

**NGO ALTERNATIVE REPORT
FOR LOIPR ON 7th PERIODIC REPORT OF JAPAN
TO BE ADOPTED BY
THE HUMAN RIGHTS COMMITTEE**

JULY 14, 2017

JAPANESE WORKERS' COMMITTEE FOR HUMAN RIGHTS (JWCHR)

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This NGO Report is established in cooperation with:

- **Japan Association for Social Justice and Human Rights (KYUENKAI)**
- **League Demanding State Compensation for the Victims of the Public Order**

Maintenance Law

- **Organization to Support the Lawsuits for Freedom of Education in Tokyo**
- **The Organization for the Rights of Children with Disabilities, Japan**
- **Plaintiff Group and Civil Support Group of the Trial for the Protection of Personal Information on the Refusal to Stand up for the “Kimigayo”**
- **Hyogo Group against Red Purge**
- **The Japan Federation of Publishing Workers’ Unions**
- **Firefighters’ Network in Japan (FFN)**
- **JAL Unfair Dismissal Withdrawal Plaintiffs**

1. Realize Establishment of Individual Communication Procedure!

-JWCHR strongly requests early ratification of the first Optional Protocol to the ICCPR-

We, the Japanese Workers' Committee for Human Rights (JWCHR), request a recommendation by the Human Rights Committee that the Japanese government has to take measures to improve a stagnant situation of human rights in Japan, by accelerating early ratification of the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and realizing the individual communication procedure.

Japan has not realized the introduction of the individual communication procedure for about half a century since the ratification of the ICCPR. When the Diet ratified the Covenant, the Government promised the prompt ratification of the Optional Protocol. Nevertheless it has not been carried out even today.

Therefore, the slow developing of human rights is somewhat distinguished. In particular, the original theory which does not match international standards of the ICCPR becomes established, so that it prevents human rights from arriving to globalization. The individual communication procedure has not been implemented in the all main human rights treaties ratified by Japan. Therefore, the decisions contrary to the provisions of the treaties are sometimes handed down by the Supreme Court and the lower courts.

JWCHR have submitted petitions to the Ministries of Foreign Affairs and of Justice to promote the ratification. At that time, these Ministries replied that the Government has studied for many years to be able to cope with any case which might happen after the ratification.

Although the Human Rights Committee has often recommended that the Government accelerate the ratification of the first Optional Protocol at every consideration of the reports of Japan, the Government has indicated a negative attitude for the ratification by using a conventional phrase: "it is earnestly under consideration." Given that there exist enough preparation and non-obstacle for the ratification, the Government should ratify it as soon as possible.

.05 Nov 1993 (CCPR/C/79/Add.28 para16), 19 Nov 1998 (CCPR/C/79/Add.102 para32)

.18 Dec 2008 (CCPR/C/JPN/CO/5 para8), 19 Aug 2014 (CCPR/C/JPN/CO/6 para6)

The Committee asks the Government at every review of its periodic reports if it is possible for both the restriction of human rights in order to protect "public welfare" and the provisions of the ICCPR to coexist. The reason why the Committee expresses its concern is that the concept of "public welfare" stipulated in the Constitution of Japan prevents the actual situation from arriving the international standard of human rights provided in the ICCPR. It may be the consequence that the Government has been refusing the establishment of the individual communication procedure.

The Supreme Court and the district courts in Japan have not only neglected the interpretation and application of the ICCPR without sufficient examination, but often given decisions against the provisions of the ICCPR.

As it is closed for the members of the Committee to get in touch with individual communications from Japan, the courts do not have any opportunity to meet the views which express violation against the Covenant. Consequently, the lower courts continue to keep a negative attitude toward asking about the trend of the Supreme Court. As there is no need for the courts in Japan to be afraid of being blamed by rulings which are against the Covenant, they do not hesitate to give decisions which are against the international standard of human rights.

We would like to introduce an example, which happened recently, of the violation of Article 26 of the ICCPR. If Japan had ratified the first Optional Protocol, the following case would have been relieved as precedent.

Kazuo Tamura, whose wife died of an official casualty, applied for the compensation petition for surviving family, but he could not receive it for the reason that he was under 55 years of age at the time of his wife's death. In case of the death of husband, the age of wife may not be referred to as the condition of its application. Finally, Tamura filed a lawsuit for unfair and discriminatory regulations. However, on 21 March 2017, the Supreme Court rejected his final appeal for the reason that, positioning the compensation petition for surviving family in the social security systems

and considering a social situation where the wife is put in average wage differentials between the sexes, it cannot be said that the distinction generally set up for the wife, irrespective of her age, who has difficulties with making her living by herself, lacks a rational reason.

Regarding the widow's pension problem similar to this case, the Human Rights Committee acknowledged this discriminatory treatment between men and women based on the social situation as violation against Article 26 (e.g. Pauer v. Austria Communication No.415/1990, 26 March 1992, CCPR/C/44/D/415/1990). However, Tamura cannot lodge a complaint with the Committee as Japan has not established the individual communication procedure.

In order to break the obstacle, there is no choice but to introduce the individual communication procedure. Consequently, JWCHR strongly requests a recommendation by the Committee that the Japanese government ratifies the first Optional Protocol as early as possible.

2. Provision of Information towards Creating List of Issues by the Committee

[Concerning Article 2]

Concluding observations on the sixth periodic report of Japan, Para 6

The Committee recommended to the Japanese Government “to ensure that the application and interpretation of the Covenant form part of the professional training of lawyers, judges and prosecutors at all levels, including the lower instances.” However, according to the information disclosed by using the Information Public Disclosure System, judges listen to general lectures, for example, one titled “International Covenants on Human Rights and Judiciary” for a training. It is once a year, and only two hours long. Targeted people are limited to new judges and new assistant judges (about 100 people each), and chief judges of each department. There are 3,814 judges all over the country (as of 2016). It is said that only a few of them can get promoted to such judges, and it usually takes ten years to do so. Therefore, most judges do not have opportunity to access to the latest and specific information about the Committee’s Recommendations.

