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Japan Federation of Bar Associations

**The Japan Federation of Bar Associations' Report on  
the Japanese Government's Third Report on  
the Convention on the Rights of the Child  
and  
the Initial Reports on OPAC & OPSC**

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This table of contents was created to accord with the table of contents of the Third Government Report, which was written according to the guidelines of the UN’s Committee on the Rights of the Child. However, Parts A-F of Section (Education, Leisure and Cultural Activities) do not accord with the Government Report.

## Introduction

Fifteen years have already passed since the Convention on the Rights of the Child was ratified by Japan. During that time, the Government has reported three times, to the Committee on the Rights of the Child (the CRC), on the state of the Convention's implementation in Japan, and the CRC has considered the first two reports.

Can it be said that the status of the rights of children in Japan has progressed in these 15 years? It cannot. On the contrary, one can say only that it has gotten worse.

In response to the concerns and recommendations mentioned by the CRC following the Initial Government Report, the Second Government Report cited a few reform measures – the enactment of the Child Abuse Prevention Law and the Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children – but otherwise said almost nothing. The deficiency of this response is clearly indicated by the fact that the CRC's Second Concluding Observations are almost no different than its First Concluding Observations.

The trend towards the excessively competitive nature of the education system has passed in the past 15 years. A system of school selection regarding public schools, together with the implementation of nationwide surveys on academic ability and the publication of test results, has served to widen the disparities among schools; and due to, among other things, the introduction of an integrated middle and high school curriculum, competition has spread not just to private schools but also to public elementary and junior high schools.

Above all, the Fundamental Law of Education, which established the educational policy in Japan following the war, was recently reformed. That was based on the spirit of the Japanese Constitution enacted following the end of World War II. In 1947, from the standpoint of respect for the dignity of the individual. In 2006, however, a clause that guaranteed the independence of education, saying that education should not be conducted for, and directly responsible to, all of the people and not yield to improper control, was changed to a phrase saying that education should be conducted based on this and **other Legislation**, however without yielding to improper control – thus making it possible for the Government to strengthen its control over education.

In 2006, suicides caused by bullying occurred one after another, and the results of the Ministry of Education, Culture, Sports, Science and Technology's "Zero Suicides from Bullying" study were reexamined and found to be faulty. Incidents of

bullying, corporal punishment, school violence, dropout • expulsion and non-attendance have also not decreased. School life, which is highly stressful, affects children both physically and mentally, and the extreme loneliness and low self-esteem of Japanese children are truly alarming.

In its Second Concluding Observations, the CRC expressed concern about the system for referring juveniles to the public prosecutor for certain crimes in principle, the lowering of the age of eligibility for criminal punishment, and the expanding of the maximum period for protective detention, all of which were introduced into the juvenile justice system through a revision of the Juvenile Law conducted in 2000. Referring to the General Discussion on the Administration of Juvenile Justice Outline of the CRC in 1995, the Second Concluding Observations also advised the Japanese Government to ensure the full implementation of: the standards related to juvenile justice, especially Articles 37, 39 and 40 of the Convention; the UN's standard minimum rules for the administration of juvenile justice (the Beijing Rules); and the UN guidelines for preventing juvenile delinquency (the Riyadh Guidelines). However, the Japanese government has not regarded the CRC's recommendations. On the contrary, in 2007 it conducted a second revision of the Juvenile Law that ran counter to the spirit of the CRC's advice. The revisions are hardly mentioned in the Third Government Report.

Since the 2000 revision, a situation that runs counter to the CRC's Second Concluding Observations has worsened. For example, the number of juveniles referred to adult criminal courts has increased, and punishments have become noticeably more severe. Moreover, the 2007 revision granted police the authority to investigate juveniles under 14 years of age, provided for children under 14 who commit certain crimes to be sent as a rule to a family court, not to child guidance center and lowered the age at which juveniles can be sent to a reformatory, and established protective detention in a reformatory as a punishment for probation violations. Whereas juveniles under 14 were previously treated in a way aimed at fostering their well-being, police investigations of them can now be conducted under the name of "inquiries"; treating them judicially is growing more common; and the trend towards handing out severe punishments to young children is continuing. Moreover, based on the 2008 revision, it became possible for the victims of certain juvenile crimes and their bereaved relatives to attend the trials of the related juveniles.

Due to these repeated revisions, there is concern that the spirit in which juvenile

trials are conducted, which until now has been educational, will gradually become increasingly inquisitorial. In its reports until now, the Japanese Government has not touched at all on incidents of falsely charged juveniles. However, such incidents occur every year due to, among other things, coerced confessions and other illegal investigative practices. Even recently, a finding of innocence and no wrongdoing and a verdict of not guilty were rendered in a case in which adults and juveniles were falsely accused of assaulting the presiding judge of the Osaka District Court. Nevertheless the investigation of the polices that overemphasizes confessions hasn't changed, and the Japan Federation of Bar Associations is currently conducting a campaign to get all interrogation procedures recorded on video so that there is visual and aural evidence of what actually goes on.

In Japan, the growing economic disparity among the people has become a problem, but this disparity also clearly extends to children. As a result, the poverty of children has become a problem, and it has been pointed out that this poverty is linked to such things as academic skills, health, child abuse, and juvenile crime, which in turn exert a serious influence on the growth and development of children. However, the Government has still not conducted a wide-ranging investigative study of the various problems related to children, but has rather only gathered reports of different ministries and agencies apart. The National Youth Development Policy that has been submitted as a national action plan for realizing the rights of children is targeted at "youth" who range in age from zero to 29 years and does not stand on a rights-based approach.

In order to make it possible for measures on a rights-based approach, a Basic Law for the Rights of Children should be formulated; a budget for achieving children's rights should be allocated from the standpoint of "the best interests of the child"; and a new, interdisciplinary policy-coordinating agency that can conduct comprehensive, integrated measures should be established as well.

## **Part 1 Convention on the Rights of the Child**

### **General Measures of Implementation**

- 1 The Government should eliminate its reservations to Article 37 (c) of the Convention; conduct a review – based on the Convention’s demand for treating juveniles ”with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age" “– of the practice of physically restraining juveniles in police detention cell; and make improvements so that juveniles will be treated according to their age.
- 2 In response to the recommendations of the Concluding Observations, the Government should conduct a comprehensive review of statutory law, and enact new laws and revise existing laws so that the legal system conforms with a rights-based approach.
- 3 The Government should rescind its declaration concerning Article 9 Paragraph 1 and Article 10 Paragraph 1, and should observe the Convention in the administration of immigration control.
- 4 Although the Convention on the Rights of the Child as a law ranks above domestic law, its application in the formulation and administration of domestic law is very limited, which is a problem. Using a rights-based approach, it is necessary to review the Basic Act on Education, the Child Welfare Law, the Juvenile Act and other domestic laws while promoting the implementation and application of the Convention.
- 5 Legal apprentices and judges should be systematically trained regarding the Convention.

#### **A. The position of the Government of Japan with regard to its decision to make reservations**

##### **1 Reservations to Article 37 (c)**

1. In the Second Concluding Observations, as in the Initial, the CRC called for the withdraw of the Government’s reservations to Convention Article 37 (c). In response, the Third Government Report completely ignores this demand and essentially declares that the Government will never eliminate its reservations. The reason that the Government Report gives as grounds for the reservations is that while the Convention considers juveniles to be people younger than 18, the Juvenile Act of Japan considers juveniles to be people under 20, and that there exist provisions in the Juvenile Act (Articles 49 and 56) that provide for juvenile suspects and defendants to be separated from and treated differently than



individuals 20 and older. "This system is considered to conform to the aim of the Convention," it asserts.

However, if the Government Report is going to take this view, then it should issue an interpretative declaration to the effect that the "adults" mentioned in these provisions are adults as defined by Japanese law, in which case there would be no reason for the reservations (Initial JFBA Report, Paragraph 16).

2. The problem is that physically restraining juveniles in police detention cells has become common practice. Physical restraint in police detention cells can itself be called an infringement of human rights. Even if juveniles are held in different cells than adults, their physical restraint in police detention cells where adults are confined and interrogated turns the physically restrained juveniles into targets of investigation rather than protection, and has to be said to run counter to the Convention's demand for treating juveniles "with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age"

- 2 The Interpretative Declaration Concerning Article 9 Paragraph 1 and Article 10 Paragraph 1

3. (1) The Government Report ignores the CRC's recommendations and continues to maintain the interpretative declaration that Article 9 Paragraph 1 and Article 10 Paragraph 1 are not applicable to the administration of immigration control in Japan.
  - (2) Due to this interpretative declaration, the administration of immigration control in Japan has produced an inhumane situation whereby, in the case of foreign families whose members are all without resident status, only children who have grown up to a certain age in Japan are granted special permission for residency while the parents are deported (Calderon case, Paragraph 124). There have been times in the past when, in situations where the children had Japanese citizenship but the parents did not have it or resident status, immigration authorities forcibly separated the children from the parents and deported the parents. At present, when the children have Japanese citizenship, such inhumane measures are not carried out, so a certain improvement has been seen. However, given that this interpretative declaration exists, such measures could be revived at any time. In any case, the right of children to be raised without being separated from their parents has been trampled on.
  - (3) This interpretative declaration is also a problem in light of the obligation to faithfully observe the treaties stipulated in Article 98 Paragraph 2 of the Constitution of Japan. It must immediately be abolished.

**B. Measures Taken to Harmonize National Laws and Policies with the Provisions of the Convention (Article 4)**

1 A Comprehensive Reviewing of National Laws to Ensure consistency with the Convention

4. The Third Government Report repeated the contention of the Initial Government Report that no special legislation has been enacted to ensure conformity between domestic law and the Convention, and that none is required. However, as the Concluding Observations point out, the minimum age of marriage is different for males and females, and in addition to legislative discrimination against children born out of wedlock, societal discrimination persists against girls, children with disabilities, Amerasians, Koreans, Burakumin, Ainu and other minorities, children of migrant workers and refugee and asylum-seeking children. Thus, it is an undeniable fact that there exist numerous problems that clearly diverge from the Convention.

2 Examples of New Laws and of Revisions of Existing Laws

5. The Third Government Report gives the following as examples of new legislation and of partial amendments of relevant laws: the Law that Partially Amends the Law Prohibiting Consumption of Tobacco Products by Minors and the Law prohibiting Consumption of Alcoholic Beverages by Minors, Law about Regulation of the Acts Inducing Children Using the Internet Dating Services and Other Matters, partial amendments of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography and for Protecting Children, Establishment of the Basic Law on Measures for Society with a Decreasing Birthrate and the of the Law for Measures to Support the Development of the Next Generation, partial amendment to the Child Abuse Prevention Law and the Child Welfare Law, and new laws and regulations dealing with human trafficking. From the standpoint of advancing the children's right to life and to be protected, these new laws and amendments are commendable. However, they do not advance the right to participate or the right to develop, which are indispensable for achieving "the best interests of the child" and to which the Convention attaches so much importance. On the contrary, the trend towards more severe punishments that has resulted from the amendments of the Juvenile Act has made the rehabilitation of children more difficult, and the coercion of patriotism resulting from the revision of the Fundamental Law of Education has infringed children's freedom of expression and conscience. Such developments contravene the principles and provisions of the Convention and could be said

to roll back the abovementioned rights considerably.

### **C. Status of the Convention in the National Jurisdiction**

#### 1 Relationship between treaties and national laws

6. How are the rights guaranteed by the Convention reflected in Japanese law? Regarding this point, the Third Government Report goes no further than to repeat the Initial Government Report's assertion that the Constitution of Japan and the Child Welfare Law accord with the aims and objectives of the Convention. However, concerning that the Convention's principles and provisions call for domestic law to be established so as to support the rights of children, the Constitution of Japan and other domestic laws such as Child Welfare Law are extremely deficient as regards bolstering the right to participate and the right to develop – a deficiency that the Third Government Report ignores.

7. With regard to domestic laws that contribute the realization of the right of the child, the Third Government Report repeats the Initial in mentioning the Child Welfare Law, the Basic Act on Education, the School Education Law and the Juvenile Act.

However, these domestic laws are clearly not the type of rights-based laws demanded by the Convention.

Moreover, the report ignores the fact that the facilities and systems built for children and the budget allocated for those facilities and systems have been extremely inadequate, and that there are thus numerous problems from the standpoint of protecting children. For example, Child Guidance Centers are inadequately staffed; the minimum standards for child welfare facilities have remained unchanged since 1948; and there are many other problems as well regarding “the best interests of the child.”

8. Moreover, the Basic Act on Education, the School Education Law, and the Juvenile Act have recently been changed for the worse, strengthening authorities' control and domination over children and thus contravening the aims and objectives of the Convention. In addition to stating that the school enrolment rate has risen to almost 100%, the Government Report points out that “the Basic Act on Education intends to spread education esteeming personal dignity.” In actuality, however, the competitive environment prevalent in the educational system has still not been improved. On the contrary, under the name of reform, and in conjunction with the changes for the worse in the Basic Act on Education and the School Education Law, competitive tendencies have been strengthened, for example through the implementation of national academic aptitude tests in compulsory education. As a result, children's stress levels have increased, and a seemingly

insurmountable situation involving bullying, suicide, psychiatric disorders, truancy and more has continued. Moreover, making the national flag and the national anthem compulsory at school events has put the children's freedom of conscience at risk (see Para. 101).

**E. Precedents of the Application of the Principles or Provisions of the Convention to Judicial Judgments in Japan**

9. Regarding the Concluding Observations' concern that "while the Convention can be invoked directly by the courts, in practice this does not occur," the Third Government Report merely repeats the Second in saying that there is no precedent of a court decision explicitly showing whether or not the direct application of the provisions of the Convention is possible, and the manner of application should be determined on a case-by-case basis. It thus does not squarely address the concern of the Concluding Observations.

10. Subsequently, on June 4, 2008, the Supreme Court's Grand Bench, while not directly applying the Convention, actively cited it as one of the reasons for invalidating part of Article 3 Paragraph 1 of the Nationality Law and rendering a decision that recognized the acquisition of Japanese citizenship by a child who was born to a Japanese father and a foreign mother and for whom the father acknowledged paternity following the birth – a case that attracted considerable attention (see para.92). Moreover, other decisions, albeit few in number, that cite the Convention have also been seen in recent years in connection with deportation procedures for children who do not have resident status. However, in practice, the Immigration Control and Refugee Recognition Act, even though it is a domestic law, has been given precedence over treaties (see Paragraph 135).

Decisions that expressly cite the Convention are thus extremely rare. What's more, there are no precedents in Japan where the Convention was directly applied.

11. On April 28, 2009, the third petty bench of the Supreme Court issued a decision in a case in which a second grader (6 or 7 years old) jumped on the back of a teacher he didn't know, kicked him in the buttocks twice when the teacher tried to shake him off, and then ran away, in response to which the teacher got angry and chased after him and seized him by the collar, shoved him against a wall and yelled at him, "Don't do that again!" The unanimous opinion of the five judges was that this was educational guidance and thus permitted, and that it didn't amount to corporal punishment. It is thus a fact that the understanding of the Convention and the extent of its penetration among legal profession,

including judges, are extremely limited.

To improve this situation, systematic training regarding the Convention is indispensable for legal apprentices and judges. In addition, in order to encourage every court to apply the convention directly, a special legislation such as "the Basic Act of the Rights of the Child" is essential.

## **F. Relief Measures in Cases of violation of the Rights of the Child under the Convention**

### **1 Independent Monitoring System and Agencies that Remedy Rights Infringements**

12. The Concluding Observations call on the Japanese Government to establish an independent nationwide system to monitor implementation of the Convention. In accordance with the Paris Principles, such a system must combine opinions, advice and suggestions for the promotion and protection of human rights with a quasi-judicial authority over infringements of the human rights of individuals. While welcoming the Human Rights Commission to be established by the Human Rights Protection Bill that the Ministry of Justice is seeking to enact, the Concluding Observations express concern about the independence of that institution. The lack of an explicit mandate to monitor the implementation of the Convention of the planned commission is also concerned. Nevertheless, as described below, the Third Government Report does not sincerely address these concerns.

13. With regard to quasi-judicial remedies for individual infringements of rights, the Third Government Report praises the consultation, measures and educational efforts of the Human Rights Organs of the Ministry of Justice, and repeats the Second Government Report in holding up, as a sign of progress, the increase in the number of Volunteers for Children's Rights Protection. However, the Human Rights Organs' lack of independence is obvious. Moreover, as was pointed out in Paragraph 20 of JFBA's second report, there is information to the effect that the funds for the Volunteers' activities are meager and that no funds have been budgeted for activities aimed at redressing infringements of human rights. Given this situation, it would hardly be an exaggeration to say that these institutions are really not functioning at all.

14. With regard to an independent nationwide monitoring system, the Government Report introduces, as an independent organization in accordance with the principles of Paris Principles, the Human Rights Commission to be established by the Human Rights Protection Bill that was withdrawn in 2003 and whose re-submittal has subsequently been studied. However, this legislation was withdrawn due to extensive criticism for various

reasons: the Human Rights Commission was designed to be responsible to the Minister of Justice and would thus have little independence as an organization, as a result of which it would likely view public authority comparatively uncritically and give priority to controlling the actions of private citizens; and there was concern that the legislation would produce the risk of the media being controlled by the very authority that is supposed to be the bedrock of its protection. As mentioned above, the Concluding Observations also specified these points, and called for the Human Rights Commission to be given both independence and the explicit mandate to monitor the implementation of the Convention, but the Government Report completely ignores that problematic aspect of the Human Rights Protection Bill and doesn't address it at all.

15. In addition, the Concluding Observations call for the establishment of local ombudsmen within prefectures and a system for them to coordinate with Human Rights Commission.

Regarding this, the Government Report goes no further than to say, "As of January 2006, there are five local governments that have introduced an ombudsman for children as far as the Cabinet Office is aware of".. If the Government really takes the Concluding Observations seriously, it should not only ensure the Human Rights Commission to be independent it should also, beginning now, conduct preparations to facilitate cooperation with the ombudsmen of local governments. Towards that end, it should, as a national policy, implement measures that encourage local governments to establish ombudsmen, such as holding discussions with them and providing financial assistance such as subsidies and local allocation tax grants. Of the 1800 local governments (of cities, towns and villages), a mere 10 or so have established ombudsmen to date, and the Government's attitude towards this issue is clearly one of disengagement.

**G. Comprehensive national strategy on children's rights within the framework of the Convention on the Rights of the Child, including National Action Plan to realize the rights of the child**

16. The aim of the National Youth Development Policy is the healthy growth and development of children. The Policy thus focuses on promoting the social self-reliance of youth, and on countermeasures for juvenile delinquency, crime victimization, child abuse, and so on. Moreover, it contains managerial and controlling measures in accordance with the trend towards increasing the severity of punishments, which is spawned by the amendment of the Juvenile Act. The Policy thus runs counter to the rights-based approach called for by the Convention.

17. While the Concluding Observations noted the formulation (in December 2003) of the National Youth Development Policy, it pointed out that the Policy was not a comprehensive plan of action and that the participation of children and civil society in the elaboration and implementation of the Policy was insufficient. It also recommended to strengthen, in collaboration with civil society and youth organizations, the Policy to ensure that it is rights-based, covers all areas of the Convention. In response, the Government Report mentioned an assortment of Government measures, including the formulation of the Policy (Paragraph 32), efforts in relation to a World Summit for Children and the World Congress against Commercial Sexual exploitation of children (Paragraph 31), the establishment of the Education Rebuilding Council (Paragraph 33), and formulation of the Focused Strategy 'Japan That Supports Children and Families' (Paragraph 34).
18. However, as is pointed out elsewhere herein, none of these measures takes rights-based approach, nor encouraged the participation of children and civil society through their implementation. In addition, the National Youth Development Policy is an authoritarian, control-oriented effort that instills in children a normative consciousness from above. The Education Rebuilding Council also aim to instill “high scholastic abilities and norms” in children in an authoritarian manner. In that regard they have the same problem as the National Youth Development Policy, and will result in promoting greater competitiveness at school. Furthermore, the Focused Strategy 'Japan That Supports Children and Families' is basically a strategy for countering the declining birthrate; its relevance to realizing the Convention is highly tenuous.

## **H. National scheme for implementation of the Convention**

### **1 The Positioning of the Headquarters for Promoting Youth Development**

19. As domestic mechanisms for implementing the Convention, the Government Report mentions the general adjustments conducted by the Cabinet Office over different ministries and agencies; the Headquarters for Youth Development, which was established in June 2003 for purposes of implementing the Convention; and the National Youth Development Policy (December 2003), which puts the Headquarters' policy into concrete form. However, the Headquarters for Youth Development is part of the Government; it is by no means an independent agency. Moreover, the “youth” who are the focus of the National Youth Development Policy range in age from zero to 29 years old; the measures that the Policy proposes include labor measures that could hardly be said to be directed at children; and it

would be difficult to say that the measures that *are* directed at children take rights-based approach.

## 2 Lack of Cooperation with Local Governments

20. Regarding cooperation with local governments, the Third Government Report goes no farther than to repeat the Second in saying that the Cabinet Office holds liaison conferences with the main youth departments and agencies of local governments, and that the two sides exchange information and jointly promote measures. No progress is thus evident since the Second Report. There is also no information about any specific cooperative efforts. This can be taken as proof of the fact that there is no cooperation with local governments that is based on a comprehensive plan founded on promoting rights-based measures.

## 3 Collecting and Organizing Statistics

21. Conducting research and studies, and collecting and organizing statistical data, about the current state of children are indispensable for formulating and implementing policies for children. Regarding this point, the Government's efforts are highly inadequate.

22. The influence that poverty has on the scholastic abilities, health, abuse and delinquency of children has been becoming an issue worldwide. However, the Government has not conducted comprehensive research and studies on this issue, nor has it collected any related statistical data and organized it so that it can be widely used by the people. The Government has not even established an official poverty standard (poverty line), nor has it calculated, based on official statistics, a poverty rate for establishing such a standard. And in other ways as well, it has shown no initiative regarding this problem.

23. The Government Report does not present any statistical data about infringements of the human rights of children, such as high school dropping-out, truancy (including staying in the nurse's office when at school), bullying, or suicides from bullying; or about the number of cases of corporal punishment at schools or the number of disciplinary actions taken, for reasons of violence, in reformatories and other institutions. Nor does it present such necessary statistical data as the proportions of public and private childcare centers or the statistical relationship between the quality of childcare and the development of children. Thus, while there is currently a growing trend among local governments to privatize public daycare centers due to fiscal problems, there is no way to evaluate the effects and thus the desirability of this trend. It is necessary to collect statistical data that can be effectively used as guidelines for improving the situation with the rights of children or for preventing its deterioration. A system that is comprehensively managed by a single agency and that can easily be accessed by the people is necessary. But such has not yet to appear.



#### 4 Measures for Evaluating the State of the Convention's Implementation

24. The Third Government Report (Paragraph 49), like its predecessors, says that no such measures have been taken. Such an attitude is unforgivable. If the state of implementation is not evaluated, it's impossible to devise a program for improving it.

#### **I. Joint implementation of youth policy with non-governmental organization and other civil society groups**

25. The Government Report says that, in implementing their policies, Government ministries and agencies are cooperating with NGOs and other members of civil society, but no specificity is provided. In what way has the Government taken the opinions of JFBA, an NGO, into account in revising the Juvenile Act and other statutes? In what way has it tried to seriously deal with the problems that many organizations, including JFBA, have pointed out in the counter-reports they have submitted based on the reviews they have conducted? To the extent of what can be seen from the Government Report, there is no evidence that the Government has cooperated with the NGOs or even taken their opinions into account.

