February 1, 2024

**Forced Worship of the National Flag & the National Anthem at Public Schools in Tokyo**

Report from Japan to Ms. Farida Shaheed, the Special Rapporteur on the

Right of Education～mainly in regard to the question 4 and 9

　　 The Organization to Support the Lawsuits for Freedom of Education in Tokyo

**Preface**

1. We are a group of citizens supporting the lawsuits filed by teachers and other

school staff (hereafter teachers), who had been given undue punishments by the Tokyo Metropolitan Board of Education (hereafter the Board) for refusing to obey the below-mentioned order.

**2** On October 23rd, 2003, the Board issued a directive (hereafter 10.23 directive) ordering teachers at public schools in Tokyo to stand up facing the national flag “Hinomaru” (hereafter Hinomaru) and to sing the national anthem “Kimigayo” (hereafter Kimigayo) at school events such as entrance and graduation ceremonies, stating that punishments would be imposed on them in case of disobedience. The attached guideline stipulated that music teachers should accompany the singing of the national anthem on the piano, and that diploma should be handed over to the students on the stage.

**3.** Many teachers including music teachers refused to obey the order in the belief that

it constitutes violations of teachers’ and students’ right to freedom of thought,

conscience, opinions and expression, as well as an intervention in education by the administrative authority. What they did was just remaining seated quietly for 45 seconds during the singing of the anthem, and the proceedings of the ceremonies were never disturbed at any school.

**4**. However, those who remained seated were punished without any exception, and since the order has been issued every year since 2003, the number of those who were given some sort of punishments has amounted to 484 as of January 31, 2024. Those who were given punishments filed several lawsuits to nullify the punishments and the directive itself.

**5.** In this paper, we will report actual examples of human rights violations at public schools in Tokyo, and discuss the issue in the light of **question 4:** restrictions on autonomy and self-governance of public schools in Tokyo, and **question 9:** infringements of the right to freedom of thought, conscience, opinions expression in the educational space.

We will also explain the historical background for why so many teachers could not accept the order in **para26～30**.

**Regarding Question 4**

1. **Autonomy of Public Schools is Threatened in Tokyo**

**A-1 The form of ceremonies is determined by the Board.**

**6.** Since the issuance of the 10.23 directive, the controlling power of the Board and of school administrators as its agents has been intensified. 10.23 directive, not only ordered teachers to stand up facing Hinomaru and sing Kimigayo, but also directed how to hold the ceremonies in detail: Himonaru should be put up on the front wall of the stage of the hall, all the attendants should be seated facing Hinomaru, teachers should be seated on designated seats and so on.

**7.** Before the directive, school events, especially graduation ceremonies were planned freely by teachers and students. They took months to discuss the form of the ceremonies and each school designed different and unique forms of ceremonies. Especially, in many special-needs schools, the ceremony had been held on the flat floor, with the desk for giving/receiving diploma in the center, so that graduating students could face their family and the remaining students. The students in a wheelchair were able to go to the desk by themselves to receive the diploma. The stage was decorated with pictures and works of art painted or made by the students, which showed their growth during the school days.

**8.** Such creative forms of ceremonies were, however, all forbidden by the 10.23 directive. All the attendants were forced to be seated facing Hinomaru on the stage, and graduating students had to receive the diploma at the desk placed on the stage. The Board even funded the schools for special-needs education for building the slope. As a result, every student in a wheelchair had to ask someone else’s help to go up the narrow slope leading to the stage. The opportunity for them to show proud performance of moving on their own in front of the attendants was lost.

**A-2- Banning of voting at staff meetings**

**9.** Before 10.23 directive, Tokyo Metropolitan Schoos had very free atmosphere,

where staff exchanged their opinions freely on various issues including how to hold

school ceremonies. When opinions divided, they made decisions by voting. The

principals also participated in the discussion.

**10.** However, soon after the issuance of the directive, the Board forbade voting at the

staff meeting, and most issues were decided by the principal and communicated in a

top- down way. Principals were also under severe surveillance by the Board.

**Regarding Question 9**

**B. Violations of Teachers’ Human Rights**

**～Severe Punishments for quietly expressing protest against the order**

**B-1-(1)** **Teachers are punished if they disobey the order of duty.**

**11.** Since the issuance of the 10.23 directive, teachers at public schools in Tokyo have

been ordered to stand up facing Hinomaru and sing Kimigayo at the school events

such as entrance and graduation ceremonies. The music teachers have been ordered to

accompany the anthem on the piano. As described in detail in **para26～30**., owing to

the historical background, in which the symbols played important roles in militaristic

aggression against Asian countries during the Second World War, paying respect to

Hinomaru and Kimigayo is still a controversial issue in Japanese society, and there are

teachers who cannot or think they should not accept the symbols.

