

**THE PARALLEL REPORT
TO THE 3rd PERIODIC REPORT OF JAPANESE GOVERNMENT
SUBMITTED TO THE COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS (CESCR)**

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

The 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: +81-3943-2431

e-mail: hmrights@yahoo.co.jp

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

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Counter Report on the Third Periodic Report by the Government of Japan on ICESCR

Introduction

We very much appreciate the “Concluding Observations” of the Committee on Economic, Social and Cultural Rights: Japan, which the committee adopted after considering the second periodic report by the government of Japan. It has given a huge impact on the Japanese society, and we hope the committee will continue to make appropriate comments on Japan’s human rights situation and make concluding observations which suggest the direction for its improvement.

The Great East Japan Disaster of March 11, 2011, has left 15,854 people dead, 3,276 missing, more than 330,000 evacuees in temporary housing, and a total of 1,300 related deaths after the Disaster, which exceeds 900 of Hanshin-Awaji Earthquake in 1995 (the statistics as of the end of February, 2012). The Japanese society has been filled with suffering and sorrow caused by such serious damage. We thank deeply for all the assistance and support given by many people in many countries and international organizations throughout the world.

2. The Government of Japan making an unprecedented, thoughtless response to the “Concluding Observations” without listening genuinely

The Concluding Observations of the Committee on Economic, Social and Cultural Rights on Second Periodic Report of the Government of Japan adopted in August, 2001, has given a great impact on the Japanese society.

The Committee recommended the Japanese government and Hyogo Prefecture (hit by the great earthquake in '95) to take appropriate steps promptly in accordance with the obligations prescribed in article 11 of ICESCR, as stated in “Concluding Observations”, “Principal Subjects of Concern”, and “Suggestions and Recommendations”. It also expressed proper concerns and made recommendations regarding the issue on nuclear power plant.

The Concluding Observations were taken up by mass media such as newspaper and television in the Hanshin-Awaji District, and they were thought highly of by the people who came to know about them. However, the government of Japan as well as those of Hyogo Prefecture and Kobe City did not pay due respect and argued against them in the National Diet, Prefectural and City Assemblies, regarding them as “misunderstanding of the facts”, “unjust” or “an opinion given after only 6-hour discussion”.

The above phrases are quotes from the account given by Mr. Hitoshi Murai, then

Minister of State in charge of Disaster Prevention, in Special Committee on Disaster, in the House of Representatives on Nov. 8, and in the House of Councilors on Nov. 28, 2001. Further, during the period in between, on Nov. 14, Mr. Toshiyasu Noda, then Counselor for Cabinet Office, went to Geneva to meet with Mr. Tychonoff, then Secretary of the Committee for Social, Economic and Cultural Rights, and gave him the government view on the Concluding Observations.

Moreover, the Japanese government submitted a report titled “the Comments by States Parties on Concluding Observations” on July 16, 2002. The Committee discussed this document and made it public (Document No. *E/C.12/2002/12*). This seems to have been the first case ever done by the committee.

In addition, the content was just repetition of what had already been stated in the second periodic report by the government, their written document in response to the list of issues, and the remarks made at the time of consideration. The way the Japanese government responded to the Concluding Observations was unprecedented and lacked common sense.

However, a look at the current situations of the great earthquake and nuclear power plant disaster clearly shows that the observations by the Committee were correct, while the responses by the Japanese government were completely wrong. The detailed discussion will be given later in the section “The Great Earthquakes and Meltdown of Nuclear Power Plant ”

The third periodic report by the government of Japan does not refer at all to the responses it took to the concluding observations given by the committee on the second periodic report. We would like the committee to ask the government of Japan what their present view is on this matter.

3. “ Concluding Observations” Suggesting the Way the Japanese Society should be in the Twenty-first Century

We believe the “Concluding Observations” made about 10 years ago by the Committee was of high value, showing the way Japan should be in the 21st century. Paragraph 10 points out that “the Committee is concerned that the State party does not give effect to the provisions of the Covenant in domestic law in a satisfactory manner.” It is quite true that provisions of the Covenant are not generally mentioned in legislative, administrative or judicial decision-making processes, and Japan’s “contravening its obligations under the Covenant” is the fact.

Also, we are in complete agreement with paragraph 38 of the Concluding Observations, which urges the government to establish a national human rights institution.

The DPJ administration which started 2 years ago has been unable to realize any of the campaign promises such as introduction of individual communication system and visual recording of the entire interrogation process, although they were listed in their manifesto. The government of Japan is faced with concerns and recommendations regarding a great number of subjects by not only this committee, but also by those on universal and periodic reviews by UN Human Rights Council, ICCPR, ICSECR, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and CEDAW.

However, it may be no exaggeration to say that the successive administrations in Japan have kept ignoring them to this date, including the period when the country was a member of the Human Rights Council.

In February, this year, Minister of Foreign Affairs expressed that Japan would retract its reservation of article 13, 2(b) and (c) of ISECR, on which the committee had expressed concerns and given a recommendation. It is certainly a step toward progressive introduction of free secondary and higher education, which deserves special mention.

Nevertheless, the present administration has also been betraying the high hopes of the people, impeding the rights of every global citizen ensured by UN International Covenants on Human Rights. We hope that the committee will point out again, in the Concluding Observations, the direction the Japanese society should be heading for in the 21st century, in order to improve its human rights condition which has been left far behind the global standard.

4. Report from the Struggle by Japan Railway Labor Union, Kinki Group

The following is a report by Japan Railway Labor Union's 25-year Struggle for retraction of layoffs of 1,047 members and their return to JR.

We submitted a counter report on the second periodic report by the government of Japan, in accordance with article 20 for "freedom of assembly" of the Universal Declaration of Human Rights, ICCPR, and article 8 of ICESCR for "the right of everyone to form trade unions and join the trade union of his choice," and sat on in the sessions considering the Japanese government's periodic report.

So far, we have succeeded in having ILO make recommendations to the government of Japan on as many as 9 occasions. Also, we have been supported by many workers, scholars, lawyers and intellectuals from all over the world.

With the support from the people in a wide range of fields, we made the final decision in the 25th year of our struggle that "the realization of re-employment under the government responsibility" would be difficult, and were forced to conclude that "the termination of our

struggle to retract layoffs and return to JR” was unavoidable.

We proudly report that “the solution under the government responsibility” equals to a “winning solution”. We keep on fighting against “breach of the right to unite,” as well as “intensification of labor”. We are fighting in pursuit of safety in railway transportation, and more than anything else, for “securing the dignity of every human being.”

Let us express our sincere gratitude to the committee for guiding the government of Japan in accordance with the Universal Declaration of Human Rights, ICCPR, ICESCR, and International Labor Convention. Thank you very much!

1. Sweeping Measures Required for Relief and Assistance for Victims of East Japan Great Earthquake and Nuclear Power Plant Accidents

(Article 11 of International Covenant on Economic, Social and Cultural Rights)

Conclusion and Proposals

- Identify and establish the responsibilities of the Government, relevant local governments and TEPCO (Tokyo Electric Power Company) in regard to the disaster of East Japan Great Earthquake and the nuclear crisis at the Fukushima plant, so that disaster victims may recover and rebuild their life without too much loss of time.

- **Establish a new energy policy of denuclearization in the interest of safety and sustainability by discontinuing the operation of the existing nuclear plants**

Concern / Recommendation (the 2nd Review of CESCR in 2001) —paragraphs 22, 27, 28, 29, 49, and 54

I. Three Prefectures of North East Japan hit by Unprecedented Catastrophe

Prologue

As stated in “the Introduction”, the great earthquake hit East Japan on March 11, 2011 causing tremendous damages including death, missing persons, and collapsed or washed-away houses and buildings as well as fishing related boats and gadgets. The disasters are beyond all description, and it is absolutely impossible to know how far the radioactive contamination would spread from the TEPCO nuclear power plant No.1 in Fukushima. Aftershocks are still shaking the earth often in many parts of the Japanese islands. Radioactive fallout not only contaminates natural ingredients of food and poses risks to the health of people, but also causes serious damages to industries of fishing, agriculture, livestock, as well as tourism. The whole country has been affected by aftershocks and fallout including capital Tokyo.

Japanese people were victimized by radioactive substances three times in the past including Hiroshima, Nagasaki and Bikini Atoll. This time is the fourth. And Japan became a perpetrator of spreading radioactive substances to the whole world while its people are in constant fear of the consequences of the nuclear fallout.

1.Reports from the Disaster-Affected Area in Tohoku (North East)

(1) Report from Miyagi Prefecture

Nine months have passed since the great earthquake. The recovery and reconstruction works are progressing slowly and victims have not yet got back on their feet. The coldness is a major issue in the makeshift housing which has been built by big construction companies outside the prefecture as they do

not have the know-how to build a house in the cold climate unique to the area. The local governments should have learnt the lesson from the similar troubles in the reconstruction process after Hanshin Awaji great earthquake in 1995. As was reported by the mass media, Miyagi Prefecture is singularly behind in providing the protection from coldness as compared to the other two, Iwate and Fukushima. Despite the instruction from the Ministry of Health, Labour and Welfare, many local governments in the prefecture cut off welfare benefit when a family on welfare receives donation money for the disaster. Miyagi Prefectural government does not offer the service of radioactivity measurement. Parents are very concerned with the health risk of their children. They want to know for sure that food especially school-provided lunch is safe. They are wondering if the schoolyard, parks, and playground are safe. Some victims settled down away from their old homes. Since the reconstruction program is not yet established, they cannot return to their own property even if they would like to do so. They do not know when and what to do next.

Fishermen are eager to go to sea for fishery, but most of fishing gears and fishing boats are gone. Victims who want to rebuild their houses or who want to restart their businesses cannot take the first step because they are faced with the double loan, which means they have their unpaid portion of old loan and the new one to start all over. No job has been created locally as the local governments placed an order of clearing work of rubbles and wreckages with large construction firms in big cities.

People are saying; "There is no job. Even if I do find a job, my wage will be cut half by intermediary. Unemployment insurance will expire in January 2012. But, I have no prospect of finding a job after that." Recovery and rebuilding of victims' livelihood as well as business activities is extremely slow in Miyagi Prefecture. So disaster victims are very angry at do-nothingism of the Miyagi Prefectural Government. What the Prefectural Government did is to leave the matter of make-shift housing to Japan Prefabricated Construction Suppliers & Manufacturers Association, blanket order of the rubble clearing project to a large general contractor, pouring huge money into the restoration of access railroad to Sendai Airport as well as to the restoration of "Dream Messe Miyagi". The program serves only the interest of big construction companies by focusing on public buildings and infrastructure. They seem to have no interest in rebuilding the livelihood of devastated individuals, families and small businesses.

Miyagi Prefectural Government wrapped up the final plan of the reconstruction programs of Miyagi Prefecture from earthquake disaster on August 17, 2011 (first draft in June and second draft in July). But, the programs look like materialization of neo-liberalism in favor of business establishment with no regard for residents. It looks like an attempt to take advantage of earthquake and Tsunami as heaven-sent opportunity for the so-called structural reform. The Miyagi Plan is in sharp contrast with the Iwate Prefecture Reconstruction Basic Plan, which focuses on "Reconstruction of Everyday Life" and "Regeneration of Residents' Livelihood", which we appreciate as decent and reasonable approach. At

the same time, we are determined to support residents of Miyagi Prefecture by pressuring the local governments to pay more attention to the welfare and future of residents.

(2) Report from Iwate Prefecture

The huge tsunami which followed the great earthquake of magnitude 9.0 hit the Iwate coast line extending 708 km on March 11, 2011. Population of approximate 274,000 lived in 12 cities, towns and villages along the coast at that time. The total number of households was about 104,000 and the household which held old people of 65 year-old and over accounted for 52.5%. The figure is 6.4 point higher than the prefectural average. In Iwate, it has been ten months since the earthquake and tsunami caused death and missing of approximate 6000 people and destruction of 24,736 houses and buildings.

Total number of disaster victims is approximately 64,000, of which 314,000 live in 13,223 makeshift houses, 11,678 in 4361 rented houses, 2960 sought shelter in their relatives' houses and 1621 moved out of the prefecture. 16,569 people had their houses damaged in one way or another, but no support measure is being offered for the rebuilding of the houses..

In the "Basic Plan for the Reconstruction from East Japan Great Earthquake and Tsunami" announced by the Prefectural Government one month after the disaster, Its emphasis was placed on two fundamental principles, firstly by securing "living", "learning" and "working" so as to protect the individual right of seeking happiness and secondly by carrying on the victims' affection and sentiment toward their home province. The Basic Plan was deliberated by the Committee for Iwate East Japan Great Earthquake Tsunami Reconstruction (19 members) chaired by Katsumi Fujii, President of Iwate University while public comments were sought. The Plan was finally adopted at the Prefectural Assembly on August 11. Then details of recovery program was drawn up by devastated cities, towns and villages.

The lives rescued from the unprecedented disaster should never be lost by lack of attention again. Nevertheless, three major public hospitals suffered the catastrophic damage. Yet they were not dealt with in the basic plan. So they became the issue of election campaign of the governor and members of the prefectural assembly. The newly elected governor announced his decision to rebuild hospitals. Now makeshift facilities have been built to provide 41 beds to temporary Prefectural Takada Hospital. It still remains a big challenge for the Iwate Prefecture to rebuild adequate medical service in the public and private sectors for protection of life and health of the residents.

The core industries of the Sanriku coast (Iwate coast) are fishery and marine products processing. 90 percent of 14000 fishing boats as well as aquaculture facilities and fishing gears were washed away. 108 out of 111 fishing ports suffered devastating damage. The industries need strong support for the restoration of their basics. Although fishery is resumed in groups by different fishery cooperatives, immediate assistance is needed to restore and rebuild the industrial infrastructure so as not to overburden

fishermen who have lost everything.

The local government announced public housing projects to build 9000 to 9500 houses as well as to subsidize approximately one million yen to each household which is going to rebuild home on its own (maximum of 9500 households). Nevertheless, various obstacles still remain untouched including the central part of the prefecture which is submerged in water. It all depends on hard work of residents and the support from neighbors and friends in solidarity to make the two principles work as is envisioned by the local government.

(3) Report from Fukushima Prefecture

The accident of the TEPCO nuclear power plant No.1 in Fukushima is the largest and worst environmental pollution in the history of Japan in many respects. Just take a look at a few aspects;

*Seriousness of damage: As they could not search the missing people who were washed away by tsunami, the bodies were left unattended for several months.

*Scope of the damage: Large part of the Japan islands has been contaminated with radioactive substance.

*The damage in terms of money: The Government estimates the damage of nuclear accidents at 5,800 billion yen presently. But many experts say that it is an underestimate.

*Length of time required for the recovery and reconstruction: It would take a very long time just for recovering from the damage of earthquake and tsunami in the first place. Now in some areas radioactive fallout makes it impossible for residents to come home for the next 20 years because of the contamination. Besides that, popular assumption is that it would take 30 - 40 years to decommission the nuclear reactors.

*Anxieties of possible late-onset injury from radiation: Fukushima Prefecture announced that the all zero to 18 year-old residents at the time of the accident will receive medical check-up for the rest of his or her life.

We would like to comment on the third report of the Japanese Government in connection with the paragraph 49 of E/C.12/1/Add.67. In reference to the Government's statement "To obtain the understanding of citizens and residents of areas in which nuclear power installations are located, the Government recognizes that it is important to give them full explanations and to hear their opinions concerning the safety of nuclear power (E/C.12/JPN/3) 77, we would like to comment as follows.

The Government as well as power companies sprinkled the words of "Safe Nuclear Power" one-sidedly trying to establish the so-called "safety myth". They never listened to the opinion of those who warned the danger of nuclear power. A group of residents in the citizens' movement have repeatedly warned the Government and TEPCO about the risks and danger of nuclear accidents which will be caused by natural disasters like earthquake and tsunami since 2004. Hidekatsu Yoshii, Member of the Diet (Japanese Communist Party) has raised the same issue at the Diet 9 times since 2005. But these facts came to public knowledge only after the accidents took place and the risk has become reality. Also with regard to

nuclear disaster by earthquake, Professor Katsuhiko Ishibashi (former director of the Research Center for Urban Safety and Security Kobe University) warned the Government as an expert witness at the public hearing of the Diet in 2005. Since then, the issue got the attention of concerned citizens at the national level, which led various groups of citizens' movement to express their concerns and demands, but the Government and electric power companies have ignored them, failing to take any precaution measure. Then finally the natural disaster hit the nuclear plants on March 11.

In reference to the Government's statement "to hear their opinion", we would like to state that it came to light and stunned the public that NISA (Nuclear Industrial Security Agency), a governmental agency, wrote a scenario in favor of nuclear power generation to stage public hearings and meetings with local residents in cooperation with a power company or to have employees of local government office to speak up in favor of a nuclear power plant. What the Government and electric power companies were doing was to repeat groundless assurance that Japanese nuclear power plants are safe and that no serious accidents could happen in Japan. Then they made the assurance into colorful pamphlets for advertisement using a large sum of tax money. Moreover, the advertisement has been spread to the entire population through mass media and education at schools. Consequently, Japanese people have been made to believe firmly that nuclear energy is safe.

The Government report states, "Japan's fundamental law concerning disasters, contains a section on dealing with accidents at nuclear power installations, which prescribes, as a basis for tackling nuclear-power-related accidents, the actions that need to be taken to prevent the occurrence and escalation of accidents and to recover from them. It also states," ... operators of nuclear power installations have formulated a Disaster Management Operating Plan for each installation, which prescribes the action to be taken to prevent nuclear-power-related accidents, respond to emergencies, and deal with the aftermath of nuclear-power-related accidents."

Then what really happened? Approximately 150,000 residents were forced to evacuate their homes and to scatter in different parts of Japan. One big challenge is to have them return to their old homes. But, many of them suffer privation in the places where they settled because of insufficient financial support they receive as compensation for the damage. Support is needed urgently in terms of material and psychological. Yet what they presently receive is definitely insufficient. Furthermore, despite the fact that decontamination of the environment is indispensable before they come home, TEPCO is totally indifferent in this respect.

The plant management and operators were absolutely unprepared for accidents and had no effective measures for "prevention from expansion" of the accidents.

According to the interim report of the Government's Investigation Committee on the Accident at Fukushima Nuclear Power Stations of Tokyo Electric Power Company, there were many cases of lack of awareness and mishandling of the systems. The Power Plant Management and workers erroneously thought that ISO Condenser was operating normally as they did not know that the loss of backup electric power disables the Condenser at No.1 unit. There were delays in starting up of the emergency venting system to relieve the inside pressure, a worker's arbitrary manual shutdown of high-pressure coolant injection system at No.3 unit and further delays of water injection by a fire truck and so on. The report points out that the Government as well as TEPCO was unaware of the seriousness of the condition in which a severe accident such as hydrogen explosion is developing into the disaster that would spread fallout into the environment and contaminate the communities. They simply lack in breadth of vision enough to see the far-reaching consequences of natural disaster's impact on the nuclear plant.

The preventive measures against the expansion of damages also failed. Mayors and village chiefs in Fukushima Prefecture had no access to information from the Central Government except for news on TV. Furthermore, as the Government did not inform calculation results of SPEEDI (System for Prediction of Environmental Emergency Dose Information), many residents were unable to select more appropriate evacuation routes and methods and many were unnecessarily irradiated. The offsite center located 5 km away from the No.1 unit was established for the sole purpose of responding to accidents. However, since there was no forethought of the possibility of simultaneous nuclear accident and natural disaster, the center structure did not take into consideration the increased radioactive dose. Eventually the center was abandoned when the area was designated for evacuation. Those disasters and calamities have been predicted by the group of concerned and credible citizens who are more knowledgeable. But the Government and TEPCO did nothing until March 11th.

Did the Government really learn the lessons of the Great Hanshin-Awaji Earthquake of 17 years ago?

1. 17 years from the Great Hanshin-Awaji Earthquake

We at Japanese Workers' Committee for Human Rights participated in the 2nd review of the report of the Government of Japan by the CESCR in August 2001, and submitted our report on the issues of relief of victims and reconstruction of the devastated cities by Great Hanshin-Awaji Earthquake of January 17, 1995. At that time, members of Hyogo Prefectural Conference of Citizens, Reconstruction Research Center and other groups were with us to appeal the unfairness of the Government's position that a home is private property, for which each family should take full responsibility.

The concluding observation dated August 31, 2001 included the issues of Great Hanshin-Awaji

Earthquake in paragraph 27 and 28 under C. principal subjects of concern as well as in paragraph 54 and 55 under E. suggestions and recommendations. The committee made the following recommendations;

"54. The Committee recommends that the State party encourage Hyogo Prefecture to step up and expand its community services, in particular to older and disabled persons."

"55. The Committee recommends that the State party, in line with its obligations under article 11 of the Covenant, speedily take effective measures to assist poorer earthquake victims in meeting their financial obligations to public housing funds or banks, undertaken to reconstruct their destroyed houses, in order to help them avoid having to sell their properties to meet continuing mortgage payments.

The Government at that time was afraid that the CESCR concluding observations might create disadvantage for the Government. So, immediately after they were published, the Government insisted at a Diet session that CESCR wrote those observations based on misinterpretation of facts and that their views were not right. Later on, it insisted that the Secretariat of CESCR admitted "the errors" again at another Diet session. It ignored the concluding observation consistently, and refused to implement the bail-out package for victims of Great Hanshin-Awaji Earthquake disaster. Hyogo Prefectural Government and the City of Kobe followed the steps of the central government, and kept saying that CESCR misinterpreted facts obstinately at their sessions of the Prefectural Assembly and the City Assembly.

2. Ten Years from CESCR's "Concluding Observation"

The "Concluding Observations" have lifted the spirit of and given hope to not only victims of the Great Hanshin-Awaji Earthquake disaster but also many more victims of natural disasters after that, who have been faced with many difficulties. Natural Disaster Victims Relief Law was revised twice in 2004 and 2007, by nationwide citizens' movement which thrived on the courage they had from "Concluding Observations". In 2004 revision, "two million yen" provision was newly set up in the new program called "Habitation Stability Support Program." However, the money was not to be used for rebuilding of the house itself. 2007 revision dated December 14, 2007, raised the amount to maximum of three million yen with improvements in application which removed all the limitations with regard to applicants' status about ages, incomes and use of the money on rebuilding of the house itself. The revised law was retroactively applied to victims of Noto-Hanto earthquake, Niigataken Chuetsu-oki Earthquake, the typhoon No. 11, all of which took place earlier in 2007. However, there was no retroactive application of 2004 revision nor 2007 revision to the victims of the Great Hanshin-Awaji Earthquake disaster.

3. Victims of the Great Hanshin-Awaji Earthquake Disaster Today

Almost 17 years have passed since the disaster. Victims had no choice but to rely on various loan programs without any public support of direct subsidies. They are now the socially vulnerable being

pushed into poverty in a state of deadlock in repayment of housing and other loans. Since many failed in the repayment of the loans from the former Government Housing Loan Corporation, the portion of 49,400 million yen was repaid by performance of subrogation in 2465 cases while the loan of 53 billion yen from the Emergency Disaster Reconstruction Fund was repaid by performance of subrogation in 6,920 cases, which means many victims lost their newly-built houses and stores after many years of struggle. As of December 31, 2011, out of total 56,422 cases of loan from Disaster Relief Fund (3,500,000 yen, 10 year- repayment-term), loan users in 12,981 cases (23%) in the amount of 19,600 million (19.3%) are going to default the payment when they come due. 10,877 cases (19.3%) of the above defaults are recourse loans in small installments of 1000 yen per month. We estimate that over 4000 former victims have gone bankrupt including 1,977 bankruptcies in Kobe City alone.