26. Moreover, the Government Report says that the Government has exchanged opinions with NGOs, but it cannot be said that the Government has taken any initiatives. It is necessary for the Government to at least exchange opinions on substantive matters with NGOs; it should also share its perspective to the extent possible, and formulate a concrete program for achieving progress in implementation of Convention. But it has not taken any such initiatives.

27. In Paragraph 42, the latest Government Report cites its predecessors in mentioning the system of the Ministry of Justice's human rights commissioners as well as the Government's various kinds of counseling centers. However, it only mentions these as part of the framework for the healthy development of youth; it doesn't touch on the subject of rights-based cooperation. Incidentally, since 2000, various civic organizations have been formed throughout the country for purposes of preventing child abuse, and they have deepened their cooperation with Child Guidance Centers. Moreover, in the Regional Conferences on Measures for Children in Need of Protection that were established in municipalities (cities, towns and villages) based on the 2004 partial amendment of the Child Welfare Law, cooperation with private organizations has progressed. These developments represent true progress towards implementation of the Convention in Japan, but unfortunately they are not specifically mentioned in the Government Report. A significant development regarding the handling of child abuse is that a new system,

according to which the authority to respond first in child abuse cases shifts from the prefectures to municipalities, has been created, but both the funds and manpower allocated to the municipalities for the system have been woefully inadequate

**J. Implementation of Measures to Protect Children's Economic, Social and Cultural Rights to the Maximum Extent of Available Resources**

28. With regard to the budget for social expenditures for children, the Government Report mentions the amount of the expenditures and their proportion of the total budget. However, that is inadequate. It is necessary to touch on what kinds of policies are necessary to achieve the best interests of the child, and what budget measures are necessary to achieve those policies. The kind of report needed is one based on the viewpoint, "What kind of budget should be put together in order to raise the standards of child welfare facilities up to the minimum international level?" One problem that has now occurred is that the operating expenses for childcare centers are being drawn from general account budget, as a result of which the budgets for childcare centers are being increasingly reduced nationwide.

29. With regard to protecting children from the detrimental effects of economic policies, the Government Report mentions the child-rearing allowance and the system of public assistance. However, as part of the increase in poor households that has been described as an explosion of the working poor, the economic hardships of children are growing. Studies, based on the realities of situation, should be conducted on the adequacy of the dependent child allowance, on increasing the minimum wage, and on improving public assistance standards; and the Government should also mention its measures that are intended to minimize the effects on children from economic policies.

**L. Public Relations Activities for the Convention (Article 42)**

30. The Convention-related educational and publicity efforts enumerated by the Government are clearly inadequate. First of all, rights-based approach is lacking, so that even if time and money were spent on education and publicity, the extent of the effects would be questionable. Second, there is no agency to investigate whether education and publicity are being effectively carried out. Therefore, even when municipalities formulate education and publicity plans concerning the Convention, their efforts often stop with the formulation and the plans are not actually carried out. Third, such deficiencies have contributed to the fact that there have been no precedent in which the Convention has been directly applied.

For example, at a prefectural school for the blind in Tottori Prefecture, the principals received absolutely no training related to the Convention in the human rights training they received from 2003 to 2008. While this is a distressing situation, it is not thought to be limited to Tottori Prefecture.

#### **Article 1 (Definition of a Child)**

##### **A. Difference between the Definition of “child” in the Convention and that in Japanese Domestic Laws**

31. In Japan until now, Article 4 of the Civil Code has established 20 as the age of maturity. There is also a social custom whereby people participate in a coming-of-age ceremony in the year they turn 20. As a result, the public generally views people 20 and older as adults and people less than 20 as minors. That is, the public generally thinks that “child” means someone less than 20.

Nevertheless, in 2009 the Legislative Council of the Ministry of Justice conducted deliberations on lowering the age of maturity, and is apparently going to issue a report recommending such a step.

However, in the results of a public opinion poll conducted by the Cabinet Office in July 2008, the public was overwhelmingly opposed to the idea to view people 18 and older as adults. The age of maturity is directly related to numerous laws. Thus it should not be changed lightly without the general public’s agreement to the proposition.

##### **B. Age Limitation applied to Legal Competency in Japan**

###### **1 The Age at Which Contracts for Medical Consultation Can Be Executed**

32. Under the Civil Code, minors cannot perform juristic acts independently, without the consent of their legal representative. However, minors independently executing contracts is not itself prohibited. From the standpoint of trying to protect minors, the legal representative can cancel, only after the fact, a contract that a minor has executed. Thus, when it comes to simple medical procedures such as dental exams, there are cases in which, based on the decision of the medical institution, a minor less than 20 years old will be allowed to independently execute a contract. However, for surgery, transfusions and other such major medical procedures, a medical institution will generally not conduct the

procedure without the consent of the legal representative. At present, there are medical experts who take a serious view of the idea that children too have the right to obtain medical treatment, and who are trying to create standards for recognizing the ability of minors to make competent judgments about medical treatment and for accepting their decisions about medical treatment, provided they have reached a certain age. However, these efforts are still in the discussion stage. At present it would be difficult to say that the right of minors to obtain medical treatment has been adequately guaranteed.

The same is true regarding the ability of minors to obtain medical counseling and access medical information. In order for a minor to do these, it can generally be expected that the medical institution will first ask for the consent of the parents. Thus, it would be difficult to say that the freedom of children to obtain medical counseling and access medical information has been ensured as stated in the Government Report.

## 2 Minimum Age of Sexual Consent

33. The Concluding Observations recommend that the minimum age of sexual consent (13) be raised.

The Report states that the Government, in the Act on Punishment of Activities Relating to Child Prostitution and Child Prostitution and Child Pornography, and the Protection of Children, prohibits all acts of prostitution involving children. However, this law only punishes acts of prostitution in which compensation or the promise of compensation is provided for sex. When compensation is not provided, acts of prostitution are punished by the Child Welfare Law or by the youth protection and development regulations that have been established in the various regions and prefectures. The Child Welfare Law's punishment for causing a child to commit an obscene act was toughened through that law's revision in 2003. Due to the increase in cases of child prostitution and other crimes originating in the use of online dating websites, the Act on Regulations, etc. of Inductive Activities for Children Using Internet Dating Services (the Act on Regulations of Website Dating Services) was enacted in September 2003 and partially revised in December 2008.

However, of the children victimized by violations of the Act on Punishment of Activities Relating to Child Prostitution and Child Prostitution and Child Pornography, and the Protection of Children or by other sexual crimes, 792 were victimized (in 2008) upon using other websites besides dating websites, such as profile websites. At present, children are being sexually victimized not just on dating websites (see Paragraph 388). Accordingly, the Government's measures have to be called extremely inadequate.

In order to protect the right of sexual self-determination of children, who are in the process of growing and developing, and in order to protect children from sexual

exploitation, the legal minimum age of sexual consent should be raised.

### 3 Minimum age required to file a lawsuit

34. According to Japan's Civil Procedures Code and Act on Adjudication of Domestic Relations, minors are unable to institute lawsuits; they can only take legal action through their statutory representatives. That children are unable to institute lawsuits or to file petitions concerning domestic matters is a problem.

In the case of child abuse, children abused by their parents are unable to petition for a loss of parental authority, which was considered a problem. Thus, in the revision of the Child Welfare Law, directors of child guidance centers were given the right to petition whereas previously it had been restricted to relatives of the child or to the counsel for the prosecution. However, the right of children themselves to petition has still not been recognized, so this problem has still not been fully resolved.

### 4 Gender related differences in the legal provisions for sexual offenders

35. The Government claims that there is no distinction between males and females regarding such crimes as indecent assault or in the provisions of the Child Prostitution and Child Pornography Law. However there is still gender related differences in the Penal Code. Things may have been in the past, at present there is no rational reason for discriminating between males and females when it comes to the crime of rape. Such irrational discrimination should be eliminated.

### 5 Legal Age of marriage

36. According to Article 731 of Japan's Civil Code, the legal age of marriage is 18 for men and 16 for women.

Regarding this provision, the Third Government Report (Paragraph 139) explains, "It is generally maintained that a difference exists between men and women in terms of the speed at which they develop physically and mentally, and a gap in the marriageable age between the two was established taking such difference into consideration, and therefore the gap is based upon reasonable grounds."

However, to what extent this physical and emotional difference between boys and girls can be proved is open to question. One thus has to say that this argument misreads the purpose of the marriage age provisions.

First and foremost, the purpose of the marriage age provisions is to prohibit immatures from getting married and thus prevent the kinds of disadvantages to which marriages between overly young people are prone. Therefore, to establish an appropriate marriage age, it is necessary to investigate the age at which a maturity sufficient to have a sound marriage in modern Japanese society is attained. Moreover, since the current Constitution

assumes the equal rights of husband and wife as a precondition of marriage, and since it aims to cast off the patriarchal view of marriage and the gender-based allocation of roles typical of the past, one should say that not only physical and emotional maturity but also social and economic maturity is desired of the marrying male and female.

Moreover, setting the marriage age for females low contravenes the purpose of the marriage age provisions in that it does not serve to promote the rights of girls but, on the contrary, exposes girls to the disadvantages that often result from an immature marriage. For example, marrying at a young age prevents girls from developing egalitarian relations with their husbands and leads to them getting pregnant and giving birth at an early age, distancing them further from opportunities for educational and economic equality and, in certain cases, producing a situation whereby they become the target of exploitation in the home.

As the Government Report mentions (Paragraph 139), “In February 1996, the Legislative Council of the Ministry of Justice submitted an outline of a Bill to Revise Part of the Civil Code suggesting among other things that marriageable age should be 18 years of age for both men and women.” Based on this report, and from the standpoint of protecting the rights and preventing the exploitation of children (girls), the Japanese Government should promptly make 18 the marriage age for both men and women.

## **General Principles**

### **A. Article 2 (Non-discrimination)**

- 1 Discrimination, against children born out of wedlock, in terms of their inheritance portion, the tax system, and the statute of limitations for suing for parental recognition, should immediately be eliminated by legislative action.
- 2 Regarding discrimination against minorities, discrimination against children with disabilities and discrimination against girls, not only should these various types of discrimination be eliminated through legislative action, but effort should be made to eliminate society’s discriminatory attitudes as well.
- 3 The non-attendance at school by the children of foreigners has become a serious problem. To solve it, the opportunity for education should be equally guaranteed to all children who reach school age. In addition, a school attendance notice should be sent to all children who reach school age, and measures to prevent non-attendance should be investigated.

4 Recently, there has been an atmosphere tolerant of discrimination in Japanese society as a whole. The Government should seek to eliminate discrimination through conducting regular educational activities.

#### 1 Discrimination Against Children Born out of Wedlock

37. Regarding children born out of wedlock, there was discrimination in terms of the information required on family registers, the information required on birth notifications, and the ability to acquire citizenship. As mentioned below, various improvements have been made through legislation. However, there is still discrimination against children born out of wedlock, so that further improvement is necessary.

At present, lifestyles are diversifying: there are couples that don't submit a marriage notification because they choose to retain their respective surnames; there are couples that choose to be wedded in fact rather than in name so as not to be subjected to the constraints resulting from a wedding notification; there are fathers and mothers that don't live together or submit a marriage notification but who cooperate in raising their children; there are women who choose to live as single mothers; etc. Thus, nowadays it is no longer rare for men and women to choose not to adopt the path of legal marriage. As a result, many children are being born out of wedlock.

Just because children are born out of wedlock, that's no reason for them to be treated differently than children born in wedlock. The kind of legal system that promotes society's de facto discrimination against children born out of wedlock should naturally be improved.

#### ( 1 ) Inheritance Portion

38. The Proviso to Paragraph 4, Article 900 of the Civil Code states, "the share in inheritance of an child out of wedlock shall be one half of the share in inheritance of a child in wedlock." This provision exists because the old Civil Code, based on the idea that legal marriage should be respected and that legitimate children should be respected as the people who will inherit the family's estate, discriminated against illegitimate children regarding their inheritance portion, and that discrimination was adopted wholesale into the current law.

However, a child bears no responsibility for whether its parents were married when it was born. Accordingly, there exists no rational reason for treating the child disadvantageously in matters of inheritance. On the contrary, such discriminatory treatment of children born out of wedlock clearly runs counter to the "dignity of the individual" that is a keynote of the Constitution and to the idea of equality under the law.

#### (2) Notification of the birth and Family Registers

39. On November 1, 2004, the rules were changed for the entries to be made in the “Relationship” column of family registers to describe the relationship of a child born out of wedlock to the parents mentioned in the family register. When notification of the birth of such a child is provided, it is now customary to enter the child’s birth order: “first-born son / daughter,” “second-born son/ daughter,” etc.

When, for a child born out of wedlock who has been entered in a family register prior to this change, there is an application to change the entry in that column from “male” or “female” to “first/ second-born son/ daughter,” or the other corresponding expressions, the entry will be changed. Moreover, so that the fact that the entry was changed will not remain on record, it has become possible to file an application and have a new version of the family register made.

(3) Nationality

40. Previously, it was only possible for a child born out of wedlock, of a father who was a Japanese national to obtain Japanese nationality if the father recognized the child prior to the birth, a situation that led to inequalities. However, by the revision of the Nationality Act conducted on December 12, 2008 (implemented on January 1, 2009), that provision was eliminated (see Paragraph 90).

(4) Tax System

41. The deduction for widows specified in the Income Tax Act does not apply to mother-and-child families when the child has been born out of wedlock. It only applies to mother-and-child families that result from either the death of the husband or divorce and in which the child is legitimate. Thus, families with children born out of wedlock are treated disadvantageously under the tax system, too.

(5) Statute of Limitations

42. The Proviso to Article 787 of the Civil Code stipulates that if three years have passed since the day of the death of the parent, a child born out of wedlock may no longer file a suit requesting recognition. Such a statute of limitations has not been established for lawsuits in which legitimate children seek confirmation of their relationship to their parents. The statute of limitations for children born out of wedlock is thus another instance of how such children are treated discriminatorily.

2 Discrimination Against Minorities

43. As will be described in various sections below, prejudice, discrimination and rights infringements against minorities – the Ainu, people with disabilities, foreigners, and other groups, including their children – have become a major problem. Moreover, the children of migrant workers suffer from an inequality of educational opportunity concomitant with



their language problems, so that they often fall behind and end up in situations where it is easy for them to become involved with antisocial people and groups; and in other ways as well they find themselves living in environments that effectively discriminate against them.

Regular activities for raising social awareness are important, but distributing pamphlets which is often the Government's preferred method for such activities is not necessarily effective. It's necessary to devise more effective methods.

### 3 Children with Disabilities

44. For children with disabilities, special needs education was instituted as part of the School Education Law on April 1, 2007. Support for children with disabilities was thus reformed from the standpoint of trying to assist these children in their personal efforts to become independent and participate in society. In that connection, on April 1, 2007, schools that were previously called schools for the blind, schools for the deaf, and schools for the disabled became "special needs schools," a term less fraught with negative connotations. However, due to this reform, the number of mentally retarded children at special needs schools has increased. It is necessary to monitor the effects that this reform has on the education of children with disabilities.

### 4 Discrimination Against Girls

45. Regarding the sexual abuse of girls and the problem that they can easily become victims of child prostitution, the Government is promoting comprehensive measures based on the (second) Basic Plan for Gender-equal Society, and this is important. On the other hand, it is also important to provide appropriate guidance about sex to children and to try to educate and enlighten victimizers.

Moreover, for children who are unable to live with their parents and thus end up living in children's homes or support facilities for development of self-sustaining capacity, sexual problems occur in these institutions between the sexes and between members of the same sex. This situation can have a major effect on the children's subsequent human relations, and thus should be sensitively monitored.

### 5 The Children of Foreign nationality

#### (1) Ineligibility for Compulsory Education

46. In Japan, compulsory education is stipulated in the Constitution, the School Education Law, and the Basic Education Law. However, when the parents are not Japanese nationals, the children are understood to be ineligible for compulsory education. Actually, various municipalities will send a "notice to matriculate at a local public grade school" to the children of foreigners if the children are of school age and if the parents register (which

they can do regardless of whether they are lawfully in the country), and will accept the children at public schools if the parents wish it. However, for controlling the immigration and residency of foreigners, the Government has firmed up the policy by which it will newly introduce a foreigner ledger system for managing its administrative services for foreigners; and following the introduction of this system, foreigners who do not have resident status will be ineligible for inclusion in the ledger. Therefore, the children of foreigners who do not have resident status will no longer receive the abovementioned notice from municipalities, and there is concern that they will be increasingly pushed into a situation where their education is not guaranteed.

(2) Non-attendance at School by the Children of Foreign nationality

47. At present, non-attendance at school by the children of foreigners has become a serious problem. However, foreigners are not included in survey on school-age children who are not attending schools, which is conducted by the Ministry of Education, Culture, Sports, Science and Technology, Accordingly, at present it is impossible to accurately understand the situation with non-attendance on a nationwide basis. However, when, based on the survey conducted by the cities and towns belonging to the Conference of Cities Where Foreign Residents Are Concentrated (an organization established by the governments of cities where numerous foreigners, especially South Americans of Japanese descent, reside and by regional international exchange associations and others), we looked at the situation with the non-attendance of foreign children in individual cities, we found that the non-attendance rate was 56.3% in the city with the highest rate, 9.3% in the city with the lowest rate, and 28.8% on average. However, these figures include children who attend schools for foreigners in some municipalities. When we considered the surveys of other municipalities and separated out the children who attend schools for foreigners, we found that around 40% of foreign children attend public schools, around 30% attend ethnic schools, there is uncertainty about roughly 10% due to their having transferred schools or returned to their home countries, and about 10% don't attend school. Of course, considering that the uncertain 10% includes non-attending children, the actual rate of non-attendance is higher than 10%. Moreover, there are some who think that, in certain regions, the rate of non-attending children and students is as high as around 30%.<sup>1</sup>

(3) Schools for Foreigners, Ethnic Schools

48. So-called schools for foreigners and ethnic schools have been placed in difficult circumstances financially. These schools are not recognized as legitimate schools by the

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<sup>1</sup> *Non-attendance of Foreign Children at School*, by Takao Sakuma, Keiso Shobo (publisher), 2006.

Japanese educational system; they thus do not receive any funds from the national treasury, and their subventions from municipal governments are no more than 10-30% of those received by Japanese private schools. As a result, the finances of these schools depend heavily on tuition and donations. However, Chinese schools, Korean schools and others do not qualify as corporations to which the special donation system applies or as Special Public Interest Promotion Corporation. As a result, their finances are extremely pinched.<sup>2</sup> Actually, due to the effects of the major economic recession now under way, several schools for Brazilians have already been forced to close.

Moreover, Korean schools are not considered to meet the standards required for students to be eligible to take the entrance exams for universities and professional schools.

As a result of these circumstances, the right to study one's own culture and history through the language of the people to which one belongs is being infringed. Moreover, ethnic children often can't fit in at Japanese schools due to language difficulties, bullying and other problems that they encounter. Thus, for children who study at schools for foreigners, current conditions amount to an infringement of their right to receive an education.

6 Prevention and Elimination of Attitudes and Prejudices to Children that Contribute to Social and Ethnic Tension, Racism and xenophobia

49. Defamatory language, violence and harassment against students who attend schools for Koreans but were born in Japan have continued to occur for many long years. However, following upon North Korea's admission in 2002 that it had abducted Japanese nationals, the incidents of harassment and their virulence both increased. They didn't stop with verbal abuse. There were also numerous vicious actions, such as pushing someone off a train station platform or ripping a student's uniform. As a result, many Korean schools took measures such as having their students go to school and leave school in groups. There were also cases of schools that had to temporarily close. In response, the government conducted educational activities: it distributed leaflets and flyers, put up posters, and the like. However, it would be difficult to say that these activities were effective. Afterwards, in 2006, when it was reported that North Korea had conducted missile tests, defamatory language, violence and harassment against students at Korean schools again heated up.

7 A Climate Tolerant of Discrimination

50. A social climate and personal attitudes that are tolerant of discrimination have slowly grown into a significant problem over the past 10 years. As part of the political reform

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<sup>2</sup> The Recommendation by JFBA on March 24, 2008.

called “structural reform” that began in 2001, the social welfare budget was cut, impoverishing the weak and producing educational disparities among children corresponding to their economic disparities. At the same time, an attitude of “personal responsibility” – that is, the idea that everyone had to resign himself to the results generated by free competition – spread among the people. Unfortunately, this attitude has come to serve as the background to the formulation and application of laws, and such a large shift in social perspective has led to a loss of resistance to discrimination against the weak.

## **B. Article 3 (Best Interests of the Child)**

- 1 The idea that “the best interests of the child should be given top priority” should be clearly written into relevant domestic laws such as the Child Welfare Law, the Juvenile Law, and the School Education Law.
- 2 The principle of “the best interests of the child,” which was removed from the Juvenile Law in its revision, should be restored. Moreover, the Juvenile Law should be revised based on the Convention and on the international standards related to it.
- 3 The Basic Act on Education was revised in 2007. Along with that, the School Education Law, the Act on the Organization and Operation of Local Educational Administrations, the Education Personnel Certification Act , and other laws were also revised. However, these revisions should be reviewed and appropriately “re-revised” from the standpoint of the best interests of the child.
- 4 In promoting the invigoration of budgetary expenditures, the tax system and the economy, the Government should reexamine the laws concerning children from the standpoint of giving top priority to the best interests of the child.
- 5 From the standpoint of giving top priority to the best interests of the child, the Government should look into changing the laws and regulations related to providing a Child-Rearing Allowance, and should make the necessary improvements.

### 1 Introduction

51. Beginning with the Initial Report, the Government has explained that giving consideration to the best interests of the child has been a premise of the Child Welfare Law, the Juvenile Law and the School Education Law. However, the Concluding Observations pointed out that the best interests of the child “are not being fully integrated into the legislative policies and programmes relevant to children,” and recommended that “further

efforts must be undertaken to ensure that the general principles of the Convention, in particular the general principles of non-discrimination (art. 2), the best interests of the child (art. 3) and respect for the views of the child (art. 12), not only guide policy discussions and decision-making, but also are appropriately reflected in any legal revision, judicial and administrative decisions, and in the development and implementation of all projects and programmes which have an impact on children.” In support of this recommendation, JFBA has consistently pointed out that, in the Japanese legal system, there are no laws that elucidate the best interests of the child and that stipulate that all efforts dealing with children have to be made based on that principle. Nevertheless, the Government has completely ignored this point and not taken it up. It has to be said that this stance is linked to the 2006 revision of the Basic Act on Education and of other major education-related laws, which was problematic from the standpoint of the best interests of the child.

## 2 The Need to Review the Revised Juvenile Law

### (1) The 2007 Revision of the Juvenile Law

52. An amendment bill of the Juvenile Law was passed on May 25, 2007 and enacted on November 1 of that year. Based on this revision, if, in order to provide the most appropriate treatment to children who have serious problems – children who have deep, complicated personality disorders and engage in serious, odious crimes as a result; children who repeatedly commit vicious misdeeds, have been institutionalized several times and still commit misdeeds; etc. – family court is deemed particularly necessary, then, even children younger than 14 (but generally at least 12) may be sent to a juvenile training school and an effort may be made to rehabilitate them through correctional education. However, the worse a child is in terms of committing odious crimes and vicious misdeeds, the more likely he is to have suffered abuse or have some other problems or immature in his developmental history, and in such cases treatment based on a protective, humanitarian viewpoint is often necessary. Institutionalization in a reformatory will not serve the best interests of such children. Moreover, while some juvenile training schools that house children have made positive efforts, such as designing the rooms to be similar to the Support Facilities for Development of Self-Sustaining Capacity, the number of incarcerated children under 14 years of age is inevitably small, and dealing with them is difficult. Furthermore, the number of juvenile training schools in Japan is limited, and in many cases they are far from the homes of the children, so that the children’s important ties to their families end up being interrupted. Thus, putting children under 14 into juvenile training schools runs counter to their best interests.