**12**. They just remained seated quietly for 45 seconds during the singing of the anthem

to express their protest to the coercion of the symbols, but all those who did so were

punished without exception. The number of those who have been given some sort of

punishments has amounted to 484 as of January 31, 2024.

**B-1-(2) The punishments became severer cumulatively.**

**13**. The punishments became severer cumulatively each time they disobeyed, starting

from reprimand, getting heavier to salary cut of one month, three months and six

months, and then to suspension from work of one month, three months and six months.

**14.** While the Supreme Court ruled in January 2012 that the punishments heavier than reprimand were unlawful, the Tokyo Board of Education newly imposed reprimands on those whose severe punishments were cancelled.

**B-1-(3) The Special Retraining Course for the Punished Teachers**

**15**. 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 about the issue.

**B-1-(4)** **Rejection of post-retirement re-employment for punished teachers**

**16.** Until the issuance of the 10.23 directive, teachers in public schools in Tokyo had been guaranteed re-employment when they reached the retirement age. While those who had been punished for other reasons such as traffic violation or sexual harassment of students were re-employed, none who refused to obey the directive passed the re-employment test. As the pensionable age was raised, they are re-employed till the pensionable age, but when they reach the age, they are dismissed.

**C Human Rights Infringements Against Students**

**17**. Since the issuance of "the 10.23 Directive", human rights violations against students in the name of “instruction” have markedly increased. The following cases are just two examples of many such cases.

**C-(1) Cases of coercion of the national flag and the anthem on students**

**18.** Case1: In 2004, at a school for the disabled, the principal and staff visited the family of a student who had declared that he would not stand up during the anthem at the coming ceremony, and pressured him to stand up. They even tried to make an inquiry about the family’s “thought background”.

**19**. Case2: In 2004, at an elementary school in M city they examined the loudness of the students’ singing voice of the national anthem. They ordered the students who were singing in a low voice to put their fist into their mouth so that they could open their mouth wide and sing loud enough.

**20.** Case3: At an elementary school, school administrators surrounded a student who did not stand up on his religious belief, and urged him to stand up.

**C-2 Prohibition of the explanation of “freedom of thought and conscience”**

**21.** In 2004, Tokyo Board of Education issued “strict warning” or other disciplinary actions against nearly 70 teachers for telling their students that they have freedom of thought and conscience before the ceremony began. In 2005, the Board of Education issued "the 3.11 notice" that prohibited teachers from explaining the freedom to students. Furthermore, in 2006, by "the 3.13 directive," the Board manifested that they were going to intensify the "guidance" to the students to stand up and sing. No alternative measures have been taken to guarantee the students’ right to conscientious refusal to stand up and sing.

**C-5 Infringements of the students’ rights to freedom of expression**

**22**. When students at a high school held a debate session concerning "the 10.23 directive," the teachers who attended the assembly were punished for leading the discussion, and the students were forced to cancel the second session they had planned. In this way the Tokyo Board of Education has restricted the students’ right to express their opinions freely on the issue of Hinomaru & Kimigayo.

**23.** The draft of the speech by the representative of graduating students was censored by teachers beforehand. The students' works and products that once beautifully decorated the stage and the ceremony hall were thoroughly removed, which is also the violation of students’ freedom of expression.

**D Human Right Violation Against Citizen**

**D-1 Criminal punishment for expressing an opinion**

**24.** In March 2004, a former teacher and one of the formal guests for a high school graduation ceremony handed out copies of a magazine article which criticized “the Directive” to the parents waiting for the start of the ceremony, and called for them to remain seated at the time of singing Kimigayo. He finished his speech more than 15 minutes before the opening of the ceremony, which proceeded smoothly and successfully till the end.

**25.** Then, 9 months later, he was suddenly indicted on the charge of “forcible obstruction of business” for having “caused a considerable disturbance to the smooth performance of the graduation ceremony.” In 2011, the Supreme Court justified the restriction on “the right to freedom of expression” based on “public welfare”, affirming the lower court’s conviction of a 200,000 yen fine. This incident caused a chilling effect on expressing one’s opinion at schools and in society as a whole.

**E Historical Background of Hinomaru & Kimigayo in School Education**

**26.** Kimigayo, which has been treated as the national anthem of Japan since the

prewar period, is an Ode to the Imperial Family as is clear from the words of the song:

*“May the reign of the Emperor last and prosper forever..*.”

**27.** Before and during the last World War, Hinomaru was hoisted, and Kimigayo was sung at every school event, which played important roles to foster allegiance to the Emperor–centered Nation or patriotism in children’s mind. Thus Hinomaru and Kimigayo are deeply connected to the militaristic education of the past,

**28**. Because Hinomaru was also hoisted in battlefields or villages and towns occupied by the Japanese army during the WWⅡ, it was taken by Asian people as the symbols of Japan’s invasion and control of Asian countries. Hoisting of the flag and singing of the anthem, therefore, is still a controversial issue in Japan.