In Hyogo Prefecture Reconstruction Public Housing, the number of people over 65 year-old is 19,135, which account for 48.2 % of the residents there. 10,096 old people live alone in the housing, which account for 43.5% of the residents. The emerging issue is increasing number of solitary death of old people unattended and unnoticed at home probably because of isolation, break-down of the community, and insufficient public care etc.. The number of solitary death amounted to 717 during 12 years from 2000 to 2011.

4, Disaster Victims driven out of their Final Homes

Hyogo Prefecture and Kobe City rented private apartment houses where victims moved in as Private Rented Recovery Public Housing to compensate the shortage of the public housing. Hyogo Prefecture accommodated 2,300 households and Kobe City 3,805 households in the same manner. Now these local governments are pressing the tenants to move out of the apartments despite the fact that the tenants have five to eight more years before their contracts expire. The local governments insist that the reason is leases with the owners of apartments which expire in 20 years. Those tenants went through many moving from their quake-shattered old homes to shelters, then to make-shift housing, and again to present Private Rented Recovery Public Housing, where they hope to find peace of mind. They had to endure many emotional stresses of separation from their old neighbors, new friends at shelters, new neighbors at makeshift housing. The elderly of 66 year-old and older accounts for 64.1% of the Private Rented Recovery Public Housing in Hyogo Prefecture. The 71 year-old and older account for 47.5%. 43.5% of them live alone. 48 % get monthly income of 50,000 yen or less while 56.7% receive 100,000 yen or less. In five years, 64.1 % of the tenants will be 71 year-old or older and 56% receives income of 100,000 or less. It is absolutely heartless and ridiculous to force those people to move out and find new places to live.

When they move in the Rented Public Housing as the final place of living, they were already old

separated from the community where they established human relations in everyday life such as shopping, medical services, and care services as well as old friends.

So it was difficult to create a new community and human relationship in the new environment, which lead to the increasing number of solitary death. Last year, 36 cases of solitary death are reported. Total 950 people have died lonely death unattended since they evacuated from their own home.

Anyway, such crude move of the local government is in violation of the fundamental human rights, rights to residence, right to the pursuit of happiness of the disaster victim provided in the constitution. It is also contradicting the concluding observation of CESCR in 2001 "54. The Committee recommends that the State party encourage Hyogo Prefecture to step up and expand its community services, in particular to older and disabled persons."

We at Hyogo Prefecture Conference of Citizens for Reconstruction have presented demands to the local governments in Hyogo Prefecture as follows, which are incorporated in the main text of the report.

1. Respect the wishes of tenants in the rented public housing and let them stay for the rest of their life by keeping the housing as the public one.
2. Discharge victims from further payment of remaining debts of loans associated with the Great Hanshin-Awaji Earthquake, such as Disaster Aid Fund.
3. Expand the care service to the aging tenants of the disaster relief public housing in order to prevent more solitary death.
5. The third report of the Government stated as follows in response to paragraph 54 of the concluding Observations.

"98. To ensure that people in intensive-care older people's homes in disaster-hit areas are taken care of, the Government has asked each prefecture and ordinance-designated city to ensure that facilities and prefectures near disaster-hit areas dispatch care workers etc. and provide daily necessities such as food and diapers."

Government also stated in regard to paragraph 55, "100. The Japan Housing Finance Agency provides loans at long-term fixed interest rates to cover the cost of rebuilding or reconstructing homes that have been destroyed or damaged by disasters."

Yet, those support measures have failed the victims so far.

We urge the Government to learn the lessons from the past, and to establish and implement the effective long-term support programs so that victims of Great Eastern Japan Earthquake including many foreign nationals may recover; reconstruct their life as the responsibilities of the Government.

We strongly demand that the Government start working on the building of the disaster-proof country where people can live with peace of mind.

III. Conditions of Victims of East Japan Great Earthquake and Violation of their Right to Residence

(1) Summary of the Issue

Life in shelters and make-shift housing does not meet the adequate standard of living in terms of food, clothing and housing.

(2) Details

Article 11, paragraph 1 of the Covenant states, "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." It also asks the States Parties to take appropriate steps to ensure the realization of this right, which we believe is the right to residence.

In the area stricken by the East Japan Great Earthquake, 113,922 houses were completely collapsed, 150,485 houses were half destroyed, 533,106 houses were partially destroyed as of August 20, 2011, and many disaster victims moved to the makeshift housing around August, after living in shelters for several months.

In the shelters and make-shift housing, the right to residence is not adequately secured in the following situations.

(1) Prolonged life in shelters which began immediately after the calamity was extremely stressful and many people died there from aggravation of the chronic disease and/or fatigue from the overwork on disaster related labors. In addition to the direct death from the earthquake and tsunami, those cases of death are recognized as earthquake related death so that the family is entitled to some benefits. In Miyagi Prefecture, 654 applications for earthquake related to death were filed, out of which 201 were recognized. In Fukushima Prefecture, 443 applications were filed, out of which 197 were recognized.

In Iwate Prefecture, 63 applications were filed, out of which 52 were recognized. The reason why the number of recognized cases is small is that cities, towns and villages are under-staffed to deal with paperwork. They put the matters in the hand of prefectural administration, which led to the delay in authorization.

(2) Many people living in the shelters are aged. Because they had neither space to move around nor chores to do daily, some lost their bodily function which requires nursing care.

(3) The need for the welfare shelters has been argued for the elderly and disabled who would have difficulty in living shelters for the general public since the time of Hanshin Awaji Great Earth Quake. However, as cities, towns and villages are supposed to be responsible for the establishment of welfare shelters, the number of facilities designated as welfare shelter is small. In Miyagi Prefecture 40% of the cities, towns and villages have the welfare shelters, while 14.7% in Iwate Prefecture and 18.6% in Fukushima Prefecture. Some of the old people received home care before the disaster. But after they lost their homes by earthquake, they were unable to enter a general shelter because the shelter was not equipped to deal with those elderly or it has no care staff to take care of them.

(4) Victims Life Reconstruction Support Program grants three million yen to those who are going to

dismantle and rebuild their completely collapsed houses. But those who had their houses half destroyed receive nothing. Moreover, seriously injured victims or unemployed victims whose houses were not damaged, are not covered by the above program. Those people must be covered by public livelihood assistance. But they are not allowed to possess a car, or necessities for job-hunting, which hampers the reconstruction of their life substantially.

(5) After moving into makeshift housing, increasing number of people started to suffer PTSD or got dependent heavily on alcohol from the grief over the loss of his or her family and friends or stress of losing jobs or unfamiliar environment.

(6) In the makeshift housing in Miyagi Prefecture and Iwate Prefecture, elderly people living alone passed away one after another from cerebral hemorrhage and cardiac attack.

(3) Matters that the Government should pay attention to

(1) In order to prevent PTSD, alcohol dependency and unnecessary disaster-related death, the Government should monitor the living conditions of victims and provide effective medical service including house visits and consultation.

(2) The Government should be prepared to set up welfare shelters equipped with adequate facilities and staff to support the old and the disabled.

(3) If the seriously-injured victims as well as unemployed victims remain unprotected by the Victims Livelihood Reconstruction Program, the Government should implement a separate livelihood assistance program for them.

(4) In order to prevent solitary death of the elderly in makeshift housing, the Government should help local governments so that they may have their staff visit victims and establish close relations with residents.

VI. Demands to the Government

The Government should keep in mind concerns and recommendations from CESCRC and implement sweeping measures for the relief and assistance of victims of the East Japan Great Earthquake. Ten years ago CESCRC stated in the concluding observations " The Committee is concerned about ... the lack of transparency and disclosure of necessary information regarding the safety of such installations, and also the lack of advance nationwide and community preparation for the prevention and handling of nuclear accidents." It also stated, "The Committee recommends increased transparency and disclosure to the population concerned of all necessary information, on issues relating to the safety of nuclear power installations, and further urges the State party to step up its preparation of plans for the prevention of, and early reaction to, nuclear accidents

In addition, the Government should recollect the Hyogo Declaration at the UN World Conference on Disaster Reduction of 2005, which states that States have the primary responsibility to protect the people and property on their territory from hazards. The Government should make the best use of these recommendations and strategies for the reconstruction and relief work in many years to come. The mountains of tasks are piled up for the Government to do including search for missing people, stabilization of victims' life, compensation for radioactive contamination, information disclosure, minimization of death caused by disaster shock and support for victims of foreign nationals.

By learning the lesson from the previous failure in the aftermath of the Hanshin Awaji Great Earthquake disaster, the Government should establish the long term program to set up solid framework of reconstruction for financial as well as physical support to the local governments and to victims to make sure the production of human rights, livelihood of all the victims including foreign nationals as well as successful reconstruction of the local industries. The Government needs to phase out nuclear energy generation and to find safe and sustainable alternative energy source. Japan suffered great damage in which many lives are sacrificed. We have no choice but to take this costly lesson. The Government has the responsibility to build the country which is well prepared for natural disaster and to prevent the risk of man-made disaster like radiation from nuclear power plants.

2-1 Actual Situation of Employment Violating Article 6 and 7 of the Covenant

Sharp Increase of Non-Regular Employment and Semi-Unemployment, Unfair and Discriminatory Pay and Destroyed Employment

In today's Japanese society poverty and disparity is spreading rapidly, and at its base lie the increase of non-regular employment with distinctive Japanese characteristics, and the destruction of employment it brings about. What is required most to solve employment problems is to build an economic society regulated by rules which would stop the employment destruction and guarantee decent work to all the workers.

1. The Situation of Employment in Japan

The employment situation in Japan has been going from bad to worse for the past decade, and is departing farther and farther from the principle of article 6 and 7 of the Covenant, which recognizes 'the right of everyone to the enjoyment of just and favorable conditions of work.'

(1) Non-Regular Workers are Under Far Worse Working Conditions than Regular Workers in spite of Work of Equal Value.

Non-regular employment is defined as follows; 1. Employment with fixed working terms of several months or a year (fixed-term employment). 2. Employment with short working hours (short-hour employment). 3. Dispatched work (indirect employment)

The characteristics of non-regular work are; 1. Workers are paid only about half as much as regular workers for work of equal value. 2. They are always exposed to the risk of dismissal, and are imposed the role of adjusting valves of employment. 3. They are employed by dispatching agencies, but they work at the companies they are dispatched to, which makes the responsibility of the employer ambiguous. As a result they don't receive enough protection as laborers.

(2) Rapid Increase of Unemployment and Semi-unemployment (Working Poor)

Under the change of industrial structure in Japan, the number of self-owned businesses and their family workers decreased by half from 13,950,000 to 7,680,000 during 20 years from 1990 to 2010. This means that small family businesses became difficult to maintain, and those people were converted into employed workers.

Thus the structure of employment pattern has greatly changed these days. A massive working class consisting of non-regular, unemployed or semi-unemployed workers has been formed. There has been a great increase in the number of low-waged workers called working poor on one hand, and on the other, regular workers are forced to engage in prolonged and irregular work, which has led to death or suicide by overwork.

The employment structure in Japan is now divided into three categories--- regular employment, non-regular employment and unemployment---, and most of the non-regular workers are in the state of semi-unemployment. Unemployment is divided into the overt unemployment and the potential unemployment, and they are easily replaced with each other. They also overlap with semi-employment.

The structural reform in the first half of the 2000's in the field of labor in Japan was promoted by the policies to transform the overt unemployed into the semi-unemployed. In addition, poor or nearly non-existent life security by the government for unemployed workers helped to motivate them to get a temporary job, thus rapidly expanding the number of the semi-unemployed workers. As a result a sharp rise was seen in the number of those people who were unable to lead independent ordinary lives with normal job, to marry or to raise children, which are recognized as rights to be guaranteed in article 7 (a) (i) (ii) of the Covenant.

In the back of the expansion of unemployment and semi-unemployment, big companies enjoyed huge current profit. According to the statistics in the end of 2011, the profit was ¥262 trillion, which was almost the same amount as the whole national budget of some other country.

The increase of unemployment and semi-unemployment is raising fundamental questions over how to guarantee the peoples' right to exist and the right to work, and who should pay the cost.

The flow of workers into the non-regular employment is incessantly continuing not only from unemployment or semi-employment but also from regular employment. During the 20 years from 1990 to 2010, regular workers decreased by 1.25 million from 34.88 million to 33.63 million, and most of them became non-regular workers. Thus in 2010, 34.3% of workers in Japan were in non-regular employment, which means one out of three workers is a non-regular worker in Japan, which is very uncommon in other countries.

(3) Characteristics of Non-Regular Employment

The first characteristic is low wages. The wage per hour is ¥1,532 for the ages of 60 ~ 64, the annual income for 2000 hour labor being just a little over 3 million yen. Even if a person works 3000 hours a year, which is the acknowledged line of *Karoshi* (death by overwork), he earns only about 4.5 million yen. In the case of women, the wage is much lower, and their annual income is some 2 million yen for the labor of the same hour. In addition to low wages, it is barely possible for non-regular workers to marry or raise children, because they cannot join social insurance, and are always on the brink of losing their jobs. They are forced to engage in double or triple work in order to make a living.

The main reason for the expansion of non-regular employment is reduction of labor cost in major businesses. This is very Japanese phenomenon never seen in EU countries, where the principle of equal pay for work of equal value is maintained.

The second characteristic is fixed-term employment contract. According to the statistics of 2010 by Ministry of Health, Labor and Welfare, 75% of non-regular general workers are fixed-term employees.

Within non-regular employment there is a style called 'non-term employment', which means employment without fixed-term or with the term of more than one year. The number of 'non-term' workers is 9.91million, accounting for 57.3 % of non-regular workers, but in reality, there are quite many fixed-term workers among them.

The third characteristic is that most of non-regular employment is indirect hire, which includes dispatch work and work by contract. The client companies of dispatching businesses find non-regular workers convenient because they do not owe contractual duties or cost for the reason that they are not direct employers. Work by contract disguises the actual relationship of employer and employee as a contract between individuals. It is utilized to evade employer liability, and as a result it functions as an adjusting valve of employment.

(4) How the Great Mass of Non-Regular Workers Have Been Produced

Worker Dispatch Law was revised in 2003, and the ban on dispatching workers to the production line was lifted, expanding the dispatched work in a very rapid pace. In order to evade regulations stipulated in Worker Dispatch Law, individual contracts in disguise became rampant. Affected by the recession, these workers were dismissed and driven away from their lodgments. They had nowhere to go or no money to move, and wandered about the streets under the cold winter sky. They stood in line for food provided in the tents in a park called "New Year's Eve Village", which was set up by charity organizations and NGOs. It became a big social problem. According to a survey of June 2011, the number of dispatched workers throughout the country is 122million, lower than the previous year by 10%. It does not mean, however, that dispatched workers actually decreased. The real situation is hidden behind the statistics, because dispatched employment is illegally disguised as contracts between individual business owners or as direct employment with fixed term. Actually dispatched workers are increasing in invisible way.

Furthermore, other employment patterns, such as short-term fragmented employment or indirect employment in which workers are always transferred throughout the country, are spreading and it is difficult to figure out the real situation through statistics. Especially workers in problematic employment patterns, such as dispatched daily workers, subcontract workers at nuclear plants, or foreign trainees are very often excluded from statistics.

Thus employment in Japan is more and more deteriorating owing to low wages, easiness of employment adjustment, hollowing out of employers' responsibility and intermediary exploitation. Additionally, non-regular employment is spreading into the field of education, medicine, welfare and public services, which accelerates unpaid overtime work and long working hour in regular employment. Employment structure in Japan is being destroyed.

2. Deregulation and Increase of Non-Regular Employment was Promoted by Government's

Policies

Non-regular employment increased rapidly owing to the policies of structural reform in 2000's, and after Worker Dispatch Law was revised in 2003 to deregulate the category of industries accepting dispatched workers, nothing was left to prevent semi-employment or non-regular employment. In the face of a strong call for re-regulation of dispatched work, the government of Democratic Party, which was established in 2009, promised the second revision of the law and prepared a bill. The policies in the bill, however, did not lead to the drastic solution of the problem.

(1)The Defects of the Bill of Revision

Only very few working patterns are the targets of prohibition

Although the bill prohibits the registered type of dispatch and the dispatch to manufacturing industries, out of 1.57million dispatched workers, only 300,0000 (19.1%) are the targets of the prohibition (“the number of workers as of June 1st 2009 in the Report on Dispatched Work by Ministry of Health, Labor and Welfare 2009”), and nor are 160,000 of non-term employment workers out of 250,000 dispatched workers in manufacturing industries (ibid.) Although the report says that workers of registered type of dispatch are also the targets of the prohibition as a rule, out of 640,000 of such workers, 340,000 engaging in 26 specialist jobs (53.1%) are not the targets of the prohibition (ibid).

Discriminatory Treatments Remain

The bill states that if a person is dispatched illegally, “he/she is regarded as a direct employee of the industry he/she is dispatched to”, but poor working conditions remain unimproved, including the wages kept as low as about half that of the regular workers.

Then, in March 2012, the Labor Policy Council in Ministry of Health, Labor and Welfare reported that the bill of partial revision of Worker Dispatch Law, which was written on an agreement among three parties, the Democratic Party, the Liberal Democratic Party and Komeito, is “basically appropriate.” However, it does not solve the greatest problems of fixed-term labor contract-- unstable way of working and poor working conditions, but opens up a way to further utilize the pattern of working. In addition, it includes the stipulation on “dismissal,” which does not function at all in light of the actual situation. Thus this bill is a change for the worse planned to comply with business community's intention. The Committee on Health, Welfare and Labor in the House of Representatives passed it without any discussion.

(2)The Restrictions Planned by the Study Group in Ministry of Health, Labor and Welfare on Fixed-Term Labor Contract Does Not Lead to Tightening of Regulations.

The study group in Ministry of Health, Labor and Welfare on fixed-term labor presented a report, and

admitted the necessity of tightening regulations, saying the problem of working condition gap between fixed-term workers and regular workers should be tackled politically. The report, however, does not lead to tightening of the regulation, for it has several problems as follows; It does not see the actual situation where fixed-term workers are used as employment adjusting valves. It is negative about imposing regulations on the conditions of contract such as “limited to temporary task”. There is no proposals to treat fixed-term workers equally with regular workers, by applying to both of them the four conditions of dismissal for reorganization.

Response of Local Administrative Offices

When an irregular worker reports illegal practices by a worker dispatching agency, disguised service contractor, private contractor, and requests the correction of the conditions, majority of the officials would say "That is what everybody is doing in these days." The law set the limit to the term of dispatch workers' contract except for those in 26 categories. If a client company insists on the use of dispatch workers on illegal terms, the administrative authorities are required to give guidance, advice and recommendation to the client. (Worker Dispatching Act, Article 40, 4 "duty to offer direct employment")

If the company refuses to comply with the law, the law provides that the name of such offending company must be released. But so far, no names of violator companies have been released. Therefore, illegal practice of dispatching service is widespread and irregular workers are driven to take legal actions in quest of relief.

Responses of the Judiciary Authorities

Many irregular workers have taken their cases to the courts. But they have been disappointed by the unfair rulings that discriminative treatment of irregular workers whose performance is equal to the full-timers is the natural consequence of being irregular workers. In 2009 the Supreme Court ruled on the case of a 35-year old dispatch worker in a disguised service contract. The worker wanted to establish the employment relationship with the client company after he spent five years continuously working in the dangerous conditions under the client's guidance and supervision. But the court ruled that he belonged to his paper employer which dispatched him to the client. It is in violation of ILO R-198 concerning the establishment of employment relationship adopted on June 15th, 2006. ILO Recommendation 198, accepted by the Government of Japan, declare that workers should be able to claim employment relationship with their real employers regardless of the type of contract in view of the actual condition of labor, and that labor law can be applied to their complaints. Nevertheless, Supreme Court of Justice in Japan rendered a judgment in conflict with its spirit. Such judgment coming from the Supreme Court has notable influence on the judgments at lower courts.

In the case of a client company which re-dispatched a temp worker for profit in violation of Employment Security Act, a local court made a ruling that the client is not guilty because such practice did not really cause "mental anguish" of the worker. Moreover, some of the judges even ruled that discontinuation of dispatch contract is legal on the ground that the worker has no right to the contract renewal since the employer and the employee have disputes, which we believe is in violation of Article 8 of the Covenant and Article 23 paragraph 4 of Universal Declaration of Human Rights.

Response of the Central Government

In the article titled "analysis of labor economy" of the Labor Economy White Paper published on August 3, 2010, the Ministry of Health, Labour and Welfare discussed the increase in the unstable patterns of working as well as widened income gap. They admitted responsibility of the Government for the first time in that deregulation of the worker dispatching service has been an encouraging factor. But they did not discuss serious influences on the economy and society or how to correct them. Immediately after that, the Ministry declared that they would revise the Worker Dispatching Act, which brought about widened income gap as the Government is aware of its heavy responsibility for the consequences of excessive deregulation. In spite of these talks, the outline of the revised law does not indicate any intention to correct "discriminatory treatment of workers who do the equal work". It does not penalize a client company which engages in illegal practice. Or worse, it is a pardoner judging from the sentence "A client company will not be punished if it is not aware that such practice is illegal" in the draft. The Government is not going to take concrete measures to correct the abusive practice of the human rights toward irregular workers. We request CESCER to recommend that the Government take corrective measures immediately.

(3) Report on a Helpless Irregular Worker

A 42 year-old man worked for Canon at Optical Apparatus Plant in Utsunomiya from 2000 to 2009. During these nine years, he was employed as an irregular worker. He was committed to the work believing that he was a member of Canon and was trusted by the full-time employees there. But his salary was about half of what his full-time colleague received. Finally in June of 2009, he took a legal action to establish employment relationship with Canon which should recognize him as a full-time employee. At the end of August, Canon refused to renew his contract, leaving him unemployed. He worked four years and eight months under a disguised service contract, one year and one month under a dispatch contract, one year and five months under the 2nd disguised service contract and one year and ten months under fixed term direct employment contract. In 9 years, the pattern of employment changed 4 times and he had to go through renewal procedures 30 times. Most of the time, he worked under illegal conditions. He notified the illegality to a local administrative office, which trusted his words and instructed Canon to correct the conditions. Yet he could not get out of fixed-term employment. So taking his case to the court in 2009 was his final chance to establish his status of a regular full-time employee.

Canon assigned irregular workers to tasks which are neither temporary nor provisional while the company pays only half of the regular wages of the permanent workers at the same workplace. Canon owes its rapid growth in 2000's to massive use of irregular workers. But after Lehman's fall, those irregular workers were fired in large numbers. Irregular workers are treated as a regulating valve of the

labor force that industries can control anytime. There is practically no law in Japan to protect irregular workers. Local administrative offices are reluctant to interfere with client corporations to protect irregular workers. And even the legal courts produce unfair rulings in favor of client corporations one after another. Irregular workers are helpless and vulnerable as they are trapped in the cycle of unstable employment with low wages despite the fact that they do the same work as full-time employees. They remain the working poor as they cannot get out of poverty with only half of the full-timers wages. It is a phenomenon spreading in Japan. If an irregular worker joins a trade union to improve working conditions, he is doomed to get fired and he ends up fighting against his dismissal. We should not leave such conditions neglected. We hope that CESCR make earliest possible recommendations to the Government as well as UN's initiative in regulating the activities of multinational corporations.

