NGO ALTERNATIVE REPORT
FOR THE EXAMINATION OF THE 7th PERIODIC REPORT OF THE GOVERNMENT OF JAPAN AT THE HUMAN RIGHTS COMMITTEE

JANUARY 18, 2021

JAPANESE WORKERS' COMMITTEE FOR HUMAN RIGHTS (JWCHR)

Japanese Workers' Committee for Human Rights (JWCHR)

(NGO in Special Consultative Status with the ECOSOC)

Address: 2-33-10 Minami-Otsuka, Toshima-ku, Tokyo, 170-0005, Japan

Telephone: +81-3-3943-2420

Fax : +81-3-3943-2431

e-mail: hmrights@yahoo.co.jp

URL: http://jwchr.s59.xrea.com/

CONTENTS

Page

This NGO Report is made in cooperation with:

- Japan Association for Social Justice and Human Rights (KYUENKAI)
- League Demanding State Compensation for the Victims of the Public Order Maintenance Law
- Organization to Support the Lawsuits for Freedom of Education in Tokyo
- Organization for the Rights of Children with Disabilities, Japan
- National Liaison Center against the Red Purge
- Japan Federation of Publishing Workers' Unions
- JAL Unfair Dismissal Withdrawal Plaintiffs
- Firefighters' Network in Japan (FFN)

1. Demanding the Realization of the Individual Communications Procedure(Article 2)

A. Point at Issue

The Japanese government ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979, but has not ratified the first Optional Protocol (Individual Communications Procedure) yet.
It is extremely important for the Japanese government, a State party, to submit a periodic report to the Human Rights Committee whether the government complies with and implements the obligation of the Covenant, and to introduce the Individual Communications Procedure that is granted to an individual person who can ask for relief if one's right, which is provided by the Covenant, was rejected in all domestic trials.
Furthermore, considering that a Japanese member of the Human Rights Committee used to be the Chair of the Committee for four years, and involved in individual communications sent from 116 State parties, the Government's response to the Committee is full of inconsistencies.
In addition, while announcing at a session of the Human Rights Council that Japan has contributed to not only development and promotion of international human rights norms but also improvement of human rights situations in the world, the Japanese government is serving the 5th term member of the Human Rights Council, by leaving behind the domestic backwardness of international human rights standards. Given the actual situation, we are wondering if Japan is eligible for the member.

B. Recommendations and Concerns from the Human Rights Committee

The Human Rights Committee has continuously recommended that Japan ratify the first Optional Protocol (individual communications procedure) from the 3rd examination of the periodic report of Japan (1993) to the 6th examination (2014). And the human rights treaty bodies such as the Committee against Torture, the Committee on the Elimination of Discrimination against Women and other three Committees, have also issued recommendations against Japan to ratify the individual communications procedure.
Since the first Universal Periodic Review (UPR) in 2007, many members of the United Nations have recommended that Japan introduce the individual communications procedure. And at the third UPR in 2017, 10 members of the United Nations made recommendations for Japan to declare acceptance of the provisions on individual communications of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

C. Actual Situation

When Japan ratified the ICCPR in 1979, it did not ratified the first Optional Protocol by saying that it concerned about the independence of jurisdiction. Since then, the Government has not replied any positive answers toward the ratification for more than 40 years. The Government only reiterates its comments such as "the procedure may pose any problems in relation to Japan's judicial system and legislative polity" or "the procedure must be noteworthy, but it is studying what problems there are in other countries and how they are treated."

D. Opinions

As far as The Government continues to take such attitude as "(the Committee) does not take the actual situation and the legal system of Japan into account," and ignores its recommendations that Japan is obliged to faithfully comply with the provisions of the Covenant, it is meaningless that Japan has ratified the international human rights treaties. Under such circumstances, it often happens that the rights which are recognized in the international human rights treaties, are not relieved in domestic courts. There are some examples. One example is that happened under the criminal justice system in Japan, whose system was criticized as "as it depends on confessions too much, this is the remains of the Middle Ages" at the examination of the second periodic report of Japan of the Committee against Torture, another is that the conception of "public welfare", which the HRC has repeatedly recommended at its examinations of the periodic report of Japan, is incompatible with the right to freedom of thought and conscience provided in Article 18 of the Covenant. For solving these problems, it is essential to introduce the individual communications procedure, and then to realize the situation where judges have to proceed trials with tension, keeping the existence of the international human rights treaties in mind.

E. Conclusions

We, JWCHR, call for the Committee to strictly recommend that the Japanese government ratify the individual communications procedure as soon as possible, in order to relief the victims who suffer from a false charge and to establish a society where no one is injured in fundamental human rights.

2. Regarding LOIPR para 23 ~ Inappropriate Application of "Public Welfare" as a Concept for Human Rights Restriction (Articles 2, 18 and 19)

A. Issues

1. The Japanese Government has paid little attention to the repeated concerns and recommendations by the Committee regarding the concept of "public welfare". During these 6 years, they have taken no measures in response to LOIPR, para23, not even appointing a section officially in charge of examining the concept of "public welfare."

2. In Japan, "public welfare" has often been considered synonymous with the concepts such as "social norms" or "never be a burden on others" that are incompatible with the concept of "rights", thus serving as "a general reservation to the rights" (General Comment 34, para6). This has created a reversed relation between "right" and "restriction" (ibid.para21), where a lawful exercise of the right to freedom of expression may be restricted as if it were a selfish act of an individual. This situation has remained unrectified.

B. Concerns and Recommendations by HRC

3. Concluding Observations in the past regarding reservations of rights to fundamental freedoms on the grounds of "public welfare"

1) Concluding Observations, para8 (CCPR/C/79/Add.28), 5 Nov. 1993

2) Concluding Observations, para8 (CCPR/C/79/Add.102), 19 Nov. 1998

3) Concluding Observations, para10 (CCPR/C/JPN/CO/5), 18 Dec. 2008

4) Concluding Observations, para22 (CCPR/C/JPN/CO/6), 19 Aug. 2014

4. For the Consideration of 7th Periodic Report of Japan

1) List of Issues Prior to Reporting, para23 (CCPR/C/JPN/QPR/7), 11 Dec. 2017

2) 7th Periodic Report of Japan, para201 (CCPR/C/JPN/7), 28 April 2020

C. The Present Situation of the Government

5. No section has officially been appointed to this date to examine the concept of "public welfare". (1)

6. No "steps" have been taken to respond to the request made in LOIPR, para23.(2)

7. The Government has been unwilling to have a sincere dialogue with NGOs. They declined to answer the question we had asked in writing in advance, regarding how restrictions on human rights are provided in the constitutions of other countries, including restrictions under the concept of "public welfare"(3).

D. Our Argument

8. Since its 3rd Periodic Report, the Japanese Government has repeated the same assertion that human rights may be restricted by the concept of "public welfare" provided in the Constitution of Japan, articles 12 and 13, quoting the court precedents to justify their argument. However, the Japanese courts tend to place greater value on maintaining order than protecting human rights, which has resulted in court rulings that restrictions of individual rights by public institutions are permissible under the concept of "public welfare". Shown below are some of such examples.

