**Mandate of the Special Rapporteur on the right to education**

**ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION**

**IN EDUCATIONAL INSTITUTIONS**

**Call for CONTRIBUTIONs**

For her upcoming report to the Human Rights Council to be presented in June 2024, the United Nations Special Rapporteur on the right to education, Ms. Farida Shaheed, will consider academic freedom and freedom of expression in educational institutions.

The report will build on previous work achieved by other United Nations human rights mechanisms on the topic, particularly the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Committee on Economic, Social and Cultural Rights. While recognizing that there is no single, exclusive international human rights framework for the subject, Ms. Shaheed will consider academic freedom through the right to education framework. More precisely, the report intends to consider academic freedom as part of the entitlement to receive and provide quality education, at all levels of education.

The Special Rapporteur intends to take stock of setbacks and progress both under international human rights law and in domestic legislation and practice with respect to defining academic freedom, ensuring its enjoyment by all relevant actors and protecting it from attacks and interferences.

The report will examine existing System frameworks and normative content of academic freedom as a human right. It will consider subjects and duty bearers of this right. It will also analyze, from a human rights perspective, direct and indirect attacks on and interferences with respect to academic freedom of staff and students, including through commercialization, online surveillance, funding, conditions of work and studies and other pertinent issues.

|  |  |
| --- | --- |
| **Name of the country/entity submitting information** | **Japan/ Japan Teachers’ Union** |

**Questions**

**General framework**

1. *How is academic freedom defined and protected in the constitution or laws of your country, and what are possible limitations or restrictions? Please provide the original citation and source, as well as a summary of relevant judicial practice, if any.*

Article 23 of the Japanese Constitution: "Academic freedom isguranteed."

1. *Are academic staff, teachers, students all entitled to academic freedom? Does this differ by level of education? Please explain.*

[System framework]

“Academic freedom” in Article 23 of the Japanese Constitution includes freedom of academic research and freedom of publication of research results, and these are broadly understood to be guaranteed to all citizens (Supreme Court, University of Tokyo Popolo case).

On the other hand, freedom of teaching is closely related to academic freedom, but is not necessarily included in academic freedom; however, the freedom to teach the results of their research at universities is guaranteed (Supreme Court, University of Tokyo Popolo case). In general education including primary and secondary levels, students do not have the ability to criticize the content of teaching, and teachers have strong influence and control over students. It is understood that freedom is not guranteed (Supreme Court, Asahikawa Gakute case).

In particular, the freedom of teaching in primary and secondary education institutions, in close relation to the right to education (Article 26 Paragraph 1 of the Constitution), who has the right to determine the content of education did not reach to consensus; the State’s Education Rights theory (Judge Takatsu of the first Ienaga case, etc.) and the All Nationals Education Right theory mainly for parents (Judge Sugimoto of the second Ienaga case, etc.). Later, the Supreme Court ruling of the Asahikawa Gakute case said that both thories were too extreme and unilateral to be adopted. Therefore it adopted ecompromise and said that the education of children is not dominantly authorized to the educational personnel, but above all, first respond to the right to learn of the child and belongs to the responsibilities of those who can fulfill the child’s right, and that parents also have the freedom to educate their children, and the state has the authority to determine the content of education to a necessary and equivalent extent.

[Japan Teachers’ Union policies and activities]

In April 2010, upper secondary schools tuition fees was waived, but its application to Korean schools remained postponed. Although there was a high possibility that Korean schools would meet the criteria for waiver, the decision was frozen due to political issues between Japan and North Korea. In June 2010, the UN Committee on the Rights of the Child concluded its review of Japan's report, stating that “Chinese schools, Korean schools, and schools for children of other origins receive inadequate subsidies.'' Concerns have been expressed over the fact that foreign schools have not been receiving the same amount of money, and they are urging Japan to “increase subsidies for foreign schools'' and “consider signing the UNESCO Convention for the Prevention of Discriminatory Treatment in Education.'' But on February 20, 2013, the Ministry of Education changed the ministerial ordinance to exclude Korean schools from being eligible for the free-tuition policy, and notified the 10 schools that had applied for it that they had not been designated. Excluding only Korean schools from this policy is completely at odds with the international community's conventional wisdom regarding human rights.