(4) Disparity in Cares for Life and Health of Workers.

It is an emerging social issue in the aftermath of East Japan Great Earthquake to prevent and protect workers' life and health from asbestos-related risks and damages in the process of clearing work, restoration and reconstruction of the disaster area. Struggle for asbestos victims has its own history in Japan. The shipbuilding industries did not take adequate dustproof measures and consequently produced a large number of pneumoconiosis and asbestos lung patient among their employees. After the year 2000, the industries decided to set up "Corporate Compensation Program" to give relief to their employees who suffer the disease. On the other hand, employees of subcontractors and their associates are not covered by the program although they worked hard in the inferior and miserable environment only because they have no employment relationship with the parent companies which have contributed to the program. This is the matter of human rights. Against the high-handedness of the parent companies, workers have risen in relevant sectors and areas to demand the decent medical care for those associated with subcontractors who suffer pneumoconiosis or asbestos lung. However, Shimonoseki branch of Yamaguchi District Court made a ruling which override the principle of relief for every victim in June, 2011 in the case of reparation for workers associated with a subcontractor of the Mitsubishi Heavy Industry at Shimonoseki Shipyard. The judge refused to respect "classification for pneumoconiosis management" and "complications" approved by the Labor Standards Inspection Office and the ruling tramples on the principle of relief for every victims, which has been cherished and developed by many people including those from preceding generation, patients and bereaved families for many years. Victims of pneumoconiosis and asbestos lung have been plagued by varieties of symptoms over many years, and they are still having tough time struggling with disease. Furthermore, since pneumoconiosis is a progressive and irreversible disease, they struggle in fear of approaching death every day. We call on Japanese courts to return to the position of "relief for every victim." Workers' lives and health should not be treated differently by the patterns of employment.

Direct employment Without Term Should Be the Norm.

As patterns of employment and work have been diversified during and after the 1990s, the number of irregular workers has increased in the manufacturing sectors. In the meantime, Part-time Employment Act was revised in 2008 while Labor Contract Act was newly enacted in 2007. Almost all industries are substituting dispatch workers with fixed term contract employees, which is another name for irregular workers. The term is short and the wage is low. Even if the contract is renewed, the worker cannot expect the raise in the wage. In addition to the instability and low wage, it has come to our attention that workers cannot or will not exercise their rights for fear of non-renewal of the contract. More serious issue is that increasing number of workers is forced to choose between accepting wage cuts and their dismissal at the time of contract renewal. We insist that direct employment without term should be the norm for every worker. Again, increasing number of bread winners of the households takes the position of handling the core works as irregular workers and those people strongly request the stability of the employment as well as fair pay and benefits. It is imperative to regain the life assured by the Constitution of Japan and International Covenant on Economic, Social and Cultural Rights.

3. The Current Situation and Problems of Non-Regular Workers' Struggles for Social Justice

(1) Layoffs of Non-Regular Workers by Large Corporations

It was reported by Ministry of Health, Labor and Welfare on July 30,2010 that, in the wave of layoffs of non-regular workers following the Lehman crisis in autumn, 2008, the total of 285,252 non-regular workers lost their jobs during the two years from October 2008 to September 2010 (estimated).

Many large corporations make non-regular workers do the same job as regular employees, at much lower wages over many years, discarding them simply at the prospect of decrease in production or in sales, and yet as early as in 6 months to one and a half years, they start hiring new dispatched workers or resume accepting application for fixed-term employment.

The situation is even worse in manufacturing industries. Many of non-regular employees are forced to engage in hard work which regular workers would avoid, at about half the regular wage for a long period of years, during which the format of their employment contract keeps constantly changed from contracted to dispatched, fixed-time, or some other type. Such changes in the format of employment contract serve the purpose of large corporations to sneak through application of dismissal restriction, "the right not to be dismissed without rational reasons," (article 16, Labor Contract Law, Japan) which should be ensured to every regular employee.

(2) Lawsuit Struggled by Dispatched Workers

Lawsuits Demanding Direct Employment by Corporations to which Workers are Dispatched

The nationwide rush of layoffs of dispatched workers from autumn 2008 to 2009 brought about many lawsuits demanding direct employment by the corporations to which workers were dispatched. The corporations sued for confirmation of employment status include: Isuzu Motors, Nissan, Mazda, Cannon, Mitsubishi UFJ Bank, NTT, Panasonic, Mitsubishi Electric Corporation, Mitsubishi Fuso, JFE, Nippon Kayaku, NSK, Japan Post Transport, Nippon Thomson, Tostem, Jeco, Konica-Minolta, Yokokawa Electric Corporation, etc.

In the Panasonic PDP case, the second petty bench of the Supreme Court of Japan rejected, on Dec.18, 2009, both claims for confirmation of status and for payment of wage on the ground that, admitting the outsourcing contract between Panasonic PDP and Pasco had been disguised, the formation of labor contract was not acknowledged between the plaintiff and Panasonic PDP, and that the termination of employment was effective.

Dismissal of Permanent Employment Type Dispatched Workers

The status of permanent employment type dispatched workers had been considered to be rather stable, compared with that of other types of non-regular workers. However, they also got caught in the storm of layoffs of non-regular workers started in autumn, 2008. Radia Holdings Group, one of the biggest dispatching companies in Japan, carried out in April 2009, a massive lay-off of 400 workers who were employed by three corporations in the group, Ctech, Technopro Engineering, and CSI which were engineers dispatching companies.

Some of the laid-off dispatched workers filed a petition for provisional disposition as well as for a labor tribunal, demanding confirmation of status. In the tribunal, each of them obtained the decision that declared the dismissal null and void, and are presently continuing their lawsuits. The main issue in each case lies in the necessity of personnel downsizing. Ctech conducted personnel cutbacks allowing only 3-month waiting period, while it reported unappropriated retained earnings of more than 20 billion yen at the end of that period, as a corporation in good standing. It is obvious that their dismissal of employment is illegal and invalid.

Forced Transition from Fixed-Term to Dispatched

There have been many incidents of large corporations forcing a transition in employment format from fixed-term to dispatched workers. Nippon Telephone and Telegraph East-Hokkaido Corporation ("NTT East-Hokkaido" hereafter) decided to

transfer 700 contract workers simultaneously to NTT Hokkaido Telemart Co. (a subsidiary of NTT East). The corporation sent them a notice that they should choose between the two; to be transferred to the new company as dispatched workers, or to accept the termination of employment at the end of March, 2010. Faced with this unfair treatment, the contract workers filed a petition for provisional disposition to Sapporo District Court, and won the renewal of employment contract from NTT East-Hokkaido.

(3) Lawsuit Struggles by Fixed-Term Workers

Struggle against Mid-term Layoff

At the end of 2008, Isuzu Motors laid off all of 553 fixed-term workers in the middle of their employment term. The workers filed a petition to Tokyo District Court for provisional disposition for suspension of dismissal and for provisional payment of wage. The layoff was judged illegal, and Isuzu retracted the mid-term layoff of every fixed-term worker.

Struggle against Dismissal

Honda terminated employment of all the fixed-term workers from autumn, 2008 to the end of that year, but one worker at Tochigi Factory, filed a suit at Tokyo District Court, demanding confirmation of status and payment of wage. Honda had been adopting a hiring method of circumventing the law to employ fixed-term workers for core, permanent jobs for a very short period of 1-3 months, and re-employ them repeatedly after a blank period of 20-30 days a year.

4. Battles of Irregular Workers

(1) Japanese subsidiary of US insurance company ignored labor law of Japan and fired staffs.

AIG Star moved part of its operation from Tokyo to Nagasaki in 2003, when the company fired all the workers on their short-term contracts. It is true that their employment contract was for the short-term, but the contracts have been renewed continuously for many years without interruption. Those workers handled the same tasks as full-time employees. When they were first introduced to the job at a public job placement agency, they were informed that 60 year-old is the retirement age for them.

Moreover, during the process of moving to Nagasaki, the company assured them the continuation of employment. But as soon as all the transfer work is over, the company fired them on the ground that their employment contracts have expired. In labor law of Japan, an employment contract of a limited period should be regarded as a labor contract without term if the contract is renewed repeatedly. AIG

Star transferred part of its business to Nagasaki City by firing many workers in Tokyo. The company receives 1,300 million yen (12 millions\$) from Nagasaki as incentive money for doing business in the city as well as for employing locals as part-time workers.

Since four of those fired workers are members of the trade union, the union tried to keep their jobs by collective bargaining. But the company kept insisting "There is nowhere we can transfer them to" without giving specific information about the ground of their dismissal. The union filed a complaint against the company demanding that the company should enter dialogues in good faith with the union to Tokyo Committee on Labor Affairs, which ordered the company to start a dialogue. The company which was unhappy about the order requested the Central Labor Relations Commission to reexamine the issue. Although the Central Labor Relations Commission tried to persuade the company to reconcile, the company refused. Finally the Central Labor Relations Commission issued the relief order to resolve the issue with the union, making additional comment to the order "AIG Star lacks sincerity in dealing with the workers". Meanwhile, the company filed a libel suit against the union at Tokyo district court accusing that the union's allegations in campaign flyers were false and caused damage to the company. The flyer was to make the public aware of the unjust and unreasonable dismissal of workers. The court rejected the accusation completely, and added some remark about the unjustness of dismissal. However, the company has not yet cancelled the dismissal. There is no just reason for this dismissal. Only workers with short-term contracts were targeted for dismissal in violation of human rights. Even a multinational corporation is required to obey the law of its host country. The case is in violation of Article 1, Article 2, Article 6 and Article 7.

Multinational corporations are frequent abusers of human rights in Japan in the following cases: Groundless de-hiring, discharge warning to the temporary workers on the ground of insufficient performance, and groundless dismissal of disabled person who is employed within the framework of the incentive program. Japanese authorities in charge usually remain in the background with the position that it will not interfere with individual cases of labor dispute. But, as far as multinational corporations are concerned, the authority should take a strong position to have them respect human rights and obey the law of host country, Japan.

(2) Report on the Issues of Irregular Workers and the Responses by Administrations at Regional Level, Judiciary and the Central Government

The number of so-called irregular workers is on the increase. They are the workers who do the same work as regular workers, but have been discriminated against and have suffered abuse of human rights only because they are different in terms of employment pattern, nationality, and gender.

Workers at Yanmar Biwa Plant in Nagahama, Shiga Prefecture, are not covered by Workers Accidents

Compensation Insurance. Even when someone got injured by accident in the production of small engines, no benefit will come to support him. So finally one of them joined the trade union and demanded the coverage of the insurance. Then the employer fired him right away in retaliation. And this is not an isolated incident in Japan. The fact that such situations remain unchecked and neglected constitutes the violation of Article 7 of the Covenant, the right of everyone to the enjoyment of just and favorable conditions of work. Following is our report on the responses of local administrations, judiciary and central government to the issue of irregular workers.

Response of Local Administrative Offices

When an irregular worker reports illegal practices by a worker dispatching agency, disguised service contractor, private contractor, and requests the correction of the conditions, majority of the officials would say "That is what everybody is doing in these days." The law set the limit to the term of dispatch workers' contract except for those in 26 categories. If a client company insists on the use of dispatch workers on illegal terms, the administrative authorities are required to give guidance, advice and recommendation to the client. (Worker Dispatching Act, Article 40, 4 "duty to offer direct employment")

If the company refuses to comply with the law, the law provides that the name of such offending company must be released. But so far, no names of violator companies have been released. Therefore, illegal practice of dispatching service is widespread and irregular workers are driven to take legal actions in quest of relief.

Responses of the Judiciary Authorities

Many irregular workers have taken their cases to the courts. But they have been disappointed by the unfair rulings that discriminative treatment of irregular workers whose performance is equal to the full-timers is the natural consequence of being irregular workers. In 2009 the Supreme Court ruled on the case of a 35-year old dispatch worker in a disguised service contract. The worker wanted to establish the employment relationship with the client company after he spent five years continuously working in the dangerous conditions under the client's guidance and supervision. But the court ruled that he belonged to his paper employer which dispatched him to the client. It is in violation of ILO R-198 concerning the establishment of employment relationship adopted on June 15th, 2006. ILO Recommendation 198, accepted by the Government of Japan, declare that workers should be able to claim employment relationship with their real employers regardless of the type of contract in view of the actual condition of labor, and that labor law can be applied to their complaints. Nevertheless, Supreme Court of Justice in Japan rendered a judgment in conflict with its spirit. Such judgment coming from the Supreme Court has notable influence on the judgments at lower courts.

In the case of a client company which re-dispatched a temp worker for profit in violation of Employment

Security Act, a local court made a ruling that the client is not guilty because such practice did not really cause "mental anguish" of the worker. Moreover, some of the judges even ruled that discontinuation of dispatch contract is legal on the ground that the worker has no right to the contract renewal since the employer and the employee have disputes, which we believe is in violation of Article 8 of the Covenant and Article 23 paragraph 4 of Universal Declaration of Human Rights.

Response of the Central Government

In the article titled "analysis of labor economy" of the Labor Economy White Paper published on August 3, 2010, the Ministry of Health, Labour and Welfare discussed the increase in the unstable patterns of working as well as widened income gap. They admitted responsibility of the Government for the first time in that deregulation of the worker dispatching service has been an encouraging factor. But they did not discuss serious influences on the economy and society or how to correct them. Immediately after that, the Ministry declared that they would revise the Worker Dispatching Act, which brought about widened income gap as the Government is aware of its heavy responsibility for the consequences of excessive deregulation. In spite of these talks, the outline of the revised law does not indicate any intention to correct "discriminatory treatment of workers who do the equal work". It does not penalize a client company which engages in illegal practice. Or worse, it is a pardoner judging from the sentence "A client company will not be punished if it is not aware that such practice is illegal" in the draft. The Government is not going to take concrete measures to correct the abusive practice of the human rights toward irregular workers. We request CESCR to recommend that the Government take corrective measures immediately.

(3) Report on a Helpless Irregular Worker

A 42 year-old man worked for Canon at Optical Apparatus Plant in Utsunomiya from 2000 to 2009. During these nine years, he was employed as an irregular worker. He was committed to the work believing that he was a member of Canon and was trusted by the full-time employees there. But his salary was about half of what his full-time colleague received. Finally in June of 2009, he took a legal action to establish employment relationship with Canon which should recognize him as a full-time employee. At the end of August, Canon refused to renew his contract, leaving him unemployed. He worked four years and eight months under a disguised service contract, one year and one month under a dispatch contract, one year and five months under the 2nd disguised service contract and one year and ten months under fixed term direct employment contract. In 9 years, the pattern of employment changed 4 times and he had to go through renewal procedures 30 times. Most of the time, he worked under illegal conditions. He notified the illegality to a local administrative office, which trusted his words and instructed Canon to correct the conditions. Yet he could not get out of fixed-term employment. So taking his case to the court in 2009 was his final chance to establish his status of a regular full-time

employee.

Canon assigned irregular workers to tasks which are neither temporary nor provisional while the company pays only half of the regular wages of the permanent workers at the same workplace. Canon owes its rapid growth in 2000's to massive use of irregular workers. But after Lehman's fall, those irregular workers were fired in large numbers. Irregular workers are treated as a regulating valve of the labor force that industries can control anytime. There is practically no law in Japan to protect irregular workers. Local administrative offices are reluctant to interfere with client corporations to protect irregular workers. And even the legal courts produce unfair rulings in favor of client corporations one after another. Irregular workers are helpless and vulnerable as they are trapped in the cycle of unstable employment with low wages despite the fact that they do the same work as full-time employees. They remain the working poor as they cannot get out of poverty with only half of the full-timers wages. It is a phenomenon spreading in Japan. If an irregular worker joins a trade union to improve working conditions, he is doomed to get fired and he ends up fighting against his dismissal. We should not leave such conditions neglected. We hope that CESCR make earliest possible recommendations to the Government as well as UN's initiative in regulating the activities of multinational corporations.

(4) Disparity in Cares for Life and Health of Workers.

It is an emerging social issue in the aftermath of East Japan Great Earthquake to prevent and protect workers' life and health from asbestos-related risks and damages in the process of clearing work, restoration and reconstruction of the disaster area. Struggle for asbestos victims has its own history in Japan. The shipbuilding industries did not take adequate dustproof measures and consequently produced a large number of pneumoconiosis and asbestos lung patient among their employees. After the year 2000, the industries decided to set up "Corporate Compensation Program" to give relief to their employees who suffer the disease. On the other hand, employees of subcontractors and their associates are not covered by the program although they worked hard in the inferior and miserable environment only because they have no employment relationship with the parent companies which have contributed to the program. This is the matter of human rights. Against the high-handedness of the parent companies, workers have risen in relevant sectors and areas to demand the decent medical care for those associated with subcontractors who suffer pneumoconiosis or asbestos lung. However, Shimonoseki branch of Yamaguchi District Court made a ruling which override the principle of relief for every victim in June, 2011 in the case of reparation for workers associated with a subcontractor of the Mitsubishi Heavy Industry at Shimonoseki Shipyard. The judge refused to respect "classification for pneumoconiosis management" and "complications" approved by the Labor Standards Inspection Office and the ruling tramples on the principle of relief for every victims, which has been cherished and developed by many people including those from preceding generation, patients and bereaved families for many years.

Victims of pneumoconiosis and asbestos lung have been plagued by varieties of symptoms over many years, and they are still having tough time struggling with disease. Furthermore, since pneumoconiosis is a progressive and irreversible disease, they struggle in fear of approaching death every day. We call on Japanese courts to return to the position of “relief for every victim.” Workers' lives and health should not be treated differently by the patterns of employment.

Direct employment Without Term Should Be the Norm.

As patterns of employment and work have been diversified during and after the 1990s, the number of irregular workers has increased in the manufacturing sectors. In the meantime, Part-time Employment Act was revised in 2008 while Labor Contract Act was newly enacted in 2007. Almost all industries are substituting dispatch workers with fixed term contract employees, which is another name for irregular workers. The term is short and the wage is low. Even if the contract is renewed, the worker cannot expect the raise in the wage. In addition to the instability and low wage, it has come to our attention that workers cannot or will not exercise their rights for fear of non-renewal of the contract. More serious issue is that increasing number of workers is forced to choose between accepting wage cuts and their dismissal at the time of contract renewal. We insist that direct employment without term should be the norm for every worker. Again, increasing number of bread winners of the households takes the position of handling the core works as irregular workers and those people strongly request the stability of the employment as well as fair pay and benefits. It is imperative to regain the life assured by the Constitution of Japan and International Covenant on Economic, Social and Cultural Rights.

2-2 Discrimination and dismissal caused by detesting labor unions and its activities on the increase

(Article 7 and 8 of the Covenant)

By the revision of the worker dispatching law in 1999 and its drastic deregulation in 2003, Japan's labor environment has significantly changed. Particularly, due to the increase of unstable temporary workers, as seen in the manufacturing sector, the recession triggered a lot of unemployment under the pretext of the expiration of the period of employment. At the understaffed workplaces caused by such mistaken policy of the government, responsibilities and substantial overtime work on regular workers are excessively expanding, and a lot of "karoshi", or death from overwork, and suicide by overwork have occurred. In addition, a lot of workers who ask for improving working environment and working conditions, are suffering discrimination, power harassment, sexual harassment and dismissals. As a result, they are increasingly expelled from their workplaces. It is clear that this situation is just threatening the existence of Article 7 of the Covenant, providing that "the right of everyone to the enjoyment of just and favorable conditions of work", and Article 8, "the right of everyone to join the trade union of his choice" and "the right of trade union to function freely."

As a further problem, workers suffering human rights violations such as discrimination and dismissal have rarely restored their rights even if they asked for the judicial relief. The court seldom refers to the International Covenant in the judgment. Reminding Paragraph 35 of the recommendations expressed at the review of the 2nd periodic report of the government, we feel keenly the necessity of training programs on human rights for judges, prosecutors and lawyers in order to enhance knowledge, awareness and application of the Covenant.

Respective cases are as follows.

(1) Illegal intervention against labor union activities and discrimination against thought and wages

At the workplace of Suzuki Motor Corporation, a world famous automobile industry, its workers are not able to take holidays with pay at their disposal for fear of devaluing their performance evaluation when they take holidays more than three days a year. Wages of overtime work for all workers and their supervisors will not be paid only partially. The number of "karoshi" and suicide by overwork caused by excessive overtime work exceeds 10 persons since 2000. In order to prevent active workers who raise such serious problems at the workplace and demand impartial and good working conditions, from entering into labor union executives, Suzuki Motor has made the illegal intervention such as a vote under surveillance of supervisors, a vote of writing for another and manipulation of a ballot box. Adding to such attacks towards the activists, the company caused them unbearable mental pain: isolating them from

others, hindering free talks with general workers, and obstructing the distribution of leaflets by its management staff in front of the company's gate.

Furthermore, the activists have been severely suffering wage discrimination, which almost threatens their right to life. Some activist, for example, has been evaluated to a minimum without a raise for years, and his wage was low by 122,000 yen per month, namely 2,250,000 yen a year, compared to other workers having the same seniority of 37 years. While he has repeatedly asked the company for the correction of this wage discrimination, nothing was improved. So he filed a suit in July 2000. Five years later, the district court ruled that the company should pay redress and compensation, recognizing the existence of thought discrimination and human rights violations, expressing that "what the company's illegal activities significantly violated honor and sentiment of the plaintiff as human beings is the damage which is irrecoverable only by redress related to the wage discrimination." But the high court decided against the plaintiff, not recognizing that there existed thought discrimination and human rights violations. The Supreme Court also rejected an appeal.

Under such circumstances in which the judiciary in Japan has no attitude of respecting the International Covenant, companies have been continuing human rights violations against not only the Covenant of the CESCR but also the "Guiding Principles on Business and Human Rights" (A/HRC/17/31) of the Human Rights Council.

(2) Private high school management that interferes with educational activities of its teachers who are members of labor union, issuing a lot of disciplinary measures against them

Such situation is happening in educational sites as well as companies. In Tsurukawa high school, its teachers who joined the labor union established in 1992 for the purpose of seeking the improvement of educational conditions and working conditions in order to facilitate real education for students, were unfairly suppressed one after another. The school management has been continuing bonus discrimination and collective bargaining without faith, and intentionally detesting the teachers in labor union, excluding them from class teachers and advisors of club activities, interfering with all educational activities having access to the students, and frequently issuing disciplinary measures. It is apparently violating Article 13 "the right to education" of the Covenant of the CESCR.

(3) Private college that abuses the right of dismissal and violates free activities of labor union, and the court that supports the college

Dismissal of a college teacher, who expressed some doubts about the college management and asked for its improvement, has occurred at the Saitama Kawaguchi women's junior college. This is also the phenomenon in which the management expels a person whom it detests, from its organization.

As the board of directors remarkably has taken arbitrarily measures against the introduction of personnel evaluation system and the deterioration of positions, Kiyoko Kinugawa urged the management to operate the college according to the rules and investigate the President's thesis reportedly having some problems. As a result, she was suddenly fired because of a lack of qualification and cooperativeness as a teacher. In June 2008, she filed a suit for demanding invalidity of the dismissal in the Tokyo District Court.

