

**THE JAPANESE WORKERS' COMMITTEE FOR HUMAN RIGHTS - JWCHR**

**NGO in Special Consultative Status with ECOSOC**

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**Individual Report**

**JWCHR report for the 3rd UPR of Japan**

**Realize Recommendations Expressed by the Human Rights Committee!**

**The Japanese Workers' Committee for Human Rights – JWCHR**

**25 March, 2017**

JWCHR have submitted our reports for both first and second reviews of Japan by UPR. At the occasion of the second review of Japan, many member states expressed their recommendations to the Government that it should promote the ratification of the first Optional Protocol to the ICCPR. (A/HRC/22/14)

However, the Government has not taken any effective measures to accelerate the ratification nor to disseminate its information to the people.

JWCHR would like to submit our report, for the first information, related to the prompt ratification of the Optional Protocol. For the second, it is a report on coercion on national flag and anthem at public schools in Tokyo. It is third time that JWCHR submits the report related to this problem to the UPR review. And, for the third, it is an issue related to the victims of the public order maintenance law whose term was valid until the end of the World War II. The present conspiracy law which is threatened to be enacted, is considered as the reoccurrence of the public order maintenance law.

The individual report was prepared in cooperation with the Organization to Support the Lawsuits for Freedom of Education in Tokyo and the League Demanding State Compensation for the Victims of the Public Order Maintenance Law.

**I. Realize the Individual Communications Procedure without Delay!**

**-JWCHR demands early ratification of the first Optional Protocol to the ICCPR-**

The Japanese Workers' Committee for Human Rights (JWCHR) requests a recommendation by the UPR committee that the Japanese government accelerate early ratification of the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), realize the individual communications procedure, and take measures to improve a stagnant situation of human rights in Japan.

Japan ratified the Covenant in 1969. However, it has neglected the introduction of the individual communications procedure for about half century since then. When the Diet ratified the Covenant, the Government promised prompt ratification of the Optional Protocol. Nevertheless, even today, it has not yet carried it out.

Furthermore, although Japan is internationally regarded as an economically developed and stable country, it is obvious that its actual aspect related to human rights is somewhat retarded. In particular, Japan's own theory on human rights which is not in conformity with international standards of human rights, unfortunately becomes established in its society and prevents from developing international human rights. Any individual communications procedure of the four main human rights treaties has not been implemented in Japan. Therefore, some decisions which are contrary to the spirit of the treaties, are often handed down even by the Supreme Court.

JWCHR, in cooperation with its members of individuals and groups, has taken a movement to promote the establishment of the first Optional Protocol of ICCPR for a long time, and also petitioned both the Ministries of Foreign Affairs and of Justice to expedite the ratification. Whenever JWCHR had meetings with these Ministries, they replied that the Government had studied for many years to cope with any case which might happen after the ratification, and was ready enough for it.

However, although the Japanese government was recommended several times at the review of its report by the Human Rights Committee that it should ratify the first Optional Protocol, the Government reluctantly replied by a conventional phrase such as "we are closely studying the matter" and expressed its negative attitude for the ratification. Should the Government be convinced that the preparation for the ratification is completely finished without any obstacle, it has to ratify it immediately.

The Human Rights Committee asks the Japanese government, at every examination, about whether the restriction of human rights for protecting "public welfare" can coexist with the ICCPR. The reason why the Committee expressed its concern is that the concept of "public welfare" stipulated in the Constitution of Japan considerably prevents Japan from reaching the international standard of human rights provided in the ICCPR. So this is the same reason as the Government has been refusing the establishment of the Individual Communications until now.

The courts in Japan including the Supreme Court have not only neglected enough examination of the principle of the ICCPR, but also avoided its interpretation as well as application. As a result, they have

often handed down decisions contrary to provisions of the ICCPR.

However, by reason of non-establishment of the individual communications procedure, the lower courts do not have an opportunity to be notified of the views, which are in violation of the ICCPR, by the Committee. So they are continuing in a negative attitude only watching the state of feelings of the Supreme Court. The decisions of the lower courts are not criticized even if they are in violation of the ICCPR. Therefore, the courts do not hesitate to give decisions which offend against international human rights standard.