According to the information disclosed by the Supreme Public Prosecutor’s Office, prosecutors do not receive any “professional training” following the recommendation.

[Requests]

We would like the Committee to recommend repeatedly that the Japanese Government should ensure that the necessary professional training should be given to judges and prosecutors so that they get to observe the Covenant.

Concluding observations on the sixth periodic report of Japan, Para 22

The Committee expresses its concern that the concept of “public welfare” is vague and open-ended and may permit restrictions exceeding those permissible under the Covenant (arts. 2, 18 and 19).

The ruling Liberal Democratic Party publishes a mistaken interpretation that “public welfare” constrains human rights more extensively than “public order” does in its brochure explaining constitutional revision draft (page 13), as cited below.

The expression “public welfare” used in the Constitution is ambiguous and not easy to understand... ..By replacing it with “public benefit and public order,” we will eliminate ambiguity as well as make it clear that limits placed on basic human rights guaranteed by the Constitution are not confined to conflicts of human rights.

By using the same term “public order,” they pretend here that it is a strict standard in the international society while they intend to limit human rights more extensively than the “public welfare” so far has done in Japan.

[Requests]

We would like the Committee to clearly demonstrate that attempts to limit human rights more extensively than the present “public welfare” has done are by no means allowed.

[Concerning Articles 6, 7 and 14]

Death in Prison of Condemned Criminal Masaru Okunishi and What Causes Retrial Case to Take Longer (Concluding observations on the sixth periodic report of Japan, Para 13)

Masaru Okunishi at the age of 89 died in 2015. He had received the death sentence for Nabari Poisonous Wine Murder Case that occurred in 1962, but had been asking for reopening of the case for the past 50 years. Three times it was found reasonably doubtful that he was really guilty: he was first found innocent of the crime in 1964, reopening

of the case was ordered in 2005, and then again the order to cancel the reopening was repealed in 2010. However, each time his guilt was doubted, the prosecution appealed, and the death penalty was maintained.

During the consideration of the sixth periodic report, elderly Masaru was in critical condition, and we emphasized “Masaru has little time left, therefore disclosures of evidences and retrial review is urgent.”

As a result, the Committee recommended that the Japanese Government should “immediately strengthen the legal safeguards against wrongful sentencing to death” and pointed out that “inter alia, guaranteeing to the defense full access to all prosecution materials” was important. Moreover, it adopted Concluding Observations which asked for a follow-up within one year,

And the defense team and supporters demanded immediate implement of the Recommendations to the court, Public Prosecutors Office, but the authorities concerned have neglected their duty of disclosing evidences.

The responsibility of the authorities is heavy which resulted in the death row inmate’s death because they kept the evidences hidden.

At present, Masaru’s sister Miyoko Oka has inherited his appeal for retrial, and the tenth appeal is progressing, but she herself is already 86 years old. Many people concerned to the retrial cases become older or die. Hiromu Sakahara who was convicted of murder died at the age of 75. Iwao Hakamada (81 years old), Hiroki Miyata (83), and Ayako Haraguchi (female; 90) are suffering mental illness.

The biggest causes of proceedings taking longer are the prosecutors’ appeals in case of not-guilty verdicts or decisions to reopen guilty cases, and their resistance to evidence disclosure.

[Requests]

We would like the Committee to make a recommendation that even under the present law, Ministry of justice and Public Prosecutors Office can carry out followings actions immediately:

- 1) Refrain from appealing for an acquittal and decisions starting the retrial.
- 2) Guarantee the defense full access to all prosecution materials.

[Concerning Articles 7, 9, 10 and 14]

Substitute prison and forced confession (Concluding observations on the sixth periodic report of Japan, Para 18)

The Legislative Council Special Subcommittee of the Ministry of Justice which created the draft consisted mainly of former members of the police and the prosecution. They succeeded in defending “the function of the interrogation to persuade the suspect to disclose the truth.” As a result, the revised Code of Criminal Procedure enacted in May 2016 does not include any of the following points which the Committee indicated in the concluding observations on the sixth periodic report of Japan, Para 18. They are: 1. pre-indictment detention; 2. defense counsel’s presence during interrogations; 3. strict time limits for the duration of interrogation, etc.

Introduction of video recording of interrogations, which appears “a positive step,” is subjected to only 2 percent of all the cases. Moreover, there is a special exemption that there will be no recording when an interrogator thinks “the accused cannot give an adequate statement when recorded.”

Imaichi Case, whose decision was made during the consideration of the draft code, shed light on its loophole. The accused of the case was forced into confessing murder without being recorded while he was in custody for a separate case. Only after he was completely succumbed to the interrogator the video recording of the interrogation of the

murder case started, and it misled the citizen judges to declare the accused guilty. There is a risk that the police and the prosecution will turn to over-dependence upon confessions in order to get partial recordings of “confessions.”

[Requests]

We would like the Committee to recommend that the Japanese Government should make sure that the effect of visualization of interrogations is to ensure that there will be no forced confessions by enabling ex-post facto verification whether the interrogators pressured the accused into confessions or not. Also, the Committee should recommend that therefore it is absolutely necessary to visualize the whole process of interrogations of each case.

[Concerning Article 14]

Concerning difficulties of retrial in Chikan cases

In metropolitan areas of Japan during rush hours, trains and other transportation systems are extremely congested, and passengers cannot avoid contacting each other. Hence indecent conducts towards women called Chikan are rampant.

Chikan accusation has been strengthened since 1990s, and with it increased false charges sharply. On a congested train, it may be possible that an innocent person is mistaken for a criminal or a bag bumped into a body confused with a Chikan conduct. However, once a man shouted at by a cry of “He is a Chikan!” he is doomed. He will be forced to confess against his will in a defective Japanese criminal proceeding, or frequently found guilty in the case because the court considers the victim’s statement highly reliable however strongly he may plead not guilty. This “false Chikan charge” is frightened as a modern-day witch trial. Recently a man who was named “Chikan!” tried to run away from the platform, and was run over and killed by a train.