9. In the 3rd Period Report (CCPR/C/70/Add.1, p.50) of 1992, Japan quoted the judgement of 12 March 1948 of the Grand Bench of the Supreme Court that death penalty is legally acceptable under the concept of "public welfare".(4) This concept covers even capital punishment, which is the ultimate restriction on citizens' right to life. It would be extremely inappropriate to argue that "… the restrictions on human rights imposed under the Constitution closely resemble those under the Covenant", as stated in the 6th Periodic Report (CCPR/C/JPN/6, para5).

10. The 4th Periodic Report of 1997 (CCPR/C/115/Add.3, General Comments, para4) referred to "freedom of thought and conscience" as an example of human rights which allows no restrictions under the concept of "public welfare".(5) Thereafter, however, in a lawsuit filed by a music teacher who had been imposed a disciplinary action on her refusal based on her thought and conscience to play the piano for the national anthem in the graduation ceremony, it was ruled that the concept of "public welfare" may restrict right to "freedom of thought and conscience"(6), justifying the disciplinary action by the school board. The ruling was confirmed by the Supreme Court. The government's report is contradictory and inconsistent.

11. The 6th periodic report of 2012 (CCPR/C/JPN/6, para6) cited the supreme court judgement on the case of Tokyo Metropolitan Itabashi High School Graduation Ceremony as a typical court precedent where the restriction on "the right to freedom of expression" was justified on the grounds of "public welfare". In response to this citation, an NGO provided the Committee with an alternative report in 2014(7), arguing that this case is a typical example where a criminal punishment was unduly imposed on the right to freedom of expression under the ambiguous concept of "public welfare". The report pointed out that this supreme court judgement does not fulfill "the strict conditions" prescribed in paragraph 3 of article 19 of the Covenant, and that the criminal punishment is against the Covenant.

E. Suggested Recommendations

12. Please take concrete measures to respond to the repeated concerns of the Committee about applying the concept of "public welfare" as the ground for restriction of human rights, including actions to set up a section in charge or a council to examine the issue and come up with suggestions, within a specified time.

13. Also, please take positive measures to encourage more frequent application of the Covenant in your court decisions, as well as concrete steps to ensure that the "strict conditions" provided in paragraph 3 of articles 18 and 19 of the Covenant be fulfilled when imposing any restriction on the rights to freedom of thought, conscience and religion, or freedom of expression.

Notes:

(1) In a dialogue we had with the Ministry of Justice on December 6th 2019, answering our question about which ministry or agency is responsible for considering the concept of "public welfare", the staff in charge said, "The issue does not fall within the responsibility of this ministry, and we are not in the position to answer the question." A staff from the Ministry of Foreign Affairs also answered, "Our ministry coordinates reports from several ministries and agencies, but we cannot say which ministry is responsible for which issue."

(2) A staff from the Ministry of Justice repeated the similar answer as cited in note (1), and added, "We expect the committee to understand systems and other things in Japan." They made clear that their focus of efforts lies in persuading the international agency, rather than to accepting the recommendations.

(3) We had asked the Ministry of Justice beforehand whether they knew of any country where the concept of "public welfare" is employed in the constitution to justify restrictions on human rights, but they refused to answer saying, "It is not under our jurisdiction."

The government of Japan, despite the repeated concern from the Human Right Committee that the concept of "public welfare" is not appropriate for restricting human rights, tries to push through its own view, turning its back to the recommendations from the Committee. It has not studied international standards of human rights restrictions, how the restrictions are stipulated in constitutions of other countries, and whether there are some examples where the concept of "public welfare" is applied in an arbitrary way as in Japan.

(4) **Judgement of 12 March 1948 of the court *en banc* of the Supreme Court**

"even the people's right to life may be legally restricted or forfeited if this right is against the fundamental principle of public welfare…". (CCPR/C/70/Add.1, appendix 1, p.50).

Today more than 100 countries have abolished capital punishment, and Japan has been given the recommendation to do so from the HRC many times. However, the Japanese government adheres to its own view and would not implement the recommendation.

(5) "There is, however, no room for restriction under the concept of "public welfare" on all those human rights which bear no possibility of interfering with other people's rights. The freedom of inner thought and conscience (article 19 of the Constitution), for example, is interpreted to be absolute, and no restrictions are permitted." (CCPR/C/115/Add.3, General Comments, para4)

(6) **Tokyo District Court decision of 3 Dec. 2003 on the case filed by a music teacher who refused to play the piano along the national anthem.**

"It is appropriate to interpret that even freedom of thought and conscience, in the light of public welfare, could be subject to inherent restrictions which derives from the public nature of the public servants' job duties."

Tokyo High Court decision of 7 July 2004 on the same case

"Restrictions on freedom of thoughts and conscience could be excusable as contributing to public welfare, and they should be accepted by public servants who engage in public education. The imposition of such acceptance cannot be viewed as violating the article 19 of the Constitution."

(7) Alternative Report by Support Group for the Case of Itabashi High School Graduation and Freedom of Expression (IFE). See Japan, CCPR VI, 109 (2013), Info from Civil Society Organizations (for the session),

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=JPN&Lang=EN

3. Providing Information for the Report Submitted by the Government of Japan

(1) All-embracing and excessive restrictions on election campaigns based on Public Offices Election Act (Articles 18, 19 and 25)

(a) United Nations Human Rights Committee indicated in its fifth Concluding Observations that "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" (para. 26), and in its sixth Concluding Observations that "urges the State party to refrain from imposing any restriction on the rights to freedom of thought, conscience and religion or freedom of expression" (para. 22).

(b) Mr. David Kaye, UN Special Rapporteur, also reports that the provisions of Public Offices Election Act are those that impose disproportionate restrictions on political campaign activities. However, the Japanese Government still insists that the provisions prohibiting door-to-door visits, distributing documents, etc. are legal and appropriate. Therefore, they have effects of chilling political participation of voters in general, and continuous, widespread human rights violation is rampant all over the country. (See the report for LOIPR on the 7th Periodic Report of Japan by Japanese Workers' Committee for Human Rights (JWCHR), page 8).

(c) Recommendations We Wish

We wish to request the Committee to clearly recommend to the Japanese Government that it repeal the provisions of the Public Election Offices Act which restrict election campaigns, political activities, activities of speech and expression as soon as possible, and stop the application and execution of those provisions by the law enforcement authorities as a part of the responsibilities of the Government even before the abolition of the provisions.

(2) Disclosure of the Evidences and Prohibition of Public Prosecutor's Appeal in Retrial Cases (Articles 6, 7 and 14)

(a) Disclosure of the Evidences

In Masaru Okunishi's retrial case, the investigator's record of his oral statement while the case had been investigated was disclosed last year, whose contents contradict the death sentence, but it was after he died in 2015 (he was 84 years old). In Hiromu Sakahara's retrial case, negatives of the photographs which shook the grounds of the guilty verdict were disclosed and decision of the start of retrial was made, but it was after he died in 2011 (he was 75 years old).