Japan Teachers' Union argued that excluding the children of Korean schools from free education due to diplomatic issues or other reasons violates the International Covenant on Human Rights A (Article 13-1), which guarantees the opportunity for education to all children, and that it is in violation of the Constitution. Recognizing that this is a problem in light of Article 26 and the principles of the Fundamental Law on Education, we have implemented further efforts. This change in the ministerial ordinance is completely unacceptable, as it violates the human rights of the children who are innocent. Another major problem is that the purpose of the law has been distorted by changing the ministerial ordinances, which do not require debate in the National Diet. Article 3 Item 1 of the Basic Law for Children, which came into force in April 2023, states, “All children will be respected as individuals, their fundamental human rights will be guaranteed, and they will not be subjected to discriminatory treatment.” We will continue to work to deminish discrimination against Korean schools.

*3. What do you consider to be (a) the main challenges to academic freedom, and (b) gaps in the System framework for protecting academic freedom?*

Traditionally, issues related to academic freedom have focused on protecting academic freedom from interference and oppression by authorities, but now there is a focus on how and to what extent freedom of research activities, including science technology, should be guaranteed. What is lacking is that judicial precedent has not yet been accumulated regarding standards for examining the constitutionality of laws and regulations on the freedom of research activities.

**Autonomy of educational institutions**

1. *Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail. Are there restrictions on police or military personnel entering educational institutions? If so, please share the rules.*

[System framework]

For public primary and lower and upper secondary schools, while boards of education has the right to personnel and facility management, each school has the right to organize curriculum. On the other hand, when it comes to private schools and universities, incorporated institutions have discretion and autonomy. In particular, universities are guranteed autonomy in order to guarantee academic freedom (Supreme Court, the University of Tokyo Popolo case). This autonomy is recognized to a certain extent in matters related to personnel matters such as university presidents, and in matters related to the management of university facilities and students. However, regarding autonomy over personnel affairs, since November 2023, amendment of relevant law requires some large universities establish “Administrative Policy Council” consisting of three or more members from inside and outside the university with the approval of the president and the Minister of Education. This amendment can undermine the autonomy of universities.

Regarding autonomy over facility management, it is stated that academic freedom and autonomy are not guaranteed if the purpose is not for truly academic research and publications but for acts that correspond to political and social activities. There is judicial precedent that states that the entry of police officers does not violate the academic freedom and autonomy of universities (Supreme Court, the University of Tokyo Popolo case).

[Japan Teachers’ Union policies and activities]

Although the "National Curriculum" have been established by the country, it has been confirmed as merely general guideline and should be applied flexibly according to the actual circumstances of students and community, but in reality this is not the case.

Japan Teachers' Union has pointed out problems such as the basic nature of the national curriculum as guidelines and the curriculum overload for children and teachers, and has negotiated with the Ministry of Education to inform the actual situation in schools. In order to ensure that new measures such as promoting the GIGA School Initiative (distributing devices for free to all the students of primary and lower secondary education) and introducing digital textbooks do not become additional burden on schools, we will continue to respect the autonomy and independence of schools, reaffirm that schools have the right to organize curriculum, work to implement curriculum focused on children.

In addition, in February 2023, the Ministry issued a notice to boards of education and schools to ensure that bullying cases that should be reported to the police are thoroughly reported. In accordance with the Convention on the Rights of the Child, Japan Teachers' Union strives to ensure quality education as a top priority. Regarding bullying, educators need to understand the problems of each child and work with school social workers and other professionals to deal with them properly, in order to make schools safe and secure place for all children.

Article 16 of the Fundamental Law on Education states that “Education should be conducted in accordance with the provisions of this law and other laws without being subject to unjust control, and educational administration shall be carried out in accordance with the appropriate roles of the national and local governments.'' and that "educational administration must be carried out fairly and appropriately through divided roles and mutual cooperation." In spite of this stipulation, the revised Local Education Administration Act that came into effect in 2015 has changed the system including appointing the head of board of education by the head of local government and establishing “General Education Council.'' Those revision could allow governments intervene, albeit indirectly, in education.

Japan Teachers' Union will continue to demand that educational administration be carried out fairly and appropriately, with appropriate division of roles and mutual cooperation between the national and local governments.

*5. Please provide examples of institutional guidelines/codes of conduct developed to ensure respect for academic freedom, including from external public or private actors.*

Guidelines for responding to misconduct in research activities and others; https://www.mext.go.jp/b\_menu/houdou/26/08/\_\_icsFiles/afieldfile/2014/08/26/1351568\_02\_1.pdf

Code of conduct for scientists; https://www.scj.go.jp/ja/scj/kihan/kihan.pamflet\_en.pdf

**Funding**

1. *How is funding, including for research, regulated? Is the process transparent, and are there any guarantees put in place to ensure respect for academic freedom?*

[System framework]

It seems that there are no regulations aimed at restricting academic freedom. Due to decrease in the national budget (operating expenses grants for national university corporations, and private school grants for private universities), higher education institutes have no choice but to rely on competitive fund such as Grants-in-Aid for Scientific Research, joint research with companies and private grants. For this reason, short-term results are required rather than basic research, and there are concerns about the privatization and commercialization of education by the entry of educational technology.

