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The Report to the Fourth Cycle of the Universal Periodic Review (UPR) of Japan

To: Office of the United Nations High Commissioner for Human Rights

Provision of information in writing for the Human Rights Situation Summary on Japan to be prepared by the Office of the United Nations High Commissioner for Human Rights –

Coercion of "National Flag and National Anthem" in Education



**Civil Council for the Implementation of ILO/UNESCO Recommendations
(CCIU)**

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What is CCIU?

We are a citizens' group consisting of Tokyo teachers and former teachers, lawyers, academics, and citizens, established in March 2020 with 34 callers and 86 supporters to demand the realization of the ILO and UNESCO's 2019 recommendation to the Japanese Government to correct the "Hinomaru/Kimigayo (National Flag and National Anthem)" coercion.

What is the ILO/UNESCO Recommendation to rectify "Hinomaru/Kimigayo" Coercion?

In October 2018, the ILO/UNESCO Joint Expert Committee on the Application of Recommendations for Teachers and Staff adopted its final report (Note 1) at its thirteenth session. In the spring of 2019, ILO and UNESCO published a recommendation calling for the correction of the "Hinomaru/Kimigayo" compulsory practice. In October 2021, the ILO/UNESCO Joint Expert Committee on the Application of Recommendations to Teachers adopted its fourth and final report (Note 2), which again included a recommendation calling for the correction of the coercion of the Hinomaru/Kimigayo.

Activities of CCIU (Note 3)

Since its inception, CCIU has engaged in dialogue with the Japanese Government, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) and the Tokyo Metropolitan Board of Education, published news, leaflets and booklets, held seminars, followed up with CEART, submitted reports to the Committee on Civil Liberties, and worked toward the implementation of the ILO/UNESCO "Hinomaru/Kimigayo" compulsory corrective action recommendations.

I. We call upon the Human Rights Council to make the following recommendations

- a. The government, local governments, and local boards of education must not force any person to perform acts of respect for the "National Flag and Anthem" in school education.
- b. Local governments and local boards of education must not punish teachers and staff who refuse to perform acts of respect for the "National Flag and National Anthem" or put children at a disadvantage.
- c. The government must provide a way for teachers and children who are unable to participate in certain acts of observance, such as the "National Flag and National Anthem" salute act, to be taken into consideration. The government must provide ways in which consideration can be given to teachers and children who are unable to participate in certain acts of observance such as "flag and anthem" salutes.
- d. Governments must not intervene to infringe on educational freedom with regard to rituals, textbooks, and school administration.
- e. The courts and the Diet must respect the 1966 "Recommendation on the Status of Teachers," the Covenant on Civil Liberties, and the Convention on the Rights of the Child in order to protect the freedom of thought and

conscience of teachers and children. Convention and the recommendations issued by the Committee for the Application of the "Recommendations" must be observed, and efforts must be made to implement the recommendations and fulfill international human rights protection obligations.

II. Fulfillment of International Human Rights Obligations

A. Methodology and broad consultative process for the preparation of the information provided.

1. Since the 2019 ILO and UNESCO recommendation to correct the "Hinomaru/Kimigayo" coercion, the CCIU has had one direct dialogue with the Ministry of Education in 2020/2021. CCIU has held direct dialogue with the Ministry of Education, Culture, Sports, Science and Technology (MEXT) once and made written requests four times in 2020 and 2021. The Ministry of Education and Science only repeatedly responded that the ILO/UNESCO "Hinomaru/Kimigayo" recommendation did not take into account the Japanese legal system, and no dialogue was established.

B. Background of the country under review and the framework for the promotion and protection of human rights, in particular the normative and institutional framework:

2. Despite the recommendations made at the first UPR, it cannot be said that the government has had sufficient dialogue with civil society for the fourth review, as it has in the past.
3. The Ministry of Education, Culture, Sports, Science and Technology (MEXT) merely sent English-language letters of recommendation to Tokyo and Osaka, two of the local governments (Note 4) that enforced the "Hinomaru/Kimigayo" and punished teachers who did not comply, and did not exchange any opinions.
4. Even when Diet members submitted a "letter of inquiry" (Note 5) urging the government to implement the recommendations, the government only responded negatively, saying that it was "not in line with the legal system of our country."
5. The government has not translated the "Final Report" (2018) of the 13th session of the Joint ILO/UNESCO Expert Committee on the Application of Teachers' Recommendations), but does not translate it into Japanese and does not disseminate it to civil society.

C. Human Rights Infrastructure, including Constitution, Laws, Policy Instruments, National Jurisprudence, and National Human Rights Institutions

6. Paragraph 2 of Article 98 of the Constitution states, "Treaties concluded by the State of Japan and established international laws and regulations shall be faithfully observed.

However, there have been very few judgments in which conventions and recommendations have been applied, and there are no precedents in which the ILO/UNESCO Teachers' Status Recommendation of 1966 has been applied.

In addition, even if a violation of the Convention or Recommendation is appealed, it has not been the subject of a hearing by the Supreme Court.

D. Scope of International Obligations.

7. The Government voted in favor of the adoption of the 1966 Recommendation on the Status of Teachers (Note 6) and the 1997 Recommendation on the Status of Higher Education Teachers (Note 7). Since 1966, as a member of the ILO and UNESCO, the government has been actively promoting the Recommendation.

8. The ILO/UNESCO Joint Expert Committee on the Application of the Recommendation on the Status of Teachers (CEART) was established to monitor the application of the 1966 Recommendation and adopts a final report every three years.