Another problem is that it is virtually impossible to request retrial in a Chikan case. There are few evidences in the first place, a point in dispute is whether he touched her or not, and all the issues have been discussed by the time of final decision. Therefore, it is impossible to prepare any new evidence to contradict the decision, which is the precondition of starting retrial.

Kobayashi Case was the most promising one to start retrial among the convicted Chikan cases. At the time of the incident, Kobayashi could not move his fingers because of the intense pain due to generalized scleroderma derived from collagenosis, so it was impossible for him to commit such an act. He insisted as such, but the court did not accept his claim, giving him a prison sentence. Kobayashi and his defense team went on to prove more specifically that he could not have moved his fingers by having a new specialist appraise the case. Still, the court dismissed the claim, citing “lack of novelty.”

[Requests]

We would like the Committee to indicate that it is necessary to comply with the principle of criminal trials especially strictly, that the prosecution has a burden of proof in a case with only confessions as evidence, such as a

Chikan case. The Committee also should indicate that judges in Japan are required to have a scientific and rational attitude to respect specialists' opinions based on scientific knowledge.

[Concerning Articles 18, 19 and 25]

**Limitation of speech by the Public Offices Election Act is an extensive and continuous human right violation
(Concluding observations on the sixth periodic report of Japan, Para 22)**

Public Offices Election Act comprehensively forbids activities of speech and expression by candidates and citizens during election periods for the reason of "public welfare." The police deem activities other than those permitted by law as crimes, and have apprehended more than 90,000 people for distributing documents and making door-to-door visits for more than 60 years since 1950 when the Act was promulgated. Consequently, numerous citizens were summoned, warned or searched. Such constraints can be called extensive and successive human right violations which have effects of chilling political participation of voters in general.

For instance, at a Fukusaki mayoral election in 2015, when a candidate's supporters' association sent a newsletter to each member, the police retrieved all the newsletters all over the town. The police then conducted a door-to-door investigation: "Are you a member?" "Who did you vote for?" and summoned many of the association officials. One of them got summoned more than 100 times during 5 months in spite of explicit rejection. Likewise, at Yabu city councilor election, an ex-teacher in his 80s who sent a letter to his former students was summoned for three years.

Hence the Committee has repeatedly issued Recommendations since 1993, and indicated that restrictions during election campaigns in Japan are incompatible with the Covenant in General Comment No. 34 (Para. 37). It recommended that the Japanese Government should "refrain from imposing any restriction on the rights to... freedom of expression" in the last concluding observation (para22). Mr. David Kaye, Special Rapporteur on the right to freedom of opinion and expression, indicated that "the current restrictions appear unnecessary and disproportionate" in his report to the Human Rights Council (A/HRC/35/22/Add.1/para57.71).

We Kyuenkai has demanded for the implementation of the Recommendations to legislative, executive and judicial branches since 1990s. An opposition Diet member took up this issue at the House of Representatives and requested to implement the Recommendations to the Minister of Justice in 2016.

[Requests]

We would like the Committee to recommend that the Japanese Government should cancel invocation of provisions of Public Offices Election Act immediately. The Government should not wait until the Law is revised.

3. Not to permit “Anti-Conspiracy” Law called the present Public Order Maintenance Law, Please Recommend the Government to Apologize and Compensate for the Victims of the Public Order Maintenance Law

During 20 years between 1925 and 1945 in Japan, those who opposed aggression and colonial rule to the other countries, insisting on the popular sovereignty and resisting the then government, were tortured and insulted by officials such as Special Higher Police under the Public Order Maintenance Law. Up to the present, it is confirmed that 93 victims including a novelist Takiji Kobayashi were massacred. In addition, more than 400 victims were died in prison and the number of the victims who were arrested, detained and ill-treated, exceeding hundreds of thousands of persons. Fierce oppression was developed not only nationwide but also in colonized Korea where more than 80 persons were executed.

At that time, the people who were against the war considered to be a national policy, were criticized as traitors or betrayers of the country and received human rights violations of the abuse and the insult. These were criminal acts against humanity that are apparently in violation of Articles 17 and 18 of the International Covenant on Civil and Political Rights (ICCPR) adopted by the United Nations General Assembly. The Public Order Maintenance Law was abolished in postwar 1945, but the honor of victims who were oppressed by this notorious law, has not been restored even today when it becomes more than 70 years after the end of the war. In addition, any compensation has not been paid for them. Their human rights violated and insulted by the country have not been recovered. This situation has made not a few victims and their bereaved families feel stigma. The present government fabricates the history by saying that the aggressive war was “a war for the liberation of Asian countries” or “a sacred war for Self-sufficiency and Self-defense,” and recklessly intends to lead the country to the way to war again. In order to stop a reverse flow of history, we definitely think that the government should realize the apology and compensation for the victims of the Public Order Maintenance Law, recognizing the violation of human rights for the victims.

Post-war process in the light of international human rights and humanitarian law

We sympathize with what the Human Rights Committee expressed serious concern on legal responsibility and relief of the victims of “comfort women” in its concluding observations in 2014 and 2008 as well. Another problem which has not been settled as a crime against human rights and humanity, is a problem of the victims of the Public Order Maintenance Law. While insisting that it is not appropriate for the government to take up a problem which occurred prior to the ratification of the ICCPR in 1979, the government expressed intention to take measures for the problem of the “comfort women,” which is considered to be prewar human rights violations, in response to the review and the concluding observations of the fifth periodic report of Japan expressed by the Committee in 2008. The government also expressed the same intention for this problem at the examination of the sixth periodic report of Japan in 2014.

