**Report from Japan on Violations of a High School Student’s Right to Freedom of Expression (Article 19)**

**~“Citizen’s arrest” of a high school student for his peaceful expressive activity by the vice-principal of Meguro 9th Junior High School～**

**The Organization to Report the Case of Meguro 9th Junior High School to CCPR**

May 27 2021

**1. Introduction**

 The organization was established on October 26 in 2020 to report to the Human Rights Committee on a case of violation of Article 19 of the ICCPR, in which a high school student was arrested for his peaceful activity of handing out flyers to junior high school students on the street near Meguro 9th Junior High School in Meguro-Ward, Tokyo. The detailed facts are as follows.

**2. Facts**

(1) Distribution offlyers by a Senior High School Student

① What the student was doing.

Around 7:30 on the morning of July 8thi in 2020, a senior high school student was handing out the flyers to junior high school students on their way to school on the street 200 meters away from the school gate of the Meguro 9th Junior High School. The reason that he distanced himself from the gate was that he had been intervened by the school administrators the day before, and he wanted to avoid trouble.

② Content of the Flyer

 It criticized the plan to conduct swimming classes in the midst of the COVID-19 pandemic　at Tokyo Metropolitan Koyamadai Senior High School, which is located near Meguro 9th Junior High School, from the viewpoint of protecting students’ health and safety. Originally it had been handed out to at the gate of the Koyamadai Senior High School to the students at the school, and the swimming class was cancelled after that.

③ Composer of the Flyer

 The flyer was made by an organization named *Japan Committee for Self-governing*, which was established by high school students.

 It introduces itself as follows. “We aim to take the place of the present student bodies, which have now become subordinate to the school authorities, and we are engaged in autonomous activities standing always on students’ side, to protect students’ freedom and rights and to improve and enhance our school life.”

④ Purpose of the Distribution of the flyer

 The flyer was handed out to the students at Meguro 9th junior high schools, which is located near Tokyo Metropolitan Koyamadai Senior High School, and many of whose students go on to Koyamadai Senior High School, to inform them that students’ autonomous activities can change school life and to invite them to join their organization.

(2) Oppression of the Distribution Activity

 ① Interference by Shuichi Takahashi, vice-principal of Meguro 9th Junior High School and other staff members.

 The school administrator Mr. Takahashi did not want their students to read the flyer criticizing the school authorities. He and two other members of the school staff interrupted the student, who was handing out the flyer peacefully all by himself.

Their stated reason for the interruption was “to protect the safety of the school routes”, but the distribution was being done peacefully in a quiet residential area, 200 meters away from the junior high school with few pedestrians or traffic, and there could be no danger or obstruction to the school route.

② How he was arrested

 The student began filming their persistent disturbance with his smartphone to record it as the proof of intervention. He walked back without stopping recording, and calling, “Please keep social distance!” He tried to avoid being touched or treated violently, but the vice-principal approached him and placed his hand in front of the camera lens of the phone. When the student resisted in order not to be deprived of the smartphone, the vice-principle shouted, “Ouch, ouch! I suffered violence, so I must report to the police,” and called the police, using his own cell-phone. In about 20 minutes three police cars and seven police officers arrived, and the student was taken to the Himonya Police Office.

(The URL of the video of the scene: <https://www.youtube.com/watch?v=UZfb8CDehTQ>)

 According to the “facts of alleged infringement”, which was composed later, the reason for the student’s arrest was an “interference with public officers”, and it was a “citizen’s arrest”.

③How he was detained

 After the police investigation, he was sent to Tokyo District Public Prosecutors Office. As he remained silent according to his attorney’s advice, the detention period was lengthened by 10 days. And another 10 days were added at the open court for the disclosure of reasons for detention, on the ground that there are risks of the destruction of evidence

 When he was arrested, he identified himself by showing his health insurance policy and told the contact number of his organization, thus making clear that there was no risk of flight. However, he was detained in the substitute prison for 21 days, which is the legal ceiling for detention. He could not attend school during the period. After being freed, he was exempted from prosecution.

**3. Problems regarding reactions by the authorities concerned**

(1) Takahashi Shuichi; then vice-principal of Meguro 9th Junior High School

 Generally, school administrations have no authority or legal ground to prevent high school students, who are ordinary citizens, from peacefully handing out flyers on the public streets. It is not an official duty of school administrators to intervene citizens’ activities of handing out flyers. As an educator, he should not have resorted to asking the help of police authority to suppress the activity of handing out the flyers, and his conduct of citizen’s arrest is against the article 220 of the Criminal Code (1).