### (2) The 2008 Revision of the Juvenile Law

53. An amendment bill of the Juvenile Law was passed on June 11, 2008. In serious cases of juvenile crime, victims were given the right to attend the court proceedings. However, in juvenile cases, in which the time from the occurrence of the crime to judgment in the trial is short, it often happens that the offending youth isn't able to truly grasp the facts of the case before the trial is over. On the other hand, the victim is still in anguish from the recent crime and ends up seeing a youth who has still not taken to heart what he has done. A system that allows victims to attend the proceedings under such circumstances cannot be said to be focused on the best interests of the offending youth.

### 3 The Need to Review the Revised Education-related Laws and Regulations

54. The Basic Act on Education was revised in 2006. Along with that, the School Education Law, the Act on the Organization and Operation of Local Educational Administrations, the Education Personnel Certification Act, and other laws were also revised. However, the effect of these revisions on the independence, autonomy and self-reliance of education has become a matter of concern. These laws need to be reviewed again, from the standpoint of the best interests of the child (see Paragraph 222).

### 4 Educational Disparities Among Children Resulting from Economic Disparities Among Their Parents

55. In 2007, researchers carried out a study – on approximately 1200 sixth graders and their parents living in Tokyo area cities with a population of about 250,000 people – on whether there is a correlation between children's academic abilities and household income. The study conducted an academic aptitude test in mathematics, regarding which it found that the scores of the children rose proportionately with the annual income of their parents. It also found that the children's study time at home increased with the parents' annual income. In addition, it is known that, among the high schools attended by children who go on to the top national universities, the proportion of private schools is clearly increasing, and that economic power thus exerts a large influence on the child's career path.

56. On the other hand, the Child-Rearing Allowance has been reduced through legal reforms implemented since 2002; moreover, increases in welfare benefits for single-mother families, after being gradually reduced, were completely eliminated on April 1, 2009. According to a study by the Ministry of Health, Labor and Welfare, the average income of single-mother households in 2006 was 2,119,000 yen, or 37.6% of the average income of all households. (Despite the fact that more than 80% of the mothers in single-mother households are employed, the annual income from work in such households is on average no more than 1,710,000 yen.) Moreover, there are said to be at least four million households of working poor – people who work but are unable to earn an income above

social welfare payment – in the country as a whole; they comprise 10% of all Japanese households. The children that grow up in these households are exposed to circumstances that often lead to an inferior education and that can greatly affect their future employment, marriage, circle of friends, and success. Such a situation clearly runs counter to the best interests of the child.

#### 5 Detention in an Immigration Detention Facility

57. As a policy, the Immigration Bureau detains all foreigners that it suspects of violating the Immigration Control and Refugee Recognition Act, and allows temporary release only discretionarily. The Government says that it tries to avoid detaining minors and that, if it does detain them, it gives consideration to detaining them for the shortest time possible. However, it has come to light that, in 2006, seven children under 18 years of age were detained and that the detention period for two of them exceeded half a year. Moreover, when children are detained they are placed in the same detention facilities and the same community cells as adults. Absolutely no consideration is given to the conditions of their detention.

### C. Article 6 (Rights to Life, Survival and Development)

- 1 In order to make it possible to adequately understand the situation and the causes, and establish countermeasures, with regard to current problems related to the life, survival and development of children – problems such as suicide, health problems, incidents, and accidents – the Government should establish an independent system for understanding statistical data that has an adequate budget and institutional backing.
- 2 In establishing countermeasures, top priority should be given to creating a system that doesn't rely on guidance to children with problems and police supervision, and that seeks to unlock the heart of troubled children and victimized children and elucidate their problems; a system that can use the information gained from this should also be created.
- 3 It is pointed out that the systems for gynecology/obstetric departments, pediatric departments, pediatric neurology departments, and clinical pediatric psychotherapists are not sound but are rather on the verge of collapse. The Government should clarify this situation and the measures that will be taken to overcome it.
- 4 The Government should establish sex education that is predicated on the viewpoint of the rights of children to life, survival and development, and should distance itself from the trend to disparage sex education.

- 5 With regard to protection from victimization by crime, the Government should strengthen neither the guidance given regarding misbehavior nor reliance on the police, but should rather establish a system premised on the self-awareness of children and on community solidarity.
- 6 The Government should establish concrete safety standards for schools and also a system that can provide adequate financial compensation.

## 1 Introduction

58. Regarding this field, the CRC, in its Second Concluding Observations, expressed concern, and offered recommendations, regarding youth suicide, the prevalence of mental and emotional disorders among adolescents, that sexually transmitted diseases among youth are on the rise, and drug abuse by adolescents. However, the Third Government Report does not specify any measures to deal with these problems or express any views towards overcoming them.

## 2 Suicide

59. (1) In July 2005, the Upper House's Committee on Health, Welfare and Labor passed a resolution on suicide, and the Inter-Ministerial/Agency Liaison Group against Suicide was established and issued a decision on general countermeasures. Moreover, in June 2007, the Cabinet agreed on General Policies of Comprehensive Measures against Suicide. Whereas previous anti-suicide efforts focused on the personal causes of suicide, these latest ones are also concerned with elucidating and dealing with the social causes. However, for youth suicide, the focus is still on elucidating and dealing with personal causes. The social causes specific to youth suicide – for example, the stress caused by an overly competitive educational system – weren't mentioned. The Government has yet to elucidate the situation from the standpoint of children or conduct investigations and establish countermeasures geared to the best interests of children and to expressing their views.

60.(2) First of all, , the statistical data necessary for creating the suicide countermeasures based on the viewpoint mentioned above have not been collected. The police, the Ministry of Health, Labor and Welfare, and the Ministry of Education, Culture, Sports, Science and Technology have separately gathered and published statistics from their respective points of view. However, the decision as to whether the victims apply to suicide is left to each organization; there are no common standards for making that decision. None of the organizations includes failed attempts in its statistics. Each also has a different focus: for the Ministry of Health, Labor and Welfare, it is the citizenry at



large; while for the Ministry of Education, Culture, Sports, Science and Technology, it is limited to children at public schools. The Ministry of Education, Culture, Sports, Science and Technology gathers statistics on causes of suicide, but only announces the one most important cause; around 60% of suicides are classified under “other causes” (Document 2). Reports that might expose schools to criticism are avoided, so reports do not accurately express actual conditions. There are no statistical materials that analyze the relationship between the overly competitive education at schools and the stress and developmental disabilities that such education causes to children. Over the past several years, the number of suicides attributed to bullying has been zero, despite the fact that suicides whose main cause is bullying successively appear out of nowhere. There are clearly problems in how the statistics are processed.

- 61.(3) With regard to dealing with suicide, there is mention of “efforts have been made to enrich the education provided through experiential activities among other activities so that children can learn to truly love life ” and “to improve counseling systems at schools by placing school counselors and expert advisors for parent and children.” However, nothing specific is said about what has been learned from these efforts as regards the situation with youth suicide, or about their benefits or problems or the prospects for overcoming the latter. Nor is there any analysis of their relationship to the increasing stress of children.
- 62.(4) After suicides caused by bullying continued, the Ministry of Education, Culture, Sports, Science and Technology, on February 5, 2007, issued a notice, “On Guidance for Students Who Exhibit Problem Behavior,” in which it prescribed, as methods for dealing with such behavior: “When problem behavior actually occurs, the board of education and the school, guided by educational considerations, should take firm action to deal with it, including temporary suspension and disciplinary or other measures, which are permitted under the current legal system, and thus enable the other students to have peace of mind at the school”; and, “When problem behavior that might be a criminal act, such as causing an injury on campus, occurs, the school should not try to handle it alone but should rather immediately notify the police and obtain the cooperation of the police in dealing with the matter.” An attitude of depending on the police and other authorities and trying to solve problems coercively, rather than seeking rights-based solutions that will strengthen ties among students and raise student self-awareness, remains in practice and has not been overcome.

## 2 Health Problems in Early Adolescence

63. (1) Regarding sexually transmitted disease, AIDS victims in Japan – both infected persons

and symptomatic persons – have been increasing year by year. In 2007, the number of infected persons rose by 1082, to 9756, while the number of symptomatic persons increased 418, to 4468. Moreover, there were 213 infected persons and 22 symptomatic persons under the age of 20. Children, too, are thus not unaffected by this disease (Document 3). Regarding countermeasures for children, the Government has placed school-based educational efforts predicated on Courses of Study at the top of the list. However, the first time that the Courses of Study touch on countermeasures for preventing AIDS and other communicable diseases is when they deal with health and physical education for third-year junior high school students, who are 14-15 years old. Moreover, their focus is on the causes of, and methods of coping with, communicable disease. About treating communicable disease, all they say is, “Acquired Immune Deficiency Syndrome (AIDS) and sexually transmitted diseases can be treated.” Is there any guarantee that, merely because this subject is taken up in the Courses of Study, a 15-year old will be led by his developing abilities to view the efforts being made regarding prevention, care, treatment and support as his own concern and to try to find out more about them and participate in them? It must be said that rights-based efforts are extremely inadequate. What’s more, children in Tokyo are not supposed to be given information about sex and, as illustrated by a case in which the principle of a school for disabled children, who successfully conducted sex education and was disciplinarily demoted because of the education, the “sex education bashing phenomenon” is growing (Document 4), such that it has become difficult to provide children with such information, and there is also concern that the progressive provisions of the Courses of Study will be eliminated. A shift to a rights-based method of dealing with this matter is desired.

- 64.(2) The Government Report next provides some remarks about experts, but it contains no account on the current state, benefits and problems of children’s participating in the efforts now being made using the information that they themselves have acquired, or about whether counseling centers and aid agencies are adequate and easy for children to use. Nor is there any information about whether the confidential information disclosed at such venues is protected, or about whether the guarantees that no discrimination will occur as a result of using such venues are adequate. Such efforts and considerations are currently absent from the picture. This is something that needs to be improved.
- 65.(3) Regarding the recommendation that the law be revised so that children can obtain medical counseling and use medical information without parental consent, please see Section II B.

66.(4) Paragraphs 182, 367 and 368 of the Government Report state that, at the time of the Second Report (November 2001), medical treatment during the prenatal, perinatal and post-natal periods and for infants was good and that systems had been created for maintaining the health of mothers and infants and older children. Regarding this matter, however, the systems for gynecology/obstetric departments, pediatric departments, pediatric neurology departments, and clinical pediatric psychotherapists are not sound but rather are all heading towards collapse; even emergency departments are not in good condition; and no plan for overcoming this situation has been expressed. As for treating pervasive developmental disabilities, there aren't enough doctors and clinical psychologists able to do the work, so when one seeks help at a hospital or clinic, one commonly has to wait days to receive it. And since treatment cannot be readily received, the life and survival of the children is exposed to risk. How to deal with this situation continues to be discussed by legislative bodies (Document 5). The Government should at least clarify the situation.

### 3 Crime Victimization and School Accidents

67.(1) The measures to protect children from being victimized by crime do not serve to increase the opportunities for dialogue and interaction and thereby promote conditions that will ensure safety, but rather mainly involve such things as the increased use of police supervision and the setting up of surveillance cameras and other forms of police-centered monitoring of children.

68.(2) School safety standards have not been established. The incidents of injury and disease under the management of schools handled by the National Agency for the Advancement of Sports and Health in 2007 numbered 1,212,857; and the total number of incidents in which medical expenses, or benefits for death or disability, were paid reached 2,168,378. These included 75 incidents involving death and 497 involving disabilities. The National Agency for the Advancement of Sports and Health also pays benefits for disasters managed by schools; but since the schools always serve as intermediary, cases occur in which the victims are not helped due to the circumstances at the school. Nor can the amount of compensation be called adequate when compared to the accident compensation paid elsewhere. Standards that will better ensure the safety of children at schools, and a system that enables victims to be fully compensated, are urgently needed (Document 6).

### D. Article 12 (Respect for the Views of Children)

- 1 Concluding Observations pointed out, “ traditional attitudes towards children in society limit respect for their views within the family, schools, other institutions and society at large.” The Government should clarify the content, achievements and problems of the efforts that have been made to ameliorate this situation.
- 2 The Government should rescind the May 20, 1994 notification from the Notice from the Administrative Vice-Minister of Education and switch to a direction of sincerely and squarely dealing with the views of children.
- 3 The Government should build a system that enables students, children and parents to participate in the operation of schools, including the formulation of school rules.
- 4 In the student discipline and suspension system, the Government should allow the participation of lawyers who will represent and advocate the views of the students.
- 5 The Government should improve the current situation whereby children are not allowed to file civil lawsuits by themselves.
- 6 The Government says that the views of children are reflected in the law, government policies and judicial decisions. However, the Government should clarify how the views of children are reflected and the problems with the way they are reflected.

69. Regarding this field, it was pointed out in the Concluding Observations that traditional attitudes towards children in society limit respect for their views within the family, schools, other institutions and society at large. Moreover, it was recommended that promote respect for the views of children and facilitate their participation in all matters affecting them, in the family, courts, administrative bodies, institutions and schools, as well as in policy development, and ensure that children are aware of this right, that provide educational information to, inter alia, parents, educators, government administrative officials, the judiciary and society at large on children’s right to have their views taken into account and to participate in matters affecting them. that undertake a regular review of the extent to which children’s views are taken into consideration and of the impact has on policies, programmes and children themselves, and that ensure that children participate systematically in meetings of boards, committees and other groups determining policies in schools and other institutions providing education, leisure and other activities for children.

Except for , these recommendations do not necessarily point to deficiencies in the legal system. The Third Government Report divides up and reports on this subject in five categories: (a) Consideration on respect for views of the child, (b) Opportunities to hear the opinions of child in judicial and administrative proceedings, (c) information on organs and opportunities that allow a child to have a right to participate in the process of

decision-making, (d) Training for experts in child-related issues, and (e) Reflection of children's view obtained from evaluation of public opinion, consultation, and petition in legislature, politics, and judicial decisions. Moreover, in Paragraphs 197, 201, 202, 203, 205, 206, 211, and in the second half of 192 and the first half of 193, the Government Report touches on consideration for operational matters, but for the most part it goes no further than to explain the legal system; the current state of the system's operation, the results achieved so far, the problems that remain, and the efforts to overcome these are hardly reported at all. Using statistical data, the Government should clarify the current state of the system, especially whether the switchover to a rights-based approach is adequate or not.

70. In Paragraphs 192-198, the Third Government Report discusses the consideration given to respect for the views of children. In Paragraph 192, it mentions, as guarantees of opportunities for children to express their views, Paragraph 121 of the Second Government Report (equivalent to Paragraphs 61 and 62 of the Initial Government Report) and the Initial Government Report's Answer 18 to the questions of the Committee on the Rights of the Child. Answer 18 asserts, "What the agencies related to education were notified in 1994 is as stated in Paragraph 69 of the report (Initial Report), but since then the Government of Japan has been promoting their awareness on this matter through various opportunities,"; Answer 18 also cites the May 20, 1994 Notice from the Administrative Vice-Minister of Education (Document 7) and states that Paragraph 193 also invokes this notification and says that the Government of Japan has been instructing boards of education and others concerned ." It is true that one part of the notification points out that, when taking disciplinary action, consideration should be given to ensuring that there is ample opportunity to listen to the child's views and hear the child's perspective on the circumstances of the incident. However, the notification doesn't stop there. With regard to establishing school rules, it says, "Within a range that is reasonable and necessary for achieving educational goals, one may provide guidance and instruction and establish school rules"; moreover, regarding Article 12 Paragraph 1 of the Convention, it says, "The principle that the views expressed by children should be properly weighed based on the child's age and level of maturity is valid, but that they be taken into account in all situations is not necessarily required." Overall, the notification stresses "guidance and education" and "that [the views of children] be taken into account in all situations is not necessarily required"; in other words, it asserts that it is not necessary to accept and deal squarely with the views expressed by children. It is mainly due to the situation produced by the notification that the CRC stated, "Respect for the views of children is being curtailed," and that a traditional attitude towards children is being maintained in the schools. Valuing the

notification, and viewing the guidance provided since its issuance in light of the consideration that should be given to respecting the views of children, leads one to conclude that the Report hasn't squarely addressed the CRC's concerns. The Government should recognize that the notification itself leads to the curtailment of respect for the views of children, and should reform the attitude by which it evaluates the notification.

71. JFBA, in its report on the Initial Government Report, pointed out that school rules unilaterally created by schools broadly infringed the rights of students related to their daily lives. JFBA also has expressed its concern over the abovementioned Notice from the Administrative Vice-Minister of Education, which states that "school rules are specific arrangements for ensuring that pupils and students will achieve a sound school life and better development, and should be determined according to the responsibility and judgment of individual schools," since it endorses the idea of schools unilaterally making school rules and therefore supports that infringement. On January 26, 2001, there occurred the Tokorozawa High School Incident. In this incident, a school which had a student council that participated in the decision-making process for school events, and which had sincerely accepted and dealt with the views of the student council, decided not to afford the school council those rights in connection with an enrollment ceremony; refused, for a graduation ceremony, a student-organized ceremony that had been approved at a faculty meeting; and forced on the students enrollment ceremonies and graduation ceremonies in which the national flag was raised and the national anthem was sung. There were thus actions that infringed the rights, previously guaranteed to students, to express their views about, and to participate in, school events. This is a violation of Article 12 of the Convention on the Rights of the Child. Effort to improve the situation was demanded of the school (Document 8). The incident was also treated as a problem by the report on the Second Government Report, which called it a classic example of an action that infringes and "limit respect for their views."

72. The reason that consideration for respect for the views of children is necessary as a principle of rights is that sincerely accepting and dealing with the views of children facilitates the creation of close, dialogue-based relations between children and the people around them, and that this dialogue helps to promote the growth and development of children. Therefore, limiting respect for the views of children is a serious matter of concern. And recommendations regarding it have continued to be made. Specifically, the nation and the society must respect the views of children about all matters that affect children; at the same time, it is vital that children participate in dialogue and be aware that they have the right to do so. And in order to firmly establish this practice, the nation and the society must

provide the society as a whole with information and then periodically evaluate the results, and social mechanisms in which children can participate must be established. The CRC has provided the Government with recommendations aimed at achieving those goals.

Therefore, in order to ensure that consideration will be given to respecting the views of children, it is necessary that the nation and the society adopt an attitude, and create opportunities, for sincerely engaging with children, and guarantee children full partnership in those opportunities. No matter how complete a guarantee the system provides, if the operators of the system don't deal with children sincerely, or if the children don't master information about the mechanisms of the system and participate in the opportunities it provides for dialogue, nothing will change. In order to get the nation and the society to deal with children sincerely, in order for children to actively participate in these interactions, and in order to guarantee and strengthen the preconditions that make such participation possible, corresponding mechanisms and their appropriate operation are indispensable. Among the explanations of Paragraphs 192-197, that in Paragraph 192 states that opportunities to express one's views are guaranteed both in constitutional guarantees related to civil liberties and in the procedures related judicial and administrative decisions and measures; it also explains the educational activities, concerning the rights of children, that are conducted by the human rights organs of the Ministry of Justice. Moreover, Paragraphs 193-198 explain the legal system and its operation in various areas, including student discipline and suspensions, the number of universities that have established courses on the human rights of children, institutionalized children, child guidance centers, correctional institutions, applications for asylum with refugee status, and more.

73. Of course, it cannot be denied that these mechanisms and their operation are fulfilling certain functions. However, it hasn't necessarily been made clear how much the mechanisms are serving to monitor either the problem of the limitations placed on respect for the views of children or the situation with children being able to participate at will. For example, on April 28, 2009, in a case in which a second grader (6 or 7 years old) jumped on the back of a teacher he didn't know, kicked the teacher twice in the buttocks as the teacher tried to shake him off, and then ran away, in response to which the teacher got angry and chased after the student, seized him by the collar, shoved him against a wall and yelled at him, "Don't do that again!" – in this case, the third petty bench of the Supreme Court issued a decision saying that this behavior was permitted because it was educational guidance, overturning a lower court decision that such behavior constituted corporal punishment. The Supreme Court decision, which found that there was no corporal punishment despite the fact that material force was used and the child had to be taken to

the hospital and receive medical treatment, is problematic. However, one can also point to the problem that the teacher didn't deal with the way the child expressed his view – kicking the teacher twice – in a manner that took into account the child's age and level of maturity, but instead yelled “Don't do that again!” and then tried to hush up the matter. There is also the fact that the Supreme Court interpreted an act that limited a child's opportunity for self-expression as educational guidance. What is furthermore surprising is that all five of the justices on the court were unanimous in reaching that conclusion (Document 1).

74. The explanations about what is being done in connection with such matters as guaranteeing the participation of children, providing information to children, guaranteeing protection from violence and invasions of privacy, ensuring civil liberties, and ensuring respect for the dignity of the individual, are not necessarily adequate. Nor is what is actually being done necessarily adequate. In addition, there is no system that clearly guarantees children (rather than their parents) the right, should it be necessary, to appoint a legal representative to deal with such things as disciplinary actions, school suspensions of attendance, temporary detention, etc. Moreover, it is necessary to analyze, and present the issues concerning, the benefits that have arisen, and the problems that remain to be overcome, in what is most important, the operation of the system; yet this has not been done at all. The Government should clarify these matters.
75. In Paragraph 194 of the Third Government Report (Paragraph 103 of the third report, Paragraph 55 of the second report), it says that, as of 1999, 110 universities covers 174 subjects related to the rights of children in their curricula, whereas 245 universities covered such subjects as of 2004. This progress is laudable. However, as of April 2008, there were 734 universities in Japan, but no more than one third had established courses related to the rights of children, and this is an even bigger issue than the progress that has been made. The Government should take up the subject of how to achieve rapid progress in this matter.
76. In Paragraphs 199-202, the Government reports on the opportunities, for listening to the views of children, that have been incorporated into judicial and administrative procedures. As is made clear in Paragraph 199, children are themselves unable to take legal action with regard to civil suits. It is extremely difficult for them to bring a suit that opposes the views of their legal representative. Overcoming the limitations placed on respect for the views of children is a task that should be taken up without delay.
77. In Paragraphs 203-206, the Government reports on the opportunities and institutions where children have the right to participate in the decision-making process. However, there is no analysis about what is most important – the current situation regarding the limited



respect for the views of children – or about what kinds of results have been achieved in the operation of the system and what kinds of problems remain to be overcome. The Government should clarify the situation regarding these matters.

78. In Paragraphs 208-211, the Government reports on how views about children, obtained from evaluating public opinion, meetings and petitions, are reflected in legal, political and judicial decisions. However, there is no mention of how the views of children themselves are regarded. The views of adults which are beneficial for children are treated as the views of children. The Report does not reflect the views of children. It reflects rather the situation where adults control the views of children. There is no analysis of how the current situation reflects or doesn't reflect the views of children, or of the problems in the system – such as the lack of mechanisms by which children can easily express their views – that need to be overcome. The Government should clarify these matters.

#### **Civil Rights and Freedoms (Articles 7, 8, 13, 14, 15, 16, 17, 37 (a))**

##### **A. Name and Nationality (Article 7)**

1 Article 772 of the Civil Code should promptly be revised, so that the birth of all children can be registered immediately.