[Japan Teachers’ Union policies and activities]

National universities were incorporated in 2004, and the National University Corporation Law aims to “improve the standards of higher education and academic research and achieve balanced development.'' However, even though Japan's budget for higher education is currently among the lowest of OECD countries as a percentage of GDP, the operating expenses subsidy was reduced by 77.8 billion yen (approximately 600 million US dollars) from 2010 to 2020. According to the Administrative Reform Council's project classification, the National University Operating Expenditure Grant (Special Education and Research Expenses) was judged to be a subject of “reduction in the budget request.'' Even national universities, which had been known for their low fees, have been affected by this situation, with their financial foundations being shaken and students now being asked to pay the same amount as private universities.

At the meeting hosted by Japan Teachers’ Union, the participants reported that retirement vacancies were not filled (universities) and that there were students who could not afford to advance to higher education (universities and high schools). In order to widen access to higher education, there is an urgent need to expand operating expenses grants as well as scholarships.

*7. Which rules and regulations protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education? Please explain how conflicts of interest that may arise are addressed.*

Please refer to the previous reply.

**Surveillance**

*8. Please explain whether and the extent to which academic staff and students, at all levels of education, are subject to surveillance by public authorities, for example through on-site cameras or online scrutiny. Has this led to undue restrictions to academic freedom and freedom of expression in educational institutions?*

It is believed that there is no supervision (monitoring) using security cameras or online for the purpose of restricting academic freedom.

**Freedom of expression in teaching and access to books**

*9. Do teachers and professors, at all levels of education, enjoy freedom of expression in their own teaching? Are there any limitations imposed, such as remaining “neutral” or forwarding a particular perspective, e.g. on religious and political matters?*

[System framework]

Regarding political matters, the Ministry of Internal Affairs has issued “Points to note regarding ensuring political neutrality in teaching''. Article 14 Paragraph 2 of the Fundamental Law of Education states that “Schools specified by law shall not engage in political education or other political activities to support or oppose a particular political party.'' Article 14 Paragraph 2 of the act aims to ensure the political neutrality of education by indicating the limits of political education in school and prohibiting specific partisan political education. One of the concrete stiplulation is Article 18 Paragraph 1 of the Educational Civil Service Special Cases Act, which states that “For the time being, regardless of the provisions of Article 36 of the Local Public Service Act, restrictions on the political activities of educational civil servants in public schools shall be the same applies to national public servants.''

Although they are local public employees, in light of the unique duties and responsibilities of educational public emloyees who serve the entire nation through education, the restrictions on their political actions will be made the same as those of national public employees. Comparing the Local Public Service Law and the Special Education Law, we find that while local public employees are restricted to a limited area, educators working at public schools are restricted nationwide. Furthermore, compared to local public employees, the educators are subject to stricter restrictions on political acts as stipulated in Article 102 of the National Public Service Law and the National Personnel Authority Regulations.

However, Article 18 Paragraph 2 of the Educational Public Service Special Cases Law states that “The provisions of the preceding paragraph apply to Article 111-2 of the National Public Service Law regarding the punishment of those who violate restrictions on political activities as “This law shall not be construed as implying that it is an example.'' Even if an educational public employee violates the restrictions on political conduct, no penalties will be imposed (however, disciplinary action may be taken.).

Furthermore, according to “Points to keep in mind regarding ensuring political neutrality in instruction'' issued by the Ministry of Internal Affairs, when addressing actual issues that have politically conflicting views, it is necessary to keep the following points in mind in order for schools to provide instruction that fosters political knowledge while maintaining political neutrality;

・There are a variety of opinions on real-world issues that have politically conflicting views. It is difficult to conclude that one view is absolutely correct and others are wrong, and it is generally important to have discussions and build consensus while holding one's own opinions. Therefore it is important to have a calm and rational discussion process to arrive at a conclusion rather than coming to a single conclusion.

・When discussing issues that allow for a variety of viewpoints and ways of thinking, or issues that are unconfirmed, it is important to present a variety of views to deepen students' ideas and discussions.