In court, the college management claimed the following reasons for the dismissal, which were filled with distortions, fabrications and exaggeration: the management regarded her complaints as slandered ones; it described her as non-cooperative against the management and considered her an unqualified teacher by judging from a meeting with students while taking refreshments; and it submitted a "signature list" of the faculty colleagues asking for her retirement as evidence of showing a lack of qualification and cooperation.

However, the court, approving almost entirely the college's claims, turned down her request, expressing that "even if the plaintiff has no particular problem in its class and gains much credibility from students", "in the severe situation surrounding junior colleges, it is not the abuse of the right of dismissal that the college fired the plaintiff, who lacks qualification and cooperativeness, in such the small junior college." A higher court also rejected her appeal by reason of "the lack of qualification and cooperativeness to be a teacher can be compatible with credibility from the students." And she appealed to the Supreme Court with comments strongly expressing injustice of the dismissal and the original judgment, but it rejected the appeal and decided not to receive the complaint.

In this judgment, it is mentioned that the decision of "qualification and cooperativeness to be a teacher" can be made by the college management at its convenience and accordingly any dismissal can be possible at will by this decision. And, while the plaintiff submitted new evidence showing that the "signature list of faculty colleagues asking for her retirement" was prepared under instruction of the management, this judgment, however, neglected it and justified it as a conclusive factor of the dismissal. This is just the abuse of the right of dismissal, contrary to the Constitution of Japan, the Labor Contract Act and apparently the Covenant of the CESC.

In addition, although this matter was legally settled down, she was continuing propaganda campaigns in front of the college by reason that the labor dispute still remains unsolved. However, the college management filed a provisional disposition prohibiting proposals of collective bargaining and campaign to the Tokyo District Court. And the court decided the provisional disposition. Such situation where a propaganda campaign is prohibited by labor union means the violation of Article 8 "the right of trade union to function freely" and also the violation of freedom of expression.

(4) Massive dismissals of Japan Airlines (JAL) aiming at age discrimination and offense against labor activities on the ground of the company reconstruction

JAL went into bankruptcy in January 2010 and fired 165 pilots and cabin attendants as part of the company reconstruction based on the Corporate Rehabilitation Law in December of the year. While JAL has already gained operating profits more than the rehabilitation plan and the number of those who voluntarily retired has exceeded the reduction target, it forced them to resign on the ground of the age and medical history.

Even if it becomes necessary to reduce personnel because of the deterioration of management, the four conditions referring to the norm of the Labor Law have to be observed in the case of dismissal: a high degree of necessity, efforts to avoid dismissal, rationality of criteria for selection and validity of procedure. So this is the dismissal that aimed at age discrimination, health reasons and offense against labor activities including the elimination of its activists.

(5) The New National Theater Foundation (NNTF), which dismissed a choir member, denying her as a worker and refusing collective bargaining

In February 2003, Setsuko Yaegashi, a female choir member of the New National Theater, was informed of terminating a contract with the NNTF. In order to renew contracts every year, the NNTF has been examining its members by listening to them singing and taking the system to replace them annually. As a member of the Musicians Union in Japan, she has submitted some reports regarding the future of opera theaters in Japan and the improvement of working conditions to the New National Theater. By doing so, she was probably detested by the NNTF. Her union called on the NNTF to hold collective bargaining about the termination of her contract, but the NNTF rejected it for the reason that her union has no right of collective bargaining, showing that the choir members of the NNTF do not correspond to workers provided in the Labor Union Law. As a result, her union filed a motion for relief of unfair labor practice on the refusal of the NNTF for collective bargaining with the Tokyo Labor Relations Commission. In May 2005, the Commission ruled that the NNTF committed an unfair labor practice. Next year, the Central Labor Relations Commission also ruled the same order.

The NNTF, however, filed a suit for revocation of the order by raising an objection, and the district court and a higher court ruled in favor of the NNTF, both rejecting the union's claims. After that, the Supreme Court ruled that the choir member should be regarded as a worker, but the case of the unfair labor practice regarding the termination of her contract and the refusal of collective bargaining was remanded to the high court, and testimony of the plaintiff is under trial right now.

(6) Dismissal of a temporary secretary of labor union

At the Shiga head office of the Japan Federation of Prefectural and Municipal Union (JICHIROREN), civil servants' union, the Union forced Junko Shimizu, a temporary secretary, who had been working on

the condition that her labor conditions correspond with those of regular workers, to work as one-year-fixed worker instead of full-time worker. Furthermore, it abolished her annual pay raise and often informed her of dismissal notice. In March 2008, the Union suggested disciplinary dismissal to her on the pretext of her conversation by telephone with a union member whose complaint was protesting against the Union, and finally refused to renew her contract.

She filed a suit for demanding revocation of her dismissal, but her appeal was rejected both in the first and second trials, and even in the Supreme Court. In the decision, the plaintiff was offensively described as a person who has no job capacity and non-cooperative, arguing about her simple mistakes. And the court recognized the termination of her contract by reason that the plaintiff did not obey agreements and instructions when her final contract was renewed. This decision indicates that, by showing strict compliance items which workers cannot simply obey, employers may terminate contracts with not only workers who are not able to obey them, but also workers who are against them. This decision could deprive fixed-term workers of their rights to negotiate with employers and to achieve better working conditions. It is the decision that apparently violated Article 8.1, (a) of the Covenant.

(7) Civil servant dismissed after punishments of transfer, reprimand and demotion

When Kyoko Kusunoki, a public health nurse, in Nanmoku-mura, Gunma, raised some questions about safety and practice methods for the implementation of fluoride mouth rinses, which aimed at the prevention of dental caries, she received punishments of transfer, reprimand and demotion by the village authorities pressured by the local Dental Association. Finally she was dismissed in December 2007.

The reason of her dismissal was that “there are many behavior problems which are not suitable as a civil servant.” For example, she did not always wear an office wear, but actually there were some workers not wearing it; she left her seat just before the closing time of public office and then recorded the closing time on a card; she refused to receive a notice of demotion due to insufficient description for the punishment. They were very irrational reasons indeed.

But, a main intention to eliminate her was the Dental Association’s criticism against her reluctant article regarding the implementation of fluoride mouth rinses, which was carried in a public relations magazine by permission of a chief of the village. The exclusion from the workplace such as forced retirement, confiscation of her job and a warning to other people, has been continued against the public health nurse who was worried about safety and security of the people of the village including its children.

In 2003, when she was ordered to transfer to the editing of the public relations magazine, she filed a suit for demanding revocation. And she aimed at resolving the problem soon, entering the labor union acceptable even one person because there was no other labor union in the village office. But the village office was leaning toward deciding to dismiss her, adding also its loathing for the labor union.

Against such violations of human rights as eliminating the worker unilaterally from the workplace, the

court did not pronounce a fair judgment regarding the case of the revocation and even rejected the provisional disposition related to the dismissal. Accordingly the court has not become a shield against the prevention of human rights violations.

(8) Sexual harassment, power harassment, confinement, violence and a judge who imposes a settlement-----an unrelieved worker

A personnel manager and some administrators of the Ricoh Production Print Solutions Japan dismissed Kaori Natui at the office in July 2009, confining her in the conference room for a long time, doing violence to her and confiscating her personal effects. In that case, she was laid the blame for embezzling falsely, being forced to sign a document. She received a sly bullying infringing significantly on the personality of the worker. And she also received discriminatory treatments, sexual harassment by insulting remarks and job disturbance, being forced to work overtime at midnight everyday. As a result, she went out of condition due to her mental predicament and suffered a profound wound both physically and mentally.

After filing a suit, a judge of the first trial, summoning the plaintiff and her lawyer to appear in a court, persuaded her for half an hour, by saying that “in my opinion, you had better withdraw the suit by yourself and accept reconciliation not to hurt your future because you are a woman.” The control of court proceeding filled with prejudice and prejudice has been implemented.

The ruling turned down all the allegations of the plaintiff, expressing that “it is natural that there exist injustice and discrimination in the society for the reason of grumbles and persecution complex of workers.” This decision neglects not only the rights of workers, but also the deprivation of the right to work, the violation of personal rights and the violation of the equality based on sexism.

The ratio of female workers in companies in Japan is on the decrease year by year. That is the reason a lot of women are losing the working environment due to the depression. She filed a suit against injustice of the denial of her working, the deprivation of the right to work and the disgrace brought by the company. These are social problems that may always happen to many Japanese women. Female workers are not those who only receive wages by offering the labor. The deprivation of the right to work and the violation of personal rights include an act that hurts such feelings as libel, insult and breach of privacy.

As the cases mentioned above, the exclusion of workers from the society and companies by reason of thought, has occurred by neglecting the laws and the Covenants and, in the present situation, the judiciary do not play a role either to put a stop to it. We urge the Committee to recommend that the Japanese government obey the International Covenant to prevent violations of the empowerment of female workers and human rights of all workers.

3 Toward the guarantee of firefighters' right to organize--in relation to the Article 8

What's FFN and what do they do?

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

In 1995 and 1997, representatives of FFN paid a visit to ILO Headquarters, and made requests to Bernard Gernigon, member of ILO Freedom of Association Committee, to press the Japanese Government to take actions. Next, in 2008, FFN Chief and another official met Karen Curtis, Vice-Director of International Labor Standard Office at ILO Headquarters, and called attention to the situation in Japan, and asked for support for the acquirement of firefighters' right of organization.

Domestic efforts are not forgotten. On May 21, 2010, when the Ministry of General Affairs held a public hearing, FFN Chief spoke about what is happening at firefighters' workplaces across the country, and expressed his opinion that firefighters should have right of organization as soon as possible.

1. Japanese Government's Speech at the 99th ILO General Assembly

Ritsuo Hosokawa, Vice-Minister of Health and Welfare, made a speech on behalf of the Government at the assembly, and mentioned the topic of firefighters' right to organize. He stated that the Government would establish a "study group discussing the firefighters' right to organize" within the Ministry of General Affairs by January in 2010, and that the group would compile a report by autumn that year.

2 . Right to Organize is one of the Basic Human Rights

At the first sitting of the group, Group Leader Mr. Ogawa explained the premise of the forthcoming discussions at his committee. "It's an infrastructural principle of the society which was created by the modern labor laws and regulations that workers organize themselves and consult and negotiate labor matters with their employers on an equal basis as much as possible. And basic labor rights are part of fundamental human rights which should be enjoyed by everyone. We should recognize this, and let us start discussions." It is clear that he takes it for granted that the right to organize should be given to workers concerned.

3. "Explanatory declaration" of the Japanese Government is against the international law

On August 21, 2001, the Committee for ICESCR examined the second report submitted by the Japanese Government. There the representative of the Government reiterated its explanatory declaration that 'the police' include the fire service of Japan. However, there is no legal ground in Japan that firefighters are members of the police force.

The Japanese Government declared in 1979 when it ratified ICESCR and ICCPR: "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 Organise, 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."

In short, the Government ignored the 1973 recommendations by Committee of Experts on Application of Conventions and Recommendations and Freedom of Association Committee. The Japanese Government should withdraw its explanatory declaration.

4. Deficiencies in the system of Firefighters' Labor Relations Commission

The Japanese Government has insisted that the system of Firefighters' Labor Relations Commission is the compensatory appliance of the right of organization. However, tasks at the Commission are occupational duties based on the Article 17 of Firefighting Organization Law. On the other hand, right to organize is a right guaranteed by the Article 28 of our Constitution. Workers should independently be able to create an organization which is entitled to negotiate working conditions with the authorities. The Commission has a totally different function, so it's a mistake to compare the two.

Moreover, there are some problems inherent in the Commission system:

1. Even when the Commission submits opinions "found to be appropriate for adoption," the rate of their implementation is quite low.
2. The chief of the fire defense headquarters concerned is not required to implement such opinions.
3. The Commission has a meeting only once a year.
4. Non-members are not allowed to observe the meeting.
5. The authors of the accepted opinions cannot explain them at the meeting.
6. The average time to examine each opinion is only about seven minutes.
7. Firefighters do not have access to the record of the proceedings.

5. Why do Firefighters Resort to Lawsuits?

During the past several years, more firefighters nationally have sued their employers to improve their working conditions. They have had to turn to lawsuit because neither the Firefighters' Labor Relations Commission nor Personnel (or Impartial Judgment)

Committee cannot solve the labor disputes. If right to organize were guaranteed at workplaces, problems can be worked out through negotiations between labor unions and the authorities.

Such lawsuits can be divided into three kinds according to their contents.

- (1) Fire Department Authorities suppress firefighters' voluntary move to organize (Tobi Fire Department

vs. firefighters, Okayama Prefecture)

(2) Disputes cannot be settled through Firefighters' Labor Relations Commission or Personnel Committee (Inazawa Fire Department vs. firefighters, Aichi Prefecture; Fujinomiya City Fire Department vs. firefighters, Shizuoka Prefecture; Mito City Fire Department vs. firefighters, Ibaraki Prefecture)

(3) Power Harassment (Matsudo City and Nagareyama City Fire Departments vs. firefighters, Chiba Prefecture)

6. Necessity of the Right in order to Save Lives and Properties of Local Residents

Firefighters need to acquire their right to organize not just for themselves. Improving working conditions in firefighting workplaces leads to saving lives and properties of local people as well.

Also, if firefighters were guaranteed their right to organize, their organization would be able to hold a disaster prevention symposium in local communities, for example, as an employee organization. It will become easier for us to inform the residents of fire defense matters such as restructuring in the service and appropriate mobilization of firefighting service. Such initiatives will surely be beneficial to the community. In short, firefighters' right to organize will help protect communities and the inhabitants.

4 Plea for the recommendation of early redress of the general ban of public servants' right to strike -- in relation to Article 8

All public servants including employees of public enterprises (a kind of local public servants) are still banned to strike. Those who have done so are subject to abusive punishment or threat-like "warning." We would like your early recommendations for lifting the all-encompassing ban, as well as the ban for each case.

The problem of overall banning of civil servants' right to strike had been reported to your committee in our counter reports, and your committee expressed concerns in the Concluding Observations (Aug. 2001) in "C. Principal subjects of concern" (the 21st observation). It pointed out that it's wrong to ban all the public servants' right to strike, including "those not working in essential governmental services, including teachers."

Japanese public servants are divided into numerous categories by the domestic laws applying to each category. On the other hand, the ban on the right to strike is on "all the public employees and public servants," ranging from national government officials with central management functions to the peripheral, so-called non-clerical, non-authoritative ones.

Workers at Iwate Prefecture Hospital have organized a labor union (Iwate Prefecture Medical Department Labor Union). They are trying to organize all the workers at Prefecture Hospital, and are acting to make their hospital a user-friendly facility for all the patients and residents. The workers are subject to Local Public Enterprise Act (Act No. 292 of August 1, 1952) and they are "enterprise employees" according to Articles 1(3) and 36 of the Act. While Article 39 of the same Act stipulates that bans on labor dispute actions do not apply to them, Article 11 of another law, Local Public Enterprise Labor Relations Act (Act No. 289 of July 31, 1952) bans all the strikes.

This means that the Government wants to ban all the strikes by all the public employees even with irregular application of laws. It's an extraordinary situation from the standpoint of international standards such as your committee's concluding observations and ILO Employment Relationship Recommendations (March 29, 2006). It must be amended as soon as possible, including improvements in the system of public enterprises when applicable.

Iwate Prefecture Medical Department Labor Union (3,100 members) has negotiated and bargained collectively with the hospital authorities regarding the introduction of the new pay system (pay raise depending on performance evaluation) for the past several years, and requested the authorities shouldn't introduce the new system unilaterally or forcibly.

The union opposed the system because it is likely to motivate hospital workers to behave well for their bosses rather than for their patients and it tends to lower the quality of customer services. Also, the

individual evaluation will embarrass the teamwork and human relations among the workers.

Unfortunately, the negotiation between the union and the employer came to a deadlock and broke up. So the union had to resort to an in-house meeting (strike) on November 11, 2007 when the authorities declared to introduce the new system without agreement. The decision to strike was based on all the union members' volition, and its duration was 15 minutes at the longest. Then the hospital management took disciplinary action to 15 union officials on January 16, 2008. Then they sent all the members who had attended the meeting (about 1,000 members) a written admonition, which is not prescribed by any rules or regulations. Thus the hospital management did a clear, forceful intervention into labor union activities.

5 Japan's High Education Costs Policy Causes the Escalation and Consolidation of Education Gap.

—On “introduction of free secondary and higher education” prescribed in Article 13-2—

Education expenses are a heavy burden on a family budget.

Equal educational opportunities are not available due to family economic power.

Regarding a heavy burden on a family budget by Japan's high educational costs, an OECD research (Education at Glance 2011; OECD) shows that the rate of public expenditure on educational expenses is 3.3% at the whole education level and 0.5% at a higher education level, the worst among the OECD countries.

At present, the amount of the first-year payment including tuition for national universities exceeds ¥820,000, and that for private universities exceeds ¥1,310,000. Consequently, students and young people complain, “Though I passed the entrance exam, I gave up going to university because I couldn't pay the admission fee,” “I gave up going to university because I couldn't afford the tuition,” “I can't concentrate on my study because of my part-time job to cover my living costs,” and so forth.

As a result, according to a survey made by Tokyo University (2005-2006), the rate of high school students who go to university is 28% from families with the annual income of less than ¥2,000,000, while 62% from those with that of more than ¥12,000,000. The double gap shows the fact that equal educational opportunities are not provided due to family economic power.

A survey by the National Federation of Students' Self-government Organizations titled “The Report on University Tuition and Employment” (answers from 3,977 students at 37 universities) reveals that the income of average families continues reducing and that household poverty leads to that of students' lives. Almost 40% of them say, “My entrance to university and attendance strains the family budget,” “I feel very sorry to my family members and relatives for their hardships,” etc. They reduce food expenses, pay university tuition by scholarship, make their living by part-time jobs, refrain from buying books, cut down on sleep for part-time jobs, etc. They cannot take enough time on study.

Interest-bearing loan scholarship system with obliged repayment

— “I cannot make use of the system in fear of the future repayment.”

In Japan, there is a scholarship system sponsored by Japan Student Services Organization (JASSO) as a system which guarantees “equal educational opportunities.” One-third of university students make use of the system. However, the scholarship is not a benefit, but a loan with obliged repayment. Basically, an interest-free scholarship had been systematized, but in recent years, only the amount of interest-bearing scholarship has been increasing to 75% of the whole scholarship project expenses.

The amount of the loan is very expensive. If you loan ¥120,000 a month for four years in university, the total amount of the repayment reaches ¥7,750,000 (interest rate 3%). The annual income

of people at the age of late twenties is ¥2,540,000 (Statistical Research on Wages in Private Enterprises by National Tax Agency, 2010). It almost triples the annual income of the graduates and is a heavy burden on them. In addition, since April 2010, a new system has been introduced: more than three-month overdue defaulters shall be notified to individual credit information institutions (Blacklist System), and they shall not use credit cards and loans. Students from low income families scream, “We cannot utilize the scholarship system in fear of the future repayment.”

Most students wish to “study without worrying about money.”

In the third report the Japanese government explains about its reservation of Article 13-2(b)(c) of the Covenant, which prescribes “the progressive introduction of free education” in secondary and higher education, “In order to guarantee educational opportunities, JASSO, local public organizations and public-service corporations, etc. are carrying out scholarship projects for the students who have difficulties in school attendance for economic reasons “ Although the Japanese government ratified “an adequate fellowship system” (Article 13-2(e) of the Covenant), its scholarship system has not realized “equal opportunities of education”, as you know the situation mentioned above. For the students and young people to receive education without worries, the introduction of a benefit scholarship system with no repayment is absolutely necessary, not a loan system with future heavy burdens. The urgent task is to take a step toward the introduction of free school tuition. We request those concerned to approach the Japanese government so that it may retract the “reservation of Article 13-2(b)(c) of the Covenant,” guarantee “the right to education,” realize “equal educational opportunities” as soon as possible, and perform its international duty suitable for its economic power.

The Japanese government continues excluding Korean high schools from free tuition.

In 2010, the free high school tuition was realized. However, Korean high schools in Japan were “currently excluded” from the free tuition system, and as far as they are concerned, the free tuition has still been put off. The first reason was a request from the state minister for abduction matters, the second reason was the bombardment incident caused by North Korea, and now the Japanese government says that free Korean high school tuition depends on “the future North Korean regime” after the death of Secretary General Kim Jong Il, though, in the meantime, the tuition of two newly-established ethnic schools except Korean high schools were made free of charge without any trouble.

The Democratic Party administration imposed an additional tax for the deduction for specified dependents. This caused the parents with children who go to Korean high schools to pay more tax than before.

The condition of the free tuition is that the school provides a curriculum “similar to a high school course.” This means to satisfy an objective standard. The important thing is that the intervention in educational content is prohibited by the Fundamental Law of Education and that lessons based on free

religious and historical views are guaranteed by the Private School Law.

Regarding this problem, in the third-sixth observations of the Japanese government report on the International Convention on the Elimination of All Forms of Racial Discrimination held in March, 2010, the committee expressed concerns about the exclusion of Korean schools from free high school education tuition and made a recommendation of “no discrimination in the provision of educational opportunities” (Paragraph 22.a).

We strongly request a recommendation by the committee that the Japanese government should make Korean high school tuition free of charge as soon as possible.

6 Violation of the Right to Education and the Right to Work at Schools in Tokyo

---Coercion of the National Flag and Anthem on Teachers and Students

(Violation of the articles 2, 6, 7 and 13 of the CESCR)

1. Preface

On 23rd October 2003, the Tokyo Board of Education issued a directive (10.23 directive hereafter), demanding the principals of all public schools in Tokyo to give the order of duty to every teacher and school staff to stand up and sing the national anthem or play the piano to it at school events such as graduation and entrance ceremonies. Those who refused to obey the order have been severely reprimanded, and the number of the punished amounts to 437 as of May 2011.

Not a few people in Japan, including teachers, students and their parents, have a strong feeling of resistance against the enforcement of Kimigayo, the national anthem of Japan, at schools; because it has been sung since the time of militarism and totalitarianism under the Old Constitution without any revision even after the World War II; and also because its lyrics mean, “May the reign of the Emperor last forever.” The teachers were punished for just being seated quietly during the singing, following their educational beliefs which place a high value on peace and human rights.

The coercion and the punishments not only violate the article 18 of the International Covenant on Civil and Political Rights, but also infringe the rights stated in the International Covenant on Economic, Social and Culture Rights, for the punished teachers have suffered various disadvantages because of the punishment records, and such situation has been affecting the students’ right to education as well.

Here we report how the coercion of the national anthem and the national flag at schools in Tokyo violates the articles 2, 6, 7 and 13 of the ICESCR.

2. Violation of Children’s Right to Education (Violation of Article 13 -1&3)

Students of various ethnic backgrounds, varied religious beliefs and different political opinions are studying at schools in Tokyo, and freedom of thought and conscience and the right to express their opinions must be respected. The preemptory coercion of the national flag and anthem on teachers, who have direct personal contact with students, has also imposed great pressure on students’ mind and hurt their sense of dignity as follows.

(1) Prohibition of the Explanation of “Freedom of Thought”

At most public high schools in Tokyo, in respect for the diversity of ethnicity, religious belief and political opinion of the students and their parents, they had explained before the ceremony began that freedom of thought and conscience is respected, and made it clear that rising and singing the anthem was not mandatory. The board, however, prohibited the explanation saying it is “inappropriate,” and

gave the punishment of “strict warning” to the teachers who explained.