2 The child of a foreign mother, who gives birth in a hospital and then goes missing without submitting notification of the birth, should be treated as an abandoned child prescribed in Article 57 of the Family Registration Law and immediately granted the Japanese nationality based on Article 2 Item 3 of the Nationality Act.

3 The Government should release data on how many of the cases that haven't fallen under Article 57 of the Family Registration Law have been cases to which Article 2 Item 3 of the Nationality Act has been applied.

4 If the Japanese Government is going to insist that nationality obtained by naturalization can substitute for nationality obtained by birth, it should disclose the number of stateless individuals who have been naturalized during their minority.

##### **1 Notification of Birth**

79. The CRC, in its Concluding Observations about the Second Government Report, expressed concern about the fact that undocumented migrants were unable to register the birth of their children and that this had resulted in cases of statelessness (Concluding

Observation 31). Moreover, in its second report, JFBA pointed out the de facto obstacles to providing a birth notification and demanded that these be ameliorated.

However, the latest Government Report merely cites the pertinent parts of the Second Government Report (Paragraphs 213-215); it does not address the abovementioned concerns of the Concluding Observations or the issues raised by JFBA. Moreover, the cited parts of Second Report merely describe pertinent articles of laws such as the Family Registration Law and the Nationality Act; they do not deal with the actual situation. The right of children to be registered is the starting point for receiving all subsequent rights. Unregistered children are excluded from all public services, including welfare, medical treatment, and education. The latest and previous Government Reports display indifference on the part of the Government to this extremely important right.

- 80.** Until now in Japan, the problem of birth registration has mainly been considered a problem of children with foreign nationality, above all, children of illegally staying foreigners. As before, no improvement has been seen on this problem. On the contrary, as mentioned below, there is concern that the situation is becoming worse. Moreover, as has previously been pointed out, there is another problem that, due to de facto and de jure obstacles, a notification of birth cannot be submitted even for some Japanese children.

In 2007, a case came to light that surprised the public. A boy had grown up without his parents submitting a birth notification for him because they “didn’t have the money to send him to school.” Since his birth, he never once went to school and is thus unable to read and write functionally.

The parents, who didn’t submit a birth notification, must of course bear responsibility, but the Government, which didn’t notice and neglected a child whose birth wasn’t registered and who didn’t attend school, is also culpable. The Japanese Government should immediately take concrete measures, including cooperation with local communities, to ensure that such incidents of non-registration do not occur in the future.

## 2 The 300-Day Problem

### (1) Introduction

- 81.** The so-called “300-day problem” is a problem involving children for whom a birth notification cannot be submitted due to the provisions of Article 772 of the Civil Code.

The Civil Code assumes that a child born within the 300 days following a divorce is the child of the ex-husband. Therefore, even if the real father is someone other than the ex-husband, if the child is born and the birth notification is submitted within 300 days after the divorce occurs, the child will automatically be registered as a child of the ex-husband in the family register. To avoid this, the mother, following the birth of the child, has to file

a “Lawsuit to Confirm Non-existence of Parent and Child Relationship” against the ex-husband. However, there are many cases in which the mother, due to the ex-husband’s violence or some other reason, wants to avoid any dealings with him. Moreover, having to undertake legal procedures can itself be a considerable burden for the mother. As a result, the problem of being unable to submit a birth notification immediately after birth can arise.

Moreover, in a Ministry of Justice survey published in April 2007, it was estimated that, in 2005, the total number of birth notifications for births that occurred within 300 days after a divorce was approximately 2800 nationwide.

(2) How the Ministry of Justice and the Supreme Court Have Dealt with the 300-Day Problem

82. Regarding this problem, the Ministry of Justice has established a policy whereby a birth notification from the actual father will be accepted if there is a doctor’s certificate verifying that conception happened after the divorce occurred. However, the only ones helped by this policy are children born early, within 300 days after conception. Thus, in June 2008, the Supreme Court suggested, on its website, that “in cases where the husband has been unable to have sexual relations with the mother of the child because he has, for a long time, worked abroad, been incarcerated, lived separately, or some other such reason exists, and it is therefore objectively clear that there is no possibility that the wife is pregnant with the husband’s child,” the child may petition a family court for mediation to obtain recognition from the actual father. As a result, in July 2008, 27 children from around the country simultaneously petitioned family courts in various regions for such mediation.

However, the petitions that were granted were limited to cases in which it was “objectively clear” that it was impossible for the mother to be pregnant with the child of the ex-husband. There is thus a likelihood that this impossibility will not be considered “objectively clear” in situations where, at the time of conception, the husband and wife were not living apart or, even if they were living apart, their residence cards hadn’t been changed, or in other such situations. Moreover, the decision as to whether the impossibility is “objectively clear” is left up to the discretion of the judge. As a result, it has been reported that a certain petition was denied even when a DNA analysis, indicating the father’s paternity of the child with more than 99% certainty, was submitted, because the analysis “didn’t serve as proof that there was no sexual contact with the ex-husband”; that pressure to withdraw a petition was exerted in the Hachioji branch of the Tokyo court; but that mediation was allowed to take place in the Sagami-hara branch of the Yokohama Court.

(3) The Notice of the Ministry of Internal Affairs and Communications, and Remaining Problems

83. According to a Ministry of Internal Affairs and Communications notice of July 7, 2008, even if a birth notification is not submitted, a child may be entered on a residence card and public services such as medical care, a child allowance, acceptance at childcare centers may be received, provided that three conditions are met: it is clear that the child has Japanese citizenship; a birth notification cannot be submitted due to the fact that a presumption of legitimacy based on the provisions of Article 772 of the Civil Code is operative; and the procedures such as recognition mediation are being promoted, and the probability that the child will be entered in a family register in the future is considered high.

However, if the ex-husband has Japanese nationality and the mother has foreign nationality, or if the courts do not accept the petition for recognition mediation, or in other such cases, the child's residency registration will continue to be unacceptable. Although, thanks to the Ministry's notice and the operation of the courts, measures have been taken to partially prevent the disadvantages to children from the 300-day problem, a fundamental solution will not be reached as long as Article 772 of the Civil Code is not revised,

Article 772 was originally established so that paternity would not become confused. However, 110 years have already passed since its enactment. It no longer suits existing social conditions, in which divorces and remarriages are not uncommon, and moreover, as described above, it has also become a major obstacle to registering the birth of children.

Thus, so that a birth registration can immediately be submitted for all children, Article 772 of the Civil Code should be revised without delay.

### 3 Registering the Birth of Foreign Children

(1) De Facto Obstacles to Birth Notification, and Concerns about the Introduction of a "Foreigner Ledger System"

84. Article 62 Paragraph 2 of the Immigration Control and Refugee Recognition Act obligates any official of the national government and local public entity, if he/she has knowledge of an alien whom he/she believes to fall under any of the items of Article 24, to report the information. As a result, parents who fear deportation tend to refrain from submitting a birth notification for their children. JFBA pointed this out in its second report, where we also proposed that exceptions be created to the reporting obligation, but no improvements have been seen so far. The problem with the refusal to issue birth certificates when maternity expenses aren't paid is similarly unimproved; no punitive provisions have been established for either Article 19 Paragraph 2 of the Medical Practitioners Act or Article 39 Paragraph 2 of the Public Health Nurse, Midwife, and Registered Nurse Law, both of which require that a birth certificate be issued regardless of payment of maternity

expenses.

85. In addition, in July 2009, a bill to introduce a “foreigner ledger system” to uniformly manage all information about foreign residents in Japan was enacted and promulgated. It is scheduled to be put in force within three years after the promulgation. Under the current foreigner registration system, all foreigners who will reside in Japan for 90 days or more are obliged to register; and even if their residency is not legal, their registration have been accepted. Thus, despite the problem of the abovementioned report of information, the current system has a positive aspect in that, if illegal-resident parents register as foreigners, it encourages them to submit a birth notification for their children and also encourages their children to attend school. However, if the residency registration of illegal residents ceases to be accepted, a situation will result in which illegally staying parents are not registered with any municipal government. And if that happens, there is concern that, even more than now, parents will refrain from submitting birth notifications and their children will be excluded from public services.

(2) Identification of Nationality at Time of Registration

86. JFBA, in its second report, pointed out that the nationality of foreign children was left inaccurate at the time of their registration as foreigners, but no improvements have been seen in this as yet.

4 The Right to Acquire a Nationality

(1)The Inadequacy of Measures to Prevent Statelessness

87. [1] With regard to securing the right of children to acquire citizenship, the Third Government Report (Paragraph 221) merely refers to Paragraph 140 of the Second Government Report; it does not say anything new.

Paragraph 140 of the Second Government Report states that as there is a possibility that a child born in Japan may become stateless if this principle is applied rigidly, the jus soil principle is also supplementally adopted so that a child shall be a Japanese national when both parents are unknown or have no nationality in a case where the child is born in Japan (Item 3, Article 2 of the Nationality Act).

However, there are still children who are being forced into a condition of statelessness in such cases as a child whose mother seems a foreigner, gives birth in a hospital, and then goes missing is . The right to acquire a nationality is not fully guaranteed (see Paragraphs 89-94 of the JFBA report on the Second Government Report).

88. [ 2 ] Moreover, Paragraph 140 of the Second Government Report cites Article 8 Paragraph 4 of the Nationality Act and states that,, with regard to “a child who was born in Japan, and had his/her domicile in Japan for three or more years consecutively since his/her birth,”

among the naturalization conditions, the conditions on legal capacity and capability to make a living are exempted and the domiciliary condition is alleviated, so that they may acquire Japanese nationality by naturalization.

However, the abovementioned naturalization conditions are no more than the minimum requirements for the decision of the Minister of Justice at his own discretion, whether or not to grant naturalization. If those requirements are fulfilled, it does not necessarily mean that Japanese citizenship will automatically be obtained.<sup>3</sup> Therefore, it must be said that those provisions are also inadequate from the standpoint of preventing statelessness.

## (2) The Inadequacy of the Data

89. The Government cites the provisions in Article 2 Item 3 and Article 8 Paragraph 4 of the Nationality Act and explicates them. However, it doesn't provide any data on how many cases there have been in which Japanese citizenship has actually been acquired through the application of those provisions (or, conversely, how many cases there have been in which Japanese citizenship has been denied even when applied for).

If the Government is going to actively proclaim that those provisions are for preventing statelessness, it should clarify the situation using hard data.

## 5 Acquisition of Nationality by Children Born out of Wedlock

### (1) Article 2 Item 1 of the Nationality Act

90. Article 2 Item 1 of the Nationality Act required that a child's father or mother be a Japanese national at the time of the child's birth in order for the child to acquire Japanese nationality. Therefore, a child born out of wedlock to a Japanese father and a foreign mother could not acquire Japanese nationality if the child was not recognized by the father prior to its birth (recognition of the fetus).

In general, however, recognition is possible after birth, and many people do not know the system of fetus recognition. Moreover, there were even fewer people who know that fetus recognition was necessary for an illegitimate child to acquire Japanese nationality. Furthermore, since the fetal period is far shorter than the period following birth, there is a proportionately greater possibility that the procedures for fetus recognition will not be carried out.

In short, the acquisition of Japanese nationality by children born out of wedlock was highly dependent on the knowledge and will of the father. It was thus a highly uncertain proposition.

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<sup>3</sup> A June 4, 2008 Supreme Court ruling regarding Article 3 of the Nationality Law points out that naturalization is a discretionary act of the Minister of Justice and that even someone who fulfills all the requirements prescribed by Article 8 Item 1 of the Nationality Law will not necessarily be able to acquire Japanese citizenship.

Accordingly, JFBA has repeatedly asserted that there is no rational reason to discriminate between children given fetus recognition by a Japanese father and children given post-natal recognition by a Japanese father, and that the law should be revised in a way that does away with such discrimination. And, as is explained below, this problem was largely resolved through a revision of Article 3 Paragraph 1 of the Nationality Act conducted on December 12, 2008.

(2) Article 3 of the Nationality Act

[1] The Debate About Article 3 Item 1 of the Nationality Act

91. Prior to its revision on December 12, 2008, Article 3 Item 1 of the Nationality Act stipulated that in cases where a child acquired the status of a child in wedlock by marriage of his/her parents or affiliation by them was under twenty years of age and the acknowledging father or mother was a Japanese citizen at the time of the birth of the child, Japanese nationality might be acquired through notification to the Minister of Justice if that father or mother was currently a Japanese citizen or was so at the time of death.

Article 3 Item 1 of the Nationality Act provides for situations in which the father or mother has recognized the child. However, in the case of an illegitimate child (a child born out of wedlock) of a Japanese mother, a legal parent-child relationship between the mother and child is considered to come into existence with the birth of the child; and in the case of an illegitimate child who received fetus recognition from the father, a legal parent-child relationship between the father and child is also considered to come into existence at the time of the birth. In both cases, in accordance with Article 2 Item 1 of the Nationality Act, the child acquires Japanese nationality upon birth. Thus, in actuality, Article 3 Item 1 only applies to children who are born to a Japanese father and a non-Japanese mother who are not legally married, and who did not receive fetus recognition from the father.

Prior to its revision on December 12, 2008, Article 3 Item 1 of the Nationality Act accorded the Japanese nationality to an illegitimate child (a child born out of wedlock) of a Japanese father only if the child acquired the status of a legitimate child through the marriage of the parents. It did not accord the Japanese nationality to an illegitimate child (a child born out of wedlock) born to a Japanese father who recognized the child (postnationally) and a mother who were not legally married, even if the child fulfilled other prescribed requirements. It had therefore been questioned whether this distinction isn't a violation of Article 14 of the Constitution, which provides for equality under the law.

[ 2 ] Decision by Full Supreme Court and Revision of Law

92. While maintaining that, for purposes of recognizing the Japanese nationality of a child who did not acquire such nationality by birth, it was reasonable to establish provisions

according to which, recognition would be provided only when certain requirements that can be the indexes by which to measure the closeness of the tie between the child and Japan, in addition to the existence of a legal parent-child relationship with a Japanese citizen were fulfilled, the Supreme Court asserted that making that requirement the legal marriage of the parents did not match up to the realities of family life of today and had no reasonable relevance, and thus decided that Article 3 Item 1 of the Nationality Act, which stipulated the legal marriage of the father and mother as a requirement for the child to acquire nationality (through notification to the Minister of Justice for it) was in violation of Article 14 Paragraph 1 of the Constitution (June 4, 2008 decision by the Supreme Court' Grand Bench).<sup>4</sup>

Based on this Supreme Court judgment, the Nationality Act was revised on December 12, 2008 (implemented January 1, 2009) such that, if the child is recognized by his/her Japanese father after birth, the child can obtain Japanese nationality through notification to the Minister of Justice even if the parents aren't married.<sup>5</sup>

### [ 3 ] The Situation After Revision of the Law

93. That the unreasonable discrimination against people who receive postnatal recognition from their Japanese father was redressed is to be welcomed. However, during the revision process, there arose a movement that opposed revision on the grounds that, for example, there might be people who try to acquire Japanese nationality through false recognition. As a result, in the process of working out the revision, supplementary resolutions were made regarding demands that effort to adopt effective measures to prevent false recognition be made and studies be conducted about the necessity and appropriateness of introducing a scientific method of confirming the parent-child relationship. Due to those resolutions, the enforcement regulations for the revised Nationality Act require that numerous documents be submitted to acquire Japanese nationality. Consequently, acquiring Japanese nationality through postnatal recognition is in fact difficult if one does not have any support of experts

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<sup>4</sup> The Supreme Court decision pointed out that other countries are moving towards eliminating discriminatory treatment by law against children born out of wedlock; that, in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, both of which the Japanese Government has ratified, contain such provisions to the effect that children shall not be subject to discrimination of any kind because of birth; and that many states that had previously required legitimation for granting nationality to children born out of wedlock to fathers who are their citizens have revised their laws in order to grant nationality if, and without any other requirement, it is found that the father-child relationship with their citizens is established as a result of acknowledgement.

<sup>5</sup> Revised Article 3 Paragraph 1 of the Nationality Act: In cases where a child acknowledged by the father or mother is under twenty years of age (excluding a child who was once a Japanese citizen) and the acknowledging father or mother was a Japanese citizen at the time of the birth of the child, Japanese nationality may be acquired through notification to the Minister of Justice if that father or mother is currently a Japanese citizen or was so at the time of death.



and supporters. Moreover, for legitimized children, the procedures for acquiring nationality have become more difficult than they were before the revision.

## **B. Preservation of Identity (Article 8)**

Japan's Nationality Act has established a nationality reservation system and a nationality selection system, according to which Japanese nationality already acquired will be lost if certain notification is not made and Japanese nationality will be automatically lost if another nationality is acquired or selected. These provisions violate Article 8 of the Convention and should therefore be revised to conform with the Convention.

### 1 Retention of Nationality

94. Dual citizens<sup>6</sup> born overseas shall lose their Japanese nationality if a notification that their Japanese nationality is to be retained is not made within three months of their birth (Article 12 of the Nationality Act and Article 104 of the Census Registration Act). Moreover, a person who loses his Japanese nationality because such a notification is not made, and who then, during his minority, does not have an address in Japan and does not submit the notification to acquire Japanese nationality to the Minister of Justice, will be unable to reacquire Japanese nationality henceforward (Article 17 Paragraph 1 of the Nationality Act). This nationality reservation system has various problems, including a child's nationality is greatly affected by the parents' knowledge of this system and by their intentions, but the system is not generally known, and in fact there have been cases in which nationality has been lost because the system was not known,<sup>7</sup> and having an address in Japan is a requirement for reacquiring Japanese nationality, but in cases such as the one in which a Japanese man married a woman in Southeast Asia, had a child with her, and then left her and the child and returned to Japan alone, it is difficult for the child to reacquire Japanese nationality without receiving appropriate support.

Thus, the Nationality Act and the Family Registration Act should be revised such that children who acquire Japanese nationality by birth will not be forced to lose it against their

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<sup>6</sup> According to Article 2 of Japan's Nationality Act, a child shall be a Japanese citizen if i) the father or mother was a Japanese national at the time of birth; ii) the father died before the child's birth and was a Japanese citizen at the time of death; or iii) born in Japan and both of the parents are unknown or are without nationality.

<sup>7</sup> According to the 2007 activities report of the JFC Network, a specified nonprofit organization that assists children born of a Japanese and a Philippine parent, of the 262 legitimate children born in the Philippines and handled by this organization up through 2007, only 81 had reserved their Japanese nationality while 181 had lost it.

will by the nationality reservation system.

## 2 Selection of Nationality

95. Children with dual nationalities shall select one of them before his/her reaching twenty-two years old (Article 14 Paragraph 1 of the Nationality Act). The Minister of Justice may provide written notice to any Japanese citizen having a foreign nationality who has not selected Japanese nationality before his/her reaching twenty-two years old (Article 15 Paragraph 1), and the person receiving the notice shall lose Japanese nationality when the period has elapsed if the selection of Japanese nationality is not made within one month of receiving the notice (Article 3). A Japanese citizen who makes the selection declaration shall endeavor to renounce his/her foreign nationality (Article 16).

Thus, legally, people who have dual nationalities as a result of being born from one Japanese parent and one foreign parent are obliged to select a nationality, and if they select Japanese nationality but do not give up their foreign nationality, they are in violation of their obligations under the law.

In actuality, nobody has ever received a formal notice to select a nationality since the nationality selection system was established in 1985. Moreover, notifications of nationality selection are submitted to municipal governments in Japan, so if an individual's other home country does not have provisions like those of Article 11 Paragraph 2 of the Nationality Act, the individual will not lose his/her foreign nationality. However, since the provisions for nationality selection exist, ordinary citizens often misunderstand that, if they do not select a nationality before his/her reaching twenty-two years old, they will immediately receive a formal notice to do so. Also, it is clear that the very existence of a nationality selection obligation put considerable emotional pressure on children with dual nationalities. Moreover, since the provisions exist, the Japanese Government may at any time legally provide notice for a nationality selection, exposing children with dual nationalities to the risk that they will lose one of their nationalities at some time in the future. Such a nationality selection system is unjust and arbitrary deprivation of their nationality and therefore should be abolished.

### C. Freedom of Expression (Article 13)

<p>The Government should review the situation concerning the hairstyle regulations at all public elementary and junior high schools in the country and at minimum give instructions to the regions and schools where buzz-cuts are still compulsory to eliminate such regulations.</p>
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## 1 Introduction

96. The Government says that in Japan, freedom of expression is guaranteed to the people, including children, under the provisions of Article 21 of the Constitution, and is paid the greatest respect as an essential right for maintaining democracy (Paragraph 223 of the Third Government Report, Paragraph 142 of the Second Government Report, Paragraph 83 of the Initial Government Report).

Moreover, in Paragraph 143, the Second Government Report says, "With respect to school regulations, it is important to review them constantly based on the condition of students and the view of the students' guardians. From this point of view, the Ministry of Education, Culture, Sports, Science and Technology has been providing guidance for the boards of education".

## 2 School Regulations that Restrict Freedom of Expression

97.(1) However, even now, many schools have rules and regulations restricting hairstyles.

Hair is a part of the body and the freedom to decide on one's hairstyle is considered closely related to the personality of the individual and to be guaranteed by Article 13 of the Constitution and by Article 13 (Freedom of Expression) of the Convention on the Rights of the Child. Nevertheless, many schools have regulations for hairstyles.

Below are two cases involving regulations that restricted hairstyles to a single one, a buzz-cut, and regarding which requested for human rights relief were made to bar associations.

98.(2) A Case from Kumamoto Prefecture

In October 2003, the Kumamoto Bar Association conducted a questionnaire on 47 public junior high schools in Kumamoto Prefecture. It found that almost all of the 47 schools were looking into reviewing their hairstyle regulations, and that nine had already decided to move towards abolishing, during the 2003 school year, regulations that required a buzz-cut. In February 2004, the Kumamoto Bar Association again asked the schools whether buzz-cut regulations would continue to exist when the new school year began in April 2004, whereupon 19 answered that they would continue to maintain such regulations.

Given this situation, on March 10, 2004, the Kumamoto Bar Association recommended the junior high schools to promptly abolish the buzz-cut regulations as violating the basic human right of students to have freedom in how they wear their hair.

100.(3) A Case from Kagoshima Prefecture

In response to a petition, made on February 28, 2008, for a human rights relief, the Kagoshima Bar Association placed an inquiry with 59 junior high schools in Ohshima County. Of the 39 schools that responded, 34 said that they had hairstyle regulations, and

17 said that in effect buzz-cuts were mandatory.

Given this situation, on March 6, 2009, the Kagoshima Bar Association advised the Kagoshima Prefecture Board of Education to instruct the schools under its jurisdiction that the establishment of school regulations regarding buzz-cuts, and guidance predicated on such regulations, conflicted with the Constitution, the Convention on the Rights of the Child, and the Basic Act on Education, and also overstepped the bounds of the discretionary powers related to educational guidance that are permitted to junior high schools, so that regulations whose content serves to make buzz-cuts mandatory should be abolished without delay.

#### **D. Freedom of Thought, Conscience and Religion (Article 14)**

Due to the establishment of the National Flag and National Anthem Law, the national flag and the national anthem, about which the Japanese people are deeply divided in their opinions, have become compulsory elements of school events, thus infringing the freedom of thought and conscience of students; and such a trend is spreading.

Given this situation, the Japanese Government should provide guidance to prevent situations in which the human rights of children are infringed at schools.