(b) Public Prosecutor's Appeal

Masaru above had his retrial begun, but because the Prosecutor appealed, he had to die in prison. His survivors have succeeded his retrial case. Hiromu's case above was also succeeded by his survivors, and it was decided that the retrial would begin, but since the Prosecutor appealed, it hasn't opened yet. Koki Miyata had his retrial begun, but the Prosecutor appealed twice, and it was delayed. The year before last when he was given judgment of not guilty at the age of 85, he was suffering from dementia and couldn't understand the ruling. Iwao Hakamada got his retrial begun in 2014, but because of the Prosecutor's appeal, it I still pending in court (He is 84 years old now). As for Ayako Haraguchi (94 years old)'s case, three times the decision of reopening of proceedings was made since 2012, but each time the Prosecutor appealed. She is now bedridden.

(c) The recommendation we wish

The State party should promote the full disclosure of evidences, and stop prosecutors from appealing. It shouldn't wait for the revision of the laws.

4. Please Recommend to the Japanese Government that Japan Apologize to and Compensate for Victims of the Maintenance of Public Order Law (Articles 7 and 18)

In Japan for the twenty years until the end of the World War II (1925-1945), there were people who opposed invasion into and colonization of other countries, defended national sovereignty, fought and resisted against oppression. Under the Maintenance of Public Order Law, these people were abused as traitors, rebels or mutineers, tyrannized and oppressed by Special Political Police.

More than 95 individuals including a famous novelist Takiji Kobayashi were butchered in the process, with more than 400 deaths in prison and as many as several hundred thousand arrested, imprisoned, chained and tortured. It was not only within Japan, but the situation was more calamitous in the colonies in the Korean Peninsula as well as old Manchukuo.

These were criminal acts violating the Articles 7 and 18 of the International Covenant on Civil and Political Rights. The Law was abolished in 1945 after the World War II, but the victims of this bad Law have not had their honor recovered or been compensated in any way for the past 75 years. This violation of human rights by the State party has continued even today. This being the case, the Japanese Government has not admitted the last war as an aggressive war; on the contrary, it tries to falsify the history and want to make Japan a country to wage a war again, shouting "the war was to liberate Asia," or "it was for our country to survive and defend ourselves." We believe that in order to prevent reversing the history, the Government should recognize there were abuses of human rights of victims by the Law, and apologize to and compensate for them immediately.

We wish healing of the wounds of war from the standpoint of international human rights and humanitarian law

It is unforgivable to continue ignoring the apology and compensation just because the deeds "had taken place before the International Covenant on Civil and Political Rights was ratified." We sympathize with your indication of legal responsibility and necessity to rescue victims in the "comfort women" system in the "General Conclusions" in 2008 and 2014. The issue of victims of the Maintenance of Public Order Law is another unsolved crime of anti-humanity and anti-human-rights. The victims' struggles and resistances were appreciated in the Potsdam Declaration: "The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people."

We have been reporting to the Human Rights Committee since 1995 that "the Committee should recommend that Japanese Government admit that the Maintenance of Public Order Law was a bad law and apologize to and compensate for victims of the Law," just like other Western nations did. We strongly request that the Committee include this matter in the List of Issues, and that it recommends the State party that it should do so.

5. Forced Worship of "Hinomaru" and "Kimigayo"

5-1 Regarding LOIPR para26 ~ Forced Worship of the National Flag & the National Anthem at Public Schools in Tokyo (Articles 18 and 19)

A. Issues

1. 10.23 directive issued by the Tokyo Board of Education ordering teachers of public schools in Tokyo to stand facing the national flag and sing the national anthem at enrollment and graduation ceremonies violates articles 18 and 19 of the ICCPR.

2. The State Party and the Tokyo Board of Education pay little respect for the recommendations by Human Rights Committee.

B. The past records

3. The questions and recommendations by the Human Rights Committee
   - List of Issues for the 6th examination (CCPR/C/JPN/Q/6 para17) 14 Nov. 2013
   - Concluding observations of the 6th examination (CCPR/C/JPN/CO/6 para 22) 20 Aug. 2014
   - LOIPR for the 7th examination (CCPR/C/JPN/QPR/7 para 26) 11 Dec. 2017

C. The attitude of the administrative agencies of Japan in response to the LOIPR

4. Ministry of Education, Culture, Sports, Science and Technology took no measures in response to para 22 of the concluding observations of the last review. This time, while para 26 of the LOIPR specifically asks about the 10.23 directive, the government report still makes no reference to the directive and just repeats quoting the same court decision as the last time. (CCPR/C/JPN/7/para 216～ 219)

5. The Tokyo Board of Education, which issued the 10.23 directive, neglects the compliance obligation of the international treaties by the local public agencies. (1)

D. Facts concerning the questions asked by para 26 of the LOIPR for the 7th review

6. In 2013, we reported the influences of the directive on teachers and students for the 6th examination. (at pages 58～72 of the NGO report by "Japanese Workers' Committee for Human Rights"(2))
   The situations have not changed so much, and the total number of the punished teachers has Amounted to 483 as of March 31, 2020. (3)
   We would like to add that before the directive was issued in 2003, enrollment and graduation ceremonies in public schools in Tokyo had been held without the national symbols for tens of years. Standing and singing the anthem was not essential for the ceremonies.

7. Measures taken to enforce 10.23 directive on teachers
   ①Order of duty (p.58 7-D-1(1) of the NGO report referred above)
   ②Disciplinary Punishments (ibid. at p.59 7-D-1(3))
   ③Recurrence Prevention Seminar (ibid. at p.59 7-D-1(4).)

8. Financial sanctions against teachers (ibid. at p.60 7-D-1-(6) (7))

①As a result of series of lawsuits, the Supreme Court ruled that salary cut and heavier punishments should be nullified, while judging reprimand to be valid. However, financial disadvantages brought by reprimand are also considerably severe. (4)

②The punishments involve other various disadvantages such as discriminatory treatment on the job (5) or refusal of after retirement jobs (6).

9. New developments concerning this issue

①Even amid the covid-19 pandemic, the Tokyo Board of Education forced on schools the singing of the national anthem at graduation ceremonies, while instructing to cancel the chorus of the school song and other ceremonial songs of students' choice to prevent droplet infection. The order by the board invited severe criticism from scholars, lawyers, journalists and many other people as the imposition of patriotism on students. (7)

②CEART reviewed an allegation filed by a Japanese education workers' union, and in its final report issued on March 20, 2019, the committee defined the singing of the national anthem as "a patriotic ritual", and "quiet refusal to stand or sing" as to be "within an individual teacher's right to preserve a personal sphere of civil rights". (cf. CEART/13/2018/10 para100 ～110)

E. Our argument against the state party's report

10. The government replied to the LOIPR para 26 that standing and singing the national anthem is just a "customary ceremonial presentation", and therefore the order seeking those acts does not constitute a restriction on the right to freedom of expression (CCPR/C/JPN/7/218). However, the attitudes toward the national symbols vary according to individuals, and the acts of standing and singing the anthem are not "value neutral" (8). Teachers' refusal of the order falls within the rights guaranteed by the article 18-1 of the Covenant.

