**Report to the Special Rapporteur on the right to education**

Tokyo Teachers and Children Whose “Academic Freedom” and "Freedom of Thought and Conscience" Are Violated by Enforcement of the "Hinomaru (National Flag) and Kimigayo (National Anthem)”

Name of country/organization submitting information: Civil Council for the Implementation of the ILO/UNESCO Recommendations on "Hinomaru/Kimigayo" (CCIU), Japan

Cochair: Tomoaki KANAI, Makoto TERANAKA and Kohtaro YAMAMOTO

Contact: Law firm of Tohichiro SAWAFUJI, Hongo, Bunkyo-ku, Tokyo, Japan. 113-0033.

Tel +81-3-5802-0881.

E-mail:cciu@teramako.jp

**About CCIU**

CCIU is a citizens' organization created in March 2020 to help implement the Recommendations against the "Hinomaru & Kimigayo" enforcement (2019) of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART). It consists of lawyers, academics, former and current teachers, and citizens. The Japanese Government, however, has ignored these recommendations. We hope that the Special Rapporteur will issue strong recommendations to Japan.

**What we want from the Special Rapporteur**

1. We request that the Special Rapporteur visit Japan to hear from us (CCIU).

2. We request that the Special Rapporteur issue the following concerns and recommendations to the Japanese Government.

　Since 2003, the Tokyo Metropolitan Government has forced teachers and children to stand up for hoisted “Hinomaru” and sing “Kimigayo" at graduation and entrance ceremonies, and has ordered that the content of these ceremonies be carried out as directed by the Tokyo Metropolitan Board of Education (TMBE). This coercion is not based on law, but rather on the non-legal "Courses of Study" and "Directives.”

This is a clear violation of freedom of thought, conscience, and learning.

We demand that the Special Rapporteur recommend that the Ministry of Education, Culture, Sports, Science and Technology (MEXT) to order the TMBE to withdraw the "10.23 Directive," stop punishing teachers and staff, and not coerce children in the name of "guidance.”

**Questions ＜Questions１,2 and 9 >**

1. **Definition and Protection of Academic Freedom**

１―１　CCIU's view 　Violation of academic freedom ,

freedom of thought and conscience

Under the Directive issued by the TMBE in 2003, public school teachers and staff have been ordered to stand up for the hoisted “Hinomaru” and to sing “Kimigayo” as part of their duties, and have been punished if they do not comply. (A total of 484 people in elementary, junior high, high, and special-needs schools have been accordingly punished.) This extraordinary violation of freedom of thought, conscience, and education has continued for 20 years.

１―２　CCIU's view 　the Japanese education has been distorted

by the "Courses of Study,"

In Japan, the Constitution and the Fundamental Law of Education (promulgated in 1947), which is the Constitution of Education, state that freedom of thought and conscience, academic freedom, and the right to learn are to be protected. However, among national laws, orders, ordinances, public notices, and directives, arbitrary operations of the administration are more rampant at lower levels and the Japanese education has been distorted by the "Courses of Study," which are merely orders issued by administrative agencies, as well as by administrative directives.

The "Hinomaru & Kimigayo" has been enforced on the basis of the "Courses of Study" and the "Directives.

１−３　Legal Protection Framework

Academic freedom is guaranteed by Article 23 of the Constitution. It is also supported by Article 19 of the Constitution, which stipulates freedom of thought and conscience, and educational freedom is likewise supported by Article 21 of the Constitution, which stipulates freedom of expression.

On the other hand, Article 26, Paragraph 1 of the Constitution guarantees children's right to learn, which is also guaranteed by Articles 13, 14, and 25 of the Constitution.

The former Fundamental Law of Education states that education is to be provided for the realization of the principles of the Constitution of Japan (sovereignty of the people, guarantee of fundamental human rights, and pacifism), and its Article 10 states that "education shall not be subjected to unjust domination.

Although freedom of thought, conscience, and learning are supposed to be protected in this way, the reality is that they are not. The MEXT and local boards of education control and dominate the educational field through the "Courses of Study," which were issued to ensure nationwide standards, and the Directives they announce, thus violating the principles of the Constitution.

1. **Is academic freedom recognized or does it depend on the level of education?**

２−１　CCIU's view/conclusion

　Academic freedom and educational freedom are seriously infringed by the "School Education Enforcement Regulations," "Courses of Study," "Directives," and "Notifications.” The infringement does not vary on the level of education.

２−２ Historical Background of Educational Freedom

Postwar Japanese education was transformed into democratic one by the U.S. occupation policy. However, the policy shifted around 1950 due to changes in the situation in East Asia, and democratic education was greatly regressed. The year 2006 saw the revision of the Fundamental Law of Education to include patriotism, and a return to administrative control and prewar imperialist public education was plotted using "Cabinet Decisions," "Courses of Study," and "Directives.” Textbooks are controlled by the national “Textbook Authorization System” and each Board of Education is under the control of the head of a local government. At universities, authority is being concentrated in the hands of university presidents, and faculty councils are being turned into advisory bodies, hence threatening academic freedom.