##### **1 Guidance Regarding the National Flag and National Anthem**

**101.** The National Flag and National Anthem Law was enacted in 1999, establishing the Hinomaru as the national flag and Kimigayo as the national anthem. However, among the people there are still many who are opposed to them after the establishment of the law, as before, considering that the Hinomaru and Kimigayo have remained strongly associated with Japan's militarism before World War II.

However, with the 1989 revision of the Courses of Study, teachers became required to raise the national flag and to instruct students to sing the national anthem, and raising the national flag and singing the national anthem came to be performed at the graduation ceremonies and enrollment ceremonies at public schools throughout the country.

Once the rate at which these were performed reached 100%, educational administrations next began quickly moving in the direction of constraining the behavior of each teacher and student.

On October 23, 2003, the Tokyo metropolitan government issued a notice entitled "On Raising the National Flag and Singing the National Anthem at Enrollment Ceremonies, Graduation Ceremonies, etc." to the principals of all municipal schools under its

jurisdiction. Teachers were told that, at enrollment ceremonies, graduation ceremonies, etc., they should stand facing the flag and sing the national anthem; that the singing should be accompanied by piano; and that they would be held professionally responsible if they did not obey the work orders that, based on this notice, the principal issued regarding the raising of the flag and the singing of the national anthem.

The same trend has spread from Tokyo to other regions.

## 2 The Human Rights of Teachers and the Human Rights of Children

102. Throughout the country, teachers who, for reasons of freedom of thought, disobeyed the work orders of their principals and were punished, and teachers who sensed danger in the trends of their respective educational administrations, brought suits demanding compensation for damage, suits demanding the cancellation of punishments, suits demanding confirmation of the absence of an obligation, and so on, and gradually the decisions of the courts have been made.

In the suits, the main point of contention has been the human rights of the teachers (their freedom of thought and conscience). However, children and students are also directly affected by the instructions to teachers. In actuality, a trend towards instructing and forcing all children and students who refuse to stand up to stand has been growing. As a result, it could be said that infringements of the freedom of thought and conscience (or freedom of the process of forming thoughts and conscience) of children and students have taken place.

## 3 Cases in Which the Freedom of Thought and Conscience of Children Has Become an Issue

103. There have been some cases in which children themselves have requested for human rights relief to bar associations. Below are two examples.

### (1) A Case from Kanagawa Prefecture

104. A student at a prefecture-run high school, based on his own freedom of thought and belief, asked the principal of the school to respect the students' freedom of thought and conscience and dispense with the raising of the national flag and the singing of the national anthem at a graduation ceremony. In response, the principal called the student to his office and, for a long period of time, tried to persuade him to go along with the raising of the flag and the singing of the national anthem at the graduation ceremony. This act of attempted persuasion violated both the student's freedom of thought and conscience (Article 19 of the Constitution) and the right of children to express their views (Article 12 of the Convention on the Rights of the Child). Moreover, the board of education asked the principal to submit a report on the proceedings at the graduation ceremony. The principal's abovementioned attempt to persuade the student was triggered by the request for the report. Not only did that attempt lack any consideration for the rights of the student and his parents, but through

it, and through the request for a detailed graduation ceremony report that included such information as the attitude of the participants, the students were in effect coerced to go along with the raising of the national flag and the singing of the national anthem. The request for such a report was equivalent to demanding of the principal that he carry out a standardized ceremony according to accepted forms. It produced concern that the student's and his parents' freedom of thought and belief regarding the national flag and the national anthem, and the right of children to express their views, were being indirectly infringed, and there was concern that the same kind of infringement of human rights would occur in the future.

For these reasons, the Yokohama Bar Association, on September 10, 2004, recommended to the principal that he not meddle with the particulars of proceedings involving the national flag and the national anthem, and to the board of education that it notify the schools in the prefecture that, in advance of school events, they should fully discuss matters with students and parents and respect their views and hold ceremonies in a way that respected their freedom of thought and belief.

(2) A Case from Osaka Prefecture

105. At a city-run junior high school in Osaka, the principal explained to students, in advance of the graduation ceremonies held from March 2000 to March 2002, about their freedom to stand for and sing Kimigayo or to leave the ceremony and their freedom of thought and conscience. However, the new principal who arrived in April 2002 only gave the students a simple explanation, essentially "We won't force you," for the enrollment ceremony of April 2002 and the graduation ceremony of March 2003, and gave no advance explanation at all for the enrollment ceremony of April 2003 and the graduation ceremony of March 2004.

As a result, the Osaka Bar Association, on March 10, 2005, issued the following recommendation: "The explanations to the students at the time of the enrollment ceremony of April 2002 and the graduation ceremony of March 2003 were highly inadequate, and there was no explanation at all in advance of the enrollment ceremony of April 2003 or the graduation ceremony of March 2004. This is inadequate guidance that is remarkably lacking in the consideration expected of a principal for his students' freedom of thought and conscience, their freedom to sing or not to sing Kimigayo, and their freedom to stand or not to stand for the singing, and is a potential infringement of the human rights of the students. We therefore recommend you, regarding the singing of Kimigayo at enrollment ceremonies and graduation ceremonies, to give adequate consideration to respecting the freedom of thought and conscience of students in a way such as providing students with an

explanation in advance about freedom of thought and conscience.

#### **E. Freedom of Association and of Peaceful Assembly (Article 15)**

The Government should establish positive measures that will encourage children to actively exercise their freedom of association and of peaceful assembly.

106. While pointing out that the freedom of association and peaceful assembly is guaranteed by the Constitution, the Government Report states that “guidance” may be given to students to a reasonable extent as required for achieving educational goals.”

Regarding this point, the CRC’s Concluding Observations about the Second Government Report expressed concern about restrictions on the on- and off-campus political activities of students and restrictions on the participation of children below the age of 18 in organizations; and recommended that the State party review legislation and regulations governing activities undertaken by schoolchildren on and off campus and the requirement for parental consent to join an organization. However, the Third Government Report, like its predecessor, goes no further than expressing general ideas and does not address the concerns of the Concluding Observations.

107. The current situation, including the abovementioned points made by the CRC, is that Japan’s elementary schools, junior high schools, high schools and colleges, as shown the Ministry of Education’s October 1969 notice prohibiting high school students from engaging in political activities, negatively view collective or organized activities conducted by children and have been less than supportive of such activities, as a result of which such activities are generally extremely negligible – which is a serious problem. In order to change this situation, the Government should establish positive measures that will encourage children to actively exercise their freedom of association and peaceful assembly.

#### **F. Protection of Privacy (Article 16)**

In order to guarantee the right of children to privacy in schools, in their dealings with police, in institutions and elsewhere, effective measures, such as guidelines specific to the officials of particular workplaces, should be established.

108. Citing the Initial and Second Government Reports, the Third Government Report asserts

that children's private lives and privacy are protected by the Constitution and by laws and ordinances, etc. (Paragraphs 230-237).

Moreover, regarding the point, made in the CRC's Concluding Observations about the Second Government Report, that children's right to privacy is not being fully respected, as illustrated by the inspections of children's belongings, the Third Government Report replies, "in dealing with cases where schools concerned recognize under their responsibility and judgment that a search through personal belongings was inevitable under the given circumstances, schools are advised to explain the purpose, reasons, and necessity to do so to the guardians and students and to seek their understanding before taking appropriate measures according to respective circumstances. For example, such necessity may arise when there is a high possibility of someone having brought a dangerous object to school." (Paragraph 232). However, how effective such instruction actually is has not been verified, and there is no evidence that the situation with inspections of personal belongings has improved.

Moreover, the Government Report does not answer the point, made in the CRC's Concluding Observations, that officials at institutions intervene in the private communications of children.

**109.** The Government Report states, "Based on, among other things, the 'Criminal Investigation Standards,' which are rules of the National Public Safety Commission, the police, in conducting investigations, consider the characteristics of youth, endeavor not to attract the attention of unrelated parties, are careful about what they say and do, and otherwise conduct themselves with kindness and understanding and try not to hurt the feeling of young people" (Paragraph 235). In actuality, however, consideration for juvenile suspects is inadequate. For example, the presence of the parents of juvenile suspects at interrogations is not permitted, which is a problem (see, Paragraph 314)..

**110.** In Japan, besides the inspections of personal belongings, and the interventions into the personal communications of children by institutional officials, that were pointed out by the CRC, the notion of respect for the right of children to privacy has been extremely tenuous until now, and serious problems exist as a result. For example, as was touched on in the previous JFBA report, the privacy of juveniles who are considered committed acts of malicious delinquency and who are victims of crimes is often infringed by the mass media, and there have been infringements of student privacy by the activities of school-police liaison councils as well. Guidelines for dealing with such problems should be drawn up. Moreover, the Government should conduct efforts to deepen understanding about the importance of respecting the right to privacy of children.



## **G. Access to Appropriate Information (Article 17)**

111. As ways in which children are provided with beneficial information, the Government Report mentions the enrichment of school libraries (Paragraph 238) and the recommendations of cultural assets for children (Paragraphs 239, 240); and as examples of international cooperation for providing information to children, it mentions the aid to the UNESCO Asia/Pacific Cultural Center and more. (Paragraphs 241, 242)

On the other hand, with regard to protecting children from information harmful to their welfare, it mentions both the formulating of the National Youth Development Policy and the Guidelines for Improving the Environment Surrounding Youth (April 2004), the latter being based on that policy (Paragraph 243); and as concrete results of these efforts, it mentions: the Government's institution of laws and ordinances and its PR and educational activities; activities directed at promoting efforts to improve the media literacy of children; strong requests to local authorities that harmful information be controlled through their codes; requests to industry groups related to the mass media that they practice self-regulation; the strengthening of police control of harmful information; etc. (Paragraphs 244-255).

Basically, Article 17 of the Convention, which takes the important role played by the mass media as its foundation, tries to ensure that children will be able to use information and material from diverse sources, especially information and material whose purpose is to promote their social, spiritual and moral well-being and their physical and emotional health; its aim is to enable children to readily access such information and material. However, it would be difficult to say that, in Japan, children's access to "information and material whose purpose is to promote their social, spiritual and moral well-being and their physical and emotional health" is adequately guaranteed. As is also mentioned in the Government Report, protection from harmful information is overemphasized in Japan. At present, the need to protect children from harmful information on the Internet and other mass media cannot be denied; at the same time, depending on how that protection is exercised, children's right of access to information can end up being broadly abridged. Thus, methods of protecting children from harmful information have two sides: they guarantee the rights of children but can also restrict them. It is therefore necessary to carefully study such methods, taking both sides of the issue into account. In Japan, methods of control that are based on laws and ordinances and on police force are widely used (Paragraphs 248-251), while consideration for the right of access to information – an important right for children – is

deficient.

**H. The Right not to be subjected to Torture or Other Cruel, Inhumane or Degrading Treatment or Punishment (Article 37 (a))**

- 1 The Government should investigate the reasons why coercion through corporal punishment and violence has not ceased at schools, child welfare institutions, juvenile training schools, and other such places where children should be treated most humanely and with respect for their dignity; and should immediately devise measures to improve the situation.
- 2 “On Guidance for Students Who Exhibit Problem Behavior,” a notice issued by the Ministry of Education, Culture, Sports, Science and Technology on February 5, 2007, should immediately be withdrawn, as it goes in the opposite direction from prohibiting corporal punishment.

1 Introduction

112. The CRC’s Concluding Observations about the Second Government Report stated that the CRC “notes with concern that corporal punishment is widely practiced in schools, institutions and the family.”

2 Child Welfare Facilities

113. With regard to child welfare facilities, the Government Report (Paragraph 258) states that the Minimum Standards for Child Welfare Facilities have added a new provision as of January 2005 whereby personnel working in Child Welfare Facilities are prohibited from abusing children staying at the facilities (Article 9 Paragraph 2) and that concerned parties are requested to strictly abide by such standard where acts corresponding to the abuse of the rights to take disciplinary actions such as corporal punishment are prohibited and Child Welfare Facilities, for instance, are instructed to particularly focus on the aspect of abuse of disciplinary actions such as corporal punishment when conducting administrative guidance on child welfare (Paragraph 258). It also states that child welfare facilities are required to set up a complaint window to ensure that complaints from a child placed in a child welfare facility or the guardians regarding treatment at the facility are promptly and appropriately dealt with (Paragraph 259)..

In actuality, however, since 2001, cases of corporal punishment and abuse at child welfare facilities have not decreased (Document 9), and it cannot be said that the measures recently taken by the Government are adequate (see Paragraph 167).

### 3 Corporal Punishment at Schools

114. The Government Report (Paragraph 260) states, regarding corporal punishment at schools, that it is prohibited under the School Education Law and that “the Government of Japan has been promoting their awareness on this matter at conferences of student guidance teachers held every year.” It also states, “At Japanese schools, disciplinary actions may be taken when they are considered necessary for educational purposes. In taking such disciplinary actions, however, the Government of Japan has been repeatedly instructing through training programs to pay full attention to the circumstances surrounding each student by listening to his / her explanations and opinions, and to ensure that such disciplinary actions have essential educational benefits, instead of serving merely as sanctions.”

However, “conferences of student guidance teachers held every year” mentioned in the Government Report are meetings of the board of education’s supervisors of teachers and they are not meetings of the teachers directly involved in providing guidance to students at schools. Therefore, there are questions about how effective the meetings are at promoting the stopping of corporal punishment. Moreover, the Report says that there are training programs about giving consideration to the student at the time of administering discipline, and that at the venues for comprehensive training where board of education members, people directly related to the schools, and others are brought together, guidance is provided regarding the prohibition against corporal punishment. However, it is unclear as to specifically what kinds of training are being conducted with regard to the prohibition against corporal punishment and to giving consideration to students at the time of administering discipline.

115. In actuality, the number of teachers punished for reasons of “corporal punishment” did not fall below 300 a year during the period from 1995, when it first exceeded that number, until 2007. Moreover, it exceeded 400 a year for seven consecutive years, 2000-2006 (in 2007 it was 371). As these publicly released statistics demonstrate, the number of cases of corporal punishment has not been decreasing.

116. Moreover, on February 5, 2007, the Ministry of Education, Culture, Sports, Science and Technology issued a notice, “On Guidance for Students Who Exhibit Problem Behavior,” that deals with the issue of corporal punishment. This notice asserts that “firm guidance for students who exhibit problem behavior” (such as bullying) is necessary, and that among “the forms of discipline administered using tangible force (physical force visible to the eye) on students,” not “all of them are not allowed as corporal punishment.” There is thus concern that this notice will be interpreted as a relaxation of the standards governing

corporal punishment. The notice is fundamentally mistaken in allowing problem behavior to be addressed by using tangible force (violence) against children, and has to be called contradictory to the Third Government Report, which says that effort is being made to prevent corporal punishment.

As was previously mentioned: in the case, decided on April 28, 2009 by the third petty bench of the Supreme Court, in which a second grader (6 or 7 years old) jumped on the back of a teacher he didn't know, kicked him in the buttocks twice when the teacher tried to shake him off, and then ran away, in response to which the teacher got angry and chased after him and seized him by the collar, shoved him against a wall and yelled at him, "Don't do that again!", the finding was that this behavior on the teacher's part did not constitute corporal punishment, despite the fact that tangible force was used and the child had to go to the hospital and receive treatment. This is very problematic since the Supreme Court endorsed the position taken in the abovementioned ministerial notice, overturning the rulings of a district court and the high court (Document 1).

4 Treatment in Institutions including Correctional Institutions for Juveniles such as Juvenile Classification Homes, Juvenile Training Schools, Juvenile Prisons, Penal Institutions

117. The Government Report states that "the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment" in correctional institutions such as juvenile classification homes, juvenile training schools, juvenile prisons as well as in penal institutions, is guaranteed by the Constitution and by law. However, the report hardly touches on what the actual situation is.

In actuality, there have been many court cases, and many requested for human rights relief to bar associations, that have involved illegal investigations and interrogations of children (juveniles) before indictment which investigative authorities have conducted – mainly through a detention system that employs detention cells at police stations – using violence, threats, deceit, and other inhumane and degrading methods that ignore the human rights of juveniles and injure their dignity.

118. On May 22, 2009, the authorities announced an incident in which staff members of a Hiroshima Juvenile Training School inflicted violence on juveniles. As of the time of the authorities' interim report, a total of 100 incidents, in which violence was visited on approximately 50 of the 102 juveniles in the institution, had come to light. There was thus an extremely abnormal situation, in which many of the institutionalized juveniles had suffered violence from staff members. The violence included direct forms of violence such as punching and kicking, as well as insidious forms of abuse, such as refusing permission to go to the bathroom and thus causing urinary incontinence. It was also reported that children

who suffered violence bore psychological damage following their release. Previously, on March 14, 2002, at Miho Academy (a juvenile training school), an incident occurred in which staff members inflicted violence on juveniles, but that incident was not adequately investigated, and the legal measures necessary to prevent a recurrence weren't taken, as a result of which this other major incident occurred at the Hiroshima Juvenile Training School. The Government must thoroughly investigate the facts of this case and release them and determine why such an incident recurred. Moreover, it must provide monitoring by an appropriate independent organization as well as a system for the children to report their grievances.

119. The Government Report states that, in order to guarantee “the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment” in correctional institutions and penal institutions, correctional officers are provided with necessary training, inspections of institutions are carried out by inspectors and a grievance mechanism have been introduced. However, it is questionable whether this system has been able to operate effectively. On this point, a thorough investigation should be carried out.

## **V. Family Environment and Alternative Child Care**

### **A. Parental Guidance (Article 5)**

1 Programs for parental guidance should be broadened and improved, and adequate specialists trained.

2 The Government should consider establishing a system that would authorize the court to order parents to undergo effective instruction and guidance in parenting.

#### 1. Lack of parental training programs

123. There has been no amelioration to the overwhelming need for more programs for parental instruction and guidance for parents who have committed child abuse. For example, no system exists for ordering parents to undergo parental guidance, and even training programs for learning about good parenting have not yet been established. There are also few specialists who can provide effective parenting training. The environment for parenting training for parents who have never committed child abuse is even less developed.

#### 2. Restrictive and ineffective court procedures

124. Although Article 28-6 of the Child Welfare Law stipulates that the family court may advise the local governments to take guidance measures for relevant guardians, there is no regulation allowing the court to directly give orders to the relevant guardians to obey that guidance. Furthermore, no punitive measures are taken when guardians fail to obey guidance measures of the local governments (the administrative body for establishing child guidance centers), rendering this regulation ineffective. There were only 10 cases of such advice based on this regulation nationwide during the one year from April 1, 2007 to March 31, 2008, which is testimony to the fact that the regulation is hardly utilized due to its ineffectiveness.

**B. Parental Responsibilities (Article 18, Paragraph 1 and 2)**

1 Effective measures should be established to resolve the problems of poverty and inequality among children, which are particularly serious among single-parent families.

2 The Minimum Standards of Child Welfare Facilities should be urgently reviewed, and improvement made to living conditions of children placed in child welfare facilities and to working conditions of staff who provide support for these children.

1. Poverty and inequality among children

125. (1) Poverty and inequality among children are becoming increasingly serious. In Japan there is a significant disparity in the scope of choices in educational options for children depending on their family's financial circumstances.<sup>8</sup>

126. (2) It is clear that measures implemented through the social security and taxation systems are insufficient in resolving such economic disparities, and poverty among single-parent households, which has been neglected, is exceptionally high. This was evident in the Report on the 2006 National Survey of Single-mother Households by the Ministry of Health, Labor and Welfare, which showed that the average income of households consisting of single mothers and children was only 37.8% of that of average households assigned a value of 100%,

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<sup>8</sup> According to the joint survey conducted by the Yomiuri Shimbun, one of the three major newspapers in Japan, with goo Research in January 2007, 66% of the subjects consider the disparity in education arising from the parents' financial clout increasing, and 59% consider the increasing rigidity of this disparity a problem.

127. (3) According to the OECD (2005), redistribution of income through taxation systems and social security in OECD countries has resulted in driving down the rate of child poverty by 8.3% on average. In contrast to this, the rate of child poverty in Japan rose by 1.4% in the same period. In other words, the rate of child poverty in Japan worsened as a result of the social security and taxation systems. The worsening of child poverty due to Government measures is a serious issue for Japan.

## 2. Facilities for child welfare and their improvement

128. (1) While progress in the improvement of children's homes has been poor, the government has not been forthcoming in revealing specific figures or budget amounts regarding facilities for child welfare in the Government Report, and there seems to be no desire on the part of the government to reveal the actual circumstances of facilities.

It is also interesting to note that while there were 551 children's homes (total capacity: 33,660) nationwide in 2001, that number increased to only 564 (total capacity: 33,917) by 2007. Furthermore, the number of children housed in these facilities in 2001 was 29,610 (87.9% of total capacity) and increased to 30,846 (90.9% of total capacity) by 2008. Facilities are unable to meet demand adequately and staff at child guidance centers who actually process the placement of the children voice concern that they have difficulty in being able to place children due to lack of vacancies.

129. (2) Despite the advice of the Concluding observations of the Committee on the Rights of the Child concerning the "Minimum Standards for Child Welfare Facilities," there has been no review of conditions whatsoever. Furthermore, staff at many of these institutions still interfere with children's personal correspondence and conduct searches of their personal belongings (many institutions still hold the belief that such practices are normal procedures), and the right to privacy as advised by the CRC advice has not been realized.

130. (3) In many children's homes, a large number of staff resign from work prematurely due to the harsh working environment and difficulties in human relationships, and this situation is conspicuous in the workplace where aside from a small number of experienced staff the majority of the staff are young with only two to three years' experience since commencing employment. There is a lack of middle-level staff and an environment where inexperienced staff can develop skills in areas such as non-violent interaction in the practice of child protection.

### C. Separation from Parents (Article 9)

1. The prolonged, forced separation of parents and children, who bear no responsibility for their
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parents' status, should be avoided as much as possible irrespective of the parents' nationalities or status of residence.

2. The Government's declaration regarding Article 9-1 of the CRC to the effect that this clause should not apply to cases where the child is separated from his or her parents as the result of forced departure based on the Immigration Control Law must be revoked immediately.

3. In procedures for family affairs and personal status action, the child's opinion should be adequately taken into consideration. Even if proceedings are contrary to the child's wishes, procedures that ensure efforts are made to gain the understanding of the child should be taken. Furthermore, when a child reaches a certain age, that child should be given the right to make a petition regarding the loss of parental authority or a change in the person of parental authority.

4. Efforts should be made to cultivate an awareness in people that even after the parents' divorce, unless there are exceptional circumstances such as domestic violence or child abuse, it is in the child's best interests to maintain personal relations with the non-custodial parent, and relevant legal procedures toward this end should be made effective.

## 1. Separation of foreign national families without Status of Residence

### 130. (1) Introduction

Although Article 9-1 of the Convention on the Rights of the Child stipulates that States Parties shall ensure that a child shall not be separated from his or her parents against their will, in the past when a foreign family without resident status was prosecuted in Japan, it was the general practice to detain only the father at the Immigration Bureau but not the mother and child, who were temporarily released on the same day after being charged. However, following a crack down on foreign nationals staying illegally in Japan around 2003, measures became more stringent and it became more common for both parents to be detained at the Immigration Bureau and for children to be held at a temporary shelter facility of a child guidance center after the center was contacted by the Immigration Bureau. Furthermore, there seemed to be no hesitation on the part of the immigration authority to detain parents even from single-parent households.<sup>9</sup>

131. (2) In contrast to the average holding period of about one month and a half for a child at a temporary shelter facility of a child guidance center, the average holding period for child of foreign nationality was about five months, and longer stays are becoming conspicuous.

