

## NGO Report for the UPR review of the Japanese Government

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The Human Rights Council decided to undertake a universal periodic review (UPR), in which the review of the Japanese government will be held in May 2008.

Since 1993, the Japanese Workers' Committee for Human Rights (JWCHR), under the old Commission on Human Rights, has visited and participated in several committees, including subcommittees of protection and promotion of human rights, and the Office of the High Commissioner for Human Rights. And the JWCHR has periodically published its reports titled "People's Voices from Japan" and made its opinions.

At the time of the review of the initial report of Japan based on the Covenants, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention against Torture, the JWCHR has submitted its reports as a member of NGO and offered information toward an effective review.

We have been active in Japan for establishing and improving human rights and supporting activities of the members of groups or individuals, who are infringed on their human rights and seek recovery of the rights.

The UPR was newly introduced as universal review by the decision of the Human Rights Council, and we welcome the introduction of this system of review.

Japan was a candidate for and became a member of the Human Rights Council. From this point of view, Japan is in a position that it has to show initiative for realizing the human rights. However, the Japanese government is ignoring many recommendations and concluding observations based on the review of the old Commission on Human Rights. The government which does not sincerely accept these recommendations and try to implement the Covenants, leaves the situation as it is for a long time.

We, the JWCHR, demand the State to make clear its responsibility to take at the review of the UPR. And, with expecting an efficient review, we submit our report as follows. We will also continue to make efforts for aiming the establishment of each provision of the relevant UN Human Rights Covenants.

#### **1. The Japanese government keeps ignoring the Articles of the Covenants, which were reserved at the time of its ratification, for a long time.**

##### **(1) The reserved Articles**

Japan, in June 21, 1979, ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), but reserved to ratify some Articles of the ICESCR mentioned below.

Article 7 (d) : "remuneration for public holidays"

Article 8.1 (d) : "the right to strike"

Article 13.2(b) (c) : "gradual introduction of free secondary and higher education"

As for these reserved Articles, Japan has not yet taken measures to lift the reservation. Therefore, in "the concluding observations of the ICESCR in 2001" it mentioned: "the Committee is concerned that the State has no intention to lift the reservation," and "the State has not made the Covenants effective within domestic laws."

In the review of the UPR, the fundamental attitude of the government, while making its responsibility clear to observe the International Covenants, has to be questioned, such as (1) the reason of no intention to cancel the reservation, (2) the reason of domestic situation which prevents the cancellation, (3) at which institution of the government review or discussion is taken place, and (4) the “submission” of a concrete plan toward cancelling the reservation.

**(2) Article 7 (d) : “remuneration for public holidays”**

As the reason of the reservation of the Covenant, the Japanese government says that “there is no custom for private companies in Japan to pay remuneration for public holidays.”

Such observation is considered as a refusal of implementing the Covenant for the reason of domestic custom. The rights provided in the Covenants should be originally applied to the establishment and revision of local laws in accordance with the Covenants. Provided that domestic custom taking priority over the Covenants is permitted, each State could freely interpret the Covenants according to its local situation, and the international standard and effectiveness of the Covenants would be lost.

Regarding the UN Human Rights Covenants as the international convention, all States have to make efforts toward its implementation and realization, and also enhance the enlightening movement and the enforcement of annual plan.

The Japanese government’s reservation is aimed to avoid its responsibility to implement the Convention and to realize human rights.

**(3) Article 8.1 (d) : “the right to strike”**

The government has reserved “the right to strike” and deprived public officials of it. The actual situation of a long time-unpaid overtime working of public officials is referred to following reference.

**(See reference 5 attached)**

**(4) Article 13.2 (b) (c) : “introduction of free secondary and higher education”**

Although the Japanese government has rarified the ICESCR nearly 30 years ago, the government has no intention to lift the reservation of Articles 13.2(b) (free secondary education) and (c) (gradual introduction of free higher education). Under the circumstances, the burden of school expenses for students (families) has been increasing every year and producing obstacles in the way of study.

According to the research by the All-Japan Federation of Students’ Self-Governing Associations, which concentrates student councils over the country (150 national student councils, approximately 500,000 students), the school expense of colleges (higher education) is soaring 9.5 times at national colleges and 3.5 times at private ones in compared with the year of 1975. ( price increase between this period is 1.8 times)

The school expense for national colleges reaches 820,000 yen and 1,300,000 yen for private ones. (as mentioned below, the average annual income of a salaried employee is 4,350,000 yen)

Under the situation of a large school expense, many students are forced to spend much time for part-time jobs than for studying.

According to the research intended for staff in charge of guidance counseling at high school, The reason of reply “ due to economic reason, not to academic ability” of those who gave up studying at college, occupied 70 percent.