9. The government is obliged to make efforts to implement the recommendations for correcting the "Hinomaru Kimigayo" compulsory practice, which were successively included in the final report of CEART in 2018 and 2021.

E. Interest from the Committee on the Application of the Covenant

10. The List of Issues (LOI) of the Sixth Periodic Report of the International Covenant on Civil and Political Rights, para. 17 (Note 8), its concluding observations, para. 22 (Note 9), as well as LOI of the Seventh Periodic Report, para. 26 (Note 10), the issue of coercion and disciplinary measures against teachers and staff is addressed.

11. The issue of coercion against children is addressed in the consideration of the Fourth and Fifth Periodic Report of Japan of the Convention on the Rights of the Child. (Note 11)

III. Promotion and Protection of Human Rights in the Field - Freedom of Conscience, Religion, and Expression in Education

12. Disposition of Teachers in Tokyo

In 2003, Shintaro Ishihara, then Governor of Tokyo, issued the "October 23rd Notice" (Note 12), which required public school teachers in Tokyo to stand up to the national flag "Hinomaru" and sing the national anthem "Kimigayo" at graduation and entrance ceremonies. (Note 13) As of April 2022, the total number of (Note 13) As of April 2022, the total number of disciplined teachers and staff in Tokyo is 484 (Note 14).

13. Trends in the number of disciplined teachers and staff in Tokyo

In 2002, the number was zero, but it rose sharply to 179 in 2003, the year the notice was issued. (Note 15)

Those who were disciplined were forced to change their thought in the name of "training to prevent recurrence.

14. Forcing Children

Children are strictly instructed to sing "Kimigayo" loudly with their mouths open in music class.

All children, regardless of nationality, origin, or beliefs, are forced to stand up and sing "Kimigayo" in a loud voice.

Children with disabilities are at risk of losing their lives because they cannot receive the assistance they need while the teachers stand and sing. (Note 16)

15. Refusal to Rehire

Teachers who have been disciplined are denied rehire for one reason only: they were disciplined for not standing up.

More than 70 people have been deprived of a sense of purpose and security of livelihood.

16. The Roots of "Hinomaru/Kimigayo"

The Hinomaru and Kimigayo are the symbols of the modern Emperor System.

In 1940, Japan, Germany, and Italy formed the Tripartite Pact, in which the Hinomaru, the Hakenkreuz, and the flag of the Kingdom of Italy were used side by side to inspire the war spirit. (Note 17) After the defeat in the war, Japan continues to use "Hinomaru" and "Kimigayo" as it did before the war. In 1999, overcoming many objections, Japan enacted a law to make the "National Flag and

National Anthem" a national anthem.

However, even today, the government has repeatedly stated that it does not enforce the use of the "Hinomaru" and "Kimigayo" because some people consider them problematic as symbols of the war of aggression by the emperor. (Note 18)

17. State Control of Education

Starting with the compulsory use of "Hinomaru/Kimigayo" at graduation and entrance ceremonies, the government has been promoting the revival of prewar education in textbooks and school administration. (Note 19)

Even in the case of COVID-19 disaster, only the singing of "Kimigayo" was forced by the Ministry of Education and the Tokyo Metropolitan Board of Education. (Note 20)

18. Recommendations from the UPR Working Group of the fourth cycle of Japan

How to deal with the national flag "Hinomaru" and the national anthem "Kimigayo" is an important right of each individual to freedom of thought and conscience. In order to recognize diversity and realize the right to peace, no one should be forced to wear the national symbols "Hinomaru" and "Kimigayo."

* Notes (See the annex submitted separately)

Note 1: Final report of the Thirteenth Session of CEART

Note 2: Final report of the Fourteenth Session of CEART

Note 3: Webpage of CCIU

Note 4: Numbers of punished teachers based on the MEXT

Note 5: Intent of the questions (Japanese)

Note 6: ILO/UNESCO Recommendation on the Status of Teachers in 1966

Note 7: ILO/UNESCO Recommendation on the Status of Teachers and Staff in Higher Education in 1974

Note 8: List of Issues for the examination of the Sixth Periodic Report of Japan at the Human Rights Committee in November 2013

Note 9: Concluding Observations of the Sixth Periodic Report of Japan at the Human Rights Committee in August 2014

Note10: List of Issues for the examination of the Seventh Periodic Report of Japan at the Human Rights Committee in December 2017

Note11: Mr. Rodriguez's questions at the Fourth and Fifth Periodic Report of Japan at the Committee of Rights of the Child

Note12: 10.23 Directive

Note13: Statement by President of the Japan Federation of Bar Association (Japanese)

Note14: List of the numbers of the punished in Tokyo, April 2022

Note15: Change of the numbers of the punished in Tokyo over the time

Note16: Examples of violation of human rights of handicapped children

Note17: Flag of the Tripartite Pact

Note18: Parliamentary statements in 1999

Note19: Statement of the Japan Federation of Bar Associations on Textbooks and Morals
(Japanese)

Note20: (1) A newspaper article reporting of graduation ceremonies at Tokyo Metropolitan
Schools (March 2020). In order to prevent COVID-19 infection, schools did not
sing school songs or any other songs, but they sang the national anthem
"Kimigayo" because the Tokyo Metropolitan Board of Education instructed
them to do so. (Japanese)

(2) Administrative Circular 1 and 2