11. The true target of the directive is students.
The government explains that "the intent" of teaching about the national flag and national anthem "is not to intrude on the inner mind of the students to compel them" (CCPR/C/JPN/7/216). But the punishments on teachers have great chilling effects and peer pressure, and practically compel the students to stand and sing. The true purpose of the directive is to instill patriotism in students' minds.

12. 10.23 directive is incompatible with 18-3 & 19-3 of the Covenant.

① There are no laws or rules that oblige teachers to stand and sing the anthem.
The government presents Local Public Service Act and the National Curriculum Standards as the legal bases for the directive, but neither has any provision to oblige teachers to stand to sing the anthem. (9)
The latter is not even a law in the first place.

② The Supreme Court decision on 16. Jan. 2012 admits that there were no influences on the procedure of the ceremonies by teachers' refusal to stand and sing (10). Imposing punishments on those who stayed seated quietly during the singing of the anthem is not necessary to "protect public order and the fundamental rights and freedoms of others", and therefore does not meet the conditions for human rights restrictions stipulated in paragraph 3 of the articles 18 & 19.

13. The government quotes the Supreme Court decision as the basis for their argument that the directive does not violate the ICCPR (CCPR/C/JPN/7/para 2181～219), but the decision does not invoke articles 18 & 19 of the ICCPR. It was made without any consideration about application of the Covenant.

F. Suggested recommendations

14. HRC is concerned about the situations in public schools in Tokyo and other prefectures and cities, where teachers who refuse to stand up for "Hinomaru" and sing "Kimigayo" or play the piano at enrollment and graduation ceremonies based on their thoughts, conscience, beliefs as a teacher or religious faith are punished and imposed financial and other disadvantages,.

The Committee recommends the state party to take necessary measures to ensure that the articles 18 & 19 of the ICCPR be respected by local governments and at schools.

15. HRC is concerned that the related articles of the ICCPR are not considered or applied in the judicial process in Japan.
The Committee recommends the state party to ensure that the covenant be considered and applied in judicial decisions.

＊＊＊

Notes

(1) In a dialogue with the Tokyo Board of Education, we asked whether it admits the local governments are also required as well as the national government to observe the international human rights treaties that Japan has ratified and to respect recommendations from international human rights agencies. It answered, "We are not in the position to answer about human rights treaties that the state ratified. (2017.2.15)

(2)
https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CCPR_NGO_JPN_14885_E.pdf

(3) There are similar situations in Osaka as well, and 67 teachers has been imposed punishments for refusing to stand and sing the national anthem. Please refer to the report submitted by *Osaka Network against Forced Worship of "Hinomaru and Kimigayo "*

(4) Financial disadvantages

Punishments → / Influence on ↓	Reprimand	Salary cut	Suspension	
Regular salary		10% cut	100% cut	For predefined period
Hard work bonus	20% cut	35% cut	50% cut	
Salary raise	9 mo. delay	No raise	No raise	
Later influences	Cuts of periodical allowance, retirement bonus, pension etc.			

Other disadvantages

(5)①Those who have refused to stand and sing the anthem are not appointed for homeroom teachers.
②They are evaluated low in personnel ratings.
③They are not promoted.

④They are discriminated against in transfer of workplace.
⑤They are omitted from commendation.
⑥Their co-workers are required to attend recurrence prevention seminars held at their workplaces as collective responsibility.

(6)① They are refused re-employment after retiring without exception. All the lawsuits filed by ex-teachers to cancel the refusal of re-employment has resulted in the plaintiffs' loss. In total, more than 70 teachers in Tokyo and 8 in Osaka have been refused re-employment after retiring.
② In Osaka it is stipulated in an ordinance that those who refuse the order 3 times shall be fired.

(7) This issue was taken up three times in Tokyo Shimbun on 20, 22 Jul. 2020, and 2 Aug. 2020. Tokyo Minpo also reported about the order on 2 Aug. 2020.

(8) In the Supreme Court decision on June 6, 2011, which the government cites in paragraph 217, Judge Miyagawa gives his views in the dissenting opinion as follows; "It could be viewed that the directive in this case was not issued from a value-neutral intention as to ensure the smooth procedure of the ceremonies. The objective of the directive was to force teachers through adverse dispositions the actions that go against their beliefs, bearing in mind those who have such world views or educational beliefs as described above, and with the strong negative evaluation on the views…"

(9) **Legal grounds the government presents to justify the order**
The Local Public Service Act: Chapter III, Section 6: Performance of Duty
Article 30 (Basic Standard for Performance of Duty)
Every member of the personnel, as a servant of the whole community, must attend to his/her duties in the interest of the public and exert his/her utmost in the performance of his/her duties.

Article 32 (Duty of Obedience to Laws and Orders, etc. and Superiors' Orders on Matters pertaining to Performance of Duty)
The personnel, in the performance of their duties, must comply with laws and orders, by-laws, regulations of the local public body and rules fixed by agencies of the local public body, and faithfully observe their superiors' orders on matters pertaining to the performance of their duties.

The National Curriculum Standards; Provisions on the national flag and the national anthem.
"in the enrollment ceremony, graduation ceremony, etc., schools shall, in light of the significance thereof, hoist the national flag and instruct children to sing the national anthem."

(10) **The Supreme Court decision 16. Jan. 2012**
"According to the original decision, it is admitted that in this case, there had been no argument or presentation of evidence that graduation ceremonies were practically disturbed."

5-2 Issue of "Rising-Sun Flag and Kimigayo" (Articles 2, 18 and 19)

The coercion of standing up for "Rising-Sun flag" and singing "Kimigayo" in school ceremonies violates Articles 2, 18 and 19. We request the Committee to recommend the Japanese Government as follows. We hope you pay attention to the recommendation on the coercion of the national flag and the national anthem that CEART adopted in Thirteenth Session October 2018.

The Committee are concerned that it is not consistent to the Covenant to compel children to stand up in school ceremonies and to impose punishment of salary cut and such compulsion violates their freedom of thought, conscience, expression and worship. The Government should have a dialogue with the people concerned including children and teaches concerning rules regarding these ceremonies and agree with them. And the agreement can accommodate children and teachers who do not wish to participate in the raising of the flag and singing of the national anthem.

The Committee recommend to:

(a) provide a solution which enables to hold the ceremonies without confusion and accommodate teachers who feel pain and/or something wrong because they are forced behavior that express loyalty to the state;

(b) convene dialogue with teacher's organizations about disciplinary measures and review and change policy on in-service teacher training not to use as an instrument of discipline or punishment;

(c) review and change requirements in respect of school ceremonies in light of the needs of children with disabilities and persons to support them and teachers with disabilities, such as to admit to receive the diploma on the floor not on the stage.