There is a scholarship system for applicants for admission to college, but this is a loan one with interest. And it is reported that the debt is likely to reach five millions yen at the time of graduation.

As the actual budget of higher education in Japan is only nearly half of that of members of OECD, in comparison with the rate of GDP, it seems fully possible to seek a gradual introduction of free education by a policy decision.

The government has to cancel reserved Articles, and make efforts positively toward introducing an international standard. The plan of “gradual introduction of free education” should be implemented without any delay.

**(5) Article 8.2: regarding “the right to organize for fire fighters”**

Regarding Article 8.2 of the ICESCR (the right to organize for the police), the government unilaterally declared that “fire fighters are included in members of the police,” and has not implemented this Article.

Concerning the right to organize for fire fighters, even in these days, the government has no intention to implement it.

In 1995, the government, which was forced to improve its attitude by the ILO, introduced the Fire-fighting Personnel Committee System.

The Fire-fighting Personnel Committee System (below, “Committee System”) said following comments: (1) The right to organize cannot be allowed. (2) Instead, “A fire-fighting Committee” as Committee System is to be set up at fire-fighting service headquarters of all areas, which is composed of the authorities concerned and representatives of the personnel. (3) The committee can express its opinion on the review of their duties for responsible persons of fire-fighting. (4) The revision of law, concerning the prohibition of the right to organize, is not to be done.

The function of the Committee System is mentioned below,

- representatives of the workers (representatives of groups of fire fighters) can express nothing but their opinions; the decision of employment is authorized to the heads of fire-fighting instead of the Committee, (negotiations between management and labour do not exist)
- the workers cannot attend there,
- the recruitment of personnel and allowance, which are subject to the authority of a section of general affairs of fire-fighting headquarter, are not discussed,
- the committee is held once a year.

We cannot recognize this system as an alternative measure of the right to organize.

## **2. The government has not revised the articles, which were recommended in the review of the initial report, for the long time.**

The government not only has left the reserved Articles of the Covenant alone, but also ignored main concerning articles and recommendations expressed in the review of the initial report, and neglected its effort to implement .

- (1) Main concerning articles and recommendations expressed in the concluding observations of the review of the 4<sup>th</sup> initial reports of the ICESCR. (August 31, 2001) (See reference 1 attached)**
- (2) Main concerning articles and recommendations expressed in the concluding observations of the review of the 4<sup>th</sup> initial periodic reports of the ICCPR. (November 5, 1998) (See reference 2 attached)**
- (3) Concluding observations and recommendations of the Committee against Torture for the review of the 1<sup>st</sup> initial report (May 18, 2007) (See reference 3 attached)**
- (4) Regarding the review in the UPR**

Above mentioned from (1) to (3) are a part of previews and recommendations expressed recently.

These subjects are the articles, for which domestic relevant organizations have been demanding every year of the government’s implementation, and are also national issues.

The government has no intention to show a sincere attitude toward the concluding observations and recommendations of each Committee.

Though recommendations for the government are reported to its relevant administrative systems, there are no specific organizations which totally examine the government’s evaluation or its measures. NGOs in Japan understand that these recommendations are treated just as information.

Some provisions of the recommendations are sometimes questioned at the Diet. However, the present situation finishes up the government’s answer, which is the same as its answer at the Committee of

Human Rights.

It is required that a specialized organization, which receives reviews and recommendations of each Committee and prepares domestic laws in accordance with the Convention, has to be installed in the government.

Japan, which is a member of the Human Rights Council, is obliged to take responsibility for respecting and implementing the Convention and its recommendations.

Regarding recommendations, it is important to inspect, by being based on fact, how the government has tried to implement it.

And the review should demand the government of its concrete opinion on the problems, which become obstacles on the occasion of the realization of recommendations.

Apart from the review on human rights of individuals, the UPR has to check if the government, which had already ratified the Convention, has sincerely received the Convention and the recommendations and made efforts for the implementation. And the UPR should demand State party of setting up a specialized organization, which is in charge of domestic implementation of recommendations, and also of showing the conclusion before the deadline.

### **3. Postwar Compensation**

#### **The Japanese government has to apologize and compensate for “Comfort women” and victims who were abducted during the Second World War.**

In July 30, 2007, the resolution of “Comfort women” issue was adopted in the U.S House of Representatives. After this resolution, the same resolution followed in the House of Representatives of Holland in November 20, the House in Canada in November 28 and the European Parliament in December 13. Not to mentioning the U.S.A concluding the Japan-U.S Security Treaty, these States have active economic exchanges with Japan and a good friendship. So it is extraordinary for them to adopt such resolution. It is also reportedly prepared that several States will follow to adopt the same resolution.

