

THE JAPANESE WORKERS' COMMITTEE FOR HUMAN RIGHTS - JWCHR

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Joint Report

Improve the Low Level of Human Rights in Japan to the International Level!

JWCHR report April, 2012 for the 2nd UPR of Japan

Jointly prepared by the Japanese Workers' Committee for Human Rights (JWCHR) and the Organization to Support the Lawsuits for Freedom of Education in Tokyo

JWCHR submitted a report for the first review of Japan by UPR, where two of our members participated in the working session to watch the progress. On that occasion, UPR secretariat kindly distributed all the reports submitted by 23 Japanese NGOs, to which we would like to express our deep respect for their hard work. We are also grateful to those member states of the Human Rights Council who, despite their close political and economical relation with the Government of Japan, reviewed the NGO reports and offered appropriated recommendations. However, it is regrettable that the Government of Japan does not make meaningful efforts to improve the situation nor to heed the recommendations.

JWCHR submit our report to the second UPR of Japan including some additional information.

The Government has not taken measures to correct the situation over a long period of time on the matters recommended by various Governments in connection with relevant human rights conventions and treaties.

1. The Government of Japan downgraded the main concerns and recommendations on the state report and failed to make efforts for the improvement.

The recommendations and concerns are shown in the following documents.

(1) CE/C.12/1/Add.67 dated August 31, 2001

(2) CAT/C/JPN/CO/1 dated May 18, 2007

(3) A/HRC/8/44 dated September 2008

- (4) CCPR/C/JPN/CO/5 dated October 30, 2008
- (5) CEDAW/C/JPN/CO/6 dated August 18, 2009
- (6) CRC/C/JPN/CO13 dated June 11, 2010

The above six documents contains concerns and recommendations by human right treaty bodies and human rights council during the past decade.

While some recommendations overlap each other, they cover wide varieties of human rights conditions in Japan. Those recommendations reflect frustration, grievances and plight on the part of Japanese people, who have been appealing to the Government for correction or improvement every year. However, Government did not implement the recommended measures in compliance with those recommendations nor did it attempt to make efforts for improvements.

Although all those recommendations are reported to relevant administrative agencies, they are treated as pieces of information. There is no administrative agency which is in a position to make overall evaluation so as to implement appropriate measures. Sometimes, diet members ask questions on certain matters at diet sessions. An official repeat the same statement of the Government at the session of Human Rights Councils. The Government needs to have a special agency which specializes in reviewing concerns and recommendations received from UN human right treaty bodies as well as enacting necessary domestic legislations.

Japan had the honor of being chosen as one of the first members of the Human Rights Council. Japan owes the international community respect and implementation of their recommendations with sincerity. It is important to verify what Japan has done to fulfill its responsibility based on the facts. Moreover, it is even more important to find out the obstacles to the implementation of remedies are.

2. Reserved Articles of the Covenant

(1) Progressive introduction of free education in secondary and higher education

The Japanese government which had reserved Article 13-2(b)(c) of the Covenant stipulating the progressive introduction of free education in secondary and higher education, declared to retract the reservation of the Article by the answer in the Diet on February 9, 2012. In the situation where it was only Madagascar and Japan that had been continuing the “reservation” among the States, which have ratified the Covenant, it is too late but can be evaluated. The urgent task is to take a step toward the introduction of free school tuition. The rate of public expenditure of the GDP on educational expenses is 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. Such situation of high education costs should be improved. We request those concerned to approach the Japanese government so that it may guarantee “the right to education,” realize “equal educational

opportunities”, and perform its international duty suitable for its economic power.

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.

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.”

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.

(2) CESCR Article 7 d.(d) remuneration for public holidays

The Government suspended the provision by the reason that private industries are not accustomed to paying the wages for public holidays in Japan. By that statement the Government refuses to implement the part of an international covenant. Rights provided in human-rights covenants are made so that each state can establish and improve the situation of rights along this line. If each state is allowed to give priority to domestic custom over the provisions of the international covenants, member states will eventually interpret the covenant as freely as they like. Canonicity of the international covenants will be lost, so will be the effectiveness of human-rights covenants. U.N. human-rights covenants which are international treaties, are the goals that every country should make efforts toward implementation and realization by PR activities and yearly plans in that direction.

(3) Article 8.1 d, the right to strike

The Japanese government has reserved the right to strike and deprived public servants of their right to strike.

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. The 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." All 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.

(4) Toward the guarantee of firefighters' right to organize--in relation to the Article 8.2

As long as the Article 8.2 of the Covenant, the representative of the Government reiterated its explanatory declaration that 'the police' include the fire service of Japan and has not yet implemented this Article. However, there is no legal ground in Japan that firefighters are members of the police force. 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 and totally different function from the right to strike. Moreover, there are some problems inherent in the Commission system. 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. The Japanese Government should withdraw its explanatory declaration as soon as possible.