6. Issue of “Sex Education” (Article 24)

In “Guides of International Sexuality Education” which were created mainly by UNESCO, it is asked to carry out “Comprehensive Sexuality Education” based on science and human rights, but the Japanese Government does not even translate it into Japanese. In Japan there have been deep-rooted taboos and prejudices about sexuality. Children and adolescents are deprived of chances to learn “Comprehensive Sexuality Education”. And there is a stubborn notion that children and young adults with disabilities must not be interested in sex, so it becomes an ordinary state that they are not taught sexual and reproductive health.

These violate article 24, so we demand that the Japanese Government make speedy improvement.

The Committee on the Rights of the Child (CRC) of the UN made a recommendation to the Japanese Government in Feb.2019. It says, “the Committee urges the State party to:

(a) adopt a comprehensive sexual and reproductive health policy for adolescents and ensure that sexual and reproductive health education is consistently implemented as part of the mandatory school curriculum.”(par.35)

In addition, the Committee on the Rights of Persons with Disabilities(CRPD) requests to provide information on “Measures taken to ensure that persons with disabilities, including children with disabilities and persons with intellectual or psychosocial disabilities, have access to age-appropriate information and education on sexual and reproductive health and rights.”(List of issues in relation to the initial report of Japan, par.25, Sep.2019)

We request the Committee to recommend the Japanese Government as follows.

The Committee recommend to:

(a) ensure that sexual and reproductive health education is attached great importance as part of the mandatory school curriculum;
(b) enable persons with disabilities to have access to age-appropriate information and education on sexual and reproductive health and rights.

7. We strongly request that the Human Rights Committee recommend to the Japanese Government that it apologize to and compensate for "Red Purge" victims (Articles 18, 19, 22 and 26)

1. Issues

1) "Red Purge" was the gravest postwar crackdown on freedom of thought and abuses of human rights. Evidences disclosed in the United States have proved its perpetrator and accomplice was the Japanese Government.

2) However, the Japanese Government has not admitted its guilt or taken on apology or compensation for the victims, saying "Under Occupation, orders from GHQ Commander MacArthur were beyond the Constitution."

3) It happened in ①949-1950. We would like to emphvictims while the aged victims are alive.

2. Observations of the Commission

So far "Red Purge" victims, in spite of their great age, have visited the Committee several times to make a request, but it has not made a recommendation or included the matter in the List of Issues. However, it showed considerable interest in the Japanese Government's legal responsibility and the need for rescuing victims in "comfort women" in its "Concluding Observations" in 2008 and 2014. Therefore, we hope that the Committee will likewise become concerned with victims of "Red-Purge" which is an issue of human right violation and an act done by the Government.

We would like the Committee to pay attention to the fact that measures of legal relief for the victims of crackdown on freedom of thought by national governments have been taken in countries such as the United States of America, Italy, Spain, and the Republic of Korea.

3. Present conditions

The Japanese Government insists on its standpoint that the matter was settled in the judiciary proceedings; it was an incident which happened during the Occupation by the United States, and the Supreme Court decided that MacArthur's Directives were above the Constitution back then.

However, Japan Federation of Bar Associations (an association consisting of all the lawyers in Japan) has made a recommendation to the Japanese Government to the effect that "Such a violation of human rights (as red purge) is not only unforgivable in any situation, even though Japan was under occupational policies by the General Headquarters of the Allied Forces (GHQ) at that time and there were directions and suggestions from them; it is recognized that the Japanese Government itself was actively involved in or supported its execution, and that it haven't taken any steps until now when it could easily restore the victims' damages as an independent Government after the San Francisco Peace Treaty took effect in 1952. Therefore the Government bears a heavy responsibility." Also thirteen of the bar associations have made a similar recommendation or warning to the Government. This is a major trend in the field of law in Japan.

4. Opinions

"Red Purge" was an incident of crackdown on freedom of thought and abuses of human rights; approximately 40 thousand of workers were dismissed just because they were deemed as communists or fellow travelers. The Japan Federation of Bar Associations judged it as violation of freedom of thought, conscience and association of the workers, as well as grave violation of human rights (under Articles 19, 21(1), 14(1) of the Japanese Constitution, and Articles 2(1), 7, 18, 20(1) of the Universal Declaration of Human Rights). The Federation depicts the actual lives of victims as follows: "The victims suffered from significant lifelong damages. They not only had their reputations abused because they were treated as if they had been worthy of being dismissed, but also had to lead a hard life being deprived of their livelihood."

5. Conclusion

We strongly request that the Committee indicate the issue of "Red Purge" sternly in light of international human rights laws in its 7th consideration of the State party reports, list it in the "List of Issues," and request the Government to make a report concerning this matter.

8. Objection to the Reply of the Government of Japan to the List of Issues of the Human Rights Committee (Article 19)

1. The Government of Japan replied to the Human Rights Committee on the comfort women issue (Question 18) in paragraphs 155 and 156 largely as follows:

   (1) The descriptions of the "comfort women" in history textbooks are left to the publishers as long as their contents do not contain errors. (para 155)
   (2) The textbook authorization mechanism does not allow intervention by any government policy or political intent or motivation. (para 156)

2. The Japan Federation of Publishing Workers' Unions, a member of the Japanese Workers' Committee for Human Rights, strictly points out that the above-mentioned allegations of the Government of Japan are factually inaccurate, as the Federation to which the workers engaged in editing textbooks belong.

3. Japanese school teachers are obliged to use textbooks approved by the Minister of Education, Science and Technology (MEXT) on the basis of Articles 34 and relevant articles of the School Education Law. On the other hand, the National Curriculum, according to the Government of Japan, has legal bind. In these frameworks, Japanese textbooks are under strong control of the Government.

4. In 2014, the new Textbook Authorisation Standards on social studies was introduced, which contained factors that might influence the contents on "comfort women" issue: a new item was added to the textbook authorisation standard that "in case there are consensus opinions of the Government or judgements of the Supreme Court regarding any event, the textbooks shall describe it in accordance with them." In reference to this, some other items were also added, such as "textbooks shall not stress specific matters overly or take up one-sided views without sufficient consideration." "In case the textbook describes matters regarding modern / contemporary historical events on which no prevailing view has been established, it shall specify that there is no prevailing view; it contains no expressions which may make pupils and students misunderstand."

5. These criteria were applied to the "comfort women" issue, and as the result, the MEXT pushed compulsory opinions on the textbook authors and publishers that tell them to specify that the "comfort women" issue was already settled by the Treaty on Basic Relations between Japan and the Republic of Korea in 1965", etc. Though the Government does not directly demand the authors and publishers to delete the contents on the "comfort women" issue, they had to expect that they would have to accept the opinions of the MEXT in the next edition and they have had to give up referring to the "comfort women" issue. Of six different kinds of history textbooks which are currently used in junior high schools, only one of them takes up the "comfort women" issue. As a matter of fact, this means that the Government has forced the authors and publishers to delete the contents on the "comfort women" issue from their textbooks through indirect measures, therefore the Federation believes that the recommendation of the Human Rights Committee to educate the people on the "comfort women" issue is correct.