(2) Indirect Pressure on Students to Stand Up

When many students remained seated during the singing of the anthem, the home room teachers were given “strict warning.” At the same time, another directive and a note were issued to the effect that teachers should give students thorough instruction to stand up.

(3) Direct Pressure on Students to Stand Up

The order of duty after 2005 requires teachers to “instruct” students to stand up when they are seated, which is the violation of the students’ human rights in the name of “instruction.”

At High School A, when some students remained seated, the vice-principal physically forced them to stand up by putting his hand on their shoulder. He summoned them at a later date and asked them the reason or background for remaining seated, and thus continued to give pressure on their mind.

At High School B, most of the students sat down when the singing of the anthem began at the graduation ceremony. The school administrators and a member of the Tokyo Metropolitan Assembly who was present as a guest shouted, “Stand Up!” ignoring the students’ right to express their opinions. When the students still remained seated, they assumed that homeroom teachers must have “instigated” them to do so, and later the Tokyo Board of Education and the police interrogated those teachers. Furthermore, a retired teacher who made an appeal to the parents before the ceremony began asking to sit down at the singing of the anthem was indicted on criminal charges.

At Elementary School C, a pupil who didn’t stand up at the rehearsal was summoned by the homeroom teacher at lunch time and was asked the reason for the deed. Another pupil who saw the scene was unable to eat and sleep because of fear. Both of them have faith in the Christian religion. At the real graduation ceremony, one stood up and the other remained seated following his belief. Their parents made a protest against the school, but there was no apology from its administrators.

(4) Students’ Free Discussion on “the national flag and anthem” Forbidden by the Board

At High School D, the student body held a discussion session on “the national flag and anthem,” and the principal and some teachers attended it. The Board, regarding it as problematic, questioned every teacher that attended the session, and gave “strict warning” to the vice-principal and the advisory teacher of the student body. The students were forced to cancel the second session they had planned.

At High School E, a graduating student referred to “enforcement” and “pressure” in his graduation speech. The Board ordered the principal to examine how the students had been selected, what was his family background, and whether there was a teacher who had instigated him to use those words.

(5) Lack of Consideration for the Minority Group

Some students and their parents chose not to attend the graduation ceremony because of their religious belief, ethnicity or nationality. The uniform way of performing the ceremony violates the students' right to attend their own graduation ceremony.

At High School F, a student and his parents visited the principal's room the day before the graduation ceremony, and told him that he would not attend it because his religious belief did not allow him to sing the anthem. The next day he actually did not.

At High School G, a student came in after the singing of the national anthem. He is a Korean resident in Japan and did not want to sing Kimigayo, because Korea was once colonized and ruled by Imperial Japan.

(6) Human Rights Violations at Schools for Children with Special Needs

At schools for children with special needs, paying respect to the national flag and anthem is very often given higher priority than the life or safety of the children.

At School H, the alarm of a pupil's artificial respirator blared during the singing of the anthem. When the nurse ran to the child, the vice-principal ordered her to ignore the alarm and stand to sing.

At School I, a pupil gave a sign that he wanted to go to the toilet during the rehearsal. The principal ordered the homeroom teacher to let him wear a diaper at the real ceremony.

At School J, a teacher was holding a pupil with the heaviest disability on her knees during the rehearsal so that the pupil could attend the ceremony in comfortable posture. The principal ordered the teacher either to stand up leaving the child on the floor or not to let him attend the real ceremony.

The examples given above show that pupils and students are forced to pay respect to the national flag and anthem at the graduation ceremony, which is the "inescapable occasion" for them. This violates the students' freedom to express their opinions regarding the style of ceremony, including the treatment of the national flag and anthem, and is against paragraph 1 and 3 of the article 13 of the Covenant.

Paragraph 4 of the 'General Comment 13(on article 13 of the ICECR)' states, "States parties agree that all education...shall be directed towards the aims and objectives identified in article 13, and "the most fundamental is that 'education shall be directed to full development of the human personality.'"

Regarding freedom of education, paragraph 28 of the same comment states, "The committee...notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13(3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians." On academic freedom, its paragraph 38 states, "...staff and students throughout the education sector are entitled to academic freedom."

Based on the principles of these provisions, it is obvious that the problems at schools and other

educational institutions should not be solved through political pressure, authoritarian methods, top-down decision or order and submission. They should be solved based on “the logic of education and human rights,” with the participation of children, parents or guardians and teachers.

However, teachers those who acted to protect children’s educational rights, which is their essential duty, have been suffering from various disadvantages as described below.

3. Violation of the Right of Teachers to the Enjoyment of Just and Favorable Conditions of Work (Violation of Article 7)

The following unjust treatments are being imposed upon the teachers who were reprimanded for disobeying “the order” to rise and sing the national anthem based on their educational beliefs:

(1) From Economic Disadvantages to Deprivation of Work

The first reprimand for disobeying the order is admonitory warning accompanied by 3-month delay in wage increase with 10% cut in diligence allowance. The punishment becomes severer each time teachers disobey the order; for the second reprimand, 10% wage reduction for one month; for the third, 10% wage reduction for 6 months; then, one-month suspension from work (without wage), followed by 3-month suspension, and finally by 6-month suspension.

(2) Deprivation of Opportunity for Wage Increase

The Performance Evaluation System (PES) introduced in 2000 is closely linked to remuneration which is against ILO• UNESCO Recommendation concerning the Status of Teachers in that the system was introduced without agreement of the Teachers’ Union. Under this PES, those who disobeyed the order are automatically given a poor assessment of C or D out of the 4 assessment grades A, B, C and D, no matter how hard they worked. Such poor assessments lead to further economic disadvantages such as delay in salary increase or bonus cut.

(3) Deprivation of Opportunity for Promotion

Since 2009, the job category of Teacher has been divided into 2 types: Senior Teacher and Teacher. Teachers who disobeyed the order based on their beliefs cannot pass the exams for Senior Teacher just because of that record. In some cases, the teacher who had passed the exams was later disqualified when he failed to follow the order at a graduation ceremony at the end of the school year. The maximum difference in lifetime wage between Senior Teacher and Teacher amounts to a total of 16 million yen.

(4) Discrimination in Job Assignment

Taking charge of a class as a homeroom teacher is considered to be one of the most fundamental and satisfying assignments for any teacher in Japan. However, even if a teacher hopes to be a homeroom teacher, some principals refuse to give such an assignment unless the teacher promises the principal to follow the order “to stand and sing the national anthem.” As a result, one teacher has been excluded from becoming a homeroom teacher for as many as 7 years. Another teacher who had been in charge of the first year class for one year was forced to step down when she disobeyed the order at the entrance ceremony. Still in another case, a teacher who had been assigned to be a homeroom teacher the next school year was given a completely different assignment.

(5) Increase in Number of Teachers on Sick Leave

The number of teachers who took sick leave at Tokyo public schools has been rising sharply every year since 2003. In 2009, it reached 786, which is 2.6 times as large as that of 2000. Among them, 532 teachers, or 70 % of them, suffered from psychological illnesses, showing more than a threefold increase. During the same period, the number of teachers who took sick leave throughout the country increased only 1.6 times, and those suffering from psychological illnesses just doubled. This indicates the increases in Tokyo are quite outstanding. Also, in Tokyo, the number of teachers who retire before the retirement age has increased over the past several years, and this tendency is especially marked among those who were reprimanded for disobeying the order to sing the anthem. These phenomena show that the working environment of teachers in Tokyo has been deteriorating due to the abrupt changes in the educational administration since 2003.

4. Violation of the Right of Teachers to Work (Violation of Article 6)

Discriminatory treatments of teachers based on their religious and/or political opinions include the following cases of unjust violation of the fundamental right to work.

(1) Exclusion from Re-employment Program beyond Retirement Age

Tokyo has adopted a continued employment program since 1985 as a compensation for mandatory retirement at the age of 60. However, several part-time teachers who had been re-employed beyond their retirement were fired and the successful candidates were disqualified the moment they remained seated against the order. If a teacher refuses to stand up against the order just once, he/she is excluded, without an exception, from a list of successful candidates for re-employment in the following five years. At present, the number of such teachers has exceeded 60.

Responding to paragraph 50 of the covenant, the government of Japan states in its third periodic report (2009) as follows. With the start of the pension eligibility age hike, “ the Law concerning Stabilization of Employment of Older Persons was revised in 2004. The revision requires employers to (1) raise the mandatory retirement age to 65 or, introduce a system for enabling employees to continue

to work beyond the mandatory retirement age until 65, etc.” (p.20) The policy of Tokyo Board of Education tramples on this principle.

(2) Violation of Freedom to Choose one’s Occupation

Those who want to become a teacher are required to show their respect for “Hinomaru and Kimigayo,” the national flag and anthem at Tokyo public schools. It is reported that a college student, who is Christian, passed the teacher employment exams and was notified which school to teach. In a meeting with the principal just before the entrance ceremony, he confessed that his religion prevented him from standing up to sing the anthem. Consequently, he was forced to give up his employment as a teacher.

In Tokyo, all the teachers now at work are being tested for their loyalty to the country each time the entrance or graduation ceremony is held at school. As the reprimands are repeated, the teachers are driven to the point of losing their job.

5. Epilogue

So far, there have been 21 lawsuits brought mainly by those teachers who were reprimanded. By January 2012, 10 cases have been given the final judgments by the Supreme Court of Japan. It has ruled that the order of duty to rise and sing the national anthem does NOT violate article 19 of the Constitution (Freedom of thought and conscience), while wage reduction and suspension from teaching are considered to be abuse of discretion. There has been no reference by the Supreme Court on “the right to education”.

States Parties are obliged to ensure the right to education. In terms of specific obligations, *General Comment No. 13 on ICESCR* states in paragraph 49: “States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1).”

The following illustrations are included in paragraph 59 of the above document, as violations of article 13: “the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination;” “the use of curricula inconsistent with the educational objectives set out in article 13 (1);” and “the denial of academic freedom of staff and students.”

In the light of these statements, it is the essential “duty” of teachers to ensure children’s rights to learning, freedom of the full personality development and freedom of thought and conscience, and to exclude acts of human rights violation, if any, from their schools. Accordingly, teachers’ conducts to support those children who find it impossible to rise and sing the national anthem should be considered necessary and justified. It is clear that these conducts should never be subjected to reprimands.

Therefore, the present “10.23 directive” must be repealed immediately, because it is against the objectives of education to “be directed to the full development of human personality” of the students, imposing restrictions in the name of “the government curriculum guidelines” on teachers performing their essential “duty” at entrance and graduation ceremonies.

Based on the facts described above, we request the following in order to ensure students and teachers freedom of thought and conscience at a global standard:

1. In the light of the educational objectives directed to “the full development of the human personality” and “respect for human rights and fundamental freedoms” set out in article 13, we ask the committee to make a recommendation to the governmental authorities to stop coercing students to show their respect for the national flag and anthem, which violates student’s freedoms of thought, conscience and religion. Similarly, please recommend the authorities to stop coercing teachers with punishment to express respect for the national flag and anthem, for they come into direct contact with students in their personality development process.

2. We ask the committee to make a recommendation that, in holding school events such as graduation and entrance ceremonies, the school administration must provide the students and student council with opportunities to express their opinions and participate in decision-making process as important members so that they are given full explanation and consultation for their understanding, and that they are never forced to follow the administrative decisions made top-down.

3. We ask the committee to recommend that the reprimands given to the teachers for not showing respect for the national flag and anthem be retracted immediately as well as various discriminatory treatments in working condition accompanied by the reprimands.

7 The Neglect of Karoshi (overwork death) and Overwork Suicide is in violation of Article 7 (b), (d) of the Convention.

Introduction

In 2001 we submitted a report in reference to the state report of Japan at the CESCR's 2nd review of Japan. It was a voice of objection to the government's statement that there is no violation of Article 8 of International Covenant on Civil and Political Rights "prohibition of slavery and forced labor." We pointed out that the government did not touch on the issues of Karoshi and overwork suicide, which symbolically represented the reality of working conditions in Japan. 12 years later, we see little change. Rather things have gotten worse in some respect. Over 30,000 people committed suicide for 14 consecutive years from 1998 to 2011. The number of claims has increased for workmen's compensation for work-related death or suicide while the administrative offices are more willing to grant the compensation than they used to. We have not yet seen the beginning of the decrease in the number of these tragic work-related death.

This year, the report is written for the purpose of eradicating unnecessary tragedies as the result of overwork. We would like CESCR to call on the Government of Japan to take appropriate measures for prevention from the viewpoint of Article 7 (b) safe and healthy working conditions and (d) rest, leisure, reasonable work hour limit, paid vacation.

1, Neglect of extraordinarily long hours of work

Labour Standards Law defines the working hours of workers in Japan. Article 32 stipulates, (1) an employer shall not have a worker work more than 40 hours per week, excluding rest periods. (2) An employer shall not have a worker work more than 8 hours per day for each day of the week, excluding rest periods. If an employer violates the law he will be punished.

And Article 36 provides that if the employer has entered into a written agreement with a labor union with respect to working hours and notifies the Labor Standard Inspect Office, he or she can extend the working hours or have workers work on days off. The standards are old set by the notification of former Ministry of Labour in 1997. Working hours can be extended to maximum 15 hours for a week, 27 hours for two weeks, 45 hours for a month, and 360 hours for a year.

However, the law provides further if an extraordinary need arises for extension of time, an employer may extend the working time. Thus, overtime can be extended indefinitely on the excuse of extraordinary situation. The table below shows the contents of the agreements between the management and the labor unions in the major industries, whose presidents are present and future chairman and vice chairman of Japanese Business Federation. This information comes from NPO Shareholders Ombudsman who is actively pursuing the Corporate Social Responsibility (CSR) from shareholders' viewpoint. They obtained

the information through a labor bureau in charge in the process of their research on industries' compliance on labor matters.

Table 1 Labor-Employer Agreement of the Mximum Overtime for Leading Members of Japan Business Federation

company	agreed on	maximum time of extension				labor representative
		per day	per month	per 3mos	per year	
Canon	2008/8/29	15hours	90hours		1080hours	trade union
Toyota Motor Corporation	2008/8/24	8hours	80hours		720hours	trade union
Nippon Steel Corporation	2008/3/6	8hours	100hours		700hours	trade union
Nippon Oil Corporation	2008/3/31		100hours		480hours	trade union
Mitsubishi Corporation	2008/3/26	5hours	43hours		360hours	trade union
Panasonic Corporation	2008/3/31	13hours45min.	100hours		841hours	trade union
Dai-ichi Life Insurance	2008/3/26		45hours		360hours	illegible
Mitsui & Co.	2008/3/26	12hours45min.	120hours		920hours	trade union
Toray Industries Inc.	2008/9/29		160hours		1600hours	trade union
Mizuho Financial Group	2008/8/31	11hours	90hours		900hours	employee delegates
Hitachi Ltd.	2008/3/26	13hours		400hours	960hours	trade union
Mitsubishi Heavy Industries	2008/3/31	13hours30min.		240hours	720hours	trade union
Nomura Holdings	2008/3/21	8hours	104hours		360hours	employee delegates
All Nippon Airways	2008/3/31	7hours	30hours		320hours	trade union
Mitsui Fudosan Co	2008/3/31	4hours30min.	90hours		360hours	trade union
Tokyo Electric Power Co.	2008/9/26	12hours10min.	100hours		390hours	trade union

Table1.

It clearly shows that major corporations representing Japan who also lead Japanese business circle concluded agreements with labor unions on overtime exceeding the time limit provided in Labour Standards Law. At the same time, it also shows the grave reality that labor unions accepted the illegal conditions and that the Labor Standards Inspection Office in charge did not give guidance, nor request for the revision. Canon which is under the management of the former Japanese Business Federation chairman, made the union agree to overtime of 15 hours per day. Toyota Motor and Nippon Steel did the same thing with 8 hour-overtime. As is well known, the Ministry of Health, Labour and Welfare issued "Standards for Recognition of Cerebrovascular Disease and Ischemic Heart Disease" in 2001.

In other words, they are the standards for enabling so-called overwork death to be eligible for workmen's compensation. According to the above standards, if a worker did overtime work in excess of 100 hours one month before he developed brain or heart disease, or overtime work of average 80 hours for two to six months before he developed the disease, the death should be regarded as Karoshi and the family should be entitled to workmen's compensation.

Nippon Steel, Nippon Oil, Panasonic and Mitsui & Co, made the unions agree to overtime work in excess of 100 hours. Toray Industries is much worse, its workers agreed to the overwork of 160 hours. If a worker work long hours in excess of 45 hours per month, he has very little time left for his sleep and rest. It is a well-known fact that accumulation of fatigue and exhaustion could trigger and develop circulatory troubles and related diseases. That is why the Ministry of Health, Labour and Welfare decide to consult and advise the reduced overtime to those corporations who bring in the agreements on 45 hours or more overtime per month. However, the administrative guidance is not functioning. Therefore,

corporations' noncompliance as well as failure of supervision is the cause of the continuing tragedies of overwork death.

2. The latest figures of claims of fatigue death and suicide for workmen's compensation and acceptance are as follows.

Table 2. Claims for Workmen's Compensation					
Karoshi(caused by CVD· ischemia)			Mental Disorder & Suicide		
Number of applications and acceptance			*() indicates suicide attempts		
Year	Claims	Accepted	Year	Claims	Accepted
2006	938	355	2006	819(176)	205(66)
2007	931	392	2007	952(164)	268(81)
2008	889	377	2008	927(148)	269(66)
2009	767	293	2009	1136(157)	234(63)
2010	802	285	2010	1181(171)	308(65)

Under category 1 Karoshi, the number of claims and of accepted for benefit goes down slightly. Maybe people are discouraged from filing application by cumbersome bureaucratic procedures or by the fact that only 40% of the claims result in benefit. So, it is too early to say that Karoshi is on the decrease. The number remains on the high level. Under category 2, claims related to mental disorder and suicide finally goes up to four digit number. Widespread practice of long working hours, power harassments, sexual harassments and other bullying must be contributing factors to these phenomena. Taking seriously the gravity of increase in the work-related death, drastic measures for the eradication are urgently required at the industrial as well as governmental level.

3. New Developments toward the Prevention of Karoshi and Overwork Suicide

At the general meeting of labor lawyers association in November 2008, proposal for "Karoshi Prevention Act" (Fundamental Law concerning Prevention of Overwork Death) was adopted, and in October, 2010, a conference was held at Diet Member's Building to discuss the issue of overwork death and suicide in the presence of many diet members. Members of the bereaved families of victims made emotional statements about the situation surrounding their loss of loved ones, and conveyed the message that such tragedies should be eliminated from the place of work as well as the society in Japan as soon as possible, and appealed to the Diet Members for early enactment of "Karoshi Prevention Act" strongly. And on November 17, 2011, an executive committee was set up for the enactment of "Karoshi Prevention Act". In their efforts to get the public attention on the issue widely, one million signature campaigns have been organized. The following points are emphasized in the campaign.

- (1) The State should declare that Karoshi should not take place.
- (2) In order to eradicate Karoshi, identify and establish the responsibilities of the State, local

governments and business proprietors.

(3) The State must implement comprehensive measures along with investigation and research on overwork- related death. While the campaign for the prevention moved forward slowly but steadily, it has begun to have impact on the public opinion nationwide.

4 What the government and industries should do now

As elaborated in preceding chapters, Karoshi and overwork suicide symbolize the cruel reality that Article 7 of the International Convention on Economic, Social and Cultural Rights and Article 8 of the International Convention on Civil and Political Rights are being violated. Therefore, the Government of Japan should promote the following measures immediately and powerfully.

- (1) Earliest possible enactment of "Karoshi Prevention Act"
- (2) New legislation to control overtime-work-hours and stricter penalties to violator industries
- (3) Tighten supervision and guidance of administration to make sure that all industries comply with law and regulations.

For realization of the above goals we would like the Committee to make recommendations to the Government of Japan on the matter.

8 It's the Government's responsibility to make up for the damages caused by asbestos, and it should settle the disputes while the patients are still alive-- in relation to Articles 7(b) and 12(b)

What's Osaka-Senman Asbestos Suit?

Senman in Osaka is the area which for the past 100 years has been most crowded with asbestos-related industries in Japan. It's known for spinning and weaving asbestos materials and mainly producing goods such as packings and asbestos cloths, and the factories there subcontracted and supported key industries—the munitions like fighters and battleships in the pre-war age, and automobiles and commercial ships in the post-war, high-growth period. Most of the businesses are subcontractors, micro-, small- and middle-scale or individual entrepreneurs, and the working conditions are quite inadequate. Asbestos covers every surface and everything is white, in or out of factories. In such a condition, it's no wonder that there have been widespread asbestos-related damages or diseases all through the area.

Asbestos-related diseases usually show symptoms only after 10 to 50 years' latent period from the exposure. Asbestosis is an incurable disease which is characterized by insistent coughs, phlegm, and severe short breaths as it gets worse. The risk of lung cancer is 50 times greater when the patient smokes. Most mesothelioma is said to lead to death in a year or two after developing symptoms. Right now there's no effective remedy for asbestos-related diseases.

In May 2006, ex-workers, their families and neighborhood inhabitants of asbestos factories filed a suit with Osaka District Court against the Government for compensation for the first time (first wave of lawsuits by 26 plaintiffs). In May 2010, it decided the Government was totally responsible for the damages. Osaka High Court, however, reversed the prior judgment and denied the Government's responsibility in August 2011. All the plaintiffs appealed to the Supreme Court where the case is under consideration.

Thirty-three plaintiffs of the second wave suit are waiting for the ruling on March 28, 2012 by Osaka District Court.

Unjust ruling by Osaka High Court

1. Prioritizes the usefulness of asbestos and the industrial development

Although "lives and health should be most cherished," the High Court ruling ignored this principle, and decided that it couldn't be helped if lives and health were to be sacrificed for the sake of the industrial development. For example, it said, "it would considerably obstruct advancement of the industrial technologies and development of the industrial society if we immediately banned the production, processing, etc. of industrial products... and approved the operation of businesses only under the strictest regulations."

2. Overlooks the real working conditions and makes micro-scale entrepreneurs and workers responsible for the exposure and the resulting damages

Micro-and small-scale entrepreneurs and workers concerned are suffering from asbestosis and lung cancer after working in the midst of the dense asbestos dust for a very long time from morning till night.

The High Court ruling ignored this fact and blamed the entrepreneurs and workers because they knew the risks of asbestos but didn't wear dustproof masks.

However, it is the Government which got information about the carcinogenetic risks of asbestos, was aware of it, but decided not to make it public, and even hid the information completely. It would be too unfair and unjust to say that the victimized micro-scale entrepreneurs and workers are to blame.

3. Subverts the accumulated wisdom of the court rulings on pneumoconiosis and environmental pollution

To “ensure lives and health of people is more important than economic interests”—this is a principle which has been repeatedly confirmed by numerous rulings of lawsuits of environmental pollution and pneumoconiosis. Also, the Government should carry out its regulatory capacities “as soon as possible” and “in a timely and appropriate manner” which is allowed by the latest medical knowledge and advancement of science and technology. This is a principle authorized by the Supreme Court (cf. Chikuho Minamata Disease Kansai Case). This is why the latest ruling by Osaka High Court is an end-on challenge to established judicial judgments.