It is unacceptable for the government to continue to ignore the apology and compensation for the victims of this Law, for the reason that “it occurred prior to the ratification of the ICCPR.” Most of the victims are those who opposed and resisted the aggression and colonial rule since the Asia-Pacific War started. As stipulated in the Potsdam Declaration, “The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people,” their struggle for demanding democracy was highly evaluated. From the viewpoints of human rights and humanity law based on the observance of Article 7 and 18 of ICCPR, as well as prompt ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, we strongly demand an early settlement of the issue.

Threat of reoccurrence of the Public Order Maintenance Law called Non-Conspiracy Law

The League Demanding State Compensation for the Victims of the Public Order Maintenance Law has submitted a report to the Human Rights Commission in 1995 in which it required a recommendation by the Commission that the government acknowledge human rights violations for the victims.

The government, on the pretext of threat of terrorism, now submitted the “anti-conspiracy” bill, which is referred to as the “present Public Order Maintenance Law,” into the Diet in session. Unfortunately, the government passed it without enough discussion. The League expects a recommendation by the Committee that the government should

recognize the Public Order Maintenance Law as a bad law violating human rights, and apologize and compensate for the victims.

We strongly demand that the Committee include this problem in the List of Issues Prior to Reporting and express a severe recommendation in accordance with international human rights law at the examination of seventh periodic report of Japan.

4. Forced Worship of the National Flag & the National Anthem at Public Schools in Tokyo

～Violation of Articles 18 and 19 of the ICCPR～

A. Issues

1. Violations of articles 18 & 19 of the ICCPR by the Tokyo Board of Education's directive forcing teachers to stand facing the national flag and sing the national anthem at school ceremonies.
2. The State Party's disrespect for the concern and recommendation by the Human Rights Committee regarding "Restriction of fundamental freedoms on grounds of 'public welfare'" (CCPR/C/JPN/6 para22).
3. Japanese courts' reluctance to invoke the provisions in the ICCPR as criteria for their judgements.

B. Concerns and Recommendations by the Human Rights Committee

4. The past recommendations concerning human rights restrictions on grounds of "public welfare"

- 1993/11/4 (CCPR/C/JPN/CO/3 para8) • 1998/11/19((CCPR/C/JPN/CO/4 para8)
- 2008/10/30(CCPR/C/JPN/CO/5para10) • 2014/7/24((CCPR/C/JPN/CO/6 para22)

5. Human rights restrictions covered by para 22 of the 2014 Concluding Observations

In the sixth review, the issue of coercion of the national flag and anthem was taken up in para 17 of the LOI (CCPR/C/JPN/Q/6/), and para 22 of the Concluding Observations corresponds exactly to the LOI para 17. Our interpretation is, therefore, that "restrictions exceeding those permissible under the Covenant" in para 22 covers the forced worship of the national symbols. But the state party's attitude is that para 22 is a general recommendation, and that they do not intend to take any specific measure.

C. Present Situation

6. The coercion of the national symbols and punishments on teachers still continue.

Since the issuance of the 10.23 directive by the Tokyo Board of Education in 2003, there have always been teachers who refuse to obey the order at the risk of punishments in the belief that the order violates the right of teachers and students to freedom of thought and conscience. The number of the punished teachers has amounted to 480 as of May 2017.

7. "Recurrence Prevention Seminar" for the punished teachers

Every year the Tokyo Board of Education orders punished teachers to attend the special retraining course called "Recurrence Prevention Seminar", in which they are forced to reflect on their conducts in order not to repeat the same "offense". However, for those who disobeyed the order based on their educational belief, it means being forced to disclose and change their thoughts and belief.

The seminar is held several times over three months. At the Seminar Center, security guards stand on both sides of the corridor leading to the seminar room as if the trainees were criminals. Each trainee is confined in a room surrounded by four officials of the center and the principal of his/her school. The lecture is unilateral and the trainee is not allowed to ask questions nor take the handouts home. During the three-hour seminar, only fifteen minutes is given for a rest, and even when the trainee goes to the restroom, an officer follows him/her there. Some trainees say they felt as if they were being tortured. (1)

8. Coercion on students

If students remain seated during the singing of the national anthem, their homeroom teachers are punished. The principals are ordered to write in the progress table that the ceremony should not be started until they rise. The Board thus pressures students to stand and sing the anthem.(2)

9. Coercion on ordinary citizens

In the case of Itabashi High School Graduation Ceremony, a citizen who expressed his opposition against the coercion before the ceremony started was convicted of "forcible obstruction of business". The penalty has had serious chilling effects on those who are opposed to the coercion of worshipping of the national symbols.

10. The national symbols used as tools of state control of education

Control by the government over education is being intensified. In the revision of the textbook screening standards in 2014, it was made obligatory to describe governmental opinions on historical or territorial issues. Raising of the flag and singing of the anthem at ceremonies are now strongly required of the national universities and preschool institutions.

D. The attitudes of administrative organs toward para 22

11. Although several NGOs have requested the administrative bodies concerned to implement para 22, all of them have evaded to take responsibility for addressing the recommendation.
 - (1) Tokyo Board of Education denies the obligation of local governments to observe the CCPR. An official answered, “We are not in the position to answer the questions regarding the international treaties, which the state ratified.
 - (2) Ministry of Education, Culture, Sports, Science and Technology denies that para 22 is within their jurisdiction. Ministry of Foreign Affairs and Ministry of Justice take similar attitudes.

E. Japanese courts allow human rights restrictions exceeding those permissible under the Covenant on grounds of “public welfare”.

12. In the Supreme Court decision cited by the government (CCPR/C/JPN/Q6/Add.1 para 187~190), although the phrase “public welfare” itself is not used, very similar concepts such as “preservation of order”, “smooth progress of ceremonies” or “rituals of the ceremony” are used as general and comprehensive concepts to allow human rights restrictions.
13. There are other decisions in which the concept of “public welfare” was used to justify restrictions of freedom of expression. In two cases the Supreme Court convicted ordinary citizens of “trespassing” for posting political leaflets in the mailboxes of the residence for Self Defense Force personnel or of a private apartment house.