6. The allegation of the Government shown in paragraph 156 is inaccurate and untruthful. As mentioned above, the revision of the Textbook Authorisation Standards on social studies was made in an extraordinary year 2014: the revisions of the Standards on the other subjects were made public in 2017. This fact shows that the revision of the former was made based on a certain "political intent or motivation behind the curtain: in the session of the Textbook Authorisation Research Council in December 2013, in which the revision of the Textbook Authorisation Standards on social studies, one of the council members protested and opposed to the revision, and he was removed from the Council next year.

7. The Japan Federation of Publishing Workers' Unions strongly requests the Human Rights Committee to recommend the State Party to alter their measures on textbooks and sincerely face the "comfort women" issue in order to settle it.

9. A Report on a 10-year-old unfair discrimination (violation of Article 26 of the International Covenant on Civil and Political Rights) and abuse of rights of work (violation of Article 6 of the International Covenant on Economic, Social and Cultural Rights) against the 165 ex-workers who were unduly dismissed by Japan Airline Co., Ltd (JAL)

A Issues

1. Soon after the Supreme Court's decision that approved the dismissal of the 165 employees by Japan Airline Co., Ltd for the reason of redundancy (February 4, and 5, 2015), Tokyo High Court judged the actions of the receiver (director of the Enterprise Turnaround Initiative Corporation of Japan) as a violation of Article 28 of the Japanese Constitution, and Article 7 of Labor Union Act (June 18, 2015); the director was judged to have obstructed collective bargaining processes which were to avoid dismissals by fake but threatening words and deeds and sped up the process of dismissal (November 16, 2010). The decision was to be confirmed by the Supreme Court (September 23, 2016). This novel decision was nothing but a corrective act of the Supreme Court which had overlooked the unfair deeds of the company which had failed to negotiate faithfully with the unions.

   Based on this, the three JAL labor unions (JFU, JCA, CCU) collectively created flexible "Unified Demands by Three Unions" and asked for a settlement of their disputes through collective bargaining (October 19, 2016). However, without proposing any alternative solution, the employer blatantly refused to consider the demands or negotiate with the unions for the ten years after the dismissal.

2. Meanwhile, the employer had recruited 5,665 cabin attendants and 386 pilots and promoted 274 trainees to sub-pilots by March 2019. Yet no one was rehired from the dismissed 84 attendants and 80 pilots; only one of the dismissed pilots was reemployed as a non-pilot. Furthermore, all the dismissed 21 attendants in total who had applied for recruitment for experienced persons, which the employer said that it leads to returning to work, were not rehired by the end of 2019.

   This is a discriminatory act, which is a violation of "any discrimination prohibited by the law" indicated in Article 26 of the International Covenant on Civil and Political Rights, and also violates "the right to work" stipulated in Article 6 of the International Covenant on Economic, Social and Cultural Rights.

(1) Violation of Article 26 of the International Covenant on Civil and Political Rights

As ILO Recommendation No. 166 (1982) states, the workers who were dismissed by the company should have a priority of rehiring when those in the same capacity are hired later. If the JAL pilots and cabin attendants who were dismissed for redundancy alone are excluded from further employment, it's a groundless discrimination, and it's clearly against the Article 26 of the International Covenant on Civil and Political Rights.

(2) Violation of Article 6 of the International Covenant on Economic, Social and Cultural Rights

According to General Comment No. 18 adopted at the 35th session of the Committee on Economic, Social and Cultural Rights (Doc.E/C.12/GC/18) on November 24, 2005, **"denial of access to employment to particular individuals or groups"** is pointed out an act against the Article 6 of International Covenant on Economic, Social, and Cultural Rights (para. 34).

B The Present Situation

Against such unlawful acts of JAL, the Government of Japan has not taken a step to promote the company to settle the dismissal disputes or restore a normal labor-employer relationship.

C Our opinions

JAL used workers' age and sick leave as a standard to dismiss workers, but it was in order to remove workers and labor unions who defend human rights at workplaces for the purpose of air safety. We have fought for the past ten years to redress such unfair dismissals. We wish such repressed human rights to be recovered at once.

D Conclusions (Recommendations We Wish)

We request the Committee to recommend to Japan Airlines Co., Ltd and the Japanese Government the following: based on Paragraphs 8-9 of "General Policies" and Paragraphs 55-62 of "Industrial Relations - Collective bargaining" of ILO's *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* and in keeping with the reality and the demands of the workers who have been dismissed for more than ten years, JAL should faithfully negotiate with labor unions in line with the Unified Demands by Three Unions submitted on October 19, 2016 and fair settlement of this longstanding dispute.

10. Toward the Prompt Guarantee of Firefighters' Right to Organize (Article 22)

Firefighters Network (FFN) was established in 1997 and currently about 1,000 firefighters are its members. One of FFN's goals is the early acquirement of the right to organize, which is a longtime wish of all the 156,000 firefighters all over Japan.

Representatives of FFN paid a visit to ILO Headquarters in 1995, 1997 and 2008, and made requests to recover firefighters' right of organization. FFN also has sent reports to human rights organizations including the Human Rights Committee whenever possible.

A. Points at Issue

In relation to Article 22, Paragraphs 1, 2 and 3 of International Covenant on Civil and Political Rights, it is violation of Article 22 of the Covenant that firefighters in Japan are not guaranteed their right to organize. The observation that firefighters in Japan are "members of the police" is an interpretation only convenient for the Japanese Government. Under international law as well as domestic law, it is omission of legislative acts not to have guaranteed firefighters right to organize.

B. Recommendations and Concerns from the Human Rights Committee

The Human Rights Committee has yet expressed any recommendation or concern about this violation to the Japanese Government.

C. Japanese Government's Response

1. The Japanese Government's "declaration of interpretation" violated international law when it ratified the Covenant

The Japanese Government ratified the 87th Convention of ILO in 1965. At that time, since the Government made its ratification without guaranteeing firefighters' right to organize in Japan, the problem still remains. The Article 9 of the 87th Convention 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 Labour 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 Japanese Government ratified International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights in 1979, it made a declaration of interpretation as follows:

The Government of Japan, recalling that it has interpreted the fire service of Japan to be included in the "members of the police" as defined in Article 9 of ILO Convention No. 87 when it ratified the Convention, declares that "members of the police" in Article 8(2) of International Covenant on Economic, Social and Cultural Rights and in Article 22(2) of International Covenant on Civil and Political Rights include the fire service of Japan.

2. Trends over the Right to Organize

The change of government took place in the general election in autumn of 2009, and the "Committee on the right to organize of Fire Defense Personnel" was held under the instruction of

the Minister of the Ministry of Internal Affairs and Communications (MIC) at the MIC in January 2010. The "Committee on the autonomous labor-management relations system of the local public service worker" (Expert Committee) proposed once again to grant the firefighters the right to organize and to bargain collectively in October 2012. For this proposal, the Government submitted the bill "Act on labor relationship of local public workers" to the Diet on November 15, but the bill was discarded because of incomplete deliberations affected by the dissolution of the House of Representatives. After that, the Government has never discussed this bill to date.