The Government let loose the abusive working conditions where workers had to inhale dangerous asbestos, failed to ensure "safe and healthy working conditions" (Article 7 (b)) and "the improvement of all aspects of environmental and industrial hygiene" (Article 12 (b)), and violated the rights of workers and residents to enjoy good health. Osaka High Court gave the abusive ruling shown above in a lawsuit claiming for the Government's clear sabotage. It's against Articles 7(b) and 12(b).

9 Social Security (Article 9)

Concluding Observations on the Second Periodic Report of Japan

In Concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.67, 24 September 2001) recommended on pension system that “as the age of eligibility for the public pension system gradually increases from 60 to 65 years, the State party undertake measures to secure social security benefits for those retiring before the age of 65,” and also “the State party incorporate a minimum pension into the national pension system” and “that the persisting de facto gender inequality in the pension system be remedied to the maximum possible extent.” These recommendations pointed out the critical defects of public pension system in Japan. After 10 years from these recommendations, the public pension system in Japan is not improved, which make many older persons in Japan suffer terribly.

Situations of old people

Old people are living in destitution more and more. The Government’s report (October 2010) says that the population of older persons of 65 years and older amounts to 29.58 million. The old people without any pension eligibility amount to 1.18 million, and 13 million old people (44 percent of the population of 65 years and older) receive less than 100 thousand yen a month. In Japan, where the prices of daily commodity are very high, these people hardly afford to buy necessary accommodations for minimum standard of living. Only forty or fifty years ago the extended family was the mainstream in Japan, and most old people could rely on grown-up children. The family system, however, have changed rapidly. Now it is hard to expect for the children to support old parents. In the present situation having no pension benefits in old age literally menaces the right to live. Recently the news of old people’s painful death by starvation reaches us so often. Homeless old people are in large numbers. Shoplifting by old people has multiplied. As the pension gap by gender stays big, old women must struggle to keep their lives decent. Most women only get national pension benefits, average monthly paying being no bigger than 47,000 yen. In occupational pension, women receive 100 thousand yen a month in average, compared to 170 yen of men. Bereaved by husbands, they come to face distress, as they must live on modest survivors’ benefits. Abuse against old people in institutions and homes has come to become topics of news papers. Human rights convention for older persons should be enacted, as it will help struggling old people.

Comprehensive Reform of Social Security and Tax

For the reason that the national budget for social security and the aging population is expanding, the Government is going to raise consumption tax to 10 percent and at the same time is going to change the social security for the worse. This “Comprehensive Reform” is a political and controversial issue now in Japan. This “reform” will make peoples’ living conditions as well as domestic economy much worse.

Pension Reform at Issue

The biggest issue is on pension reform. Although the Government has proposed to create a minimum security pension system by drastically reforming the pension systems in Japan, together with unstable political situation, it is going to be put on the on the back burner. Instead, the Government is going to cut the pension benefits by 2.5 percent in three years, on top of pension benefits cut by price indexation. After the three years the pension cut will be executed by using “macroeconomic indexation (indexation by decrease of working people and increase of older people’s life expectancy)” every year. Another pension reform is to increase the age of pension eligibility, which still is in the middle of increasing up till 65 years. This is outrageous because employment opportunity for old people is getting worse. This kind of pension reform for the worse will add people’s distrust of pension systems further. To improve pension finances it is crucially important for the people to get better jobs. On the contrary more and more workers are now getting low wage and temporary jobs.

Health Care System in Crisis

Japan has been proud of its health care insurance system, in which all the people are covered and have had access to equal health and medical services free of charge. Workers’ family members and the people insured in National Health Care System pay 30 percent of the health care expenses. But as a consequence of people’s campaign, medical expenses for old people became free of charge in 1973. In 1983, however, medical insurance for old people became charged. Through 1990’s and 2000’s, however, health care system had revises for the worse repeatedly. Insurance premium rate as well as medical expenses has increased. Supply of medical clinics, hospitals, doctors and nurses is getting worse.

Appropriate and Equal Health Services are disappearing

Worsening of employment, income gap and increasing poverty make the medical surroundings worse. International Covenant on Economic, Social and Cultural Rights provides in Article 12 “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” From the human rights point of view, people should have appropriate and equal medical services notwithstanding income levels. In Japan people have shared that point of view. Now the serious situation is spreading. In rural areas many hospitals are disappearing because of lack of doctors. Nurses are dying from overwork. There are towns without obstetrical institutes and pediatrics department. On the other hand, because more and more people cannot pay the health insurance tax, they cannot have medical services without insurance card. Across the country 20.8 percent of the families of national health insurance system fail to pay the insurance tax. NHK reports that 475 persons died because they could not come to hospitals until too late.

Medical Care Service Programs for the Aged

To suppress medical expenditure in aging society, the Government established Medical Care Service Programs for the Aged in 2008 in spite of people's strong opposition. Every old man and woman 75 years and older was forced to pay their own medical expenditure according to the arranged ratio and the government tried to let the older people have cheap treatment. Although the Democratic Party of Japan opposed this program as discriminative to old people and insisted the abolition of the program, after two years of taking the political power, they are not moving forward to abolish it. This program is definitely against the human rights, as it provides different and lower standard medical care services for the aged.

The Long-term Care Insurance System Not Useful for People in Need

It is ten years since the Long-term Care Insurance Service started in Japan. Still now people commit suicides and double suicides of old couples concerning care taking. To use Long-term care service people must be designated in what degrees they need long-term care services. Sometimes designations do not match with what they need. Often old people who need long-term care do not have family members who can take care of them, but nursing homes for the elderly are so few that as much as 420 thousand people are on the waiting list across the country. Charges for the facilities are also very high. People must pay 10 percent of the care fee, and those who cannot afford to pay it do not use the long-term care services even if they need them. Another big problem is the shortage of care workers. The wage for care work is so low that workers cannot help quitting the job. Long-term care establishments are also likely to have difficulties in managing the business, and they often pull out of nursing business. Compensation standards of nursing care should be raised, more nursing institutions should be built, support for family care strengthened, nursing care fee reduced, and raise in national budget for all that.

Welfare Benefits as the last Safety Net

Welfare Benefits Act is based on Article 25 of Japan Constitution, "All people should have the right to maintain the minimum standard of wholesome and cultured living." The Government, however, abolished the additional allowance for the old people. Against this abolishment a class action was filed and 110 old people joined the action. Regrettably to say, the Supreme Court dismissed the suit in March this year. The government is working on further change for the worse of welfare benefits system.

10 Lots of human lives that the Japanese Government does not (or would not) save--concerning the Articles 7,9, 11, and 12

Suicide rate that is higher than any other developed country

"So sorry I was such a no good son... I can't live with this bullying." This is a will left by a 13-year-old boy who killed himself several years ago. He had to commit suicide while apologizing--this is a horrible reality which reflects on adults' suicides in Japan. The roots are the same. Adults as well kill themselves shrieking inwardly, "I'm sorry I was a bad father," "I apologize for being an incompetent worker," etc.

Adults, especially those at a weaker position in society, are forced to take their lives each day on account of overwork, power harassment, multiple debt, exhaustion from too much carework, forlornness, poverty, etc.

The number of suicide victims has soared to 80 or 90 a day, or more than 30,000 per year for 13 years in a row in Japan. This symbolizes what human lives are, and how human lives are seen in society now. Although suicides are commonly considered avoidable deaths abroad, here the suicide rate remains the same high level for a very long time, and it has been caused by the deadly delay of social preventive measures. The rate is considerably higher than those of other developed countries--it's twice as high as that of the United States, and three times the United Kingdom.

Toward "a society comfortable to live in"

October 2006 saw the Basic Law on Anti-Suicide, the first law that aimed to reduce suicides (which was prepared by congressmen and supporters, not by government officials). It was the result of the consistent plea and awareness-raising movement of families of suicide victims who wish for "a Japanese society comfortable to live in," where no one is obliged to commit suicide. It is a trend-setting law that situates suicide among imminent social problems and one that promotes comprehensive actions involving both public and private sectors.

The contents of the Law are highly commendable. It stipulates that it's the responsibility of national and local governments to carry out suicide prevention measures, and urges overall solutions directed at not only suicidal individuals but also the society itself prone to make people kill themselves.

It also points out the importance of mutual contact and linkage of those concerned, and the necessity of giving support to suicide attempters and families of victims. It can be a foothold on which the society on the whole tries to save "savable lives" with all its might.

Insufficient government measures

A good law does not solely guarantee good results, however. The fact is, most government measures do not function well. Rather, it must be said that the governments do not have the will to help

function the measures. It is true that there is a Minister in charge, but the person has more than ten other duties to perform, and the anti-suicide mission is always left behind. Office for Policy of Suicide Prevention has been created within the Cabinet Office, but its director (a ministry official) hold multiple offices concurrently, and though there are several officials who are supposed to devote themselves to suicide prevention, their highest rank is an assistant section chief. In such a situation, it's far from probable that these officials can coordinate works by various organizations or negotiate with other interest groups to reduce factors leading to suicides. It's impossible for vertically-divided government ministries and departments to cooperate each other and implement effective measures to stop suicide acts.

Budget allotment also tells a story. The size of the budget for suicide prevention is only one-several-hundredth of that for traffic safety. In short, the national government puts scant emphasis on suicide prevention which should concern human lives as much as traffic safety does. The priority is quite low.

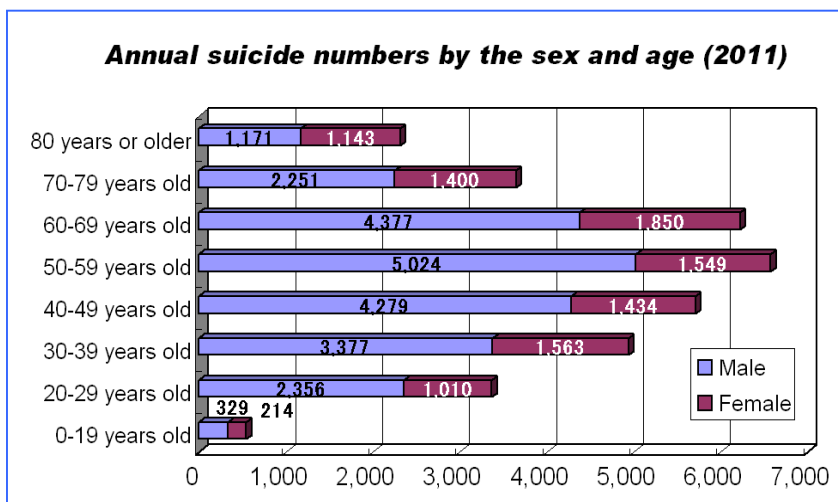
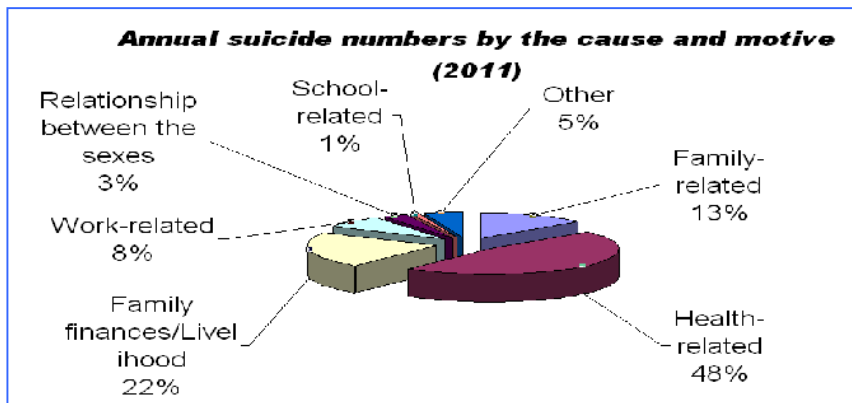
The current Minister in charge is the ninth one in two and a half years since the Democratic Party came to power. It is easy to see that such a frequent change of responsible people in government cannot guarantee the consistency of the measures. In short, the government is indifferent. When a meeting of experts is summoned by the government to discuss anti-suicide actions, no senior government officials take part in it. Once a Suicide Cause Analysis Team was set up in a Cabinet Office, but it broke up because of the shortage of human resources.

Having the national government do the minimum job "to protect people's lives"

There are some hopeful signs. In Adachi Ward, Tokyo, there were more suicide victims than any other Ward or City in Tokyo Metropolitan area during the five years up to 2009, but as a result of the local government's efforts, the number decreased by 20% to 145.

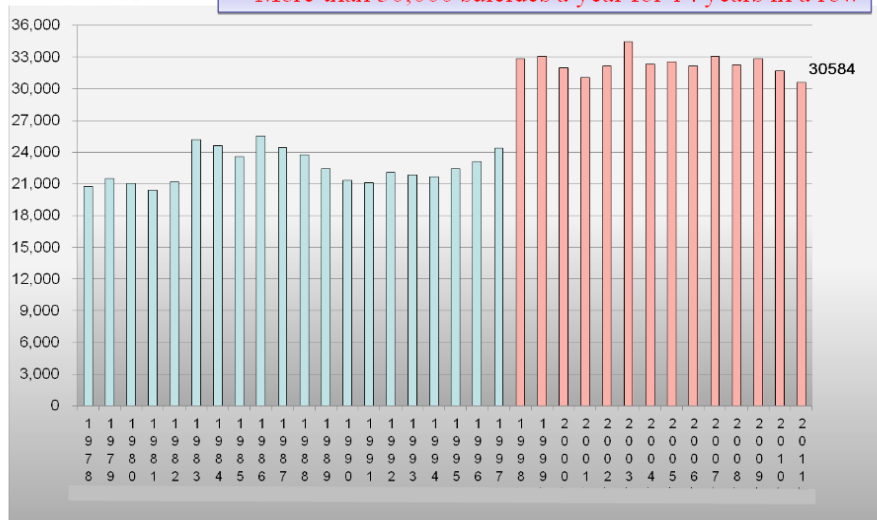
The most important thing to prevent suicide is providing detailed information about where to get advice when someone notices "suicide signals." When the government actions are delayed, the irretrievable human lives are lost forever.

Even right now, someone is being made to commit suicide. Some other one is likely to lose someone dear by suicide. To save "a lot of savable human lives," we must get together to force the government to do its minimum job--to protect people's precious lives.



LIFE LINK Annual suicide numbers in Japan

More than 30,000 suicides a year for 14 years in a row



Documents from the National Police Agency

11 Resolve the So-Called Comfort Women Issue

Article 2, 12, Article 3, Article 6.1, Article 7(b), (d), Article 9, Article 12 (d)

We would like to report the issue again because no efforts have been made to resolve this issue during the past ten years. Ten years ago this Committee considered the issue and made the following recommendation;

“53. The Committee strongly recommends that the State party find an appropriate arrangement, in consultation with the organizations representing the “comfort women”, on ways and means to compensate the victims in a manner that will meet their expectations, before it is too late to do so.”

The Government of Japan at the time insisted in its third report that the issue had been settled. During the past ten years change of government took place in Japan. Political power has been transferred to Democratic Party as the result of general election in 2009. The party listed the settlement of the comfort women in election manifesto. Yet, the issue has not been settled in spite of international outcry as you will see in the attachment.

Please refer to reports of UN Human Rights Commission’s Special Rapporteur Coomaraswamy and McDougal and Individual Observations of ILO Committee of Experts on Application of Conventions and Recommendation (CEACR) which have been monitoring the development of the issue since 1997.

For several years before and in the midst of the WWII, the military forces of Imperial Japan invaded different parts of Asia, where girls of low teens as well as young women had been coerced by brutal force to serve sex to members of the military as comfort women against their will. In the Korean Peninsula and Taiwan, both of which had been under colonial rule of the Imperial Japan, girls and young women had been recruited for the same purpose by lies and deceit. These practices are found to be a national policy of the Government of Imperial Japan. (Violation of Article 6)

The Committee on Eradication of Discrimination against Women first took up the issue in 2003. Again in 2009 they reiterated the recommendation for the lasting settlement in its concluding observation CEDAW/C/JPN/CO/6 (Violation of Article 3)

As stated in the Concluding Observation of the Committee against Torture as well as above mentioned Special Rapporteur’ reports and ILO CEACR individual observations, women had been forced to do the kind of work that they had never wanted to do days and nights under deplorable conditions because they had been constantly fearful of violence and torture from Japanese soldiers. Violation of Article 7(b) (d)

Although the Government of Japan insists that the issue has been settled by the payment of the atonement money from the Asian Women’s Fund (AWF), only small number of the survivors accepted it.

Especially in the Republic of Korea and Taiwan (the Republic of China), Governments interfered with the activities of AWF by paying the equal amount of money to survivors on the condition that they would not receive the money from AWF. UN Human Rights Committee found the compensation insufficient in its concluding observation” CCPR/C/JPN/CO/5.

The Government did not conduct extensive fact-finding investigations to avoid the increase in the number of victims. So AWF slighted or ignored hidden or silent victims in the countries where there were limited or no active support for the issue. For example, AWF handed over large sum of money to the Indonesian Government to build facilities for aged people. But in reality, we have not yet been able to find a single former comfort woman in those facilities. No survivors received a penny in countries like Democratic People’s Republic of Korea, People’s Republic of China, East Timor, and Malaysia etc. Almost all survivors in those countries remain ashamed, nameless, suffering ill health yet destitute of financial means to take care of themselves. (Violation of Article 2, Article 12 (d))

On August 30, 2011, the Constitutional Court of the Republic of Korea published its decision that the Government of Republic of Korea is in violation of its constitution by not following the procedure to settle the disputes in the interpretation of the provision in compliance with the Agreement between the two. Please refer to the summary translation of the Court’s Decision attached.

Following the decision Korean President Lee Myung-bak asked Prime Minister Noda to start dialogues at the summit meeting held in Kyoto on December 18, 2011. But Noda refused to comply with the request, saying that the issue has been settled. It is reported that the Korean Government is presently working on the next step, which is arbitration by the third party.

Question to the Japanese Government

__Did the Government follow the recommendation of the Committee “the State party find an appropriate arrangement, in consultation with the organizations representing the “comfort women”, on ways and means to compensate the victims in a manner that will meet their expectations, before it is too late to do so in paragraph 53 (E/C.12/1/Add.67) ?

If not, what is the reason?

In regard to the issue, we attach herewith relevant to documents as follows. We also note that 36 local assemblies in Japan adopted the written opinion for the settlement of the issue, which were forwarded to the Diet.

Reference: (See last pages of this report)

- 1 . List of UN Documents on the issue of comfort women

2. List of ILO CEACR documents on the violation of C0.29 (forced labour)
3. Decision of Korean Constitutional Court (summary translation)

12 Ratify ILO Conventions, No. 105, No. 111, and No. 169 and Resolve the wartime industrial forced labour issues with the Neighboring Countries

Article 6.1., Article 7 (a), (b) (d) -

In 1930's Imperial Japan had been spreading its conflicts with China to the World War II. The greatest headache of the leadership then had been the shortage of manpower in terms of soldiers and labour force. They had decided to use the population of Korean Peninsula, which had been under the colonial rule of Japan.

While no exact figure is established, the Government of Japan estimates 700,000 civilians for labourers while estimated 370,000 men were drafted to serve the military. About 2000 girls who just graduated from the elementary school are included in the first figure of 700,000. Furthermore, the Cabinet had decided to import 40,000 Chinese laborers to the main islands of Japan. Those laborers had been brutally treated in deplorable working conditions, with little food to support their health, no medical care etc. Considerable number of workers had been killed or injured by accidents, got sick or died of malnutrition. Some have been permanently disabled. When Japan was defeated in 1945, they were released and went back home. But nobody received his or her wage.

Violation of Article 6.1, Article 7. (a),(b), (d) of International Covenant on Economic, Social and Cultural Rights

In December, 1997, on behalf of over 230 Japanese trade unions which signed the complaint, All Japan Shipbuilding and Engineering Trade Union and Tokyo Regional Council of Trade Union jointly filed the complaints to the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) that the Government of Imperial Japan and certain Japanese industries have been violating ILO Convention No.29 which Japan ratified in 1932 by putting Korean and Chinese civilians to forced labour by systematically abducting and recruiting civilians by deceit during World War II and have done nothing to compensate the victims since the war ended, which include non-payment of their wages.

After reviewing the report, CEACR took the issue seriously along with the Comfort Women issue and made the following comments in its individual observation published in 1999;

"The Committee considers that the massive conscription of labour to work for private industry in Japan under such deplorable conditions was a violation of the Convention", "The Committee does not consider that government-to-government payments would suffice as appropriate relief to the victims", "the Committee... trusts that the Government will accept responsibility for its actions and take measures to meet the expectations of the victims"

As CEACR gave a clear definition of forced labour from the perspective of international law. The statement carried great weight in our legal battles at Japanese courts where there were heated disputes concerning coercion and illegality of the wartime mobilization of civilians.

Since then, CEACR issued 10 individual observations on Japan's violation of ILO Convention 29 in respect of comfort women as well as the industrial forced labour up to February, 2011.

On April 27, 2007, the Supreme Court of Japan made the final ruling on the forced labour case of Chinese by Nishimatsu Construction Co. The court dismissed the claim on the ground that Chinese nationals lost the power to seek judicial settlements by accepting the Japan-China Joint Communiqué signed in 1972. But the court also stated that the substantive claims for damages remain intact in spite of the above conditions. It also suggested that concerned parties including the Government and industry might take voluntary actions to resolve the liability issues.

Following the above ruling, Nishimatsu Construction Co., Ltd has made settlements in reconciliation with Chinese survivors on April 26, 2009 for the survivors from the Hiroshima Yasuno Power Plant and on October 23, 2009, for the survivors from the Niigata Shinano River Power Plant at the Tokyo Summary Court. And Nishimatsu paid the sum of 250 Million Yen to the survivors of the Yasuno case and 128 Million Yen to the survivors of the Shinano case. Thereby, the company has resolved all the disputes arising from the wartime use of Chinese labourers.

Nippon Steel Corporation settled the dispute with bereaved families of some Korean forced labour victims in September of 1997. Since then, efforts have been made to pursue reconciliation between individual forced labour user industries and their surviving victims or bereaved families of victims. Only a few industries agreed to reconcile. Very limited number of victims or their families received the benefit. The situation is far from overall settlement of Japanese wartime practice of forced labour.

The biggest hurdle has been the Government of Japan which stubbornly refuses to follow the observations of the ILO CEACR. The individual observations of CEACR published in February of 2011 states as follows:

"The Committee reiterates its hope that, in making these further efforts to seek reconciliation with the victims, the Government will take measures, in the immediate future, to respond to the claims being made by the aged surviving victims of wartime industrial forced labour and military sexual slavery, the number of whom has continued to decline with the passing years."

Today, youngest labourers such as 12 year-old Korean girl workers at that time are aged over 80 and we

keep hearing the sad news of death so often. While there have been no sign of the Government of Japan and industries making any efforts toward the comprehensive settlement, the Korean Parliament and the Government of Republic of Korea finally agreed to take a retaliatory action to those perpetrators which had used Korean laborers during the wartime but did not take any relief measures for their great hardship.