F. Questions to be included in the List of Issues

14. Please **comment** on the report that in the “Recurrence Prevention Seminar” imposed on those who refused to stand to sing the national anthem, the trainees are forced to disclose or change their historical views, world views and educational beliefs
15. Please explain the stance of the government of the State Party on the obligation of the local governments to comply with international treaties or recommendations.
16. Please **comment** on the report that Japanese courts have failed to apply strict conditions set out in the Covenant in judging restrictions on the fundamental freedoms including the forced worship of the national symbols

Notes

- (1) Courtroom presentation by one of the plaintiffs
<http://wind.ap.teacup.com/people/html/2017628rps.pdf>
- (2) Other cases of coercion on students are reported in the title of “Human Rights Infringements Against Students” in pp 60 ~62 of *PARALLEL REPORT FOR THE CONSIDERATION OF THE 6th PERIODIC REPORT OF THE GOVERNMENT OF JAPAN SUBMITTED TO THE HUMAN RIGHTS COMMITTEE* by JAPANESE WORKERS’ COMMITTEE FOR HUMAN RIGHTS (JWCHR).
http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CC_PR_NGO_JPN_14885_E.pdf

5. Issue of “Rising-Sun Flag and Kimigayo (Articles 18 and 24)

A. Proposal for the List of Issues

We propose that the Committee ask the Japanese Government the following questions.

It is reported that Tokyo Metropolitan Board of Education violates the rights of children with disabilities at commencement ceremonies etc. The Committee asks for the State Party’s opinions about such violation of rights.

1. Violation of rights of freedom of thought and conscience (violation of Article 18)
2. Violation of living in good health and safety (Articles 2, 16 and 24)
3. Violation of freedom of movement, or that of “reasonable accommodation” (Articles 2, 24 and 26)

B. Government’s Response to Recommendations of the Committee

Concerning CCPR/C/JPN/CO/5, Para.17, the Japanese Government reported the parts of court ruling which was advantageous to itself. It did not mention Paragraph 17 in any way during the 111th Session. It gave no response to the indication of violation of human rights among children.

Concerning CCCP/C/JPN/CO/6, Para.22, we negotiated with Ministries of Education, Culture, Sports, Science and Technology; of Foreign Affairs; and of Justice four times, and sent written inquiries to them seven times in 2015. The Government replied that the issue of “Rising-Sun Flag and Kimigayo” does not concern Paragraph 22 of the Recommendation, and therefore would not work on reducing violation at all.

C. Human rights violation by Tokyo Metropolitan Board of Education at ceremonies etc. including Commencement continues

Violation of Articles 18, 2, 16, 24 and 26.

C-1 Continued and strengthened orders to teaching staff to stand up for the national flag and sing the national anthem with more punishments for those who rejected them

The number of those punished is 480 (as of April 2017). Violation of Article 18.

C-2 Continued violation of human rights of children with disabilities by Tokyo Metropolitan Board of Education

Violation of Articles 18, 2, 16, 24 and 26.

C-2-(1) Violation of Article 18

Children are forced to stand up by physical violence such as lifting hips and mental pressure. Violation of Articles 18, 2, 16, 24 and 26.

Also violation of Articles 12, 13, 14 and 29 of Convention on the Rights of the Child; and of Articles 7, 21 and 24 of Convention on the Rights of Persons with Disabilities

C-2-(2) Violation of Articles 2, 16, 24

While the teaching staff are compelled to stand up and sing “Kimigayo,” the children are deprived of rights to live in good health and safety. Children cannot be taken care of even when their respirators signal for emergency, or go out of the room to wash their hands, because the staff are not available. Violation of Articles 3, 23 and 24 of Convention on the Rights of the Child; and of Articles 7, 10, 17, 24 and 25 of Convention on the Rights of Persons with Disabilities.

C-2-(3) Violation of Articles 2, 24 and 26

For children with disabilities to move on their own operating their wheelchairs, a flat, wheelchair-accessible floor is necessary. However, using such a floor for ceremonies has been forbidden since the 10.23 Directive. Reasonable attention to disabilities has been prohibited; as a result, disabled children cannot move around on their own. Their dignity is harmed. Violation of Articles 2, 5, 23, 28 and 29 of Convention on the Rights of the Child; and of Articles 12, 14, 20 and 24 of Convention on the Rights of Persons with Disabilities.

D. Background of the Problems

What is equivalent to Swastika of Nazis in Japan is the “Rising-Sun” flag. The Japanese Government has not abandoned the symbol of invasive war—it and Kimigayo the national anthem—but continued using it even after the defeat in war. There has been tenacious opposition to such an attitude in and out of the country because it is thought to obscure the war responsibility. However, the Government has not changed its insistence. Through school education it has imposed acts of expressing respect for “Rising-Sun flag and Kimigayo” on children and teaching staff. Especially in Metropolitan Tokyo, 10.23 Directive and Implementation Guidelines were issued in the reign of right-wing Governor Ishihara in 2003, which ordered to change the commencement style from that of children-centered to national-flag-and-anthem-centered one. It has caused problems in issues of children with disabilities in particular.

E. Proposal for Recommendation paragraphs

The Committee recognizes and is deeply worried that the 10.23 Directive and accompanying guidelines issued by Tokyo Board of Education are giving serious damages to teaching staff and children, and those with disabilities, in particular.

The Committee recommends that the State Party take necessary measures to rectify the situation immediately.

5 (2) Issue of “Sex Education” (Articles 2, 3 and 24)

A. Proposal for the List of Issues

We propose that the Committee ask the Japanese Government the following questions.

<p>It is reported that the Government of Japan and Tokyo Board of Education do not guarantee children opportunities to learn human rights, gender and sexuality in a comprehensive way. The Committee requests the State Party’s opinions about such violation of rights. Violation of Article 24.</p>
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B. Recommendations from the Committee and the Japanese Government’s Response

The Government has not taken any measure to carry out recommendations contained in “CCCP/C/JPN/CO/6. Para.8,9,10,11” dated July 2014.

