A counterargument to the response made by Japanese government regarding the list of issues

To the Sixth Periodic Report of Japan on the International Covenant on Civil and Political Rights
111th Session of the Human Rights Committee, Geneva

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Regarding the Response made by Japanese government regarding the list of issues.

We wish to receive further and clear explanation about the requirements for the provisions of the Covenant to be directly invoked by the Court of justice of any signatory nation regarding the information of list of issues question 1, Sixth Periodic Report of Japan (CCPR/C/JPN/6, Paragraph 7, 8).

We request to receive information if any about concrete cases of the provision of the covenant being directly invoked by the court of any signatory country.

Regarding the Question 1 of the List of Issues (Q. 3 overlaps Q.17)

1. At the Japanese court, there is no case in which any text or provision of the International Covenants on Human Rights including the Covenant on Civil and Political Rights (CCPR) is directly invoked.

None of the Supreme Court decisions shown as examples (3, 4 and 5) of court cases referring to the CCPR failed to give clear reference to the CCPR provisions. They do neither refer to the general opinions nor test the proportions.
2. Concluding observations of the previous examination in (Recommendation) paragraph 26 the case “5” is the judicial precedent of Supreme Court unjust decision on the "Case of Public Offices Election Law crackdown in local council member Oishi” adopted as a case in which the police, prosecutor and the judge were asked not to excessively regulate along with the revision of the law.

In spite that the concluding observations of the examination of the Fifth Periodic Report in its paragraph 26 called for a revision of the Public Offices Election Law, the Japanese government ignored the previous examination and reported as "the case where the CCPR provisions are directly invoked”. This shows that the Government still maintains the policy of political repression and constitutes an evidence of continuous serious human rights violation against civilians that have been extended and deepened especially after the Fukushima nuclear disaster and the Great East Japan Earthquake.

3. The Case of Itabashi High School Graduation Ceremony

   Please refer to Alternative Report JRFS (revised)
   http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CCPR_NGO_JPN_15091_E.docx

 II TERMS OF VIOLATIONS AND ADAPTATION PROVISIONS

◆ The Case of Itabashi High School Graduation Ceremony (ICCPR Article 2, 5, 18, 19, 20, 21, and 25)

In the Case of Itabashi High School Graduation Ceremony, no CCPR general opinion was referred to and no test of proportion was conducted.

In 184 and 185 of the government response, it is asserted that there should be a certain restriction on the "public welfare" and that it is "not intended to serve as a basis for allowing the state de arbitrary limit human rights". To
the question of the Committee regarding the intention of the government to
take any legislative measure in this regard, it failed to give any definition of
the notion of public welfare. The chilling effects on the teachers, children and
their parents across Japan as a whole seems like a situation under the
prerear “Maintenance of Public Order Act”.

4. The Supreme Court Second Petty Bench on December 7, 2012, handed
down two judgments on the cases regarding the application of National
Public Service Act. They both dismissed the appeal without circulating to
the Grand Bench, not conducting the test of proportion referring to the
covenant on civil liberty, and both cases were dismissed to appeal. By this
decision, Mr. Horikoshi was definitively judged innocent and Mr. Ujibashi
was fined of ¥100,000 yen.

Numerous cases of repression by law enforcement agencies against citizens
took place in our country from 2003 to 2005. Although charges are different
each time including violation of the National Civil Service Law, they are
intended to suppress political activities of public servants. The United
Nations Human Rights Commission on Human Rights in 2008 called that "any
irrational laws imposed on citizens’ political rights and freedom of
expression should be abolished", the Japanese government ignored the
paragraph 26 of the Committee’s Recommendation.

Even though (in 2013) Governor of Tokyo Naoki Inose had received 50
million yen on the eve of the start of election campaign, he was not arrested
but released with a fine. Moreover, investigation has not been carried out
on the case because of the opposition of the majority party in the Tokyo
Metropolitan Assembly.

On the other hand, innocent citizens who distributed fliers of leading
opposition candidates in the same election campaign were arrested and
detained in jail for five days. This incident had a profound negative effect
on the general election which took place at the same time at the end of the
year.

In a preliminary examination of CCPR/C/JPN/6 in Rights Committee 109th session of October last year, the JRFS called for the ratification of the individual reporting system, withdrawal of oppressive laws including the Protection of National Secrecy Law and the non-adoption of Japanese version of the US National Security Council, but our call was again ignored.

However, in November last year, the Special Rapporteur Anand Grover Health and Special Rapporteur on the Human Rights Council Frank Larrieux made good recommendations to the Japanese government. Mr. Navi Pirei, High Commissioner for Human Rights, criticized the move taken by the government at a press conference held on December 2.

However, ignoring these criticisms, and despite a strong opposition of the people, the Abe administration railroaded the Protection of National Secrecy Law through the Diet on December 6.

In addition, the government of Japan, by a cabinet decision, endorsed the arms exports by Japan in clear violation of Article 9 of the Constitution and is now trying to complete the maneuvers of giving a perilous twist to Article 9 to allow by cabinet decision the resort to the right to collective self-defense. "Exercise of the right of collective self-defense " is an act that violates clearly Article 9 of the Constitution and the military alliance with the US also violates bluntly Article 9.

Since the last Committee review in 2008, as a result of the Government’s continued hostility to the Human Rights and the Universal Declaration of Human Rights, the Committee recommendation has been never implemented in Japan. In order to save the children from the nuclear disaster in Fukushima, it is critical that Japan ratify the individual reporting system of the Convention on the Rights of the Child. It would pave the way for guaranteeing the human rights of the most vulnerable
In Japan, individuals reporting system of the Convention on the Rights of the Child can be ratified by cabinet decision. On April 1, the government agency in charge of the individual reporting system ratification has brought into force the Hague Convention. Also, the Women Participation Promotion Office was installed on April 22. In addition, the national action plan based on the Security Council 1325 Resolution 1325 adopted in 2000 has been initiated.

Along with the children and mothers of Fukushima, now living displaced in Tokyo, towards the Japanese government report examination to be carried out on July 15 and 16, the JRFS is preparing for making representations to the government and its related agencies.

The civil society groups in and outside Japan calling that children of Fukushima and Japan will be saved from the devastating effects of the nuclear accident request the Committee to strongly urge the Japanese government to ratify the individual reporting system by a cabinet meeting and to abolish the Public Election Law and National Public Service Law.