The measure is to disqualify Japanese industries from tendering bids for public works projects associated with approximately 1000 governmental institutions, such as the Executive Office of the President, which are exempted from the WTO Multilateral Agreement on Government Procurement. In principle, only Korean industries are to participate in such biddings. If a project requires a foreign contractor, it is OK to use them. But even in that case, Japanese industries must be disqualified if the company has not resolved the compensation issue for the Korean victims of wartime slave labour.

On September 16, the Korean Parliament released the first list of 136 war criminal industries to be purged. At the press conference, the representative of parliament members stated, "We are here to open the door to the future of new relationship between Korea and Japan in the bond of peace and cooperation rather than we remain chained to the past history of agony and humiliation."

We would like to ask how the Government of Japan takes those trends in the Korean Parliament and its Government? What is their Wartime and whether trying to resolve the forced labor and forced labor issues? The Japanese Government should make clear what their plans are to settle the issues wartime conscription and forced labour.

Japan was accepted once as a member of UN Human Rights Council, aiming further to be respected as one of world's leaders. If Japan's intention is honorable one, Japan should act in compliance with international law so as to deserve the respect that Japan aspires to win.

13 . Victims of Red Purge, the largest post-war human rights violations, urge their urgent recovery of honor and redress to the Japanese government, co-responsible for its violations

(Article 6, 7 and 8 of the Covenant)

61 years ago, a lot of workplaces were outraged by a storm of Red Purge in Japan. This storm, following the dismissals aiming at communists and its sympathizers in the government offices, including the National Railways and the Telecommunications, and the private sector in 1949, attacked most of the workplace such as press, electricity, machines, steel, shipbuilding, chemical, coal, private railways and educational institutions in 1950. Consequently, estimated 40,000 workers were purged as subversives during these two years.

The Red Purge was the oppression forced by the Japanese government, the courts and companies as one body with the suggestion of the Occupation powers that not only brought about human rights violations for the purged workers, but also suppressed developing domestic labor-union movements, blocking the influence of the Japanese Communist Party having played the main role of post-war democracy. In addition, the Occupation Powers that were afraid of the enhancement of national movement, aimed at making Japan an “anti-Communist breakwater.”

The victims purged from their workplaces were refused to obtain positions of equal status because of the disclosure of their names in public. And even hired by some companies, they lost their jobs again by a notice of the authorities describing them as “subversives.” The damage affected not only those who were purged but also the job-hunting and marriage of their brothers and sisters, and their families were also forced to have hard lives by suffering a significant damage economically and socially. As a result, there were quite a few victims who committed suicide. That is the reason the Red Purge is referred to as “the largest post-war human rights violations.” And the Red Purge also brought a tremendous damage on economic recovery of post-war Japan, movement for improving people’s lives and democratic movement for demanding antiwar and peace.

The United States, which suggested the Red Purge outrageously oppressing and violating human rights, the Japanese government and the business community, which were co-responsible for the implementation of this purge, have not acknowledged its responsibilities, apologized to the victims and yet taken any measures for their recovery of honor and redress. Furthermore, the Supreme Court, neglecting its position as the judicial independence, ruled that the dismissals of the Red Purge were implemented under the ultra-constitutional order of the Occupation Powers. At the trial of the Red Purge issue demanding the state redress for the first time, the Kobe district court totally rejected the victims’ complaints, applying the above-mentioned ruling of the Supreme Court, and not taking into account their pain suffered by the absence of the government’s remedies.

Under such hard circumstances, the purged victims have been expanding nationwide movements in order to demand their recovery of honor and redress. For the complaint of human rights relief submitted by the victims, the Japan Federation of Bar Associations (JFBA) regarded twice (in October 2008 and August 2010) the Red Purge as the violations of freedom of thought and belief, equality under the law and freedom of association. And the Association also recommended that the Japanese government, the Supreme Court, companies and governors take measures for their recovery of honor and redress. In particular, the JFBA's recommendations had significant contents such as seeking relief not only for the victims who filed a suit, but also for all who were purged, and made it clear that this purge contains unlawfulness and unfairness.

At present, the world is entering an era to reflect and to liquidate mistakes of the past: in Italy, the laws of the invalidity of dismissals and the pension compensation in favor of the workers who were fired due to communists and activists at the era of Mussolini, were adopted in 1974; in Spain, the Historical Memory Law was established in 2007, reviewing repression and human rights violations under the Franco regime, and implementing recovery of honor and redress for the victims; in Germany, the Comprehensive Honor-Restoration Law which aims to relieve the victims who were suppressed on a charge of treason by protesting against the Nazis, was established in 1985; in Korea, the Law on Democratization Movement Activists' Honor-Restoration and Compensation was enacted in 1998; and in the United States which suggested the Red Purge in Japan, its Supreme Court found in 1958 that the Red Scare, thought discrimination, was against the Constitution.

Since the Red Purge repression happened more than 61 years ago, the victims are already all over the age of 80. Therefore, there is no room to wait even one day for the relief of the victims.

The Japanese government should have immediately corrected the illegal acts of the Occupation when the peace treaty went into effect, but the government has left it unresolved. The accumulation of such unsolved measures has become the origin of human rights violations and thought discrimination, which now repeatedly took place in quite a few workplaces of Japanese companies.

The purged victims have called on Mr. Ban Ki-moon, Secretary-General of the UN, to get involved in the Japanese government in order to resolve the Red Purge issue. And they strongly urge the CESCR to intervene in the government for the urgent settlement of this problem at the review of the 3rd periodic report of the Japanese government.

14 No government measures to harmful smells and health damages around waste plastic processing facilities--Article 12 (b)

1. Claims soared after the facilities started operating, but the legal actions didn't succeed

As soon as we learned of the building plans of two waste plastic processing factories in the farmlands near residential areas of Neyagawa (in the suburbs of Osaka), we were concerned about health hazards, and formed "Civil Union to protect health and environment from possible damages from waste plastic processing plants." We have twice collected 80,000 signatures against the harmful operation, and held a protest meeting and demonstration of 1,000 people, but the factories were built for all our opposition.

Shortly after the factories started operation, claims regarding bad smells and health damages rapidly increased. We demanded that administrative bodies concerned should carry out health surveys, but they didn't. Then we resorted to lawsuits, but all of the courts (provisionary, district and high courts) we went to be refused to listen to our claims.

Meanwhile, Professor Toshihide Tsuda of Okayama University did an extensive epidemiologic survey and confirmed the existence of more than 1000 residents who suffered symptoms like pain in the eyes and throats, coughs, eczema, asthma, and headache. Professor Tsuda concluded that the factories are the cause of these symptoms because more patients reside nearer to the factories. Several doctors conducted health examination of nearly 200 patients, and they also concluded that most of the symptoms are caused by the harmful gas emissions from the waste plastic processing factories.

In 2010, eleven of the patients went to see Mikio Miyata, Professor Emeritus of Kitazato University, who is an expert in diagnosing hypersensitivity for chemical substances. After finishing the tests, he gave them shocking diagnosis as follows: "All of the patients I saw are suffering from autonomic imbalance and functional disorder in central nerves. I fear that some of them might waste their lives. I'm worried about bad effects on their children, too." Even now, a young woman's face is swollen like a monster. No doctors could restore their health, and some residents had to move out.

2. Application for inquiry to Environmental Dispute Coordination Commission

The courts did not adopt experts' opinions or testimonies from patients suffering from health injuries, and the ruling in January 2011 agreed to the Government's unscientific claim that "There cannot be health damages because eleven substances with prescribed limits of density are below these limits in the region," and ordered the residents to resign themselves for the public benefit. Fifty-one of the residents regarded this as a continuation of experiments with living human bodies, and asked for the Environmental Dispute Coordination Commission to confirm the causes. The Commission is a government administrative body and its duties include eradication of environmental pollution. Right now its inquiry is under way.

3. Thirty times toxic formaldehyde was detected

Tokyo University Professor Yukio Yanagisawa conducted air analysis near the waste plastic processing plants. Close to the premises it yielded several times higher TVOC than the average air contains. In nearby residential areas, formaldehyde was found in high density (the average density was seven times higher than the average in Japan($17\mu\text{g} / \text{m}^3$); the maximum value was 30 times higher ($78\mu\text{g} / \text{m}^3$)). Professor Yanagisawa noted that the ratio of unidentified substances which are predicted to contain harmful chemicals is high, and that it is possible that these substances are also causing the damages.

In this way, a lot of experts attribute the causes of this environmental pollution to the waste plastic processing factories. However, the Government does or will do nothing. This is against Article 12(b) of ICESCR. We are sorry to say democracy is less developed in Japan. There's less consideration for people's health or human rights. We request you to help us settle the disputes.

Additional Material

1 List of UN Documents related to the Military Sexual Slavery

1. E/CN.4/1996/53/Add.1 published on 4 January 1996
Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy,
2. E/CN.4/Sub.2/1998/13 published on 22 June 1998
Systematic rape, sexual slavery and slavery-like practices during armed conflict: Final report submitted by Ms. Gay J. McDougall, Special Rapporteur
3. E/C.12/1/Add.67 published on 24 September 2001
Concluding observations of the CESCR on Japan
4. E/C.12/2002/12 published on November 29, 2002
Comment by States on Concluding Observations of CESCR
5. E/CN.4/2003/75/Add.1 published 27 February 2003
Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy,
6. A/58/38 published on July 18, 2003
Concluding Observation of the Committee for Eradication of Discrimination Against Women
7. CAT/C/JPN/CO/1 published on August 3, 2007
Concluding Observation of the Committee against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment
8. A/HRC/8/44 published May 30, 2008
UNIVERSAL PERIODIC REVIEW :Report of the Working Group on the Universal Periodic Review Japan
9. CCPR/C/JPN/CO/5 Published on December 18, 2008
Concluding Observation of the Committee of International Covenant on Civil and Political Rights

10. CEDAW/C/JPN/CO/6 published on August 7, 2009

Concluding Observation of the Committee for Eradication of Discrimination Against Women

2 List of ILO Documents

The Cases of Wartime Industrial Forced Labour and Military Sexual Slavery

Individual Observations of the Committee of Experts on Application of Conventions and Recommendations (CEACR)

CEACR: Individual Observations concerning Forced Labour Convention, 1930 (No. 29)

Japan (ratification: 1932)

Document No. (ilolex): 061997JPN029 published 1997 (4 pages)

Document No. (ilolex): 061999JPN029 published 1999 (5 pages)

Document No. (ilolex): 062001JPN029 published 2001 (6 pages)

Document No. (ilolex): 062002JPN029 published 2002 (3 pages)

Document No. (ilolex): 062003JPN029 published 2003 (18 pages)

Document No. (ilolex): 062004JPN029 published 2004 (2 pages)

Document No. (ilolex): 062005JPN029 published 2005 (3 pages)

Document No. (ilolex): 062007JPN029 published 2007 (4 pages)

Document No. (ilolex): 062008JPN029 published 2008 (2 pages)

Document No. (ilolex): 062009JPN029 published 2009 (4 pages)

Document No. (ilolex): 062011JPN029 published 2011 (9pages)

The Case of Firefighters' Freedom of Association and Right to Organise

CEACR: Individual Observations concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Japan (ratification: 1965)

Document No. (ilolex): 061989JPN087 published 1989 (3 pages)

Document No. (ilolex): 061990JPN087 Published:1990 (1 page)

Document No. (ilolex): 061991JPN087 published:1991 (3 pages)

Document No. (ilolex): 061993JPN087 published:1993 (2 pages)

Document No. (ilolex): 061995JPN0871 Published:1995 (2pages)

Document No. (ilolex): 061997JPN087 Published:1997 (3 pages)
Document No. (ilolex): 061999JPN087 Published 1999 (4pages)
Document No. (ilolex): 062001JPN087 Published 2001 (3 pages)
Document No. (ilolex): 062002JPN087 Published 2002 (1 page)
Document No. (ilolex): 062003JPN087 Published 2003(1 page)
Document No. (ilolex): 062004JPN087 Published: 2004 (3 pages)
Document No. (ilolex): 062005JPN087 Published: 2005 (1 page)
Document No. (ilolex): 062006JPN087 Published: 2006 (5 pages)
Document No. (ilolex): 062007JPN087 Published 2007 (1 page)
Document No. (ilolex): 062008JPN087 Published 2008 (5pages)
Document No. (ilolex): 062010JPN087 Published 2010 (3 pages)

ILCCR: Examination of individual case concerning Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948 Japan (ratification: 1965)

Document No. (ilolex): 131987JPN087 published 1987(10 pages)
Document No. (ilolex): 131989JPN087 published 1989 (14 pages)
Document No. (ilolex): 131993JPN087 published 1993 (4 pages)
Document No. (ilolex): 131995JPN087 published 1995 (4pages)
Document No. (ilolex): 132001JPN087 published 2001 (11 pages)
Document No. (ilolex): 132008JPN087 published 2008 (8 pages)

3 Summary Translation of the Decision of the Korean Constitutional Court

Complaints Concerning the Claimee's Failure to Act Pursuant to Article 3 of the Agreement between Japan and Republic of Korea Concerning the Settlement of Problems in Regard to Property and Claims and Economic Cooperation.

Claimants: Survivor-Victims of the Japanese Military Sexual Slavery

Claimee: Director General of Ministry of Foreign Affairs and Trade

Main Text

This is to consider the complaints that Claimee's failure to act pursuant to Article 3 of the above-mentioned Agreement (hereinafter referred to as the Agreement), that Claimee did not make efforts to settle the dispute

concerning the Agreement is in violation of the Korean Constitution.

The dispute exists in the interpretation of the Agreement about whether or not the claims of the survivor-victims of the Japanese military sexual slavery (hereinafter referred to as survivors) has been extinguished by the provision of Article 2, paragraph 1.

Grounds

I. Outlines of the Case and the Issues under Consideration

A. Outline of the case

(1) Claimants are survivors who had been mobilized by violence, sexually abused and forced to live as comfort women to serve the members of Japanese military forces against their will under the rule of Imperial Japan. Claimee is a state agency which has overall jurisdiction over foreign affairs, negotiation and coordination of foreign trade and others related to international treaties, protection and assistance of Korean nationals residing abroad, making policies related Korean residents abroad, search and review of international situations.

(2) Republic of Korea (hereinafter referred to as ROK) concluded the Agreement on June 22, 1965 (Treaty No. 172)

(3) Government of the Republic of Korea (hereinafter referred to as GROK) and the Government of Japan (hereinafter referred to as GOJ) have conflicting interpretations in regard of the Claimants' rights as survivors of Japanese military sexual slavery. While GOJ argues that their rights are extinct by the provision of Article 2, paragraph 1 and refuses to pay reparation to the Claimants, ROK argues that the claim issue of the military sexual slavery is not resolved by the Agreement.

Claimants argue that Claimee did not follow the procedures provided in Article 3 of the Agreement despite the fact that it is in a position to do so. On July 5, 2006, Claimants requested the Constitutional Court to consider the case and to acknowledge that Claimee's failure to act constitute the violation of the Korean Constitution as well as that of Claimants' basic rights .

B. Issues under Consideration

The Court is to consider whether or not Claimee's failure to act violates the basic rights of Claimants by not following the procedures.

Excerpts of the text of the Agreement:

Article II

1 The High Contracting Parties confirm that the problems concerning property, rights, and interests of the two High Contracting Parties and their peoples (including juridical persons) and the claims between the High Contracting Parties and between their peoples, including those stipulated in Article IV (a) of the Peace Treaty with Japan signed at the city of San Francisco on September 8, 1951, have been settled completely and finally.

(Paragraph 2 and 3 omitted)

Article III. 1 Any dispute between the High Contracting Parties concerning the interpretation or the implementation of this Agreement shall be settled primarily through diplomatic channels.

2 Any dispute which cannot be settled under the provision of paragraph 1 above shall be submitted for decision to an arbitral commission of three arbitrators; one to be appointed by the Government of each High Contracting Party within a period of thirty days from the date of receipt by the Government of either High Contracting Party from that of the other High Contracting Party of a note requesting arbitration of the dispute; and the third to be agreed upon by the two arbitrators so chosen or to be nominated by the Government of a third power as agreed upon by the two arbitrators within a further period of thirty days. However, the third arbitrator must not be a national of either High Contracting Party

3 If, within the periods respectively referred to, the Government of either High Contracting Party fails to appoint an arbitrator, or the third arbitrator or the third nation is not agreed upon, the arbitral commission shall be composed of one arbitrator to be nominated by the Government of each of two nations respectively chosen by the Government of each High Contracting Party within a period of thirty days, and the third arbitrator to be nominated by the Government of a third power decided upon by agreement between the Governments so chosen.

4. The Governments of the High Contracting Parties shall accept decisions rendered by the arbitral commission established in accordance with the provisions of this Article.

II Opinions of Parties Concerned

A Claimants' summary opinion

(1) Japan's acts of forcing Claimants into sexual slavery are in violation of international treaties such as International Convention for the Suppression of the Traffic in Women and Children (1921) and ILO Convention 29 against Forced Labour, which therefore, should not be covered by the Agreement. The Agreement settled only the issues related to the right of diplomatic protection while the individual claims of Korean nationals to Japan have never been waived. Furthermore, while GOJ insists that all claims have extinguished by the provisions in Article 2, paragraph 1 and refuse to make any legal compensation to Claimants, GROK publically declared on August 26, 2005 that the Article 2, paragraph 1 does not extinguish the legal liability of Japan in relation to the military sexual slavery. Thus there is definitely a dispute concerning the interpretation of the Agreement.

(2) Article 3 of the Agreement stipulates that any dispute between the High Contracting Parties concerning the interpretation or the implementation of this Agreement shall be settled primarily through diplomatic channels. Contracting parties are required to take action to resolve the dispute.

(3) Furthermore, the Constitution clearly states the protection of human rights in various parts such as "We, the people of Korea,... ,upholding the cause of the Provisional Republic of Korea Government born of the March First Independence Movement of 1919" in preamble, "All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the basic and inviolable human rights of individuals." in Article 10, " The right of property of all citizens shall be guaranteed." in Article 23. In addition to the GROK's obligation to take actions in compliance with Article III of the Agreement, the GROK has the responsibility of diplomatic protection based on the provision that freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution in Article 37.

(4) However, GROK has not taken any concrete action, such as selection of measures for diplomatic protection and dispute settlement etc. in order to protect Claimants' basic rights effectively. Negligence on the part of the administrative power does not conform to the above-mentioned provisions of the Constitution.

B. Claimee's Summary Opinion

Constitutional complaints against the administrative power's failure to act are valid only when sovereign power did not take any action in spite of the fact that such duty is specifically defined in the constitution and sovereign power is in a position to take the action. In the meantime, Claimants do not specify what basic rights are violated by the failure of Claimee in this case.

It is not GROK but GOJ who committed the unlawful acts and is responsible for the damages. As wide latitude of discretion is given to the administrative power in regard of foreign policy, it is not possible to determine specific acts as the duty for the settlement of disputes arising from the Agreement. Furthermore, the GROK has been making the best possible efforts for the welfare of Claimants. It also has taken every opportunity to raise the issue at the international community. Therefore, it is a groundless allegation to complain the failure to act in compliance with Article 3, paragraph 1.

Diplomatic protection which is raised by Claimants means the State may exercise through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State. But the right is inherent to a State. Individuals are not entitled to demand diplomatic protection. So it should not be regarded as a basic right of the constitution. Besides, wide latitude of discretion is permitted on whether or not diplomatic protection should be exercised and how to exercise it.

With regard to the interpretation of the Article 3 of the Agreement, the Article does not burden the contracting parties with the duty to submit the disputes to arbitration. It is up to the State to choose the best possible means

of settlement in view of its national interest. Thus the State is not obliged to take any specific diplomatic measure.

III Background of the Case

Before adjudicating the case, the Court reviews the background and development of the case.

A. Circumstances Surrounding the Conclusion of the Agreement and the Process for the Settlement of Compensation

(1) On September 20, 1948 the US Army Military Government (abbreviated as USAMG) stationed in South Korea issued decree No.33 dated December 6, 1945 that all Japanese properties in Korea shall belong to the USAMG. USAMG later delegated them to the Government of Korea when the Agreement went into effect.

(2) Meanwhile, on September 8, 1951, the San Francisco Peace Treaty was concluded between Allied Powers and Japan, in which Korea's right to redress was not recognized. However, in Article 4 (a) it is provided that the disposition of property of Japan and of its nationals in the areas where Japan no longer had control, and their claims, including debts, against the authorities presently administering such areas and the residents (including juridical persons) thereof, shall be the subject of special arrangements between Japan and such authorities. And in paragraph (b) of the same Article 4, Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to directives of the United States Military Government in any of the above areas.

(3) Pursuant to Article 4, paragraph a, GROK and GOJ started the negotiation on February 15, 1952, following the preparatory session on October 21, 1951 in order to settle the issues of property, claims and obligations between the Republic of Korea and its people and Japan and its people.

Seven plenary conferences, tens of preparatory sessions, political negotiations and series of working sessions followed. Finally on June 22, 1965, the Agreement was concluded together with 4 accompanying agreements including Fisheries Agreement, Agreement concerning Legal Status and Treatment of Korean Residents in Japan, Agreement concerning Cultural Property and Cultural Cooperation.

(4) According to the "Reference documents related to issues of property and claim" submitted by Claimee, GROK presented "Eight categories of property and claim between Korea and Japan (henceforth referred to as "the eight categories")" at the first session, which took place from February 15 to 25, 1952. They were;

1. Return of antiquarian books, art works, antiques and other national treasures as well as the original edition of maps of Korea, gold plates and silver plates taken out from Korea,
2. Repayment of Japan's debt to the Korean governor-general office as of August 9, 2.1945,
3. Repayment of all the money that was remitted or transferred to Japan from Korea after August 9,

1945.

4. Return of the property of Korean business enterprises which had headquarters or main offices in Korea as of August 9, 1945.

5 Repayment of all Japanese government bonds, public bonds, Bank of Japan notes, unpaid wages of Korean drafted workers, and other claims which Japan had owed to legal and natural persons of Korean national.

6. Japan should make it legal for legal and natural persons of Korea to possess stocks of Japanese legal persons and other securities,

7. Japan should repay all the fruits generated from the above property and claims.

8. The Above-mentioned repayment and settlement should start immediately after the conclusion of the Agreement and should be completed within six months at latest.

(5) GROK and GOJ crashed at the first meeting as GOJ argued that it had claim to Japanese property in Korea comparable to Korean demands in the eight categories. Through second to fourth meetings after that, GROK and GOJ never discussed the issues of property and claim. There were so many bones of contention, such as the territorial rights related to Dokdo, Syngman Rhee Line and colonial rules etc.

Finally during the fifth meeting (October 25, 1960 through May 15, 1961), they restarted the negotiation. Japan's position was rather defensive in regard of 8 categories. For the category 1, GOJ argued that plates of gold and silver had been delivered to Japan legally and there was no legal ground for the Korean demand. As to the categories 2, 3, and 4, only property that Korea was entitled to were those which went into the possession of USAMG by the ordinance No.33. As for Category 5, GOJ was repulsive to the idea of individual compensation for the damages. The discussion continued at the subcommittee of property and claim at the Fifth Meeting until May 16, 1961. But the Korean military seized power in a military coup on that day, GOJ and GROK never reached a reasonable agreement.