C. Human rights violation under way (Violation of Articles 2, 3 and 24 of the Covenant)

Children are not guaranteed opportunities to learn sexuality as human rights, sexuality as a scientific discipline. Especially children with disabilities are often denied even their interest in sexual matter itself, since there is widely held frustration in Japan that “it is better not to let children with disabilities be interested in sexuality.” Hence, to give them necessary comprehensive sex education is an urgent matter.

D. Background of the Problems

The back-lush against gender and sexuality awareness which had started in the late 1990s became more powerful in the next decade; it came to attack “sex education” programs at schools. The back-lush at Nanao Special School which occurred in 2003 is a symbolical incident. Tokyo Board of Education staff and some of Tokyo Metropolitan Assembly members confiscated teaching materials and the teachers concerned were punished, leading to near-extinction of sex education practices at schools. Parents and teachers involved in the practices filed complaints at courts and won, but teaching staff tend to cower, and there remain virtually no practices of sex education at schools these days.

E. Proposals for the Recommendations

The Committee recommends that the State Party make sure that “school curricula include health education about gender and sexuality and that adolescent children are duly informed of rights to health, sex and reproduction including information about prevention of sexually transmitted diseases including HIV/AIDS and teenage pregnancy in the framework of school education.”

6. Request to Explicitly State the Coercion of Reverence to the Flag Hinomaru and the Anthem Kimigayo as the very Problem of Concern (Article 18)

A Points of Request toward CCPR/C/JNP/CO/7

- (1) Reiterating its previous concluding observations (**Recom. 22 of CCPR/C/JNP/CO/6**), the Committee would clarify the inclusion of “the Coercion of Reverence to the Flag Hinomaru and the Anthem Kimigayo” in the implied ‘imposition of restrictions on the rights of freedom of thought, conscience and religion’ by explicitly stating it as a case of its concern violating Articles 18 and 19
- (2) The Committee would strongly urge the unwilling Japanese government violating Articles 2 and 40 to sincerely try to understand the implication of **Recom. 22 of CCPR/C/JNP/CO/6** and deal accordingly with respect.

B Concerns and Recommendations of the Human Rights Committee

The Committee recalls its previous concluding observations (see CCPR/C/JPN/CO/5, para. 10) and urges the State party to refrain from imposing any restriction on the rights to freedom of thought, conscience and religion or freedom of expression unless they fulfill the strict conditions set out in paragraph 3 of articles 18 and 19.

(CCCP/C/JPN/CO/6. Para.22)

C The Response of the Japanese Government

- (1) The Ministry of Foreign Affairs acting as Japan’s liaison office to the UN made a response as follows to the question asked by the executive committee made up of 17 civil groups.

Ques. On Recom. 22 of **CCPR/C/JNP/CO/6** (July, 2014)

While admitting that it’s the first time for the Japanese government to receive a recommendation on the rights to freedom of thought, conscience and religion or freedom of expression, hasn’t the government checked up what human rights violative situation/incidents in Japan led to the drawing up of Recom.22?

Ans. As we are aware that the Human Rights Committee, when it examines the government report of the target country, collects opinions from far and wide on the human rights situations in that country, we refrain from speculating on the information source which induced the Committee to draw up this Recom. 22. Anyway the ministry, upon receiving the concluding observations including Recom.22, has distributed the documents together with their provisional Japanese translations to relevant governmental departments/agencies and local governments requesting them to disseminate the documents and to utilize them as references when they try to implement policies for the protection and enhancement of human rights. (written response dated Sept. 7th, 2015)

- (2) The Ministry of Education, Culture, Sports, Science and Technology, which is the very department that has virtually been coercing the reverence to the Flag Hinomaru and the Anthem Kimigayo responded as follows to the same question as in (1) on Recom.22

Ans. We cannot judge from the concluding observations whether or not the Committee’s concern is about the coercion of reverence to the Hinomaru & Kimigayo and the punishment of the school staff disobeying the coercion. (written response dated Jan.13th, 2015)

- (3) The Japanese government had reached a cabinet decision that the recommendation directed in 2014 from the Committee against Torture is not obligatory and need not be dealt with. The Japanese government, when distributing the copies of the concluding observations to relevant departments/agencies or local governments, showed its unwillingness by spelling out “Not legally binding” on the cover page.
- (4) In Kanagawa, we had a negotiation with the Kanagawa Board of Education toward implementing the recommendation and found out that it was barely ‘disseminated,’ with only a few sections knowing its existence and the very section ‘in charge of the coercion of reverence to Hinomaru and Kimigayo’ getting to know its

existence and what the recommendation implied only at our mentioning. Even after their acknowledgment, the Board declared its stance as of not letting the schools know about Recom.22.

D Our Views

- (1) The names of the school staff who refused to stand-up at Kimigayo singing-in-unison have been collected by the Kanagawa Board of Education ever since 2008, with no change in its stance seen even after the publication of the 2014 concluding observations. The coercion of reverence to Himomaru and Kimigayo is still in tact, forbidding schools to announce to the attendees “the freedom of not standing-up” prior to the ceremony and reprimanding after the ceremony those who didn’t stand-up.
- (2) Toward the **CCPR/C/JNP/CO/6**, several NGO’s had sent in reports on cases of coercion of standing-up and singing-in-unison of Kimigayo and the outrageous punishment thereafter of those who refused to do so. There being no other appeals pertaining to the restrictions on the rights to freedom of thought, conscience and religion, it’s only natural for us to think that Recom.22 clearly includes the issue of the Hinomaru and Kimigayo coercion.
- (3) The Japan Federation of Bar Associations said that it welcomed the Committee’s reference not only to Article 19 but also to Article 18, which can be understood as a result of its consideration of the appealing reports from several civil groups about the severe punishment suffered by those who disobeyed ‘work orders’ demanding reverence to Kimigayo and Hinomaru by standing-up and singing-in-unison at school ceremonies.
- (4) In spite of the facts given above (1,2,3,4), the government keeps saying it has no idea what information led to the recommendation referring to the restrictions on the rights to freedom of thought, conscience and religion and that it cannot judge from the concluding observations whether or not the Committee ‘s concern is about the coercion of reverence to the Hinomaru & Kimigayo and the punishment of the school staff disobeying the coercion, just because it has not explicitly put down so. This stance of the government is an outrageous negligence of the Committee’s recommendation.
- (5) The government, on the other hand, does say, “After our thorough consideration of the contents of the recommendation, we will deal with it appropriately.” However we can’t possibly expect it to “deal appropriately,” when it doesn’t even try to understand why it had been recommended thus.
- (6) The irresponsibly negligent stance of the Japanese government is far from what is expected of a country which has ratified the Covenant of Human Rights.