In order to break the obstacle, there is no choice but to introduce the individual communications procedure. Consequently, JWCHR strongly request a recommendation by the UPR committee that the Japanese government ratify the first Optional Protocol as early as possible.

## **II.Coercion of National Flag and Anthem at Public Schools in Tokyo (Violations of Articles 18 and 19 of the International Covenant on Civil and Political Rights)**

1. This issue has not been addressed in the Universal Periodic Reviews of Japan, although it was referred to in the summary of stakeholders' information for both 1<sup>st</sup> and 2<sup>nd</sup> reviews of Japan (A/HRC/WG.6/14/JPN/3 & A/HRC/WG.6/2/JPN/3). Therefore, we report again the human rights violations taking place at public schools in Tokyo, and ask the working group to take up this issue in the coming 3<sup>rd</sup> cycle of the Universal Periodic Review of Japan

### **Order to express respect to the national symbols and punishments on teachers**

2. Since October 2003, the Tokyo Board of Education has continued to order teachers and school staff of public schools in Tokyo to sing the national anthem *Kimigayo*, under the national flag *Hinomaru* during school events such as entrance or graduation ceremonies, and has punished those who disobeyed. The song and the flag are highly controversial in Japan because of the roles they played before and during the Second World War as the symbols of Japanese Imperialism. Teachers refused to obey the order in the belief that it constitutes a violation of the rights of teachers and students to freedom of thought, conscience, opinions and expression, as well as an intervention in education by the administrative authority. The total number of those punished amounts to 478 as of January 2017.

3. The punishments used to become severer each time a teacher disobeyed the order, starting with reprimand, rising to salary cut then to suspension from work before the Supreme Court decision in January 2012, which ruled, as detailed in paragraph 6, that the punishments severer than reprimand are unlawful.

### **Special retraining seminar for the punished teachers**

4. In addition to being given punishments, the teachers are made to attend the special retraining course for the punished teachers, where they are required to write their ideas on the issue or repentance for

their disobedience. At the end of the seminar, they are forced to submit “reflection sheet” to be checked whether they regret their disobedience or not. Throughout the seminar, they are forced to express or change their opinions and attitudes on the issue.

5. At the seminar center, security guards stand on both sides of the corridor from the entrance to the seminar room as if the trainee were a criminal. During the seminar he/she is surrounded by four center staff members and the principal. When he/she goes out of the room, a guard or staff follows him/her even to the toilet. Some of the trainees say they felt as if they were being tortured.

### **Supreme Court decisions**

6. More than 26 lawsuits have been filed against the coercion, and the Supreme Court decisions have been given in 19 cases so far. The decisions vary in details, but the basic attitude of the Supreme Court is as follows; 1. Although coercion of the expression of respect for the national flag and anthem indirectly restricts the freedom of thought and conscience, it is constitutional because it is rational and necessary. 2. As a rule, the reprimand cannot be judged illegal, but salary cut and severer punishments are illegal, because they are too severe and constitute abuse of discretion.

7. We believe it is a violation of “freedom of thought and conscience”, guaranteed by Article 19 of the Constitution of Japan, and article 18 of the ICCPR for the public authority to coerce teachers to express respect for the national flag and anthem at school events and to punish them when they refuse to obey the order based on their thought or belief.

8. But the Supreme Court ruled that the order itself was constitutional, by making up the concept of “indirect restriction”, and considering the cases only by the standard of rationality and necessity. Although teachers cited Article 18 of the ICCPR as a ground for their arguments, the Supreme Court completely neglected the Covenant.

### **Recommendations by the Human Rights Committee**

9. Several NGOs including us submitted alternative reports to Human Rights Committee concerning this issue, and HRC took it up in paragraph 17 of the List of Issues for the 6<sup>th</sup> periodic review of Japan (CCPR/C/JPN/Q/6), and responded to the Reply to LOI by the Japanese Government with the paragraph 22 in the Concluding Observations (CCPR/C/JPN/CO/6).