(6) On October 20, 1961, there was widespread concern that re-opening of the 6th Meeting would only result in the waste of time bickering over details. Both parties decided to look for a more effective alternative, that is, political settlement. After the summit meeting of Korean President Park Chung-hee and Japanese Prime Minister Ikeda Hayato on November 22, 1961, GROK and GOJ presented the amount of payment and schedule for the repayment respectively. GROK demanded \$700,000,000 while GOJ presented the repayment of \$74,000 and the loan of \$200,000,000. There was a huge difference between the two.

(7) GOJ argued that if the payment was to be made for the sole purpose of reimbursement of debt and claim, all the related matters must be examined thoroughly in view of laws and facts. Besides, the matters to be considered should be those in the south of the 38th parallel under the present conditions. As the result, the amount for ROK would be much smaller than expected. Thus GOJ proposed the payment in the forms of loan

aid and grant aid for economic cooperation and that GOJ would agree to increase the sum in exchange for Korea's waiver of claim. On the other hand, GROK insisted that the issue should be settled as reimbursement and grant aid within the framework of property-claim settlement. Later on, GROK made further concession that the total sum would be indicated without showing the breakdown.

Kim Chong-pil, the then Director of Korean Central Intelligence Agency had a meeting with the then Prime Minister Ikeda in Tokyo and two meetings with Ohira, the then Foreign Minister. On November 12, 1962, he accepted the amount of the money, negotiated conditions of payment on behalf of the GROK.

On April 3, 1965, Yi Dong-won, the then Director of Korean Foreign Office and Etsusaburo Shiina, the then Ministry of Foreign Affairs agreed to the Agreement which was later signed. It stipulated that GOJ pays the sum which include grant aid and repayment of debt and that the Agreement fully and ultimately settles all the issues concerning property and claim.

(8) On February 19, 1966, GROK passed temporary legislatures to set the legal ground for using part of grand aid for the payment of compensation to civilian victims. The money was distributed to the families of the deceased who had been drafted by the Imperial Japan and died during the war as well as to the holders of civil claim or bank deposits which had been discussed at the above meetings. Furthermore, on December 21, 1974, another law was enacted to give out the total of 9,187,693,000 won from July 1, 1975 through June 30, 1977.

(9) In the entire process of normalization talk between GROK and GOJ, the issue of so-called comfort women had never been raised nor discussed. It was not included in the 8 categories nor was it mentioned in the newly enacted law by GROK for the distribution of compensation money.

B. The Comfort Women Issue and the Campaign

(1) On November 16, 1990 the Korean Council for the Women Drafted for Sexual Exploitation by the Japanese Military was formed. In August of the next year, Kim Haksun, who voluntarily came out as a former comfort woman appealed to the Korean public for the settlement of the issue at the press conference.

(2) Until then, GOJ had denied the responsibility for the issue insisting that prostitutes had been brought in by private operators. But when Yoshiaki Yoshimi, professor of Chuo University, discovered six official documents which proved the involvement of Japanese Military in the library of the National Institute for Defense Studies in January, 1992, GOJ had no choice but to acknowledge the facts.

(3) Under the pressure of numerous victims coming out one after another, GOJ conducted a series of fact finding investigations and acknowledged the Governmental involvement in the practice of the military sexual slavery in July, 1992. Nevertheless, the first report said that there was no documentary proof that women were forcibly recruited against their will. However, on August 4, 1993, Yohei Kono, Chief Cabinet Secretary at that

time, publicly acknowledged the involvement of the Government of Imperial Japan, recruitment by force, practice of forced prostitution and admitted to gross violation of human rights as the result of second investigation and apologized to the victims and survivors in his statement.

(4) The first comfort station was established by the Imperial Japan's Navy stationed in Shanghai in 1932, which had been troubled by the nagging issues of its members' frequent rape attacks on local women, causing locals to rise in rebellion against Japanese and weakening of war power by soldiers' venereal disease from local prostitutes. Thus, a comfort station was the preventive measure to clear away those problems. After the large number of soldiers was deployed in many parts of China from July, 1937, starting the Sino-Japan War, each unit of the Military Forces began to set up comfort stations in the occupied territories. The number of comfort stations rose sharply after the Nanjing Incident in December, 1937.

Furthermore, the Military had expected more from the system. They expected that comfort women would give spiritual solace to the soldiers who were tired and desperate, anxiously waiting for the end of the war, and lift their moral. Secondly, it was an anti-espionage measure. As the women came from the colony, they did not understand Japanese, not well enough to pick up military secrets or to give out the information to the enemies. During the Asia Pacific War since 1941, Military Forces of Imperial Japan set up comfort stations in the occupied territories in South East Asia. Japan invaded into the Korean Peninsula, China, Hong Kong, Macao and Philippines, which are marked with the presence of comfort stations on the official documents. It is estimated that the number of comfort women victims ranged from 80,000 to 100,000, or to approximately 200,000. Korean women accounted for 80%, while others were from Philippines, China, Taiwan, the Netherlands and more.

(5) GROK decided to support the livelihood of former comfort women by enacting "the Law for the Support of Former Comfort Women's Livelihood" (law No. 4565) dated June 11, 1993. However, GOJ stubbornly stuck to the position that all the compensation issues including that of comfort women have been settled completely and finally by the Agreement and that GOJ was not in a position to take a new legislative action. On August 31, 1994, GOJ publicly announced that in the spirit of moral responsibility for the damage to honor and dignity of victims, it decided to establish Asian Women's Fund, a private fund, which would give out bonuses and settlement allowances individually from the humanitarian perspective.

(6) Survivors and support groups in Korea and Taiwan expressed their absolute opposition to the Fund as they considered that GOJ tried to evade its responsibility by the use of the private fund, and that the private fund had the connotation of depreciating the survivors as elements of a charity project instead of the rightful recipients of legitimate compensation. GROK requested GOJ to cancel the operation of the AWF Fund in vain. So GROK took a counter measure of giving one time payment of 43 million won, equivalent to the money from Asian

Women's Fund, to each survivor on the condition that she would refrain from taking the money from the Asian Women's Fund.

(7) In the meantime, nine of the surviving comfort women including Kim Haksun filed a law suit against GOJ as members of the Asia-Pacific war victims' group with the compensation claim on December 6, 1991. The case was finally dismissed by the Supreme Court of Japan on November 29, 2004. The Supreme Court ruled that all rights of the survivors are extinguished by Article 2, paragraph 3 of the Agreement. The Court stated that there is a possibility that the plaintiffs may have acquired rights to claim the damages on the ground of defendant's failure to secure workplace safety and act of tort by the ruling of Tokyo High Court in the lawsuit. But those rights are covered by the Agreement.

However, the survivors did win partial victory at the district court in another lawsuit filed by Pusan survivors of the Military Sexual Slavery and the Korean Women's Volunteer Corp on December 25, 1992, for the first time. But the judgement was reversed at the appeal court and the Supreme Court refused to accept the appeal on March 25, 2003. Son Shindo, Korean-resident-in-Japan and other survivors of military sexual slavery filed a law suit on April 5, 1993, which was ultimately rejected by the Supreme Court of Japan on March 28, 2003.

(8) On the other hand, GROK made the official document open to the public in connection with ROK-Japan meetings in 1960' Pursuant to the judgment of the Korean court on February 13, 2004. Then it set up the "Joint Committee of Private Citizens and Governmental Officials" which was chaired by the Prime Minister on August 26, 2005. Its task was to sort out the complex issues of financial, civil claims and debt between the two countries under Article 4 of the San Francisco Peace Treaty. Finally the Committee made public that it found it impossible to conclude that serious violation of human rights committed by state power, such as the practice of military sexual slavery, have been settled by the Agreement and that GOJ is still legally responsible for the damages. Once again, GOJ defended that all the comfort-women related issues have been settled by the measures mentioned below in response to the adoption of Resolution 122 by U.S. House of Representatives, and the Final Observation of Working group for 2008 UPR at Human Rights Council:

(a) apology made by Yohei Kono, (b) comprehensive settlement measures provided in the Agreement and (c) works of Asian Women's Fund

(9) Such attitude and measures of GOJ were not acceptable to the international community, much less to survivors and their supporters. The UN Human Rights Commission has been interested to pursue the issue continuously. On January 4, 1996, its first report was published by Radhika Coomaraswamy, Special Rapporteur, identifying the issue as clear violation of international law. And she made six recommendations including reparation on the state level, punishment of those responsible, disclosure of all the relevant documents kept in the archives of the GOJ, the official apology in writing, the facts in textbooks. The report was adopted at the 52nd session of U.N. Commission on Human Rights on April 19, 1996. Moreover, on

August 12, 1998, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted the report written by Gay McDougal, which reinforced the recommendations of Coomaraswamy, especially in respect of GOJ's responsibility for reparation and the punishment of those responsible. The "MacDougall report" emphasized the following four points.

(a) Ms. McDougal emphasized the aspect of coercion by defining the comfort-women system as sexual slavery and military brothels as rape centers,

(b) She emphasized the need for punishment of those responsible and demanded the search for surviving war criminals,

(c) She demanded that U.N. Secretary General receive the report on the development of the issue from GOJ at least twice a year, and that the UN High Commissioner of Human Rights set up a committee in collaboration with GOJ for the punishment of those responsible and payment of reasonable compensation to the survivors.

(d) She emphasized that earliest possible compensation should be realized by GOJ.

(10) After that, the Japanese society swayed to the rightist mood by successive administrations of Abe and Koizukmi. The comfort-women issue was deleted from the history textbooks and attempts were made to revise the Kono statement. In contrast, there were strong rebounds against Japan from the international community as follows. On July 30, 2007, the US House of Representative unanimously adopted the resolution 122 on the comfort women issue. The main points are:

(a) GOJ should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner.

(b) GOJ should clearly and publicly refute any claims that the sexual enslavement and trafficking of the 'comfort women' for the Japanese Imperial Armed Forces never occurred; and

(c) GOJ should educate current and future generations about this horrible crime and it should follow the recommendations of the international community.

The resolution was followed by the Lower House of the Dutch Parliament on November 8, 2007, Lower House of Canada Parliament November 28, 2007 and EU Parliament on December 13, 2007 with the similar recommendations.

(11) Furthermore, there were more reports on the issue at the United Nations including the report from UPR workingc group (A/HRC/8/44) and the final observation of CCPR (CCPR//JPN/CO/5).

(12) Also in Korea, the Parliament adopted a resolution demanding apology and reparation from Japan almost unanimously by 260 PMs out of 261. From July, 2009, 46 local assemblies adopted resolutions demanding the final settlement of the comfort women issue. Korean Bar Association and Japan Federation of Bar Associations published a joint statement concerning the comfort women issue on December 11, 2010. It

reaffirmed firstly that inconsistent interpretation of the Article II obstructed survivors from getting rightful compensation and relief, aggravating the distrust of survivors and secondly that a new legislature should be enacted by the Diet and GOJ for the settlement of the issue including apology and reparation. All of these resolutions and statement expressed the hope that the issue be settled finally by legislation of GOJ and that the GROK take more active and positive diplomatic approaches.

IV. Considerations of Lawful Requirements

A. Complaints about the Administration's failure to act

Individuals are allowed to file complaints concerning the administrative failure to act only when it is specifically provided that public power has the constitutional duty to do so and when a holder of the basic rights is in a position to request the fulfillment of the duty and the public power fails to take action.

The part "when it is specifically provided that public power has the duty to act derived from the constitution" covers all the relevant situations, firstly when such duty is clearly stated in the constitution, secondly when the interpretation of the constitution leads to such duty ultimately and thirdly when such duty is specifically set out in laws and regulations.

B. Claimee's duty to act

Should an actor of public power have no obligation to act as above-mentioned, the complaint in this case would not be legitimate. Thus we need to examine whether the public power, GROK is obliged to exercise the power to perform such duty. The Agreement is a treaty which was concluded and proclaimed pursuant to the Constitution and it is as valid and binding as any domestic law as prescribed in Article 6, paragraph 1. The court refers to the Article III, paragraph 1 and paragraph of the Agreement. According to the above-mentioned provisions, GROK is supposed to settle the matter firstly through diplomatic channels and secondly by arbitration. Now we are to proceed to examine whether or not the above provisions shall meet the situation when such duty is specifically set out in laws and regulations.

Claimants demanded reparation from Japan as they suffered serious damage as comfort women who had been removed from home and forced to serve the members of Japanese Military Forces as sexual slaves. However, GOJ rejected the demand on the ground that Article II of the Agreement settled all the issues of property and claims. On the contrary, GROK maintains the position that Claimants' claim has never been settled by the Agreement and thus the claim remains valid today. That is how the conflict emerged in the interpretation of the Agreement.

Article 10 of our Constitution prescribes "All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the basic and inviolable human rights of individuals." It signifies that dignity of a citizen is regarded highest value of constitution, and it is binding on all state agencies as the normative goal and that State carries the burden of duty to materialize

the dignity of citizens. Therefore, dignity as human being is not only individual's right to defend himself or herself, meaning that individuals are protected from State violation by "being at the limit of State power", but also the State duty to protect individuals when their dignity is threatened by the third party.

Article 2. (2) of the Constitution provides "It shall be the duty of the State to protect citizens residing abroad as prescribed by Act." With regard to the duty to protect nationals abroad, the Constitutional Court ruled that citizens residing abroad are entitled to protection by State's diplomacy under which citizens can enjoy rightful treatment in every aspect of life under the treaties, international law and domestic law of the country of residence and support in the fields of law, culture and education from political consideration by special legislature which address the need of such residents. In other words, the ruling recognizes that the duty to protect citizens residing abroad is derived from the Constitution.

On the other hand, preamble of the Constitution proclaims "upholding the cause of the Provisional Republic of Korea Government born of the March First Independence Movement of 1919." Even when the incident took place before the enactment of the present constitution, it is the most basic duty of the state to protect the safety and life of citizens. In the days of Imperial Japan's colonial rule, such protection was not possible. Under such conditions, Claimants were forcibly recruited to serve the Japanese Military as comfort women for prolonged period of time in the condition where they were deprived of human rights including honor and dignity. Therefore, recovery of their damaged dignity and honor is one of the most basic duties that the present Government is obligated to accomplish, which is upholding the spirit of the Provisional Republic of Korea Government.

In light of wording of the Article III of the Agreement, Claimee's duty to take the necessary steps for the settlement of the dispute comes from the Constitution, which requires that the public power must cooperate and support citizens who had been deprived of dignity and humanity seriously by the systematic practice of unlawful acts committed by Japan so that they can materialize the claim to reparation. If the public power fails to perform this duty, Claimants may possibly suffer serious damage to their basic rights. Thus the court pronounces that Claimee's duty to act is a lawful duty prescribed in law based on the Constitution. GROK has not done anything to obstruct the basic rights of former victims of military slavery. But GROK is responsible for the present stalemate in their struggle to recover the dignity and honor as human beings because it was GROK that concluded the Agreement using the comprehensive concept called "all claim" Taking this into consideration, it is difficult to deny that GROK has specific legal duty to act so as to remove the obstacles.

C. Non-use of Governmental Authority

Claimee argues that it made the following choice through the diplomatic route to settle the dispute. That is, GROK decided to give financial support to the survivors instead of requesting GOJ to take responsibility by

payment of reparations. Also GROK decided to keep raising the issue at every stage of the international community by pursuing the issues demanding thorough investigation, official apology, education of the present and future generations, which they considered are basic and more important.

GROK argues as follows. The choice is rightful execution of diplomatic discretionary power and should be included in measures through diplomatic route in Article 3 paragraph 1. Thus GROK has never failed to use the public power properly. However, the Court calls the attention to the fact that public power's failure to act in this case means specifically its obligation to follow set rules in Article 3 of the Agreement for the settlement of dispute over former comfort women's claim to reparation. So diplomatic measures without consideration of the claim issue can not be considered as rightful exercise of the public power.

Moreover, from the viewpoint of recovering the Claimants' dignity and honor, perpetrator Japan's admission of guilt and assumption of liability is quite different from GROK's financial support of survivors as social welfare. Therefore, support for the livelihood of the survivors does not constitute the above-mentioned legal obligation. As the matter of fact, GROK states that it decided not to pursue Japan's responsibility for the reparations in 1990's. On April 10, 2006 after the official documents of the Agreement became open to the public, GROK said in answer to support organizations' question, "There is a strong possibility that dialogue with Japan would end up in exhausting legal discussions. So GROK would not confront Japan directly in this regard". GROK reiterated this position in papers submitted to this Court after the complaint was filed.

On the other hand, GROK made the public statement on August 26, 2006 that the issue of military sexual slavery should not be considered solved by the Agreement. But, it is difficult to accept this public statement as the diplomatic measures Pursuant to the Article 3. Even if it is so intended, such settlement efforts must be continued for extended time, and if there is no more to do, they must proceed to the necessary procedure Pursuant to Article 3 of this Agreement. Since 2008, Claimee has not mentioned the issue directly, nor did it have any program to advance the settlement. The court finds it difficult to acknowledge that GROK fulfilled the obligation to act.

D. Summary Conclusion

Therefore, it is possible that Claimee did not fulfill the obligation to act and caused the damage to the basic rights of Claimants in spite of their obligation to do so. Therefore, the court will examine whether or not Claimee's failure, refusal or negligence to act which caused damage to Claimants' basic rights is in violation of the constitution.

V. Consideration of the Matter

A. Dispute on the Interpretation of the Agreement

(1) Article 2.1 stipulates "The High Contracting Parties confirm that the problems concerning property, rights, and interests of the two High Contracting Parties and their peoples (including juridical persons) and the claims

between the High Contracting Parties and between their peoples, including those stipulated in Article IV (a) of the Peace Treaty with Japan signed at the city of San Francisco on September 8, 1951, have been settled completely and finally." In this connection, it is written in Article 2 (g) of the minutes of the proceeding "Property, rights, and interests which have been settled completely between two countries and their people covers all claims including the eight categories presented by GROK. Thus it is confirmed that nobody can make a case out of it."

(2) In this regard, the position of GOJ is that all claims to compensation as well as rights of Korean people including that of comfort-women are covered by the Article 2 of the Agreement, thus, by concluding the Agreement, those claims and rights should be deemed waived or completed.

On the other hand GROK publicly announced on August 26, 2005 that the Agreement does not settle the issue of inhumane criminal acts which the State is involved with. So GOJ is still legally responsible for the settlement of the matter.

(3) In the proceedings of the constitutional court, GROK repeatedly confirmed its position that there is a difference in the interpretation of the Agreement.

(4) Therefore, it is evident that there is dispute between two countries in regard to the Agreement.

B. Procedure for the Settlement of Dispute

1. Expecting dispute in advance, Article 3 of the Agreement is made to assure that high contracting parties have the responsibility to resolve the dispute by the rules and procedures. If that is the case, Claimee has to solve the dispute through diplomatic route according to the procedure provided in Article 3 of the Agreement, and if it doesn't work, the matter should be entrusted to the mediation. Next, let us examine whether or not Claimee who failed to follow the procedure infringed upon Claimants' basic rights, and whether or not Claimee violated the Constitution.

C. Infringement of Basic Rights by Claimee' Failure to Act

(a) Claimee's Latitude of Discretion

As the state diplomacy deal with the issues and tasks in relation to the multinational environment where values and laws differ from each other, there is no denying that Claimee is given authority to exercise wide range of discretion taking into consideration of the nature, current status, domestic situation, international law and universally accepted practices. However, constitutional basic rights are binding upon all the activities of the state power. Administrative power has obligation to exercise its power so that basic rights be protected effectively. As acts of diplomacy are no exception, they cannot escape the scrutiny of judicial authority. When certain acts of diplomacy relevant to basic rights of individual citizens, such as the failure to comply with the specific provisions of the Agreement, is considered to be violating the state's duty to protect basic rights, the

court must declare that such negligence is in violation of the constitution.

(b) Gravity of Basic Rights which are to be violated

The Japanese Military Sexual Slavery is started by the Military Forces of Imperial Japan and its Government who mobilized girls and women into the servitude of sex to the members of the military forces under their surveillance. The practice is extremely unique. There is nothing comparable to the practice in the world. The unique nature of damage to the victims has been recognized by the Japanese courts, not to mention by the international community.

On April 27, 1998, Shimonoseki branch of Yamaguchi provincial court ruled that the practice represents the intense discrimination against certain ethnic group as well as women. It stripped dignity of women at its root and trampled on the pride of the ethnic people. Military sexual slavery victims have claim to Japan as the consequence of its commission of widespread inhumane crimes and it is the property right provided in the constitution. Realization of the right for compensation signifies recovery of dignity and worth as human as well as freedom ex-post facto, which had been violated and deprived for prolonged time. Thwarting the realization of the claim is violation not only in terms of constitutional claim and property rights, but also it is directly related to the violation of basic values of human being.

(c) Urgent Need of the Relief from Basic Rights Violations

Since 1991 survivor victims have filed law suits demanding compensation in Japan. The Supreme Court of Japan dismissed the demand and finalized the position that victims' right to claim has been extinguished by the conclusion of the Agreement. Now, it is impossible to expect judicial relief through the court or to expect GOJ to voluntarily apologize and relief measures. Meanwhile, there were 125 survivors on March 13, 2006 out of 225 who had been eligible for "Comfort Women's Livelihood Support Act". Victims continued to pass away in the course of the consideration by the constitutional court. In March of March 2011, the number of survivors dropped to 75. The case was originally filed by 109 Claimants, but the number dropped to 64 as 45 died during the past 5 years. Furthermore, all survivor victims are advanced in age. With further delay it may be forever impossible to materialize their claim for compensation, to win historical justice, and to recover dignity and honor as human beings.

(d) Possibility of Recovering Basic Rights

However important basic rights are, and however imminent is the danger of violation, if there is no possibility of relief, it is difficult to pronounce that Claimee has legal duty to act. However, the court asks if duty to act should be recognized only when there is 100% sure of relief. It should be regarded sufficient enough when there is a possibility of relief. If survivors insist that they are aware of the risk and willing to take a chance that GOJ would reject their demand, Claimee has to take victims' desire to take action into consideration.

Reviewing the circumstances surrounding the conclusion of the Agreement, and taking into consideration of reactions of the world which was aghast at the brutal violation of women's human rights and following recommendations about fact finding, official apology, compensation from the international community, Claimee should not rule out the possibility that compensation may be realized by Japan when Claimee sets about to follow the procedure of the dispute settlement provided in Article 3 of the Agreement.

D. Is it against Genuine and Important Interest of the State?

Claimee argues that its action could entail prolonged and fruitless legal discussions and the deterioration of diplomatic relations with Japan if Claimee demands that Japan should do the right things to fulfill its legal responsibility. Thus it is difficult for Claimee to act Pursuant to the provision of the Agreement. However, concepts of "possibility of the prolonged and fruitless legal discussion" or "possibility of deterioration of the diplomatic relations" are abstract and vague. It is difficult to regard them as valid and reasonable grounds for ignoring the Governmental duty to provide relief to Claimants who are in the imminent danger of their basic rights being violated. It is also difficult to regard it national interest which should be taken seriously. Rather, through efforts to deepen and share the understanding of history and important facts by making GOJ fulfill its liabilities, it would be desirable approach to establish the mutual understanding and trust between peoples of the two countries and to learn from the past so as to establish the solid relationship where such tragedies would never be repeated. Such development should be in the best interest of our country. Thus, the court decides that Claimee's failure to act is in violation of the basic rights under the constitution.

6. Conclusion

Therefore, the court will uphold the complaints as lawful. Although three judges have different opinions, the majority agreed to uphold the complaints.