During this period it is not clear what measures the Immigration Bureau will take against

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<sup>9</sup> For example, the case of a single parent family consisting of a Filipino mother and five children was reported in a newspaper. The mother was detained at the Immigration Control Bureau while her five children had to be held in two separate temporary protection facilities where they were required to remain for over seven and a half months.



the parents and the treatment (support) of a child from a long-term perspective is not possible.

132. (3) When the Immigration Bureau detains the parents and a child is held at a temporary shelter facility, the child is unable to contact his or her parents.

133. (4) Unable to bear such conditions of separation, there are many families forced into situations where they have no choice but to elect to return to their home country and abandon their right to undergo deportation procedures (through which there is a possibility that Status of Residence may be granted if their circumstances are judged as warranting their stay as an exceptional case).

134. (5) Furthermore, when all family members are without resident status,<sup>10</sup> if a child has not reached junior high school age before the completion of procedures for deportation, Special Permission for Stay will not be given. In such cases, when parents are of different nationalities, the general practice is for a deportation order to be issued for the parents to be returned to their respective home countries, with the child accompanying either of the parents.<sup>11</sup> The consequence of this practice is that the child is separated from one of the parents.

If the child of the foreign family without residence status is of junior high school age, Status of Residence may be granted to the child only, resulting in the child being separated from both parents. In fact, cases like this have occurred (See the Calderon case in Paragraph 302).

135. (6) Regarding Article 9-1 of Convention on the Rights of the Child, the Japanese Government construed and declared that this provision shall be interpreted not to apply to a case where a child is separated from his or her parents as the result of a deportation in accordance with its Immigration Law. On this point the JFBA disagrees and believes that treatment as in the cases mentioned above should not be tolerated. The government should retract its declaration immediately.

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<sup>10</sup> The Japanese Nationality Law adopts the principle of *jus sanguinis* (blood lineage), and even if a child is born in Japan, unless either one of the parents is a Japanese national, the child is not entitled to Japanese nationality (except in cases where the nationalities of both parents are unknown or they are without nationality).

<sup>11</sup> The following case of a family with a father of Pakistani nationality, the mother with Filipino nationality, and two children, one in 6th grade and in 2nd grade. Until at the issue of the forced deportation order, the father continued working in Japan for 18 years and a half, and the mother for 14 years without Status of Residence. Although both of their children were born in Japan, had never have left Japan, and were only able to speak Japanese, the forced deportation orders were issued with Pakistan as the destination for the father and the Philippines the destination for the mother and children following deportation. This action was endorsed by the local court (Decision by the Tokyo District Court, February 27, 2009).

2. Ensuring that all interested parties shall be given an opportunity to participate in domestic relations determinations.

136. (1) A child does not have the right to petition in the loss of parental authority.

137. (2) In Japan, upon the divorce of the parents, custody of the parental authority is given to either of the parents but from time to time there are cases which require procedures for changing the person with parental authority after divorce. In such procedures, however, the child does not have the right to petition for a change in the person with parental authority. Even if the child himself or herself wishes a change in the person with parental authority, the child does not have the right to petition for this.<sup>12</sup> Furthermore, in cases of child abuse, out of the fear of a confrontation with an abusive parent, the non-parental authority parent or relatives, who have the right to file a petition, sometimes hesitate to do so, resulting in the wishes of the child being ignored.

3. Ensuring that all interested parties shall given an opportunity to participate in personal status action procedures

138. In personal status action procedures, there are no legal provisions for hearing the views of children younger than the age of 15; therefore, if a child is younger than fifteen years of age, the decision to give a hearing or not is left to the discretion of the court. Consequently, it cannot be said that provision for a hearing is necessarily granted to every child.

4. Ensuring that all interested parties shall given an opportunity to participate in placement of child in a child welfare institution procedures

139. When a decision to order the placement of a child in a child welfare institution under Article 28 of the Child Welfare Law is being made, there are no provisions requiring the court to confirm the wishes of child. Representation of the child's wishes, however, is made by the child guidance center, which ascertains the child's wishes and presents them to the court, and this is deemed to be sufficient. However, it cannot be said that the accuracy of this representation is guaranteed.

5. Ensuring the right of a child who is separated from either or both of his/her parents to maintain personal relations and direct contact with either or both of his /her on a regular basis

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<sup>12</sup> For example, there was a case reported of a 4th grade elementary school boy whose mother was granted parental authority, but because this was against the wishes of the child, he ran away from home and was then held in a temporary welfare facility but he also ran away from there. It is assumed that he went to live with his father but the whereabouts of the child are said to be unknown.

140. (1) According to some statistics,<sup>13</sup> it is estimated that only about 60% of all parents and children who live apart after divorce actually interact with each other and meet periodically. It is only natural that the relationship between parents and children should continue after a divorce when the children are living with one parent and separated from the other, and for the children to meet and interact with the non-custodial parent. In Japan this understanding is not widely embraced by the general population.
141. (2) neither the government nor the courts play an active role in promoting an awareness among the general population that interaction and meetings between parents and children after divorce are not only in the best interests of the children but are also their rights, unless there are exceptional circumstances that would put the welfare of children at risk such as domestic violence or child abuse,. There is an absence of public bodies that can provide the means to facilitate meetings and exchanges smoothly with children and the estranged parents, and the Government should consider establishing such organizations that would enable the holding of neutral meetings (location and observer) between parents and children uninfluenced by the divorce of the parents. While there are some non-government organizations that do provide such services, they are a few in number and generally charge fees, placing them out of the reach of persons with limited financial means.
142. (3) Of 4,744 mediation cases for meetings and exchanges in the family courts in 2005, agreement was reached in 2,284 cases, and out of 701 of the completed adjudication cases (when mediation was unsuccessful and the cases went to adjudication), 284 cases ended in agreement. From these figures it can be inferred that even when court procedures are undertaken, less than half of the cases succeed in agreement on meetings and exchanges.
143. (4) Furthermore, even when meetings and exchanges are agreed on in court, the arrangements generally consist of the non-custodial parent and child spending time together during the day but not staying overnight once a month, and in cases where the guardian of a child raises objections to arrangements for meetings and exchanges, the reality is that it becomes very difficult for the child to maintain relations with the non-custodial parent.

#### **D. Family Reunification (Article 10)**

144. In becoming a member of the Convention on the Rights of the Child, the Japanese

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<sup>13</sup> Family Problems Information Center: This is a public interest corporation established to contribute to promoting sound family life by utilizing the experience, specialist knowledge and skills of former members of family court research officers.

Government construed and declared its interpretation regarding Article 10-1 and its obligation to treat applications for entering or leaving a member state for the purpose of family reunification “in a positive, humane and expeditious manner” by stating that this would not influence the outcome of such applications.

In reality, however, it cannot be said that the Government gives adequate consideration to the existence and interests of children in the entry of separated family members into Japan for the purpose of family reunification. The Government should also retract the above declaration of this interpretation immediately.

#### **E. Illicit Transfer and Non-Return of Children from Abroad (Article 11)**

- 1 The Japanese Government should undertake a fact-finding survey and reveal the result of cases where children have been wrongfully transferred into Japan from other countries and from Japan to other countries, and where returning children to Japan from other countries has been restricted because Japan is not a member state of the Hague Convention. Furthermore, with a view to ratifying the Hague Convention, the Government should immediately initiate in-depth discussion and consultation on the need to determine whether domestic legislation must be put in order for the ratification either within the Government or in a study group that would include researchers and practitioners.
- 2 The Japanese Government should investigate the current status of this problem and report on the number of cases of children under 18 years of age falling victim to human trafficking, results of arrests and actions taken against perpetrators, and the actual protection of child victims.

#### **1. International child abduction**

**145.** (1) The Government Report (Paragraph 289) fails to respond in any way to indications in the previous Concluding Observations of the Committee on the Rights of the Child that there were insufficient safeguards to protect children from abduction (Paragraph 41), and to recommendation that the State party ratify and implement the Hague Convention on the Civil Aspects of International Child Abduction of 1980 (Paragraph 42).

**146.** (2) In addition to receiving requests from foreign governments including the United States and Canada to address this issue, the Japanese Government also received recommendation in the conclusion of the Human Rights Council’s Universal Periodic Review in 2008 and announced its intentions to accept the recommendation..

**147.** (3) Due to a lack of statistics, accurate figures on abduction are not known, the problem of

international child abductions exists not only in wrongful abductions from outside countries to Japan but also in wrongful abductions from Japan to outside countries. Furthermore, because Japan does not belong to the Hague Convention, Japan is perceived as providing insufficient protection measures with respect to child abductions and, consequently, some courts in foreign countries do not readily assist in granting children permission to return to Japan from foreign countries.

## 2. Human trafficking

148. The Government Report (Paragraphs 290-291) mentions the new establishment of a provision in the Penal Code criminalizing the act of human trafficking and the partial revision of the Immigration Control and Refugee Recognition Act with regard to providing for protection of the victims of human trafficking (both enacted in July 2005). However, the Japanese Government should investigate and report on conditions regarding the number of children under 18 years of age who fell victim to human trafficking, the result of apprehension of perpetrators and actions taken against them, and the actual protection of child victims.

### **F. Recovery of Maintenance for the Child (Article 27, Paragraph 4)**

To arrange for maintenance for the child and ensure the recovery thereof, the Japanese Government should take following measures:

1. Amend the Civil Code to introduce a new provision to stipulate that irrespective of whether parents hold parental authority or not the parents are responsible for the support of their children, and add the amount of maintenance for the child to be paid and method of payment to the matters to be determined at the time of the divorce by agreement, stipulated in Paragraph 1, Article 766 of the current Civil Code.
2. Establish as new systems: (i) a maintenance for the child agreement notification system, (ii) a maintenance for the child payment order system, (iii) a maintenance for the child reimbursement system, and (iv) a preferential tax system for expenses of maintenance for the child.

149. 1 Maintenance for the child should be requested and recovered upon request from the custodial parent to the other parent as (i) part of marriage expenses during a matrimonial relationship; (ii) part of care-and-custody expenses for the child upon divorce.

150. 2 The Third Report of the Japanese Government mentions procedures such as conciliation, adjudication, and collateral judgment by the court, and explains that child maintenance may be recovered by recommendations or orders for performance of duty, or compulsory execution by title of obligation, obtainable through these procedures (Paragraph 293).

Furthermore, the Government report seems to suggest that the system for recovery of maintenance for the child support has improved recently referring to the amendment of the Civil Execution Act (enacted in 2004) which made possible the collective seizure of the obligor's future income (Paragraph 296) for the future maintenance (including that for the child) for which maturity dates have not yet come.

151. 3 However, despite the existence of these various mechanisms, recovery of maintenance for the child in Japan at present can only be described as inadequate. This is supported by results of the Report on the 2006 National Survey of Single-mother Households by the Ministry of Health, Labour and Welfare which found that although the ratio of households headed by single mothers with agreements regarding maintenance for the child is on the rise, they still account for only a meager 38.8% of the divorced single-mother households and those households actually receiving payments of maintenance for the child at the time of the survey was 19.0%.

One underlying factor contributing to this situation is that the majority of divorces in Japan are by agreement (in the Ministry of Health, Labour and Welfare survey mentioned above, over 80% of divorced single mothers replied that the method of divorce was by agreement) and because there are no provisions for an agreement on the issue of child support at the time of divorce under the current Civil Code, the majority of divorcing couples fail to make any form of agreement regarding maintenance for the child in the first place.

Second, because the all procedures mentioned in the Government Report have preconditions requiring legal procedures such as conciliation, adjudication, or judgment (however, a notarial deed is acceptable for compulsory execution), it should be pointed out that these do not function effectively in divorces which do not lead to such procedures.

152. 4 In view of the current state of affairs; it must be reiterated that the means for securing maintenance for the child in Japan remain inadequate. Therefore, with the understanding that receiving maintenance for the child is above all the right of a child, the Japanese Government must implement the various measures listed above to ensure agreements with respect that child support are appropriately established and payment is recovered accordingly.

A maintenance for the child agreement notification system suggested in this report is a system that allows filing of an agreement regarding the monetary amount and method of payment of maintenance for the child at the same time as filing of the divorce notification. A maintenance for the child payment order system is a mechanism that enables filing of an application for payment of maintenance for the child in the family court when such notified

agreement is not executed. A maintenance for the child reimbursement system is a system whereby in the case of nonpayment of maintenance for the child the government takes over that claim and grants a certain portion or certain amount of maintenance for the child to the claimant, and then assumes the role of recovering that as the government's claim. A preferential tax system for maintenance for the child is a system whereby no gift tax is levied on the recipient of maintenance for the child, or a system which enables the payer of maintenance for the child to take a tax deduction for maintenance for the child support as a form of a deduction from income for income tax.

#### **G. Children Deprived of a Family Environment (Article 20)**

1. The Japanese Government must sufficiently promote the establishment, registration and utilization of local small-scale children's homes and foster parents.
2. The Minimum Standards for Child Welfare Facilities must be reviewed immediately.

##### **153. 1 Local small-scale children's homes**

The Government Report merely made reference to its Second Report but there is concern that little effort is being devoted to the promotion of the utilization of foster parents and local small-scale children's homes (designed to house a maximum of 6 children, utilizing existing houses independent of the main facility of an institution, targeting children for whom returning to their own home is difficult, and dealing with children in an environment similar to that of an ordinary home). Local small-scale children's homes hardly increased in numbers, and in 2005 there were only 89 nationwide.

##### **154. 2 Foster Parents**

There was only a very small increase in the number of registered foster parents from 7,372 in 2001 to 7,737 in 2005. In addition, while the number of children entrusted to foster parents increased from 2,211 in 2001 to 3,293 in 2005, the number of children entrusted to child children's homes, on the other hand, was 30,846 in 2007 (in 2005, 30,830), nine- to ten-fold the number children entrusted to foster parents, and the number of children entrusted to foster parents as an alternative form of care in place of the family is still very low.

Although some initiatives in providing training for foster parents and foster parent candidates, the system for their support is still unsatisfactory.

##### **155.3 Minimum Standards for Child Welfare Facilities**

The Minimum Standards for Child Welfare Facilities which prescribe building standards and the number of staff for the establishment of child welfare facilities remain

low and have not undergone appropriate adjustment. As discussed in the Second Report of the JFBAs, the standard for the allocation of staff remains low, with a ratio of one staff for six children six years of age or older, and the living space per child is only 3.3 square meters. Furthermore, amid the current trend for utilizing small-scale units such as the local small-scale children's homes mentioned above, there are urgent calls by staff in those facilities for the need to increase staff, claiming they are unable to meet work demands under the current system.

#### **H. Adoption (Article 21)**

1. The Japanese Government should examine and study whether it can be said that the best interests of the child have been the paramount consideration in Japan's adoption system in regard to the involvement and supervision of the court, the involvement of the biological parent without parental authority, and respect for the child's wishes, and whether this system is in actual fact working for the welfare of the child.
2. The Japanese Government should begin to promptly implement specific measures to collect data on international adoptions including the nationalities of the adoptive parents and the adopted children, and to strengthen its monitoring system for international adoptions as well as to ratify the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

#### **1. Domestic Adoptions**

- 156.(1)** The previous Concluding Observations of the CRC expressed concern regarding the limited monitoring or control of domestic and intercountry adoptions and the very limited data available on domestic and intercountry adoptions(Paragraph 39). The Committee advised Japan to: (a) strengthen its monitoring system of domestic and intercountry adoptions and (b) ratify and implement the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Paragraph 40). However, the Government Report (Paragraph 299) failed to even indicate data on domestic adoptions.
- 157.(2)** Under Japan's system of adoption, when a minor of lineal descent of the adoptive parent or the adoptive parent's spouse is to be adopted, the adoption proceeds simply through filing of an adoption notification based on the agreement of the parties, and permission of the family court is not required. If a child to be adopted has not attained 15 years of age, his/her legal representative may give his/her consent to the adoption of the child on behalf of the child. According to the FY2006 Judicial Yearbook, the number of adoptions for which notification was filed during fiscal 2006 was 143,180. According to the fiscal 2006



Annual Report of Judicial Statistics the number of adoptions for which permission was granted by the family court in 2006 was 1,007. According to the survey conducted by the Ministry of Justice in 1982, the adoption of the child by the spouse of the parent of the child from previous marriage following the parent's remarriage accounted for 75% of all adoptions of minors, and it can be assumed that the ratio of adoptions of children from previous marriages is still considerably high today.

- 158.(3) In Japan, at the time of divorce, one of the parents becomes the sole legal guardian of the children and when children are under 15 years of age, adoption of the child of a previous marriage by the spouse of the remarried parent who has parental authority is possible by the consent given by such parent who has parental authority without the need to obtain permission of the family court. The consent of the other biological parent without parental authority is not required (in the case of a custodian, consent is required). In the case of an ordinary adoption, the parent-child relationship with the biological parent is not legally severed, but there is a tendency for visitation between the child and the biological parent without parental authority in principle to become restricted for the reason of the establishment of the adoption.<sup>14</sup> Adoption in Japan is also often used as a means of securing a successor for a family or succession to an inheritance.
159. (4) Adoptive relation in an ordinary adoption may be dissolved by agreement or by court decisions when there is a legal reason for dissolution. However, if the adopted child is under 15 years old, the dissolution of the adoptive relation takes place between the adoptive parent and a person to be a legal representative of the child after the dissolution of adoptive relation. Therefore, without the cooperation of such person, the procedures for the dissolution of the adoptive relation cannot proceed even if the adopted child under the age of 15 desires the dissolution.
160. (5) Therefore, the Japanese adoption system requires examination and study with respect to the involvement and supervision of the court, the involvement of the biological parent without parental authority, and respect for the child's wishes to review, whether it can be

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<sup>14</sup> A judgment made by the Osaka Family Court in May 28, 1968, which did not allow visitation between the child (adopted by the spouse with whom the person with parental authority (father) married after divorce, and the biological mother (Monthly Bulletin on Family Courts, Volume 20, Issue 10, Page 68); A judgment made by the Oita Family Court, Nakatsu Branch in July 22, 1976, which did not allow visitation between a child (adopted by the sister of the parent who had parental authority (father) and her husband) and the biological mother. (Monthly Bulletin on Family Courts, Volume 29, Issue 2, Page 108). A judgment made by the Yokohama Family Court in April 30, 1996, which decided to restrict visitation between a child (adopted by the spouse whom the person with parental authority (mother) married after divorce) and the natural father. (Monthly Bulletin on Family Courts, Volume 49, Issue 3, Page 75).

said that the best interests of the child have been the paramount consideration in the current system and the system is actually working for the welfare of the child.

## 2. Intercountry Adoption

161. (1) The Annual Report of Judicial Statistics each year announces the number of the applications newly filed at the family courts for permission to intercountry adoptions (ordinary adoptions and special adoptions) during the one-year period. However, there are no statistics on the number of the cases where permission was granted, and the number of the children leaving the country for overseas countries as adopted children is not known. This indicates that even after the Government received the recommendation in the previous Concluding Observations of the CRC there has been no attempt to step up efforts in the collection of data. Therefore, it is essential for the Government to collect data concerning intercountry adoptions including information regarding the nationalities of the adoptive parents and adopted children.

162. (2) Despite receiving the recommendation of the Concluding Observations of the CRC, the Government Report makes no mention of strengthening its monitoring system for intercountry adoptions or initiatives for the ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Japanese Government should immediately initiate specific measures to address these issues.

### **I. Periodic Review of Circumstances relevant to the Juvenile's Placement (Article 25)**

<p>The Government should consider whether the period and requirements under the new system established in 2004 for renewing the period for the placement of children in institutions is reasonable on the basis of the actual operation of the system.</p>
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#### 1. Child welfare facilities

163.(1) The revised Child Welfare Law of 2004 states that in cases where placement of children is against the will of the person(s) with parental authority, the governor of a prefecture (in many cases, the head of the child guidance center to whom the governor delegates his/her authority) may with the approval of the family court take measures to place juveniles in child welfare facilities including children's homes, etc. or foster parents. This provision states that the period for such measures for placing children in institutions, etc. with the approval of the family court shall not exceed two years, but if there is a need to continue the measures for placement in institutions, etc. for a period beyond two years, the period of placement may be renewed with the approval of the family court. The Government Report

simply refers to its past report and does not comment on this revised aspect at all. Nevertheless, according to announcements of the Supreme Court, there were 142 petitions for renewal of the placement period in 2006 and 58 in 2007, which clearly indicates that the impact of the revision in practice has not been small.

**164.(2)** After the child guidance center takes placement measures, the courts will not agree to a renewal of the period of placement if the center has not been attentive in dealing with a case. Therefore, the child guidance center is required to actively engage with parents and children during the period of placement. However, there is a need to verify whether the setting of a period of two years and requirements for renewal is reasonable or not.

**165.(3)** The Government should give consideration to an effective system whereby the judicial system is involved in guidance of the persons with parental authority following order of a child's placement in an institution. This might take the form of a legal system which would include, for example, orders for persons with parental authority to undergo counseling or treatment by the family court.

**J. Abuse and Neglect (Including Physical and Psychological Recovery and Social Reintegration) (Articles 19 and 39)**

1. When there are acts of abuse of children who are in the care of child welfare facilities or foster families, a report should be given without fail and the matter should be appropriately investigated and addressed.
2. A fundamental review of provisions pertaining to persons of parental authority under the Civil Code should be reviewed to guarantee the parents' primary responsibilities and rights in raising children. Furthermore, the suspension in part or the temporary suspension of parental rights should be enshrined in law, and Article 822 of the Civil Code providing for persons with parental authority to exercise the right to discipline should be deleted.
3. The number of child welfare officers should be increased and the officers should undergo specialist training and education. There should also be greater cooperation between child guidance centers and relevant organizations with respect to the handling of child abuse.
4. Judicial interviews should be introduced to listen to child victims including victims of child abuse.

**1. Measures to address abuse in child welfare facilities**

**166.(1)** The Government Report (Paragraph 306) touches on preventive measures for physical punishment and torture in schools and correction institutes but makes no specific

reference to measures taken to protect children in the care of child welfare facilities or foster families from abuse, neglect, and exploitation.

167.(2) From time to time in the past, incidents of children being the victims of violence and sexual exploitation by institution staff in children's homes and support facilities for development of self-sustaining capacity, which are child welfare facilities, have come to light but the prefectural governments, which are the competent authorities, have been slow to act and appropriate admonitions by the prefectures to make improvements have not been carried out. For example, in 2002 at a children's home in the Kanto area, which the Tokyo Bar Association investigated and cautioned after receiving a petition seeking human rights redress, physical and mental abuse by staff had been occurring repeatedly over a period of about 10 years but the competent authorities did not have an adequate grasp of the situation and failed to take effective measures to prevent the ongoing abuse. There are no public statistics on abuse in child welfare facilities but according to the Association for Intolerance of Child Abuse in Institutions, a private sector organization, over the 14-year period from 1995 to 2008 there were 89 cases of child abuse reported and misconducts and rights violations were allegedly occurring in 15.5% of children's homes nationwide. According to this association, in 43% of the cases the offense was corporal punishment and in 24% sexual abuse (See Document 9).

It is not easy for children who are in a situation where they know they have no other place to go to make a claim of abuse. Therefore, it can easily be imagined there are many cases of abuse that go unreported. To respond to complaints of children placed in child welfare facilities and the treatment of parents, by the minimum standards of child welfare facilities, institutions are required to establish a desk for receiving complaints but because this mechanism is established within the institutions themselves it does not necessarily function effectively.