E Conclusion

We request the Committee to ask the following in the List of Issues and Questions toward the CCPR/C/JNP/CO/7

- (1) Why hasn’t the Japanese government taken any action while it was urged to do so in Recom.22 of the CCPR/C/JNP/CO/6? Is there anything not clear or incomprehensible in Recom. 22?**
- (2) Has the Japanese government made any effort to let the schools and children know of Recom.22 which is vitally relevant to education?**

7. Restore honor of victims dismissed by Red Purge while alive!

Yutaka Ohashi aged 87 is a citizen in Kobe who has submitted parallel reports for the 5th and 6th consideration of the periodic reports of Japan, asking for the restoration of honor for the Red Purge victims.

On 1 June 1944, he entered Muramatsu Army Boy Communication School. As the entire Imperial Army was choosing death rather than surrender in the islands of Attu and Guam, the school principal instructed every morning the pupils to “absolutely go to battlefields.” But no one raised a hand. Finally he reluctantly agreed to volunteer for military service as he also gave instructions to the pupils.

On 15 August 1945, they heard the radio broadcast announcing the end of the war, standing all in a row by presenting arms at a shining schoolyard.

In November 1945, he entered the regular course of the Communication Training School in Kyoto by the introduction of the army. As the head of the family of five members, all he had to do was to send a half of wages to his family. After having worked as telecommunication operator at some post offices in Hyogo for a year, he could move up to the upper-class of the Training School by the recommendation of the chief of the post office.

After the end of the war, following the establishment of the National Federation of Students’ Self-Government Associations in Kyoto, the student association was organized at the Training School. And he participated in Society for the Study of Social Science and found for the first time that the existence of socialism and poverty and war, which have been a matter of his concern, are produced by capitalism.

Various events such as 2.1 General Strike in 1947 and a great number of successful candidates of the Communist party at the general election in 1949, led labor movement to a glorious era. However, losing his father and his brother’ death in battle, he could not participated in this movement because of heavy burden of responsibility for the life of his family.

In July 1949, he joined the Japanese Communist Party and was elected as executive member of the Kobe branch of Japan Postal Workers’ Union.

On 29 August 1950, the Director of Kobe Central Post Office gave him dismissal notice based on the violation against National Public Service Act by saying that “I am very sorry that you have a big family.”

After the acceptance of the Potsdam Declaration, it was UN forces, namely U.S. forces that carried out the occupation policies.

Red Purge was substantially practiced on the basis of the announcement of General MacArthur and the cabinet decision regarding “expelling communists and their sympathizers from public service” by the third Yoshida cabinet in May 1950.

The Supreme Court rejected the appeal for state compensation suit by super-constitutional decision in April 2013, and turned down the third retrial appeal on 22 June 2016.

We strongly demand a recommendation by the Human Rights Committee that the Government of Japan should relieve the Red Purge victims as early as possible, complying with Article 18, 19, 22 and 26 of the ICCPR.

8. JFPWU Requests the Committee to Recommend the Government of Japan to Improve the Textbook Approval System (Article 19)

1. The Textbook Approval System constitutes an infringement on Article 19 of the Covenant as described below. The Japan Federation of Publishing Workers' Unions (JFPWU), therefore, requests the Human Rights Committee to recommend the Government of Japan to improve its textbook approval system.

2. The School Education Act provides for the duty for school teachers to use, in their classrooms, the textbooks approved in the name of the Minister of Education, Culture, Sports, Science, and Technology. The contents of these textbooks shall satisfy the Course of Study (National Curricula, which the Ministry of Education, Culture, Sports, Science, and Technology (MEXT, hereafter) alleges has legal bind.), its Commentary (an interpretation of the Course of Study by the MEXT), the Criteria on the Textbook Screening and its detailed regulations for enforcement.

3. The Textbook Experts, regular staff of the MEXT and the Textbook Approval and Research Council deliberate the contents of the textbooks and judge acceptance or rejection, which means that the Government can control the contents of the textbooks directly. In social studies the grip of the contents by the Government is especially severe: the publishers concerned are forced to describe historical events (especially those in modern history) including the "comfort women," which the Government insists has been settled legally, in accordance with the "unified views of the Government" on historical events. The targets include "comfort women" or the sexual slavery by the Japanese Imperial Army, the number of the victims of the Nanking massacre, and the territories with neighbour countries.

4. Once a textbook is rejected, it is impossible to publish it as such. Though the Government admitted that the textbook approval system limits the freedom as provided for in Article 19 of the International Covenant on Civil and Political Freedom in its 4th (CCPR/C/115/Add.3, paras 176-177) and 5th (CCPR/C/JPN/5, paras 310-312) reports to the Human Rights Committee, it has alleged the system is necessary in order to secure the quality of education, etc. and justified it, stating that it is not prohibited to market the book in concern (*ibid.*). Since the publishers, however, prepare the book as a school textbook and it is impossible to do, the Government's allegation leads to a violation of the freedom as stipulated in Article 19. In its 6th periodic report the Government deleted the description of the textbook system though there was no change or improvement of the situation (CCPR/C/JPN/6).