D. Opinions

1. The Fire Defense Personnel Committee will not be a substitute for the right to organize

The Fire Defense Personnel Committee is a function provided in Article 17 of the Fire Defense Organization Act, which is totally different from "an employee organization" provided in Articles 52 to 56 of the Local Public Service Act. The Committee is not a place where labor and management negotiate.

2. The issue is not part of the reform of local civil service system

The issue of guaranteeing firefighters' right to organize is being dealt as part of the reform of local civil service system. However, it has been emphasized as a violation of international law for the past 40 years at ILO, the Human Rights Committee, etc. On the other hand, discussions of the reform have not progressed.

3. The Government has not implemented recommendations made by ILO

In 2018, the Committee of Experts on the Application of Conventions and Recommendations of ILO recommended that the Japanese government submit a report on the process until the recovery of the right to organize for firefighters. However, the Government has reported that this problem was solved by revising the system of the Fire Defense Personnel Committee. It obviously ignores the significance of the recommendations expressed by the international treaties.

4. Repeated incidents at the workplace of firefighters

Supervisor's harassment has been repeated at the workplace of firefighters nationwide. In 2019, a firefighter committed suicide, leaving a will addressed to his supervisor who hid harassment against him. Furthermore, it continues to happen the incidents of firefighters who die on duty at the scene of the fire. Notwithstanding, these problems can be surely settled down if the firefighters ask the solution for the authorities concerned by gathering themselves, organizing a union and discussing the problem each other.

E. Conclusions (Proposals for Solution)

This issue of guaranteeing firefighters' right to organize should be discussed apart from the ongoing reform of the local civil service system. This is because the pending issues here are international, not limited to domestic matters. Referral to "firefighters" should be deleted from Article 52, Paragraph 5 of Local Public Service Act, and related laws and regulations should be created or improved accordingly.

We request that the Japanese Government observe the Recommendations on firefighters' right to organize by United Nations Committee on Economic, Social and Cultural Rights, ILO Committee on Freedom of Association and Committee of Experts on the Application of Conventions and Recommendations; and that human rights of firefighters in Japan be guaranteed as highly as an international level (i.e. global standard).

ADDITIONAL REPORT
FOR THE EXAMINATION OF THE 7th PERIODIC REPORT OF THE GOVERNMENT OF JAPAN AT THE HUMAN RIGHTS COMMITTEE

SEPTEMBER 2, 2022

JAPANESE WORKERS' COMMITTEE FOR HUMAN RIGHTS (JWCHR)

The Additional Report was prepared in cooperation with:

- **JAL Unfair Dismissal Withdrawal Plaintiffs**
- **Japan Association for Social Justice and Human Rights (KYUENKAI)**
- **Japan Federation of Publishing Workers' Unions**
- **Organization for the Rights of Children with Disabilities, Japan**

Japanese Workers' Committee for Human Rights (JWCHR)

(NGO in Special Consultative Status with the ECOSOC)

Address: 2-33-10 Minami-Otsuka, Toshima-ku, Tokyo, 170-0005, Japan

Telephone: +81-3-3943-2420

Fax : +81-3-3943-2431

e-mail: hmrights@yahoo.co.jp

URL: http://jwchr.s59.xrea.com/

1. Updated report on a 10-year-old unfair discrimination (Article 26 of the ICCPR) and abuse of rights of work (Article 6 of the ICESCR) against the 165 ex-workers who were unduly dismissed by Japan Airline Co., Ltd (JAL)

A Issues

1. Soon after the Supreme Court's decision that approved the dismissal of the 165 employees by Japan Airline Co., Ltd for the reason of redundancy (February 4, and 5, 2015), Tokyo High Court judged the actions of the receiver (director of the Enterprise Turnaround Initiative Corporation of Japan) as a violation of Article 28 of the Japanese Constitution, and Article 7 of Labor Union Act (June 18, 2015); the director was judged to have obstructed collective bargaining processes which were to avoid dismissals by fake but threatening words and deeds and sped up the process of dismissal (November 16, 2010). The decision was to be confirmed by the Supreme Court (September 23, 2016). This novel decision was nothing but a corrective act of the Supreme Court which had overlooked the unfair deeds of the company which had failed to negotiate faithfully with the unions.

   Based on this, the three JAL labor unions (JFU, JCA, CCU) collectively created flexible "Unified Demands by Three Unions" and asked for a settlement of their disputes through collective bargaining (October 19, 2016). However, without proposing any alternative solution, the employer blatantly refused to consider the demands or negotiate with the unions for the ten years after the dismissal.

2. Meanwhile, the employer had recruited 6,205 cabin attendants and 397 pilots and promoted 274 trainees to sub-pilots by March 2021. Yet no one was rehired to their original occupation (crew positions) at the time of the dismissal from the dismissed 81 pilots and 84 cabin attendants; only five of the dismissed pilots and three of the cabin attendants were reemployed as part-time ground positions.

   This is a discriminatory act, which is a violation of "any discrimination prohibited by the law" indicated in Article 26 of the International Covenant on Civil and Political Rights (ICCPR), and also violates "the right to work" stipulated in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

(1) Violation of Article 26 of the International Covenant on Civil and Political Rights

As ILO Recommendation No. 166 (1982) states, the workers who were dismissed by the company should have a priority of rehiring when those in the same capacity are hired later. If the JAL pilots and cabin attendants who were dismissed for redundancy alone are excluded from further employment, it's a groundless discrimination, and it's clearly against the Article 26 of the International Covenant on Civil and Political Rights.

(2) Violation of Article 6 of the International Covenant on Economic, Social and Cultural Rights

According to General Comment No. 18 adopted at the 35th session of the Committee on Economic, Social and Cultural Rights (Doc. E/C.12/GC/18) on November 24, 2005, "denial of access to employment to particular individuals or groups" is pointed out an act against the Article 6 of International Covenant on Economic, Social, and Cultural Rights (para. 34).

(3) In particular, the recently discovered "JAL Group Safety Report FY2010" which was submitted to the Ministry of Land and Infrastructure, Transport and Tourism, clearly states the facts that personnel reduction targets of JAL have already achieved in excess of 60 pilots and 382 cabin attendants at the time of the dismissal on 31 December 2010. Namely, this description frankly shows that there exists no reason for the dismissal of 165 JAL workers which was carried out under the pretext of redundancy reduction.

B The Present Situation

Against such unlawful acts of JAL, the Government of Japan has not taken a step to promote the company to settle the dismissal disputes or restore a normal labor-employer relationship.