168.(3) However, the Child Welfare Law was revised in November 2008 and the JFBA can acknowledge that for the first time the law expressly provided for mechanisms for the prevention of the abuse of children in child welfare facilities or foster families by (i) defining and prohibiting under the law abusive acts against institutionalized children specifically cited as "abuse of children in institutions," and (ii) requiring people who discover acts of abuse to report them, (iii) taking measures to confirm the facts after a report is made, and (iv) establishing measures to be taken. However, it will be necessary to pay attention to the operation of the law after its enactment to see how the system actually works and to determine its effectiveness in terms of whether abuse in institutions decreases as a result of the revision.

## 2. Review of Civil Code provisions (provisions on parental authority)

169.(1) The Government Report (Paragraph 314) simply refers to the Second Report, and the Second Report merely describes details of the letter of the law of the Civil Code. Provisions for parental authority and guardianship are at the stage where discussion for their revision has finally begun but the law still remains unchanged. The notion of “parental authority” as “the right of the parents to exercise comprehensive control over their child” remains firmly deep-rooted and has not come under scrutiny of any sort while an understanding of rights based on the child’s perspective is weak both in terms of legal provisions and practical application.

170.(2) The JFBA has already expressed its views of the Second Government Report and believes that the provision ensuring parental authority should be revised to stipulate instead that the primary responsibility and right of parents with respect to the upbringing of the child are ensured. Furthermore, Article 822 of the Civil Code that enables the exercise of the person with parental power to exercise the right to discipline, which tends to be used as a reason for justifying physical abuse, should be abolished.

171.(3) While there has been a gradual increase in the number of petitions regarding the loss of parental authority, the number of pronouncements of loss of parental authority in 2006 was only 15. While there is a system for recovery in legal status, loss of parental authority sentences are accompanied by serious consequences and this can be interpreted as having an effect on the court’s need to exercise caution in making such pronouncements.

172.(4) To provide for the protection of children flexibly and effectively in cases of child abuse, the temporary or partial suspension of parental authority should be enshrined in law.

The absence of such legal recourse puts certain children at risk. One example at present is the problem of deprivation of medical care. There are parents who are in no way neglectful in their everyday care of their children but who refuse to allow their children to receive essential medical care (surgery) due to their religious beliefs. At present there is no legal system to intervene in such cases by suspending parental authority either temporarily or partially to allow medical treatment. Therefore, as preservative measures prior to a petition for proceedings for a pronouncement of loss of parental authority and a court decision, a request for a suspension of parental rights and appointment of a substitute parental authority has to be made in the family court. After obtaining consent for medical treatment from the substitute parental authority through approval under preservative measures, the petition for a pronouncement of loss of parental authority itself is then withdrawn.

However, such procedures are not only very laborious and require a lot of time, but the onus is also placed on the petitioner to prove the probability of the acceptance of a pronouncement of loss of parental authority, and proving this is no small task. Consequently, it can hardly be said that the physical safety of the child is secured in a prompt manner at present.

3. Need for the establishment of a framework for the prevention of child abuse

173.(1) The Government Report (Paragraphs 326 – 333, 336 – 338) explains in detail the way in which child abuse is handled by the police, including the handling of the victims. However, there is very little mention of child guidance centers, the main bodies for dealing with child abuse, and the Ministry for Health, Labor and Welfare, which holds jurisdiction over these. The Government should report on the current status of child guidance centers and issues they should address in the future.

174.(2) At present the appointment of child welfare officers in child guidance centers is increasing. The standard for the appointment of child welfare officers had been one officer per population of 100,000 to 130,000 in the past and was upgraded to one officer per population of 50,000 to 80,000 in 2005. During this period, however, the number of cases of child abuse received by the centers continued to rise. In fiscal 2007 (April 2007 – March 2008), there were 40,639 cases nationwide, roughly double the 23,274 cases of fiscal 2001. On the other hand, the number of child welfare officers nationwide in fiscal 2007 (as mentioned above) had increased only to 2,263 from 1,480 in fiscal 2001, making it extremely difficult for them to keep pace with the increase in the number of cases (Document 10).

Although municipal governments have made progress in the establishment of local council on measures for children in need of protection, there are still some local governments that have yet to establish councils and some that have established councils but are not engaged in effective activities. At the same time, a system for the renewal of the placement of children in institutions every two years based on approval through judicial proceedings has been established under the revised Child Welfare Law. Consequently, the amount of administrative work has increased. As a result, the burden on child welfare officers has not been lightened and they are unable to dedicate adequate time to families which require assistance including providing guidance to families in the home, etc. In view of these conditions, the appointment of child welfare officers should be further increased.

175.(3) According to the survey report released in June 2007 by the Children's Subcommittee of the Social Security Council, Ministry of Health, Labor and Welfare, of the 70 cases known to the Ministry of child abuse resulting in death during the one-year period in 2005,

it was revealed that 10 (19.6%) were cases in which child guidance centers were involved (including cases involving counseling, etc. for reasons other than abuse). There were also 23 cases (45.1%) in which there was contact between relevant bodies and the families but which did not result in contact with child guidance centers. To prevent the incidence of child abuse resulting in death, the number of child welfare officers should be further increased and cooperation between relevant organizations further strengthened. For example, the use of the local council on measures for children in need of protection should be promoted, and training and education on child abuse for staff of relevant organizations should be improved.

#### 4. Forensic Interviews

176. The Government Report makes no mention of interviews with child victims including victims of child abuse. However, to ensure that child victims do not have to undergo the duress of being repeatedly interviewed about the facts and having to recall over and over again past suffering in the course of family court and criminal and civil procedures, it is necessary to obtain at the initial interview as much accurate information as possible by engaging a specialist interviewer and recording the interview on videotape.

Furthermore, special thought must be given to the involvement of child welfare officers, public prosecutors, and the police in hearings. The introduction of forensic interviews, which have been introduced in a number of foreign countries already, should also be considered in Japan at an early stage (See Paragraph 390). In many cases having the opportunity to relate the facts accurately about their abuse as they receive psychological care can contribute to the recovery of children. On the other hand, without special care, questioning by investigators can result in causing secondary trauma.

## **VI. Basic Health and Welfare (Articles 6, Article 18, Paragraph 3, Article 23, Article 24, Article 26, Article 27, Paragraph 1-3)**

### **A. Children with Disabilities (Article 23)**

1. A legal system that includes a definition of discrimination as well as an implementation and monitoring organization with respect to discrimination and protection of rights should be established.

2. Ahead of the ratification of the Convention on the Rights of Persons with Disabilities, the

current School Education Law, which provides for separate education in principle, should be changed to an integrated school system in principle to enable children of school age whether with or without disabilities to attend the same elementary school in the area where they live.

3. To realize education for children with disabilities, the national and municipal governments should establish education conditions that will ensure reasonable care and assistance required for each individual child.

4. Japan should recognize sign language as a standard language. Furthermore, Japan should include sign language within the education curriculum and promote active efforts to use sign language in the educational environment as a means of eliminating barriers to language acquisition and communication.

## 1. Prohibition of Discrimination

### (1) Introduction

177. Following on from its first recommendation, the CRC expressed its concern that social discrimination of children with disabilities remained deep-rooted and recommended that “the State party undertake all necessary proactive measures to combat societal discrimination and ensure access to basic services...in particular through public education and awareness campaigns.” In response, the Government reported that in 2004 the Basic Law for Persons with disability was partially amended to clearly stipulate as a fundamental principle that no one shall be allowed to discriminate against persons with disabilities or violate their rights or benefits on the basis of disabilities (Article 3-3) (Paragraph 151). The Government went on to state that with regard to school education, settepped-up exchanges and joint learning of children with disabilities and without disabilities and people in the local community are carried out (Paragraph 152).

However, there are reports that these measures are not only absolutely ineffective in prohibiting discrimination but that these so-called “exchanges and joint learning” activities may actually promote discrimination (“exchanges and joint learning” to be mentioned later).

### (2) Limitations of the Basic Law for Persons with Disabilities and future issues

178. The revised Basic Law for Persons with disability can with certainty be recognized for establishing provisions, which did not exist previously, regarding the prohibition of discrimination. However, the legislation simply sets down the prohibition of discrimination as a fundamental principle and fails both to define what discrimination is and to establish redress provisions.

A detailed definition of discrimination has recently been established



internationally and more than 40 countries all over the world have adopted anti-discriminatory laws with provisions for the prompt protection of rights and redress for rights that have been violated. Furthermore, the Convention on the Rights of Persons with Disabilities, which was adopted by the United Nations in December 2006 and signed by Japan in September 2007, clearly defines discrimination and specifically states that denial of reasonable accommodation in itself constitutes discrimination (Article 2). This is not clearly stated in the Basic Law for Persons with disability. To ensure the effectiveness of the Convention on the Rights of Persons with Disabilities, the Convention also not only requires a general international monitoring system but also domestic mechanism to promote ,protect and monitor implementation of the Convention in each State Parties (Article 33). This system, however, does not exist in Japan and must be established.

As the above points indicate, the Basic Law for Persons with Disability is inadequate. It is imperative that this law clearly states that failure to give reasonable consideration to persons with disabilities is in itself discrimination. Furthermore, there is an urgent need to establish a legal system that includes an implementation and monitoring organization to deal with discrimination and the protection of rights.

### (3) Amendment of the Basic Act on Education

179. The revised Basic Act on Education was pushed through by the Government in December 2006. The general opinion about this amendment is argued below, but in the case of persons with disabilities, there is concern that this amendment to the legislation will serve to further promote discrimination against them.

On the issue of equal opportunity in education, Article 4 Paragraph 1 of the revised law states that there shall be no discrimination but makes no reference to disabilities. The phrase “education according to ability” in the former law was even changed to “education to suit ability.” In a separate provision in Paragraph 2 it further states that “the necessary assistance in education shall be provided” “in accordance with the condition of the disability,” and therefore support for the education of persons with disabilities is provided as if it were outside the framework of guaranteeing equality. Although the change from “according to ability” to “to suit ability” is a very slight modification, the intention to view ability as something that is fixed and to sort students on that basis can be discerned. These aspects coupled with the failure to mention a disability within the context of

the prohibition of discrimination further reinforces the notion of ability-based education and grouping according to ability.

The reason why children with disabilities was not mentioned as a reason for prohibiting discrimination in Article 3 of the original law was due to the fact that at the time of its legislation recognition of children with disabilities as members of mainstream society was not widely embraced. It was only afterwards when Article 2 of the International Covenant on Economic, Social and Cultural Rights stated that the guarantee of human rights extended to all people without exception, and “General Opinion No. 5” of the Committee on Economic, Social and Cultural Rights indicated to interpret “disabilities” to be included in the examples of the prohibition of discrimination. In this way, it was interpreted that persons with disabilities should not be discriminated in education. Later the prohibition of discrimination on the basis of disabilities was expressly stated in the Convention of the Rights of the Child. Because of these changes, there was an express need to state those aspects which had previously been omitted and left to interpretation. Despite this, however, the revised law failed to do this and there is concern that the law as it stands will give rise to negative interpretation.

The exclusion of persons with disabilities from the guarantee of equality in education in Paragraph 1 and the separate provision of “education in line with the extent of the disability” in Paragraph 2 are at variance with the “promotion of integration” (which will be mentioned later), and there is concern that this view will only serve to promote discrimination.

(4) Promotion of discrimination due to the excessively competitive nature of the schools system

**180.** Following on from its initial recommendations, the CRC stated its concern about the excessively competitive nature of schools in Japan and that it “has a negative effect on the children’s physical and mental health and hampers the development of the child to his or her full potential” (Paragraph 49(a)).

Despite this, the government introduced a national academic aptitude test in fiscal 2007, further cultivating the ethos of a test- and results-oriented education environment and instigating excessive competition. This national academic aptitude test has resulted in further exclusion and discrimination of children with disabilities.

For example, in 2007 in Morioka it came to light that there were irregularities in the reporting of results at a school where the test papers of

children with disabilities were excluded from the grading and totals of their class without the consent of the individuals or their parents. In a decision handed down by the Morioka District Court on August 17 the court supported the action of members of the prefectural board of education for not disclosing the results of the academic performance survey on the grounds that disclosure “could lead to bullying and discrimination of children with intellectual disabilities, children with development disabilities, and children who do not perform well on tests and, furthermore, could result in lowering the average score of the class or school and a lowering of the desire of those students to study.”

181. At present under the school system that provides for separate schools by law, the attendance of children with disabilities at ordinary schools is permitted when there is a concurrence of the eagerness of the parents and conditions of the receiving school, but this is hardly a case of all children being accepted at regular schools (See Paragraph 183).

If under such circumstances national academic aptitude tests are to be conducted, local schools will naturally adopt a negative stance toward the acceptance of children with disabilities who threaten to lower that school’s average score. Already this tendency has made itself evident as shown in the “irregularities” above.

Furthermore, such integrated school environments will inevitably instill a sense of inferiority in children with disabilities and inhibit “the full development of self worth” (Article 24) which is stated as one of the objectives of childhood education in the Convention on the Rights of Persons with Disabilities.

At any rate, the implementation of a nationwide academic aptitude test is a setback for education for children with disabilities, which had at last begun to move in the direction of integrated education, and there is a possibility that it will reinforce the exclusion of children with disabilities from ordinary education through an overemphasis on intellectual education and that it will sow the seeds of discrimination of children with disabilities. As it was indicated earlier, in making its decision regarding whether the test results should have been made public or not, the Morioka district court took into consideration the fact that disclosure could lead to discrimination of children with disabilities who could easily lower the average score of the school or class. However, the issue should not be seen as whether or not results of academic aptitude tests should be made public or not but rather as the conducting of academic aptitude tests in the first place.

The conducting of academic aptitude tests fosters an ethos of placing inordinate importance on tests and excessive competition in the school environment, which in turn lead to the exclusion of children with disabilities from

local schools and to encouraging discrimination.

The above sentiments were published as the opinion of the JFBA in March 2008 and the document was provided to relevant domestic government organizations.

## 2. Promotion of Integration

### (1) Introduction

**182.** The CRC has recommended (Paragraph 44) that the United Nations' Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96 of 20 December 1993) be taken into consideration in "the promotion of integration." The Japanese Government stopped at signing the Convention on the Rights of Persons with Disabilities in September 2007 and has not yet ratified it. However, the purport of the United Nations' Standard Rules mentioned above is reiterated in the Convention on Rights of Persons with Disabilities and therefore it can be said that the government is required to take into consideration those Standard Rules in promoting integration.

The Convention on the Rights of Persons with Disabilities provides for inclusion in society (Article 3-c) as a fundamental principle, and guarantees the rights of persons with disabilities to live independently and to be included in the community (Article 19) in particular. It also states that the respective rights of individuals in education (Article 24), in support for encouragement of self-support and rehabilitation (Article 26), and in employment (Article 27) must be guaranteed in a socially accepted manner. In the area of education (Article 24) it specifically provides for inclusive education.

### (2) A school system with separate education in principle

**183.** The school system in Japan in principle separates children with disabilities according to the type and the degree of the disability. This is clear from the letter of the School Education Law the provisions of which are discussed below.

Article 5 of the Enforcement Ordinance of the School Education Law states that among those intending to enter school, those with visual disabilities, hearing disabilities, intellectual disabilities, physical disabilities, and those with health impairments, apart from those with disabilities to the extent indicated in the table of Article 22 Paragraph 3, will be sent notices to attend elementary and junior high schools, while those described in the table of Article 22 Paragraph 3 will be sent notices to attend special needs schools. Furthermore, the table in Article 22 Paragraph 3 describes the extent of each disability.

The above provisions can only be described as outright segregation in education based on disabilities. They fit the definition of discrimination in Article 2 of the Convention on the Rights of Persons with Disabilities and they are in direct opposition to inclusive education system stated in Article 24 Paragraph 1 of the Convention.

(3) Problems with special needs education

184. In this environment, special needs education started as a legal system in April 2007. The most notable difference between the previous special education and special needs education under the revised law is the guarantee of the respective needs of children with disabilities. The aim to intentionally make efforts at the level of education for the children with disabilities to guarantee their needs are met, which in the past should have been met for all children, can be acknowledged. However, what is conspicuously lacking here is the premise of an integrated learning environment in guaranteeing those needs. In an inclusive learning environment, which provides for a child's needs, the objective is not necessarily to cater to the child's individual needs per se, but for the child to realize his or her needs through involvement and interaction with society. Therefore, through their presence with other children in the class and school, children with disabilities learn how the class, school and society develop and change and how they will accept them, which become the issues as their needs.

Despite this, special needs education completely lacks this perspective and aims to guarantee only the individual needs of the child in a separation environment, and this results in further reinforcing segregation. Consequently, it can hardly be said that special needs education, which maintains a separate environment, is part of an inclusive educational system.

(4) Problems of approved regular school attendants

185. "Approved regular school attendants" are those children who it is supposed should be attending special schools for the visual disabilities, hearing disabilities, or physical and mental disabilities on the basis of school attendance standards but who, for their special circumstances, are admitted to ordinary elementary or junior high schools. Under this arrangement, children with disabilities are classified according to the following three types:

Children with disabilities who are judged according to attendance standards as children who should attend ordinary primary schools

Children who, due to the type and level of their disabilities, are judged as children who should attend schools for the visually or hearing impaired or schools

for the mentally or physically handicapped

Children in        above who are judged to have special circumstances    and are deemed to be children who should attend ordinary primary and junior high schools as recognized school attendants

These provisions clearly run counter to the principles of inclusion. Dividing people according to disability and forcibly assigning them to schools on the basis of their disability denies their participation in society as a whole and is a violation of human rights in the sense that it forces limitations on the scope of their social relationships and social involvement. Creating a further group of recognized attendants from among children with disabilities who have special circumstances and integrating them as exceptions within ordinary elementary and junior high schools can hardly be seen as a positive step toward integration. On the contrary, it can only be viewed as a further step backwards in the sense that it further reinforces the notion of selection.

186. Furthermore, in a notification entitled “School Attendance of Young Students with Disabilities” (MEXT Notification No. 291, 2002) on May 27, 2002 the Ministry for Education, Culture, Sports, Science and Technology stated the following as concerns of special circumstances:

The school environment for the attendance of children with disabilities has been appropriately established through the installation of facilities and equipment to cater for disabilities and the assignment of teachers highly skilled in providing guidance, etc.

There is a need to make careful judgments regarding children with disabilities after taking into careful consideration the need for provisions for safety and appropriate guidance in line with the disabilities depending on the type and extent thereof, particularly in cases where there are two or more disabilities or where daily medical care is needed.

The above makes it clear that only a very limited number of children with disabilities will be recognized as attendants of ordinary schools. There is also a possibility that schools may use these standards as a shield to hide behind to exclude even children who have until now been able to attend ordinary elementary schools (though a promise was made that such children would not be forced to change schools as a result of the amended enforcement ordinance). Although there are regional differences, in some areas integration has gone backwards.

- (5) Hearing of Parents’ Opinions

**187.** The revised School Education Law of 2007 established that when a notification was to be issued to advise that a child should attend the elementary school division of a special needs school, the opinions of parents and persons with specialist knowledge in education, medicine, psychology or other knowledge regarding the schooling of children with disabilities, etc. should be heard (Enforcement Ordinance, Article 18 Paragraph 2). While this provision gave parents the opportunity to express their opinions, it merely provided for a hearing on the issue as to whether or not parents would accept separate education for their child due to his or her disability.

The parents have the right to make choices regarding the education of their children and simply listening to their views regarding a manner of education that varies significantly from mainstream education is not enough. Article 5 of the Convention of the Rights of the Child states the responsibilities, rights and duties of the parents to provide appropriate direction and guidance in the exercise by the child of his or her rights and Article 13-3 of ICESCR recognizes the right of parents to make choices in the education of their children. In view of these provisions, the parents' right to make the final decision in the education of their children must be guaranteed, and to ensure that parents can fulfill their responsibilities, appropriate arrangements must be made accordingly.

Therefore, if parents are merely given the opportunity to have their opinions heard, it must be said that this is a violation of the Convention's provisions.

The above procedure is arranged to listen to the opinions of the parents regarding the child who should attend the elementary division of a special needs school but when the time comes for the child to continue on to the junior high school division of that school, the right for the child to express his or her opinion must also be guaranteed. Article 12 of the Convention on the Rights of the Child guarantees children the right to express their views on matters concerning themselves and, for children with disabilities, the questions as to where and at what kind of institution they will receive their education is of significant concern. The right to express their opinions must be guaranteed for children as well as for parents.

#### (6) Exchanges and Joint Learning

**188.** Exchanges and joint learning are also premised on separation, and efforts are made to integrate children with disabilities only in certain situations within a controlled environment where segregation is maintained. Furthermore, those situations are restricted to a limited number of events during the year such as athletic festivals, etc., setting an

upper limit on annual exchange hours, or as very limited indirect exchanges such as the exchange of letters or sharing of news in newsletters, etc. and there are very few times where joint learning or interaction in real life situations takes place, such as sharing classes or eating lunch together, which are core elements of school life. There are also very few exchanges between children with disabilities and local schools in their home town. Instead, exchanges tend to take place with other schools in the vicinity of the special needs school, and parents are requested to act as escorts on such excursions. Furthermore, no arrangements are made for learning materials or textbooks at the host school, so the families of the children with disabilities are asked to purchase these at their own expense. In short, these exchanges take place only within a framework where the children are welcomed as "guests". In this context it would be easy for such exchanges to develop into activities planned around the convenience of the schedules of the children without disabilities and could ultimately lead to the development of a sense of superiority in children without disabilities and a sense of inferiority in children with disabilities, so there is a concern that such "exchanges" serve only to promote further discrimination.

However, through such exchanges the Government reports that "significant educational effects are expected in the process of cultivating an enriched humanity among all children, and these also serve as important activities for people in the local community for the promotion of correct understanding and awareness in regards to children with disabilities and education for them" (Paragraph 353)." However, the point is not what can be gained through exchanges or joint learning but what is gained through inclusive education itself. To completely dismiss the negative aspects of such exchanges and focus attention on the notion of "an enriched humanity among all children" is inexcusably superficial.

#### (7) Student Dormitories

**189.** In Japan there are a total of 1,013 special needs schools comprised of 45 national schools, 954 public schools and 14 private schools. Out of the 1,013 schools, 333 school has residential facilities, which is 32.9% of all special needs schools, and 10,292 students stay at those facilities (as of May 1, 2007 according to the fiscal 2007 School Basic Survey).

Special needs schools are prefectural facilities which cover wide school areas and therefore dormitory facilities are established to accommodate children who have difficulty in commuting. As a result, more than 10,000 children are separated not only from the area where they live but also from their parents and home to live in dormitories from six years



of age to , in some cases, 15 years of age. Although there are parents who request that their children be accommodated in dormitories to enable them to attend special needs schools, the issue remains that it is imperative to provide arrangements that reflect the rights of children to receive education in the areas where they live.

190. Recent budget cuts have resulted in the closure of one dormitory after another but the attendance of children with disabilities at schools in the areas they hail from has yet to be guaranteed. Therefore, if dormitories close without any guarantee of alternative support that enable children with disabilities in remote places to attend school, those children will be deprived of access to education which was made possible through residential facilities.

Therefore, the Government should not use fiscal cost cutting as an excuse to close dormitories but should quickly investigate the role dormitories fulfill at present and should also consider maintaining and refurbishing them as centers for assisting the life and education of children with disabilities without separating them from their areas or homes.

(8) Guarantee of upper secondary education

191. An inclusive education system must not stop at compulsory education at elementary and junior high level but must also guarantee access to upper secondary education (high school). The Convention on the Rights of Persons with Disabilities states that the rights of persons with disabilities to access an inclusive and quality secondary education in the communities in which they live; (Article 24 Paragraph 2.b) should be ensured. Therefore, further efforts should be made to promote high school attendance for persons with disabilities.