### **Negligence and irresponsibility of the State Party**

10. Although the State party of Japan is strongly recommended, by the word “urge”, 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,” no ministry or governmental institution has ever taken action to respond the recommendation even after two years and a half have passed since the release of the Concluding Observations.

11. NGOs have talked with the Ministry of Education, Culture, Sports, Science and Technology, the Ministry of foreign affairs, the Ministry of Justice and the Tokyo Metropolitan Board of Education, but

neither has admitted the issue is under its jurisdiction. The question where the responsibility lies has so far remained unanswered.

12. We sincerely ask the working group to take up this issue in the 3<sup>rd</sup> cycle of the Universal Periodic Review of Japan, and recommend the Japanese Government to respect the recommendations by the HRC, and to take appropriate measures to make local governments refrain from coercing the national symbols at educational scenes.

### **III. The Government of Japan should Apologize and Compensate for the Victims of the Public Order Maintenance Law!**

**(Violation of Articles 7 and 18 of the International Covenant on Civil and Political Rights)**

The League Demanding State Compensation for the Victims of the Public Order Maintenance Law (the League) is a group which is submitting a petition to the Diet and the Government of Japan in order to restore their honor of those who were against the aggressive war and colonial rule, which were carried out by the Government of Japan under the pre-war Meiji Constitution. The victims also risked their lives for the sake of protecting peace, democracy and life of the people, and resisted against oppression practiced under the security regulations such as the Public Order Maintenance Law. At the same time, the League calls for the Diet and the Government to rightly recognize the victims to be ones who broke new ground for introducing the sovereignty of the people specified in the Constitution of Japan as well as the respect for fundamental human rights protecting pacifism and individual dignity.

The League has already presented the petition for restoring their honor with eight millions ninety thousands names to the Diet during the period of 43 years. Moreover, 404 local governments have adopted the petition at their assemblies.

More than 95 victims were massacred and the number of persons died in prison exceeded 400 under the Public Order Maintenance Law. Furthermore, the number of persons detained and tortured at that time amounted to hundreds of thousands of victims. Contrary to *nulla poena sine lege* (no punishment without law), education, study and thought and beliefs were subject to detention and restraint as “an act of making use of certain purpose.” The crime of state power, which is definitely contrary to the significance of ICCPR and CAT, became continuous at that time so that war-promoting structure was rapidly accelerated.

After the war, the Public Order Maintenance Law was repealed in accordance with the pledge with international communities stated in Article 10 of the Potsdam Declaration, which was subject to the surrender of Japan, stipulating that “the Government of Japan shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people.”

The honor of the victims oppressed under such the bad law has not been restored for more than 70 years after the war, nor has their compensation been performed. Japan is required to faithfully implement an international commitment of the Potsdam Declaration, which was a gateway to the international communities. However, Japan reiterates on the pretext that the previous war “happened for the purpose of liberating Asian countries” or “was a holy war for Self-sufficiency and Self-defense.” This is an actual situation in Japan where the Government is behaving irrationally so as to make Japan engage in war again.

Contrary to reflecting on the practice of the Public Order Maintenance Law, the Government is now accelerating the enactment of a conspiracy law, which is said to be the present-day Public Order Maintenance Law, so as to ratify the Convention against Transnational Organized Crime. Deceiving the nation on the pretext of the protection of terrorism and the opening of Olympic Games, the Government is trying to make Japan engage in war again and to create surveillance society in Japan. The Government has to clearly reflect on the aggressive war and the Public Order Maintenance Law.

Since 1995, the League has submitted its report to UN human rights treaty bodies, stating that “We call for a recommendation that the Government of Japan should recognize the Public Order Maintenance Law to be a bad law, which violated human rights during the period of the war, and compensate with apology for the victims in the same way as Western countries.”

The League strongly request a severe recommendation by the committee on the issue of the victims, in accordance with international human rights laws, at the session of the third UPR review of Japan.