**29.** In post-war education, all the school events including entrance and graduation

ceremonies had been entirely free from intervention by the government, with everything entrusted to the discretion of each school. In 1989, however, the government’s curriculum guideline was revised to make the raising the national flag and the singing of the national anthem more obligatory than before, and ever since the Ministry of Education has pressured prefectural education boards to ensure that the flag is raised and the anthem is sung at schools events.

**30.** Especially, after the legislation of the Law Regarding the National Flag and Anthem

in 1999, the coercion of Hinomaru & Kimigayo at entrance and graduation

ceremonies was intensified nationwide, despite the government statement during the Diet discussion that there would be no coercion of the flag and the anthem.

This is a brief description of the background of the 10.23 directive and our movement against it.

**F Lawsuits Against the 10.23 Directive and Court Decisions**

**31**. Regarding the lawsuits filed by teachers against the 10.23 directive, a series of

Supreme Court decisions have been made since May 11, 2011. On January 16. 2012, the Court ruled that “as a rule, reprimand cannot be judged illegal, but salary cut and severer punishments are illegal, because they are too severe and constitute abuse of discretion,” and cancelled severe punishments, while it did not nullify the 10.23 directive itself and the reprimand based on it. This has been the attitude of the Supreme Court ever after.

**32.** Its logic is as follows: Coercion of the expression of respect for the national flag and anthem indirectly restricts the freedom of thought and conscience, but the directive was constitutional, because “in case of indirect restrictions it is not necessary to apply strict standard but rational basis test is enough, and rationality and necessity of the restriction in this case is acknowledgeable.”

**33.** We are continuing the legal fight to win a ruling that states the directive itself and any punishment based on it are illegal.

**G ICCPR Concluding Observations**

1. Several NGOs including us have submitted alternative reports to Human Rights

Committee concerning the issue since 2008, and in November 2022, the Committee publicized Concluding Observation, and took up the issue in para(38) and(39).

(38) The Committee notes with concern the reports of restriction of freedom of thought and conscience in the State party. It is concerned that as a result of teachers’ passive, nondisruptive acts of non-compliance with the requirement to stand and face the flag and sing the national anthem at school ceremonies, some have received punishment of up to six months’ suspension from duties. Furthermore, the Committee is concerned at the alleged use of force to compel students to stand during ceremonies (art. 18).

(39) The State party should guarantee the effective exercise of freedom of thought and conscience and refrain from any action that may restrict such freedom beyond the narrowly defined restrictions permitted under article 18 of the Covenant. It should bring its legislation and practices into conformity with article 18 of the Covenant.

**35**. HRC considers that the 10.23 directive restricts freedom of thought and

conscience beyond the restrictions permitted under article 18 of the ICCPR. Although the recommendation refers mainly to freedom of thought and conscience prescribed in article 18 of the Covenant, we believe that it could be applied to the freedom of expression as well, because remaining seated during the anthem constitutes the expression of protest against the 10.23 directive,

**H Insincere Attitude Toward the ICCPR Recommendation by the State Party and the Tokyo Board of Education**

1. Although the State party is strongly recommended by the Human Rights

Committee to guarantee freedom of thought and conscience, and to conform its legislation and practice to the article 18 of the Covenant, no ministry or governmental institution has shown any respect to the recommendation, nor ever taken any action since the release of the Concluding Observations.

1. NGOs have talked with the Ministry of Education, Culture, Sports, Science and

Technology and the Tokyo Metropolitan Board of Education, but they have been very reluctant to respond to the recommendation, and they would not change their attitude.

I **Present Situation of Teachers in Tokyo Metropolitan Schools.**

1. As we described in para 9、since the issuance of the 10.23 directive, public schools

in Tokyo have been changed from free educational space into the institutions where teachers can only follow the orders and instructions given by the Board.

1. After the issuance of the 10.23 directive, school administrators began to check

every detail of teaching contents of each class. Teachers are forced to submit weekly teaching plan to be checked by the principal or vice principal. At some schools, even clippings from newspapers to be used in the classroom are examined before the class. The school administrators are also under the surveillance of the Board.

1. The Board introduces new system such as new IT system called “Tokyo Smart

School Project” or “School Management Plan”　one after another, even in the middle of school terms, and teachers are swamped with paper work to submit to the Board, with very little time left to talk with and take care of their students.

1. One of the members of this group received an e-mail from a former student, who

now teaches physics at a public high school in Tokyo. It reads as follows. “We are burdened with so many tasks that a considerable number of teachers leave school. A colleague of mine aged 31 is quitting the job this coming March. Another retired two years ago at the age of 45. Still other two are on medical leave. I sometimes think of submitting a transfer request to another school, but I hear that the situation is almost the same everywhere. There is no bright prospect.”

1. We sincerely ask Ms. Shaheed to take notice of this issue and examine the situation

of human rights infringements at public schools in Tokyo.