(1) article 220 of the Criminal Code (Unlawful Capture and Confinement)

A person who unlawfully captures or confines another shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.

(2) Tokyo Board of Education

 When the student’s right to study was deprived of for 21 days on account of a series of inappropriate conducts by the school administrators, the Board sat still and did nothing. It did not try to help the student nor apologize to him.

 While it was the Board that should have advised Koyamadai High School to reconsider the class plan of swimming from the viewpoint of ensuring students’ health and safety, adversely the student who had criticized the enforcement of the swimming class suffered disadvantages for that.

Furthermore, the Board did not discipline or punish Shuichi Takahashi, the vice-principal of the junior high school in any way, for infringing the student’s human rights. It should have ordered him to attend instruction courses on human rights.

(3) Himonya Police Station under the jurisdiction of the Tokyo Metropolitan Police Department

 It accepted the offense report from the vice-principal without any investigation, and arrested

the student who was engaged in a legitimate activity.

(4) The Tokyo District Public Prosecutors Office

 It requested the Tokyo District Court to approve the detention of the student and later the extension of the term. Both requests were granted, and it detained him for 21days, despite that there was no risk of his escape since he lived with his parents. Eventually he was not indicted, but the office did not explain the reason nor apologized to him.

(5) Tokyo District Court

 It approved the containment of the student for 21 days in the substitute prison, on the ground that he remained silent, without giving any answer to the claim of the clarification by the victim’s attorney. This is tantamount to the denial of the right to remain silent guaranteed by the Constitution.

**4. Related Questions in LOIPR**

 Since the arrest occurred on July 8th in 2020, after the LOIPR was issued in 2017, there are no questions related directly to this case. The case is, however, an issue of violation of freedom of expression as well as of the substitute prison. Therefore, it will apply to the following questions.

16. In the light of the Committee’s previous recommendations (para. 18) and the evaluation of their implementation (see CCPR/C/116/2 and CCPR/C/120/2), please report on measures taken to abolish the substitute detention system (*daiyo kangoku*) or to ensure that it is fully compatible with all guarantees contained in articles 9 and 14 of the Covenant, including clarification of: (a) whether alternatives to detention, such as bail, are duly considered during pre-indictment detention and used in practice; (b) whether steps have been taken to ensure that defence counsel is present during all interrogations; (c) the eligibility criteria for court-appointed counsel under the law enacted in May 2016 and whether such legal assistance is available from the moment of apprehension; (d) whether strict time limits for the duration and methods of interrogation have been set; (e) whether an independent complaint mechanism to promptly, impartially and effectively investigate allegations of torture and ill-treatment during interrogation has been established.

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

**5. Conclusions ～Violations of The student’s Right to Free Expression**

 The student’s peaceful activity of handing out flyers of his own making to junior high school students is an activity of free expression and has no illegality. Whereas his right to express himself freely is guaranteed by Article 21 of the Constitution of Japan(1), Article 19 of the ICCPR and Article 12 of the Convention on Rights of the Child, he was deprived of the right, unlawfully detained as long as 21 days and taken away the right to study during the period. His honor and dignity as a human being were damaged by educational, administrative and judicial bodies, but there has been no explanation, no apology nor compensation for the damage. This case should be considered as a violation of Article 19 of the Covenant.

  (1) Article 21of the Constitution of Japan

 Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

**6. Suggested Recommendations**

(1) HRC is concerned that the intervention of the student’s activity by the school administrators of Meguro 9th Junior High School violates his rights to freedom of expression. There seems to have been no urgency, no legitimate purposes nor legal bases to arrest him. The Committee recommends the Government of Japan to instruct local educational agencies and schools to guarantee the rights of high school students to express opinions freely in and out of school.

(2) The Committee is concerned that the arrest of the student who was peacefully handing out

flyers on the street is unlawful. It recommends the Police of Japan to refrain itself from intervening peaceful activity of expression by high school students.

(3) The Committee is concerned that since the student, who identified himself, was detained for 21days, this case violates not only Article 19 but also Article 9 of the Covenant. The Committee recommends the substitute prison should be abolished.

 (4) The Committee is concerned that those who were in the position of educators oppressed the high school students’ expressive activity through the help of police power. It recommends the Government of Japan to make those school administrators attend instruction courses on fundamental human rights.

 (5) The Committee recommends all the damages the student has suffered should be compensated.