・In such cases, teachers must provide guidance from a neutral and fair standpoint. In addition, it is necessary to provide guidance to avoid particular viewpoints or biased treatment, such as overemphasizing certain matters or taking up one-dimensional views without sufficient consideration. When using supplementary teaching materials, please also pay attention to the "Appropriate Handling of Supplementary Teaching Materials in Schools" (Notification from the Ministry of Education dated March 4, 2015).

[Japan Teachers’ Union policies and activities]

In 2015, the Ministry of Education issued a notice titled “Education of political knowledge in high schools, etc. and political activities by high school students, etc.While promoting the education of political knowledge, it is requested to ensure political neutrality based on Article 14 Paragraph 2 of the Fundamental Law on Education. Although it is important for teachers to present a variety of viewpoints to deepen students' ideas and discussions, teachers should avoid expressing their personal principles and teach from a fair and neutral standpoint. On the other hand, in countries such as the United Kingdom and Germany, national consensus has been formed that teachers can express their own opinions, those teaching does not impair political neutrality, and citizenship and political education are being promoted.

Regarding students' political activities, while expecting them to participate proactively, the notice mentions ‘necessary and reasonable’ limits in and outside of schools. We should be cautious about restricting or prohibiting the activities of high school students who have become voters. Particularly outside of school, instructions beyond relevant laws should not interfere political activities by students.

Japan Teachers' Union is trying the formation of national consensus regarding political neutrality in schools, so that teachers are not discouraged and are able to engage in creative educational practices. We will further promote citizenship education in which children learn independently at each educational stage.

*10. Please explain the extent to which teachers and professors at different education levels can chose school manuals and other books/resources for teaching, and the reasons for any restriction in this regard. Have any specific books/materials been banned, including from school libraries, and alternatively is some material mandatory? If so, why?*

[System framework]

Regarding teaching methods, Ministry of Education, in accordance with the School Education Act, has established a system which ensures students receive quality level of education no matter where they are. National Curriculum is guideline for each school to organize its curriculum, regarding the goals and general educational content of each subject, etc.

Japan has adopted textbook certification system for primary and lower/upper secondary schools under the School Education Act. Textbook certification means that the Minister of Education examines books written and edited in the private sector to determine whether they are appropriate as textbooks, and those that pass it are approved for use. Primary and lower/upper secondary schools must use textbooks that have been certified by the Minister of Education or that have the authorship of the Ministry (School Education Act, Article 34 Paragraph 1, Article 49, Article 49-8, Article 62, Article 70 Paragraph 1, and Article 82).

There was a case in which the Ministry has instructed the prefectural board of education and the town board of education to request to reconsider which textbook should be adopted (Yaeyama textbook case). Also, the manga “Barefoot Gen” was deleted as a supplementary peace education materials from the city of Hiroshima in 2023. It depicts the changed state of Hiroshima immediately after the atomic bomb was dropped, the people suffering and dying, and the main character Gen's struggle to survive in postwar Hiroshima. Also, Its viewing was once restricted in Matsue City, Shimane Prefecture so that children at elementary and junior high schools in the city could not see it, but after receiving opposing opinions from citizens, the restriction was lifted.

[Japan Teachers’ Union policies and activities]

Japan Teachers' Union aims to improve and make the current system transparent and fair with the following recommendations.

* Regarding examinations, information disclosure should be further promoted from the perspective of transparency and fairness.
* Certification standards should be examined from an academic and educational perspective by a third-party organization independent from the government, so that they are appropriate to the actual circumstances of the community and children.
* Promote disclosure of information related to selection and fully reflect the opinions of educators and parents.
* Districts that adopt textbooks will be made smaller so that textbooks are adopted that suit the actual conditions of children and communities.
* Enable educators to be directly involved in research on textbooks. Also, ensure that the time necessary for research is ensured so that opinions are fully reflected.
* Maintain the free textbook system and increase the budget for this purpose.
* Make sure that textbooks (enlarged, Braille, audio textbooks, etc.) are distributed to all children who need them, based on the "Textbook Barrier-Free Law."

**How to submit information**

Submissions should be sent electronically no later than **2 February 2024 to** hrc-sr-education@un.org, using the email title: “Contribution: Academic freedom”.

Please select and answer the questions most relevant for your agency. Kindly limit your responses to **3,000 words** and attach annexes where necessary. To facilitate their consideration, please send responses in a Word document, and in English, French, or Spanish. **Please clearly specify the entity making the contribution on the document itself and add paragraph numbers**.

All inputs received will be posted on the OHCHR website. Please indicate if you have any objections regarding to your reply being posted on the OHCHR website.