3. The Government does not keep public promises-Individual communication procedure, national human rights agency and visualization of police investigation.

In the first UPR session, Japan was advised to accept the recommendations on the establishment of national human rights agency and individual communications procedure. The Democratic Party won the election and took power in 2009. In the election campaign, they made public promises on the establishment of national human rights agency, introduction of individual communication procedures and visualization of police investigations.

The new Minister of Justice declared the firm commitment to the realization at the press interview and set up the "the section for the implementation of human-rights-treaties" in the Ministry of Foreign Affairs. But after that, things stopped moving at all. Rather, things seem going backward.

The Fukawa incident is a well-known case of false accusation in which the accused was finally acquitted in May, 2011, after the retrial. Unfortunately, Japan produces frequent cases of false charge. Even now there are many cases which have been ordered to be retried and many convicts who are demanding their retrial. The cause of false accusation rests with the methods of police investigations. By treating suspects brutally, the police squeeze false confessions out of the suspects while they hide favorable evidences for the suspects. The police are determined to convict the suspects by all means.

Therefore, it is absolutely necessary to implement complete visualization of police investigation.

Moreover, early establishment of the individual communication procedure is necessary for those whose human rights were violated but whose damages are not relieved by legal procedures at the national level so that they can complain to the U.N. human rights organization directly.

4. 3.11 East Japan Great Earthquake and Nuclear Power Plant Accidents – inadmissible to resuming dangerous operation of nuclear power plants

The Government should keep in mind concerns and recommendations of the CESCRC expressed ten years ago and 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. 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. We strongly protest against the Government and electric power companies which plan to resume dangerous operation of nuclear power plants without safety measures. The Government needs to phase out nuclear energy generation and to find safe and sustainable alternative energy source.

5. Workers' Rights and Working Conditions

Japanese society is being threatened by destructive employment practice as a whole especially the youth, and women of all ages. Regular workers are being replaced irregular workers which now exceed one third of the labor force. Irregular workers are those who work with fixed term contract, or short term employment or dispatched workers (indirect employment). Ambiguity of employers' responsibility is an element common to all types of irregular employment. Even if an irregular worker is doing the same work as a regular employee, his wage is extremely low and he has to renew his contract many times without pay raise. The practice has produced increasing number of working poor in Japan. He will be dismissed or his contract will be terminated anytime his employer wants it.

On the other hand, regular workers also are forced to overwork for prolonged time, which resulted in the increasing number of karoshi (fatigue death) and suicide. The Government promotes such inhumane practice, casual dismissal, and low wages by legalizing them by making the Temporary Staff Services Law worse under the pressure of big industries and it poses a serious problem to the entire Japanese society. Low levels of employment relationship as well as wage standards accompanied by deprivation of workers' rights are taking place in Japan, which may be unimaginable in the eyes of

developed countries of the west. Even if the dismissed irregular worker takes a case to the court, the Supreme Court rules in favor of an employer by looking at the text of the paper contract on the surface. Such ruling has also affected the judgment of lower courts.

Article 98 of the Japanese constitution says, "The treaties concluded by Japan and established laws of nations shall be faithfully observed." So Japan has to observe the provisions of CESC, CCPR as well as CAT and CEDAW because Japan ratified them. But the Japanese justice system disregards the international codes. Judges have hardly quoted the provisions of international treaties in their rulings. We call for a strong recommendation that the Government and the Judiciary respect international standards of workers' rights as well as working conditions.

6. Freedom of Expression

In relation to the above right to strike which national public employees are not allowed to exercise, there is a pending case of "National Public Service Law Crackdown Case" at the Supreme Court of Justice.

This is a case in which security police officer followed a national public employee who handed out flyers in the neighborhood of his home and arrested him on the charge of violation of National Public Service Act. The law prohibits all political activities of public employees.

Moreover, the Public Offices Election Law severely restricts freedom of expression, so that it is called "Don't do anything election." In 2008 CPRC recommended, "The State party should repeal any unreasonable restrictions on freedom of expression and on the right to take part in the conduct of public affairs from its legislation."

The Government needs to heed external advice in and out of the country and needs to make a step forward for improvement.

7. Neglect of extraordinarily long hours of work - Fatigue death and suicide remain on the high level

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

①Karoshi(caused by CVD·ischemia)			②Mental 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.

