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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement* submitted by Japanese Workers' Committee for Human Rights
(JWCHR), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[19 February 2008]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

The Oishi Case and the Cases of Horikoshi and Arakawa
Suppression of Freedom of Expression in Elections
Is it a crime to distribute leaflets!?

Mr. Tadaaki Oishi is a city councilman in Bungo-Takada City, Oita Prefecture in Japan. He has published a weekly district newsletter called *Minnano Takada* (Everyone's Takada) in which he has written articles about his policies and reports about the business of the city council. To date, 1813 issues of *Minnano Takada* have been published. He started this work at the age of 29 when he first ran for the Takada City Council. The residents of Takada have always welcomed his newsletters and have found him to be a positive force on the city council. So far he has required the mayor to spend taxes justly, and has investigated corruption cases many times. In his city as well as in the whole of Japan, the gap between the rich and the poor has widened in recent years. Mr. Oishi has acted to shrink this gap and eliminate poverty. In addition, he has spoken out against the war in Iraq. It seemed that the police have inspected Mr. Oishi's political ideas and actions in detail in an apparent attempt to deprive him of his seat on the city council.

In April 2003, in preparation for the upcoming city council elections, he distributed newsletters to his supporters. In May 3, 2003, he was arrested and detained for 21 days for distributing 18 copies of a one-page document which included the following: "Please ask your family members, acquaintances and friends right away to vote for Oishi." "Please let me continue to serve." "We are running late in our efforts for this election. I ask for your support." After that he was prosecuted for three violations of the Public Offices Election Law (door-to-door canvassing, distribution of illegal documents, and pre-election campaigning).

In Mr. Oishi's trial in the District Court of Oita, he pleaded not guilty because the Public Offices Election Law of Japan violates the Constitution of Japan as well as the International Covenants on Human Rights by prohibiting pre-election campaigning and door-to-door campaigning as well as by restrictions on the distribution of campaign literature. In June 27, 2005, Ms. Elizabeth Evatt, a former member of the UN Human Rights Committee, testified at the court. She stated unequivocally, "The Japanese Public Offices Election Law restricting freedom of expression is incompatible with either article 19 or 25 of the International Covenant on Human Rights. The application of this penalty does not conform to either article 19 or article 25 of the Covenant."

Despite Ms. Evatt's testimony and the doubts cast upon the testimony of the police, in January 13, 2006, the District Court of Oita demanded a 150,000 yen fine and that Mr. Oishi's electoral rights be suspended for three years. He appealed the decision of the District Court.

In February 19, 2007, there was a city council election in Bungo-Takada City. In spite of the actions taken by the police against Mr. Oishi, he was elected with more votes than any other city council members, as he had been in the last election. In fact, he received 30% more votes than he had in the last election. The residents of Bungo-Takada obviously consider him an effective and indispensable member of the city council.

In September 7, 2007, the High Court of Fukuoka upheld his conviction but decided to lessen his penalty to simply a 150,000 yen fine and no suspension of electoral rights. The

High Court's judgement included the following: "Ms. Elizabeth Evatt's opinion is one of insights about what an election system should be, and isn't able to be equated with the formal view of the UN Human Rights Committee". And, "the Japanese Public Offices Election Law is compatible with articles 19 and 25 of the International Covenants on Human Rights".

Mr. Oishi appealed once more and his case was considered by the Supreme Court of Japan. In January 28, 2008, the Supreme Court of Japan dismissed Mr. Oishi's appeal. The judgment said that "the Japanese Public Offices Election Law is compatible with articles 19 and 25 of the International Covenants on Human Rights". As a result, the 150,000 yen fine against Mr. Oishi was upheld.

We call for an immediate recommendation for the grave violation of human rights occurred successively by the suppression of distributing leaflets in Japan, which is a member of the Human Rights Council.

In Japan entering 21st centuries, the suppression of distributing leaflets like the case of "The White Rose", which occurred at the Munich University during the Second World War where, by reason of distributing antiwar leaflets, young people were executed by beheading five days after their arrest, takes place successively.

Of course, there exists no such execution in Japan but distributing political leaflets becomes subject to guilty by district courts, high courts and even the Supreme Court.

Akio HORIKOSHI, a government official, was arrested in March 2004 by reason of having distributed leaflets saying "Respect the Constitution !", which allegedly committed the Government Officials Act, near his home on holiday at the general election in previous November. And he was convicted of 100,000 yen fine and two years' suspension of sentence by the Tokyo District Court in June 2006. But he appealed to the Tokyo High Court. Those who have appealed to the High Court are not only HORIKOSHI who was found unfair guilty, but also the prosecution, appealing to the High Court by protesting that "the sentence was unreasonable".

At the time the police put a tail on him for 29 days consecutively and a total of 171 policemen took a picture secretly by video camera which was installed in their shoes with a hole. And they submitted it as evidence to the Court. But the Court and the high prosecution have not released but nine video tapes as evidence out of 33 tapes.

In December 2003, when a priest Yosei ARAKAWA distributed news leaflets of a ward assembly at an apartment, he was arrested for trespassing at its corridor by a resident's report to the police. And he was detained at the police station for 23 days and indicted. He was found innocent at the first trial and many editorials of media supported this decision. But the prosecution appealed the case to a high court without submitting any new evidence and, in December 2007, the Tokyo High Court reversed the lower judgment and imposed a fine on him.

In Japan, the prohibitions of pre-election campaigning and door-to-door visit, and the restriction of distributing leaflets were brought at the same time with the enforcement of the General Election Law in 1925. After the Second World War, although the right to vote was enlarged to women and adults over 20 years old, the prohibition of door-to-door visit and the restriction of political and election campaigning still remain unchanged. Whenever a

democratic grass-rooted election campaigning demonstrated its influence, successive ruling parties repeatedly strengthened the restriction against it and violated its fundamental human rights.

After the War, those who were convicted of violation of the Public Offices Election Law (prohibitions of door-to-door visit and distributing leaflets) have reached more than 90,000.

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