5. "Morality as the Special Subject" is scheduled to be introduced into elementary schools in 2018 and into secondary schools in 2019. This new subjects may violate the freedom of children's inward thoughts as a considerable number of pedagogists are so concerned. In December 2014, the Japan Federation of Bar Associations (JFBA) submitted to the Minister of the MEXT a written opinion that criticized the contents of the MSS. The JFPWU shares the anxiety of the JFBA because the textbooks will be used as the strongest tool to implant the morality that the Government thinks is right and justifiable.

6. Mr David Kaye, Special Rapporteur of the Human Rights Council on the promotion and protection of the right to freedom of opinion and expression, says in his report on Japan (A/HRC/35/22/Add.1) that "Concerns were also reported [by preceding rapporteurs] on the alleged influence by authorities in the preparation of school textbooks relating to historical events, in particular Japan's participation in the Second World War and the issue of comfort women. In recent years, a number of human rights mechanisms have addressed their concern on Japan's limited recognition of the issue of comfort women in Japan." (para37). They include the Human Rights Committee (CCPR/C/JPN/CO/6) and five other UN organisations related to human rights. He points out the Government's interference in history education and textbooks and "calls upon the Government to refrain from interfering in the interpretation of historical events in educational materials and support efforts to inform the public on these serious crimes, paying particular attention to events related to Japan's involvement in the Second World War." (para69).

7. The JFPWR welcomes the report of the Special Rapporteur and strongly requests that the Human Rights Committee admit that the Japanese textbook system infringes on Article 19 of the Covenant and recommend that the Government of Japan should change the textbook approval system.

9. Toward the prompt guarantee of firefighters' right to organize

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

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

A. Points at Issue

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

B. Recommendations and Concerns from the Human Rights Committee

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

C. Japanese Government's Response

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

The Japanese Government ratified the 87th Convention of ILO in 1965. At that time, since the Government made its ratification without guaranteeing firefighters' right to organize in Japan, the problem still remains. The Article 9 of the 87th Convention stipulates as follows:

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

When the Japanese Government ratified International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights in 1979, it made a declaration of interpretation as follows:

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

(2) The Sixth Periodic Report of the Japanese Government and Proceedings Thereafter

In the "Sixth periodic report of States parties (Japan)," the issue of guaranteeing the firefighters' right to organize is described as follows:

Japan declared in 1978 that the term “police” referred to in article 22, paragraph 2 of the Covenant should be interpreted as including the fire service in Japan. As a solution capable of reaching national consensus on the issues concerning the right to organize of fire defence personnel, the Government introduced a system using the Fire Defence Personnel Committee in 1995. In order to improve the operation of this system, the Ministry of Internal Affairs and Communications (MIC), the Fire and Disaster Management Agency, and the All-Japan Prefectural and Municipal Workers Union (JICHIRO) discussed and agreed to modify this system to establish Liaison Facilitator system in 2005.

Subsequently, the “Committee on the right to organize of Fire Defence Personnel” was set up under MIC in January 2010. Based on opinions from both labour leadership and management representatives and interviews with relevant organizations, the Committee prepared a report in December 2010.

At a hearing of “Committee on the right to organize of Fire Defence Personnel” held at Ministry of Public Management, Home Affairs, Posts and Telecommunications on May 21, 2010, the President of Firefighters Network in Japan made a speech on problems happening at fire services nationwide, and requested for recovering firefighters’ right to organize as soon as possible.

In 2012, the Japanese Government made it clear that it would eliminate the Fire Defence Personnel Committee and that rights to organize and to bargain collectively would be guaranteed to firefighters. On November 11 of the same year, the bill to simply give firefighters right to organize was submitted to the Diet. However, because the House of Representatives was dissolved the next day, the bill has never been discussed.

D. Opinions

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

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

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

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

E. Conclusions (Proposals for Solution)

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

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

10. Pursuant to Article 22 of ICCPR, the Japanese government and JAL should hold actual negotiations with the labor unions in order to settle the dismissal issue.

On 31 December 2010, Japan Airlines (JAL) dismissed, by the reason of bankruptcy, 81 pilots and 84 cabin attendants on the basis of age and medical history of the defined period. This dismissal has not been settled.

In February 2015, the Supreme Court made an effective decision for the dismissal with unprecedented speed. Meanwhile, for the other case that the company interfered by a lie and a threat with the voting for the right to strike carried out by the labor unions, which wished to avoid the dismissal and to secure negotiations with the company based on the equality of the two parties, the Supreme Court, on 23 September 2016, gave a decision of unfair labor practice which was in violation of Article 28 of the Constitution of Japan and of Article 7 of the Labor Union Law, severely condemning the company. As a result, it became clear that the dismissal was unlawfully carried out by the company and it had no justice.

JAL has neglected following remarks, “this issue should be settled by the labor and the management independently,” described by the Ministers of Land, Infrastructure and Transport; of Health, Labor and Welfare at the Diet and the recommendation, “the company should take specific actions to sincerely negotiate with the workers,” expressed three times by ILO. The Japan Airlines Flight Crew Unions and the Cabin Crew Union which decided to submit a collective requirement, have been requesting that the company hold negotiations in order to settle this issue. However, JAL substantially continues to refuse the holding of negotiations with the unions toward the settlement of the dismissal.

Such attitude cannot be respected for the airline, which transports precious lives of human beings, not to obey the law and even to ignore the recommendations expressed by ILO. Discharging the workers on the ground of their age and medical history is in violation of the Universal Declaration of Human Rights and the Human Rights Covenant. It is a shameful attitude for the global airline.

A favorable JAL’s financial situation continues to gain tremendous profits reaching about 200 billion yen annually. The JAL management recruited new pilots and restarted training them, and newly employed more than 3,600 cabin attendants before rehiring even one of the dismissed workers.

Pursuant to Article 22 of the ICCPR, we strongly request a recommendation by the Committee that the Japanese government and JAL hold actual negotiations with the labor unions in order to settle this issue.