What the government and industries should do now is as follows,

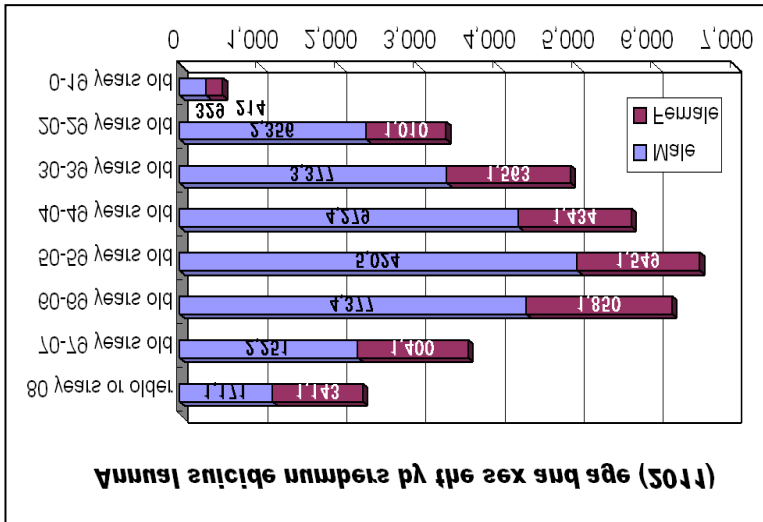
- (1) The State should declare that Karoshi should not take place.
- (2) In order to eradicate Karoshi, identify and establish the responsibilities of the State, local governments and business proprietors.
- (3) The State must implement comprehensive measures along with investigation and research on overwork- related death.
- (4) Earliest possible enactment of "Karoshi Prevention Act"
- (5) New legislation to control overtime-work-hours and stricter penalties to violator industries
- (6) Tighten supervision and guidance of administration to make sure that all industries comply with law and regulations.

8. The number of suicide victims has soared to more than 30,000 per year for 14 years in a row in Japan.

The number of more than 30,000 victims per year means that there are about 80 persons who commit suicide everyday. As a result, the total number of the victims for 14 years reaches more than 400,000, which is equal to the number of some big city. Compared with Western countries, its rate of suicide is ranked higher even among the members of the OECD.

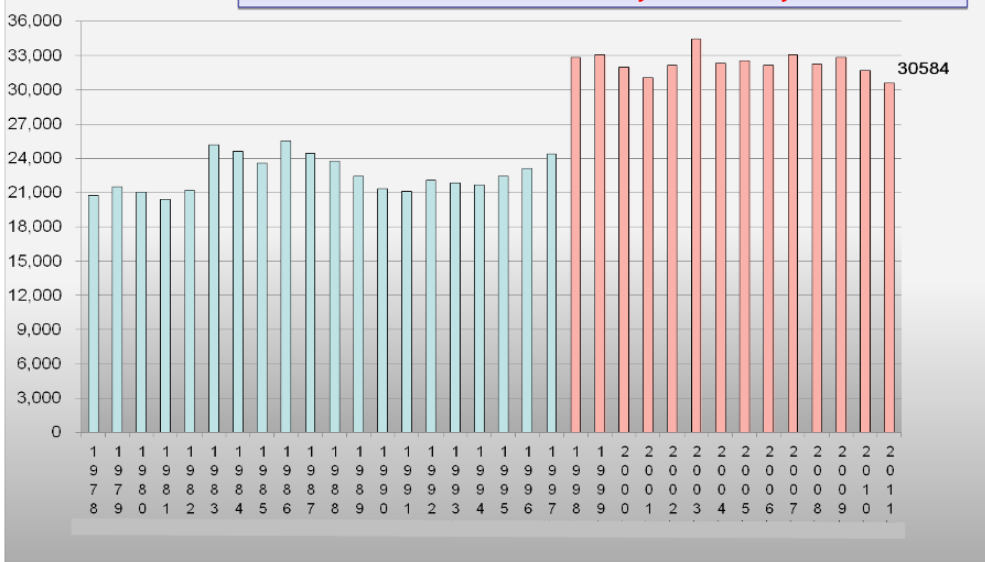
In Japan, the Basic Law on Anti-Suicide was enacted, but the national and local governments do not

take enough prevention measures, which should be taken seriously and comprehensively. 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.



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

9. Resolve the So-Called Comfort Women Issue

Now in Japan, Political power has been transferred to Democratic Party as the result of general election. The party listed the settlement of the comfort women in election manifesto. Yet, the issue has not been settled in spite of international outcry.

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.

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 in 2008.

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.

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.

Report of the Organization to Support the Lawsuits for Freedom of Education in Tokyo

10. Coercion of National Flag and Anthem (*Hinomaru & Kimigayo*) at public schools in Tokyo

We report the human rights violations taking place at public schools in Tokyo, and request the Human Rights Council to urge the government of Japan to respect the recommendations made in paragraph 60 of the Conclusions and/or Recommendations of UPR (May 2008), and to immediately ratify the First Optional Protocol to the International Covenant on Civil and Political Rights.