The resolution indicates, “Japan has to formally admit, in a clear and unequivocal manner, what its Imperial Armed Forces, during the invasion and colonial rule of the Second World War, forced young women into sexual slavery as ‘Comfort women’. And the government should apologize, compensate and accept historical responsibility.”

Thought there had been a 1993 government statement by the Chief Cabinet Secretary Kono, saying apology and contrition for “Comfort women”, the resolution expressed deep concerns for a remark of former Prime Minister Shinzo Abe who denied the military’s role in coercing the women into sexual slavery, and for an opinion advertisement of a part of Japanese Diet-men published in the Washington Post. And it also called for the government not only to follow many recommendations of international society on “Comfort women”, but also to describe this dreadful crime in its school textbooks and educate future generations.

Some Committees of UN have also adopted many resolutions and recommendations on the issue of “Comfort women”.

Through the reports of two Special Rapporteurs, Ms. Radhika Coomaraswamy of the HRC in 1995 and Ms. Gay McDougal of the Sub-committee in 1998, the Committee recommended that Japan had to apologize and compensate, from a national point of view, for the Japanese Imperial Army’s sexual slavery which was a crime against humanity and also the violation of the international law.

The recommendations of the same purpose were announced by the reviews of the 2<sup>nd</sup> Japanese initial report of the Committee of the ICESCR in 2001 and of the 1<sup>st</sup> initial report of the CAT in 2007.

The government has not apologized and compensated not only for “Comfort woman”, but also for the victims of abduction and forced labour.

During the War, Japan abducted a number of the Chinese people and the Koreans by force and forced them to work hard as slaves at the sites in poor surroundings, where it was difficult to maintain their dignity of character and health. The Japanese Supreme Court recognizes the facts of the offending and the suffering in detail, and points out its illegality. However, the Court turned down cases filed by the victims, for reasons of the statute of limitations and the principle of law of nation’s irresponsibility,

and the postwar settlement between the nations.

Regarding the issue of “Comfort women”, ILO Committee of Experts has also expressed, “The Committee does expect repeatedly that the government should take prompt measures to meet the demand of the victims, because the numbers continue to decrease year after year.”

It is required to apologize and compensate, without any delay, for the “Comfort women” and the victims of forced labour, who are very aged and dying one after another.

The Japanese government has not apologized and compensated for the victims who were tortured and repressed, during wartime, under the Public Order Maintenance Law.

The government’s absurd attitude toward such postwar reparations is caused by what Japan is not sincerely contrite over its aggression and colonialism during the Second World War.

Ex-Prime Minister Koizumi visits Yasukuni Shrine every year, claiming that “the Great East Asian War was a self-defense one”, for which he was criticized by the world. Former Prime Minister Abe claimed “breaking away from postwar regime”, and tried to revise a peace article of the Constitution for the worse.

There is a risk that Japan will become threat of the world again. With feeling fear about this thing, we understand and welcome that each nation of the world, wishing for peace, has been adopting the resolution on the “Comfort women” issue.

We expect that the UPR will recommend the Japanese government to apologize and pay compensation for the problems of postwar reparation, such as the “Comfort women” and the abduction by force, etc.

#### **4. Internal movement toward the ratification of the communications procedure**

The Japanese government has not ratified the ICCPR, the ICESCR and the Optional Protocol to the Convention on the Elimination of Discrimination against Women. And it has reserved “the communications procedure” of the Convention against Torture and of the Convention on the Elimination of All Forms of Racial Discrimination, and has not yet approved its internal application.

From this circumstances, one could imagine that the government feels hate for what its domestic problems are reported internationally, and recommendations are expressed by international organizations.

Preface of the Constitution of Japan declares, “We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth”.

The attitude of the government, ignoring the communications procedure, the Optional Protocol and the recommendations of Committees, can be said. ”It is against the Constitution”.

As “an honored member in an international society”, the government should ratify the Optional Protocol and the communications procedure.

We, “JWCHR”, have appealed for collective signatures throughout Japan, which ask for the ratification of the Optional Protocol, and every year submitted the signatures exceeding more than 2,000 organizations to the Japanese government. We have successively submitted the signatures for ten years that it has already reached 20,000 in all.

During the review of the UPR, it is required, while making clear that there is no reason for the Japanese government to ratify the communications procedure, to make the government promise to ratify it as early as possible.

#### **5. Article 7 (b) of the ICESCR: regarding “safe and healthy working conditions**

The serious circumstances of “Karoshi” or Death from Overwork and “Working poor” have been spreading out. (See reference 4 attached)

**Lastly, we hope that the UPR review will become productive and effective one.**

**Here is our NGO report, with expressing our respect and gratitude for the constant effort of the HRC and its Secretariat.**