２−３　The "Hinomaru Kimigayo" force　of the Ministry of Education, Culture, Sports, Science and Technology

The cornerstone of the "educational renaissance" toward the Emperor's System of Public Education was the "Hinomaru & Kimigayo.” The Liberal Democratic Party's Education Subcommittee, which has the Ministry of Education under its control, has been promoting patriotic education. In 1958, the LDP's draft "Courses of Study" were converted into a public notice to strengthen the enforcement of patriotic education. Since 1977, and especially in 1989, they put a clause ("In entrance and graduation ceremonies, the national flag shall be raised and the national anthem sung, in consideration of its significance”) into the “Courses of Study” and insisted that it became a duty. In 1999, the enactment of the National Flag and National Anthem Law further strengthened the enforcement.

In response, children, parents, and citizens across the country voiced their opposition to the coercion, but their voices were suppressed. Teachers and staff were silenced by disciplinary action. The punishment of teachers and staff continued in Nagasaki, Saga, Osaka, Fukuoka, Kitakyushu, Hiroshima, Miyagi, Aomori, Hokkaido, Niigata, Kagoshima, Saitama, Kanagawa, Chiba, and Tokyo, and the suppression spread throughout the country, with only Tokyo and Osaka dissidents barely surviving.

２−４　Tokyo Metropolitan Government's "10.23 directive " and Teacher punishment

The Tokyo Metropolitan Government began to adopt market principles around 1987, and in 1998 the "Committee to Study the Ideal Future of Education in Tokyo" was established, followed by the destruction of democratic education at a furious pace by Governor Ishihara.

On October 23, 2003, during Ishihara's second term in office, Yokichi Yokoyama, Superintendent of Education, issued a directive to principals of metropolitan high schools and metropolitan special-needs schools, "Regarding the Raising of the National Flag and Singing of the National Anthem at Entrance and Graduation Ceremonies" (the "10.23 Directive"). Teachers and staff who disobeyed this order were imposed cumulative punishment without mercy. (The first time was a warning for not standing, the second was a one-month pay cut, the third was a six-month pay cut, the fourth was a one-month suspension, the fifth was a three-month suspension, and the sixth was a six-month suspension).

**９. What are the challenges to academic freedom and the gap with the framework protecting academic freedom?**

９−１　**What is the 10.23** Directive **bringing to the field of education?**

　The "10.23 Directive" has created an education system and teachers and staff that are overly dependent on the will of superiors. The "10.23 Directive" administration has instilled obedience to the State, the Administration, the Governor, and the Metropolitan Government by making the teachers and students of Tokyo's public schools stand up for the national flag and sing the national anthem as an act of respect.

９−２　The 10.23 Directive

The 10.23 Directive states that graduation and entrance ceremonies must be held in accordance with the Tokyo Metropolitan Board of Education's implementation guidelines, and that teachers and staff must stand up to sing, or face disciplinary action.

The attached "Implementation Guidelines for Raising the National Flag and Singing the National Anthem at Entrance, Graduation Ceremonies, etc." issued at the same time contains detailed instructions for the ceremonies.

The disciplined teachers and staff who did not obey the principal's order to stand and sing were subjected to "recurrence prevention training" (ideological turnaround education). After retiring, they were denied rehiring.

　In one case, in the name of "guidance," children were forced to sing "Kimigayo" loudly, even with a measuring equipment. In some cases, they were forced to stand up by physical force. There is also strong peer pressure. Above all, the sight of a trusted homeroom teacher standing up induces children to stand up.

　The use of a high podium was forced in order to make the "Hinomaru/Kimigayo" ceremony the main attraction. At a school for children with disabilities, which had previously used the floor to allow wheelchair users to move around, all students were forced to receive their certificates on a high platform.

The Tokyo Metropolitan Board of Education and the courts argue that because public employees are servants of the whole, they have no right to civil liberties in the school setting and must obey the orders of their superiors.

However, the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel and the United Nations Human Rights Committee recommend that it is the civil right of teachers to quietly refuse to stand, even in the workplace setting.

While it is never permissible to violate the freedom of thought and conscience of individual teachers and staff, it is an unforgivable violation of conscience for teachers and staff to be forced by their own actions to play a role in making children stand up and sing the national anthem.

９−３　**Recommendations from International Organizations**

Our allegations have resulted in a series of recommendations from international organizations.

(1) Recommendations by CEART

1) Final Report of the 13th Session of CEART 2018.

Relevant parts: Paragraphs. 81-110.

(Recommendations on the allegations made by the AIM '89 Tokyo Education Workers' Union)

2) Final Report of the 14th Session of CEART 2021.

Relevant parts: Paragraphs. 157-171.

(Recommendations on the allegations made by the AIM '89 Tokyo Education Workers' Union and the CCIU)

(2) Recommendations by the United Nations Human Rights Committee

Concluding Observations of the Seventh Periodic Review of Japan

(Relevant parts: Paragraphs 38 and 39)

９−４　**Response from the Government**

　We have repeatedly requested the Ministry of Education, Culture, Sports, Science and Technology (MEXT) and the Tokyo Metropolitan Board of Education (TMBE) implement the recommendations, but the MEXT refuses to face them because they "do not fit the actual situation and legislation of our country.” They say they won’t disseminate the translated contents of the disagreeable recommendations.

The TMBE is also a stranger to the issue, saying, "It is not addressed to us, and we are not in a position to express our views on the matter.

The Government, which has ratified the Convention on the Law of Treaties and is bound by Article 98, Paragraph 2, of the Constitution, has an obligation to respect the recommendations. We call for a strong recommendation.