Since October 2003, the Tokyo Board of Education has continued to issue an order of duty to every teacher and school staff of public schools in Tokyo ordering to stand up facing the national flag and sing the national anthem at school events such as entrance or graduation ceremonies. The Board has punished repeatedly and accumulatively those who disobeyed the order. The total number of the punished teachers and staff has amounted to 440 as of March 2012. More than 20 lawsuits have been filed against the coercion, and the Supreme Court decisions have been given in 11 cases so far. The Court ruled that the order of duty and part of the punishments are constitutional.

The Supreme Court argued that while the order by the public authority to stand up facing the flag and sing the anthem constitutes “indirect restriction” of thought and conscience because the act expresses an element of respect for the symbols, it does not constitute “direct restriction” because the act is “ritual behavior.” Then it ruled that the order of duty does not violate the freedom of thought and conscience (guaranteed in Article 19 of the Constitution of Japan), for the order of duty is necessary and rational to keep the order of the ceremony.

However, it justified the restrictions of human rights by public authority without judging in the light of the provisions on human rights restriction in the ICCPR. The order by public authority to stand up toward the national flag Hinomaru and sing the national anthem Kimigayo should be considered as a violation of the ICCPR if it involves punishments in case of disobedience, in the light of the conditions for restriction of human rights stated in articles 18(3) and 19(3) of the Covenant.

In addition, in paragraph 38 of the latest “General Comment 34 on article 19 of the ICCPR (Freedoms of opinion and expression)” adopted on July 21th, 2011 states that forbidding or punishing disrespect of flag and symbols is against section 3 of article 19 of the ICCPR.

Furthermore, Japan has repeatedly been given concerns and recommendations by the Human Rights Committee in considerations of periodic reports, regarding the restrictions of individual’s human rights in the name of “public welfare” (e.g. paragraph 10 of the Concluding Observations on Fifth Periodic Report by Japanese Government, 2008)).

In short, the judgments by the Supreme Court were made without appropriate application of the Covenant, which constitutes a breach of international duties.

Meanwhile violations of human rights are escalating at schools, and coercion of the national flag and anthem is being imposed not only on teachers but also on students. For example, when many students remained seated during the singing of the anthem, the homeroom teachers were punished.

Some teachers were also punished for explaining before the ceremony that freedom of thought is guaranteed and that the attendees have the right to choose whether or not to sing the anthem. The number of those teachers amounted to 67 in the first year alone that the directive was issued. At High School A, the vice principal put his hand on the shoulder of the sitting students to let them stand up. At High School B, when the student body held a discussion session on “The National Flag and Anthem,” the teachers who attended the session including the school administrators were punished

The control of education by uniform, top-down instructions described above is not confined to entrance and graduation ceremonies, but is affecting daily educational activities as a whole. Flexibility has been lost at schools, the diversity in values and thoughts are not respected, and teachers as well as students are being graded on a single value system.

The same situation as in Tokyo is being accelerated in Osaka. After the first Supreme Court decision (May 30th, 2011), the “*Kimigayo* Ordinance”, which obliges teachers to stand up and sing *Kimigayo* the national anthem at school ceremonies, was enacted in Osaka Prefecture, followed by the “Fundamental Ordinance on Civil Servants” (March 23rd, 2012), which stipulates that a public servant shall be fired if he/she disobeys the same order of duty three times. The situation has reached the stage where teachers’ rights to freedoms of thought and conscience and of expression of opinion are oppressed by written laws, which clearly violates articles 18(3) and 19(3) of the ICCPR.

While the purpose of education should be the perfection of character of individuals, there spreading is a suffocating atmosphere in which flexible education based on children’s individuality is not allowed.

This circumstance is incompatible with international standard of educational rights. It is against the principles given in the following provisions; article 26 of the Universal Declaration of Human Rights (rights to education), article 13 of ICSEC (rights to education), and articles 12 (right to express opinions), 14 (freedom of thought, conscience and religion), 28 (right to education), 29 (purpose of education) of the Convention on the Rights of the Child

The essential duty of a teacher is not to obey principal’s orders unconditionally, but to defend students’ right to personality development, their freedom of thought and conscience and their right to learning, and to prevent violations of those rights.

Intervention into teachers’ thought and conscience by authority leads to erosion of academic freedom at schools and violates students’ rights to freedom of thought and conscience and to education. In this sense, Japan is against the international treaties concerning “the right to education.”

We request the HRC to recommend the government of Japan to guarantee human rights of international level at schools as a State Party of international human rights treaties, and to ratify the First Optional Protocol of ICPPR, for violations of teachers’ human rights have not been remedied by the Supreme Court decisions.