At the time of the dismissal of the 165 employees by JAL (December 31, 2010), the dismissed workers were affiliated in the labor unions of JAL Flight Crew Union (JFU), JAL Cabin Crew Union (CCU) and JAL Captain Association (JCA) respectively. However, when three dismissed workers in JCA have reached the age of the retirement in 2012, they formed the JAL Hikaikosha Union (JHU) on April 4, 2021 for the reason of the disqualification of their membership of the labor union rules of JCA at the time. And they inherited "Unified four Demands" confirmed by the three unions and demanded JAL to resolve the issue through collective bargaining. But the company's refusal to it, JHU filed an unfair labor practice to Tokyo Labor Relations

Commission (Case No. 38) on May 12, 2021, and subsequently filed on December 9, 2021 an unfair labor practice (Tokyo Labor Relations Commission, Case No.88) against the refusal of collective bargaining by the Ministry of Land, Infrastructure, Transport and Tourism, which has actual authority to supervise and to provide guidance and advise toward the resolution of JAL disputes.

JHU's dispute, which inherited "Unified four Demands" by the three unions, is still ongoing independently.

Recently JAL has proposed dispute resolution to the two unions of JFU and CCU, aiming to conclude the "contract on commission of work", not reemployment, with the dismissed workers. As a result, the two unions agreed to accept an overall resolution to the dispute, including recognition of the dismissal dated December 31, 2010.

JHU, however, is still continuing activities in order to resolve the dispute through collective bargaining based on "Unified four Demands" dated October 19, 2016, which was established as the principal pillar of "Return to work for those who wish," regardless of the movements of JFU and CCU.

C Our opinions

JAL used workers' age and sick leave as a standard to dismiss workers, but it was in order to remove workers and labor unions who defend human rights at workplaces for the purpose of air safety. We have fought for the past ten years to redress such unfair dismissals. We wish such repressed human rights to be recovered at once.

D Conclusions (Recommendations We Wish)

We request the Committee to recommend to Japan Airlines Co., Ltd and the Japanese Government the following: based on Paragraphs 8-9 of "General Policies" and Paragraphs 55-62 of "Industrial Relations - Collective bargaining" of ILO's *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* and in keeping with the reality and the demands of the workers who have been dismissed for more than ten years, JAL should faithfully negotiate fair settlement with JHU, which is still on dispute, in line with the Unified Demands by Three Unions submitted on October 19, 2016.

2. Additional report on the necessity of mandatory disclosure of evidence and prohibition of prosecutorial appeals in retrial trials (Articles 6, 7, and 14)

On June 22 this year, the Kagoshima District Court dismissed the fourth request by Ayako Haraguchi for a retrial of the Osaki Case.

Haraguchi, who was found guilty of a murder that occurred 43 years ago, has been petitioning for a retrial since 1995. She has received three decisions to initiate a retrial, which are de-fact judgments of acquittal, but each time she did the prosecutor appealed, and the decision was reversed by a higher court that approved the appeal.

She is now 95 years old and bedridden.

As we pointed out in our earlier report, there have been cases, such as those of Masaru Okunishi (84 years old) and Hiroshi Sakahara (75 years old, both at death), in which due to appeals by the prosecutors, the claimant had died before the retrial could be started. We must say that Ayako Haraguchi is in imminent danger of such treatment.

Another reason for delay in retrial requests is the lack of mandatory disclosure of evidence in the Japanese law system. In the Osaki Case, during the second retrial, the prosecutor claimed that all evidence had been produced in the first retrial, but when requested by the court, he did disclose 213 pieces of new key evidence, including affidavits of alleged “accomplices.” The 18 negative films disclosed in the third retrial, 36 years after the incident, were claimed to be "discovered" on a shelf in the police station's photo room.

Such a piecemeal-style disclosure of evidence as the prosecution thinks fit has resulted in inefficient proceedings of hearings.

Japan's retrial system, which does not require full disclosure of evidence and allows prosecutorial appeals, forces retrial applicants to continue their requests for trials, sometimes to the point of death. It violates the right to “a trial without undue delay” under Article 14(3) (c) of the Covenant.

Once again, we request that the Committee issue a recommendation that "the State Party should promote full disclosure of evidence and discontinue prosecutorial appeals without waiting for law revision.”

3. Paragraphs 155 and 156 of the Government's Reply Falsify the Fact.

1. The Committee asked the Government of Japan for an answer to the questions regarding the "comfort women" (paragraphs 18 (e)) and the Government replied as follows:
   (1) The descriptions of the "comfort women" in history textbooks are left to the publishers as long as their contents do not contain errors. (para 155)
   (2) The textbook authorization mechanism does not allow intervention by any government policy or political intent or motivation. (para 156)
2. The JFPWU would like to introduce the fact that was occurred in 2021 as evidence that proves the Government's answer is at least wrong.
3. In April 2021, a member of the National Diet who belonged to an opposite party, which, however very close to the ruling parties in its political position, submitted a memorandum of questions, asking the cabinet not to use the terms "comfort women serving in the war" and forcible abductions" of Korean workers to Japan during World War II because they were unsuitable. The cabinet responded to the memorandum, making a favourable decision.
4. In May, two of his colleagues urged the Ministry of Education, Science and Technology (MEXT) to order the history textbooks to rewrite those terms from their textbooks in compliance to the cabinet decision.
5. On 18 May, when the debate in the National Diet was still going on, the MEXT gave notice to the textbook publishers to "correct" the descriptions in concern and warned them if they would not accept it, the MEXT would "recommend" them to do so in the name of the Minister of the MEXT. As the result, all the relevant textbook publishers were obliged to respond to the notice.
6. The MEXT justified the notice by the procedure called the "application for corrections", which therefore constituted part of the textbook authorisation mechanism. Hence the JFPWU concludes that the Governments allegation shown in paragraphs 155 and 156 falsify the fact.
7. In its 3rd through 5th periodical reports on the Covenant, the Government admitted that the textbook authorisation mechanism limited Paragraph 2, Article 19 of the Covenant, insisting that it did not violate the freedom of expression, because even if the textbook were not approved, the publishers could sell them at bookstores. Such a sophism should not be allowed any longer.
8. The Japan Federation of Publishing Workers' Unions strongly requests the Committee to recommend the State Party to correct the textbook authorisation mechanism in accordance with the Covenant.

4. Additional report to the paragraphs 5-2 and 6 of NGO Alternative Report provided by the Organization for the Rights of Children with Disabilities, Japan

Add to 5-2 Issue of "Rising Sun Flag and Kimigayo" (Articles 2, 18 and 19)

We hope the Committee will pay attention to the recommendation that CEART adopted in the 13th Session in October 2018 on the coercion of the national flag and the national anthem, and what's more, the second recommendation that was adopted in the 14th Session in October 2021. The Second is directed to the Japanese Government that won't deal with the First sincerely.

Add to 6 Issue of "Sex Education" (Article 24)

Tokyo Metropolitan Government put out "the guidebook of sexual education (revised edition)" in 2019, and the Government of Japan (MEXT) have started "life safety education" under the policy of prevention of sexual crime and violence against children. But under the regulation of the courses of study they evade sexual intercourse, pregnancy, contraception, abortion, and so on. So some children can't realize sexual crime against them. Especially cases that children with disabilities are sexually abused at schools, institutions, homes, and so on are never ending. We demand MEXT to promote "comprehensive sexuality education" based on human rights and science so that children with disabilities are able to understand their own growth scientifically and enhance their feelings of self-approval.