In Japan at present about 97% of all children without disabilities continue on to high school, which has effectively become quasi-compulsory education. In this environment children with disabilities have also come to hold aspirations to go on to high school but the high school retention rate of these children still stands at 80%. This is due to a selective high school system where students are selected and eliminated through selection tests. To boost the number of students with disabilities going on to high school to 97% as for students without disabilities, the system must not only provide special care in the administration of examinations by providing longer periods of time, exams in Braille, and alternative writers, etc. but also open wide the doors to upper secondary education. Responding to this situation, while schools in all areas have a certain number of placements for students with disabilities and there are efforts to place students in schools that have not filled their capacity, with the recent consolidation and closure of evening

high schools, opening the door to greater opportunities for students with disabilities will only grow more difficult.

192. In 1997 MEXT issued a notification regarding continuation of secondary education in which it advised schools to diversify not only their methods of selection but also their evaluation criteria by saying that schools should provide greater care in administering academic achievement tests to enable more appropriate evaluation of students with disabilities, taking into account the nature and extent of those disabilities. The Government needs to be more specific in stating how the right to continue upper secondary education will be ensured for students with disabilities and in stating what constitutes “obligation of care” and “necessary support” in each situation.

At present there is an increasing number of requests for students with disabilities, who due to circumstances have difficulty in going on to regular high schools, to continue their high school education within special needs schools. While the School Education Law provides for the establishment of special needs classes in high schools, schools which have made such arrangements are extremely rare. There is a need to expand the choices available to students with disabilities including a high school division within the special needs school environment as well as special needs classes within an ordinary high school environment while positioning ordinary high schools as the mainstay of high school education for students with disabilities.

(9) Before attending school

193. The number of parents of children with disabilities who wish to have their children attend day care centers and kindergartens is increasing every year. However, the establishment of conditions for admission and attendance is left to municipal governments and there is a significant disparity in conditions among regions but, on the whole, arrangements are extremely inadequate. One particularly serious issue is the admission of children with severe disabilities or children who need medical care, with most municipal governments refusing to accept children who require medical care.

194. One example is the case of a girl of pre-school age living in Higashi Yamato-shi in Tokyo, who after a tracheotomy for laryngomalacia was fitted with a canula (a device permanently inserted in a hole opened in the throat to allow the passage of air to the bronchus). This girl attended a pre-school facility for children with physical and mental disabilities. However, because the parents wished her to grow and develop among many friends as soon as possible, they wanted to place her in group care and applied to a regular municipal day care center. However, the director of the Higashi Yamato Welfare Office

expressed the view that it was appropriate for the girl to continue at the facility she was attending and turned down the parents' application on the grounds that it would be difficult for the day care center to provide appropriate care for the child.

The parents then initiated legal proceedings to require the administrative government agency to accept the request for the placement of the child in a regular day care center on the basis that the child would be able to participate in all regular day care center activities if the center assisted in the aspiration of the child's phlegm. To wait for a decision would have meant that it would be too late to enroll their daughter in a municipal day care center. Therefore, at the time the parents initiated legal procedures, they also lodged a petition for action be taken provisionally. In January 2006 their petition was approved and the child was placed in a day care center. This provisional obligatory proceeding ahead of an obligatory proceeding had been newly established under the revised Administrative Case Litigation Act of 2005 and this is a case where redress was implemented promptly. This procedure is useful in guaranteeing the rights of a child to receive education in day care centers and elementary and junior high school particularly during the formative years of the child. This particular case verified that the procedure could function effectively. Depriving the child of the opportunity to experience group life during the formative period of his or her life and the opportunity to learn social skills places the child at a disadvantage that cannot be rectified later through compensation or other means. This is exactly what is meant by "circumstances where urgency is required to avoid irredeemable losses" which this law intended to provide for.

As stated earlier, Japan does not have a system for prompt redress in cases of discrimination, and redress is possible only through court cases such as the one mentioned above. In this case the parents were able to obtain the understanding of the court and succeeded in obtaining redress three months after initiating the case. However, a system that systematically ensures redress is needed.

(10) Need for integrated education system in principle

195. The major premise of inclusive education system is that all children are able to attend the same school in their area. Just as society is comprised of diverse people that include people with disabilities, people of different nationalities, and people with different colored skin, schools must reflect this diversity of people. Schools that exclude minorities are already discriminatory from the outset, and cannot be described as being part of an inclusive education system.

Therefore, ahead of the ratification of the Convention on the Rights of Persons with Disabilities, the current School Education Law, which provides for separate education in principle, should be changed to an integrated school system in principle to enable children of school age to attend the same elementary school as children without disabilities in the area where they live.

In addition, education where the needs of each child are met in an integrated environment must be guaranteed. At the same time, the freedom to choose a special needs school must also be guaranteed as a right in the choice of education.

Changing Japan's school system into to a system that is integrated in principle is essential for inclusive education. Without this, special needs education, approved regular school attendants, exchanges and joint learning, which all claim to ensure the needs of students, may further deepen separation rather than promote integration.

### 3. Need for support

#### (1) Need for support in regular schools

**196.** Although extending the ability of children with disabilities to the maximum must be guaranteed, the support currently provided in regular schools is extremely inadequate. Because of this, there are parents of children who are of the view that receiving special education in a separate school under a legal system of separation of education in principle provides a greater guarantee of education and development for their child, and it is this stance that lends support to the system of separate education.

Therefore, to further promote integration, it is essential to establish favorable educational conditions for children with disabilities at regular schools, and to guarantee the reasonable care and support required by each child.

The Convention on the Rights of Persons with Disabilities stipulates that "Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;" (Article 24-2.d), and on the assumption that the children attend regular schools, it states that the necessary support must be received there.

**197.** In its report, the Japanese Government mentions a special allowance for students attending special needs schools as one of its means of supporting special education(Para 352). However, this incentive is guaranteed only to children who attend special needs schools and special needs classes, and it is not guaranteed for the children with disabilities who attend regular schools.

**198.** The Convention on the Rights of Persons with Disabilities stipulates that support in meeting the needs of children with disabilities in regular schools should be guaranteed and although special needs education has been provided by law in regular schools (classes)

since 2007, it has yet to be guaranteed in specific terms.

199. During this time, the only provision established in schools has been support staff for special needs education. This was implemented as a budgetary measure appropriated through the local allocation tax in 2007, and was intended for the appointment of support staff to provide support in the study, assistance, and care of children with disabilities attending primary and junior high schools. However, it was implemented as a budget measure for the local municipalities, and, at a time when the overall local allocation tax has been reduced, some local municipalities have not necessarily appropriated this budget for the appointment of support staff. To begin with, however, only about 1.2 million yen remuneration per annum has been allocated per support staff. In addition, there are no uniform standards in qualifications of support staff for the special support education or in methods of guidance, which are left to the discretion of the respective municipal governments. Therefore, even if the support staff existed, this does not mean that the use of parents as escorts, which has been pointed out in the past, has been eliminated, nor the exclusion of students with disabilities from study and school events. Furthermore, there are reports that by the method of providing support, instead of moving in the direction of inclusiveness, children with disabilities are being withdrawn from their class and placed in a separate classroom.

#### (2) Improving support in special needs schools

200. In Japan, the current School Education Law in principle determines which school children with disabilities attend depending on the condition of their disabilities. Children with severe disabilities are supposed to attend special needs education schools. However, due to insufficient support provided at regular schools, the number of children attending special needs schools and classes is increasing every year. Despite this, support provided at these schools is also inadequate, and requests for parents to escort their children during the commute to school and back in remote areas are becoming an everyday affair. The shortage of classrooms and toilet facilities has also been reported in the media, and schools are in a state where they fundamental conditions have not been established.

#### (3) Need for education using sign language

201. In the schools for children with hearing impairment in Japan, the use of sign language itself as a method of expression is not being taught, and the use of sign language is hardly used in the learning and teaching of class subjects. At schools for children with hearing impairment an aural-oral approach in language acquisition and learning is the mainstream method of education and a combination of the students' residual hearing, the use of hearing aids, and lip reading are used.

On the other hand, in recent times there has been an increasing demand for the use of sign language in the learning environment from both children and adults with hearing difficulties. The Convention on the Rights of Persons with Disabilities recognizes the linguistic merits of sign language (Article 24-3-b), and established a provision that “Ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.” (Article 24-3-c)

This is due to the fact that sign language is recognized as a standard language globally, and the acceptance of sign language is seen as an issue in guaranteeing the identity of persons with hearing disabilities. In short, receiving education through sign language is not only essential in ensuring the right of persons with hearing disabilities to receive the right to education (Constitution, Article 26) and the right to learn but it is also an issue of the right to choose one’s language and the right to life, liberty, and pursuit of happiness (Constitution, Article 13).

202. In February 2005 after conducting a survey and study of schools for persons with hearing disabilities and sign language education, the Japan Federation of Bar Associations made public its recommendation and presented the following opinions:

The Japanese Government must formally recognize sign language as a form of language and implement the following measures to remove barriers from the acquisition of language and communication and to guarantee the right of persons with hearing disabilities to express themselves by using the language of their choice.

- (a) Give sign language its rightful place in education, make active efforts to promote the use of sign language in the learning environment, and recognize the freedom of choice to receive education through the use of sign language.
- (b) Revise copyright provisions obstructing the production of sign language video programs of textbooks, assist in the promotion of effective education methods through the use of sign language including improving sign language video programs of textbooks, and promote the training of teaching staff who will be able to teach in sign language.
- (c) When a child’s hearing impairment is identified, it is also important for the family members to learn sign language. To secure an environment where the children can use sign language at home or in the local community, explain the necessity of learning sign language to parents and provide opportunities for family members to learn sign language free of charge.

The board of education should establish an environment to enable education through the use of sign language by actively recruiting of teaching staff who can use sign language in

school for persons with hearing disabilities, and should make arrangements to actively provide opportunities for students to learn sign language also at regular schools.

Schools for persons with hearing disabilities should promote the acquisition and improvement of language skills through the active use of sign language from kindergarten and elementary school.

Because sign language is a language for persons with hearing disabilities, it is therefore part of their self identity and, as such, communication through the use of sign language must be ensured at the earliest stage as possible. For children with hearing disabilities, sign language is a right essential to character building.

#### (4) The Law for Supporting Persons with Developmental Disabilities

- 203.** Children with developmental disabilities in the past were not recognized as having disabilities and, therefore, no support was provided. Due to strong demands expressed by the parents of such children, however, in 2004 the Law for Supporting Persons with Developmental Disabilities was established. This legislation provides for lifetime support for children with developmental disabilities. The establishment of this law was in itself is a major breakthrough in the realization of support for affected persons. However, one problem is that the law specifies support for the persons with developmental disabilities; what is needed is a law for supporting the persons with all types of disabilities.
- 204.** The definition of developmental disability is somewhat vague, and LD and ADHD in comparison with autism are wider in scope from a medical point of view, with symptoms varying depending on the diagnoses of doctors, and the definitions of diagnosis are also loose. Nevertheless, a survey conducted by the Ministry of Education, Culture, Sports, Science and Technology in FY2002 indicated the possibility that development disorder may exist in the classroom at the rate of about 6% in ordinary classes. Based on this assumption, classroom teachers were asked to check students through a survey whereby the teachers were to fill in answers on a checklist to identify possible cases of LD, ADHD, and high-functioning autism. However, due to concern that such an exercise might lead to discrimination and bias through the unfounded labeling of students as a result of this survey, the Second Tokyo Bar Association in March 2006 issued a warning to ensure that human rights and privacy rights were not violated through the conducting of the survey.
- 205.** Furthermore, on the issue of support, there are reports that children who were studying in regular classes in the past were moved to "tsukyu" ( a special class for children with developmental disabilities) or in special needs classes, and as a result, this incentive serves to reinforce separate education. This support is acceptable if it is the wish of the child or the parents to receive it, but labeling a vague support scheme and forcing it against people's

will should not happen.

Support for the children with developmental disabilities also must be provided without fail in an integrated environment. To separate children on the basis of developmental disabilities is not likely to produce the desired results.

(5) Problem areas in the Services and Supports for Persons with Disabilities Act

**206.** Even before the establishment of the Services and Supports for Persons with Disabilities Act, strong objections that the legislation violated human rights were raised not only by children with disabilities but also by many other people with disabilities. On October 31, 2008, 30 plaintiffs together brought a case against the Japanese Government and other 18 municipalities as defendants before the local courts in eight locations throughout Japan, claiming that the law was unconstitutional and in breach of the law.

**207.** The most significant point at issue was the levying of user-pay charge of 10% in principle for the use of equipment and services. Welfare services such as child day services, home help, short stays, the adaptive equipment, and training medical treatment which had been stipulated in the Child Welfare Act were all included in the Services and Supports for Persons with Disabilities Act, levying on the users a charge of 10% in principle as the cost for use. This meant that people (children) with disabilities would no longer be able to get from one place to another or obtain prosthetics or other adaptive equipment essential for living without paying 10% of the respective costs. For the growth and development of a child, it is essential that all children receive education equally and equal opportunities to participate in school activities and activities of the local community. Children should not be prevented from participating in such activities due to a 10% burden of costs. Therefore, special consideration must be given for the growth of children with disabilities by providing support to low-income families, and waiving the 10% levy, etc. At minimum, the 10% levy on any transportation relating to school education, etc. must be completely abolished, and the law must be amended to enable children with disabilities to attend school and undertake their studies without financial or other worries.

4. Eradication of child abuse

**208.** Children with disabilities are more vulnerable to child abuse and significant suffering. However, because abuse generally takes place behind closed doors in homes, institutions, and schools, it is difficult to verify even when children without disabilities fall victim. In the case of children with disabilities, the reliability of statements made by the children themselves are often disputed. There are a number of difficult issues involving the abuse of children with disabilities. For example, compensation for damages are generally kept lower than compensation awarded to children without disabilities



209. There are many concealed cases of abuse of children with disabilities. For example, according to investigation results of deaths due to child abuse (Specialist Committee concerning the investigation of cases requiring protection such as child abuse by the Ministry of Welfare and Labour) announced in March 2006, out of 58 deaths due to abuse in 2004, seven persons had chronic disease and physical disabilities (14%), one person had delay in physical growth (2%), eight people had delayed mental development (16%), and one person had a diagnosed mental disorder (2%).

Cases reported in the media are detailed in the Document 11 of the reference material.

210. Abuse at institutions is hard to identify even for the parents of affected children. Even when parents do detect abuse, they are often reluctant to bring cases against institutions due to their feelings of indebtedness, and this situation force children to endure suffering and humiliation. Therefore, although the enactment of the Child Abuse Prevention Law is a step forward, the establishment of an abuse prevention law for persons with disabilities to prevent abuse in schools and institutions is essential.

### C. Social Security and Childcare Services and Facilities (Article 26, Article 18, Paragraph 3)

1 The Japanese Government should immediately review both the reduction of Child-Rearing Allowance and abolishment of increase in welfare benefits for single-mother families, and revive the laws and systems relevant to these allowance and benefits back to at least those existed in 2002 or before.

2 The Japanese Government should promptly enhance childcare centers, including after-school programs, in both quality and quantity from the view point of the child welfare, and at that time it should re-acknowledge its responsibility for the care and make its very best efforts in maintaining and improving the environments surrounding the nursing, not only aiming at satisfying numerical targets such as eliminating the number of children who are applying and waiting for the admission.

1 Child Allowance, Child Rearing Allowance, etc.

211. The Second Government Report listed the child allowance and the Child-Rearing Allowance as the Japan's social benefits in support of child rearing (Paragraph 57).

Since 2002, however, the child rearing allowances to be provided to single parent families have been cut off: in addition to lowering of the upper limit of the eligible family income for all kind of allowances, amendments were made to the laws to halve the amount

of allowance at most for the families who have received the Child-Rearing Allowance for five years or longer since their last child had reached to three year old, and etc.

Among the above, the payment restriction up to five years is said to be frozen in response to criticism from the public in fact by permitting a wide range of exceptional cases, but in order to be excluded from the reduction, relevant single parent families have to file applications to local governments and to express and explain the reason to be qualified as an exceptional case. Therefore, some families automatically receive reduced allowances due to ignorance of such procedures.

212. Further, increase in welfare benefits had been granted to single mothers under public welfare assistance until April 1, 2009 in Japan, when the grant system was completely abolished after some years of gradual reduction.

Above policies, in particular the policies by the Government after the year 2000 are pushing children of single families, etc towards further poverty.

## 2 Childcare services for children of working parents

213. The Second Government Report reported only the number of locations for the Project of After-School Measures for Healthy Growth of Children (so-called “after-school program”) and failed to address its issues (Paragraph 385); the Project is suffering from chronic shortage of supplies. (In accordance with a field survey of after-school programs for the FY 2007 conducted by National After-school Program Liaison Council, out of children in lower grade students (youngest children) whose mothers are working only about 30 % of them attended after-school programs.)

According to the Government Report it is intended to enhance admission to childcare centers of children who have applied and waited for admission (Paragraph 386); however, the Ministry of Health, Labor and Welfare itself announced that the number of children who have applied for the facilities and been waiting was as many as 19,550 nationwide as of April 2008, so apparently the countermeasures are not sufficient.

214. Further, it is pointed out that since the Japanese Government and local municipal governments increasingly outsource nursing services to private enterprises in order to admit children who have been waiting for being admitted to childcare centers, which contributes towards degrading of childcare centers and nursing environments in terms of human and physical resources, and some report that it leads to increase of children’s injuries. In fact litigations are brought to courts against such measures (Document 12).

215. In addition, the Ministry of Health, Labor and Welfare published a new policy of direct contract method of licensed childcare centers in February 2009, which shows decreased involvement in nursing. As such, the Japanese Government is pursuing a policy that

neglects nursing environments of children in fact, while expressly promising for countermeasures to the falling birthrate as a slogan.

**D. Standard of Living (Articles 27, Paragraphs 1-3)**

216. Regarding the point in the Declaration of Habitat Agenda (Habitat ) that “ special attention must be paid to the shelter needs of vulnerable children”, the Government reports that it has been trying to facilitate protection of children responding to the necessity of such facilities; however, the children’s homes which are mentioned by the Government will be positioned as alternative facilities of family homes not shelters. Further, children’s homes are in fact increased only by a small number and outsourced to private enterprises, which do not catch up with the rapid growth of the number of children who are under protection resulting from abuse.

217. Temporary shelter facilities of child guidance centers represent so-called official shelters, but those temporary shelter facilities are small in the number, and cannot provide sufficient services to children because many of them are accommodating children over their capacity. In addition, such temporary shelter facilities protect children of a wide age range from infants to teenagers less than 17 altogether while prohibiting any communications with the outside and outings, which enforces hardship on children of early adolescence by prohibiting to go to school, etc. In addition, in Japan, children under 20 years old are specified as minors, but no shelter for children of age between over 18 and under 20 had been established. So attorneys and welfare specialists started cooperative activities to set up an incorporated nonprofit organization and built shelters mainly for children in their early adolescence. So far already four privately operated shelters were established. These shelters have protected nearly 150 children so far in cooperation with child guidance centers. In addition, this year another shelter is expected to be opened. To those private shelters, however, no official grant or subsidiary has been provided and they are operated by private donations, etc. The Japanese Government should grant subsidy and support these private activities.

**Education, Leisure and cultural activities (Article 28, 29 and 31)**

**A. General Statement (on the Second Concluding Observations and the General Characteristics of “Reform” Trends)**

The CRC's Concluding Observations should be considered seriously, and an educational system should be established through right-based approach that would lead to secure enhanced educational opportunities by reviewing the education system reform introduced recently that pushes the educational system towards more harsh competition.

## 1 Basic position of the Third Government Report in comparison with the CRC's Concluding Observations

### (1) The CRC's Concluding Observations expressed in the review of the Second Report

**218.** As a result of the review of the Second Report, concerns (Paragraph 49) were expressed as follows: that the excessively competitive nature of the education system has a negative effect on the children's physical and mental health and hampers the development of the child to his or her fullest potential ((a)); that excessive competition for entry into higher education means that public school education must be supplemented by private tutoring, which is not affordable for children from poorer families ((b)); and that night schools in the Tokyo metropolitan area, which offer flexible education opportunities, in particular for dropouts, are being closed down ((e)), and the recommendations (Paragraph 50) are made such as to develop measures to effectively address problems and conflicts in schools, in particular violence, including bullying ((b)).

### (2) Responses in the Third Government Report

**219.** The Government Report responded to the issues addressed by the CRC's Concluding Observations, and regarding the concern (excessively competitive nature of the educational system) it states at Paragraph 423 (Improvement of the school admission system), "the Government of Japan makes efforts ...combating excessive competition in school admission... has begun to slow down," and also at Paragraph 424 (Reexamination of curricula to alleviate the competitiveness in the school system), "...does not merit any comment that this might create negative influence by exacerbating the competitive nature."

As for the concern above (the issue of access to higher education), it notes that the countermeasures are taken as described in Paragraph 391 (Scholarship system), and with regard to the concern (the issue of closing down of evening high schools), it expresses in Paragraphs 401 and 402, "...establishing independent day and evening part-time schools ...to meet the diversified needs of students...deems its current measures appropriate."

Though the Government Report responded to the concerns addressed by the CRC's Concluding Observations formally as above, it doesn't seem to observe actual conditions

that the concerns addressed, and we have to say that it evaded tackling the matter directly. In addition, regarding the recommendation of , as stated below, it cannot be said that effective measures have been taken.

## 2 Trend of educational (legislation)“reform” conducted after the review of the Second Government Report

220.(1) Regarding the trend of educational “reform” proceeded in and after the year 2000, the Second Report of JFBA “Paragraph 312” and the following pointed out that since such reform considers children only as objects to be corrected through control, enlightenment and enforcement for rearing leaders to secure human resources who support global competition by introducing deregulation and market theory to the academy, and that such Fundamental Law of Education “reform” debate may invite intervention by the state in the contents of the education and mental values of human beings and more competitive education.

221.(2) Though the recommendations in the CRC’s Concluding Observations on the Second Government Report encouraged to seek for a right-based approach and pointed out the above-mentioned concerns of “the excessively competitive educational system” and that children from the families with financial hardship are having difficulty due to “excessive competition for entry into higher education” and demanded for review of curriculum so as to ease the competition underlying the educational system while maintaining high quality of education, the educational “reform” have been introduced since 2000 contradicting above recommendations.

222.(3) December 2006, the Fundamental Law of Education was “reformed,” since then an education that steps into one’s mind becomes possible by specifying such as “ foster an attitude to respect our traditions and culture, love the country and region that nurtured them”(Article 2 Item 5), etc. in Objectives of Education (Article 2), In addition, the provision “that education shall not be subject to ‘unjust control’” (Article 10 Paragraph 1 of the former law) has been transformed to “(education) shall be made in compliance with what the laws specify” (Article 16 Paragraph 1), which has raised concerns regarding influence on independency and autonomy of the education through laws. It specifies that schools “shall provide a structured education in an organized way” (Article 6 Paragraph 2), and deleted the provision of teachers being “servants of the whole community” (Article 6 Paragraph 2 of the former law) and the provision of “direct responsibility of education” contained in the Education Administration (regarded as unjust control provision) (Article 10 Paragraph 1 of the former law); by such amendments, it became possible to restrict independency and autonomy of the education and to allow the state and education-related

administrations to enforce strengthened control over the education. The newly established “Basic Educational Promotion Plan” (Article 17) intends to achieve “educational objectives” (respective items of Article 2) including virtues with multiple meanings, through an achievement plan, achievement measurement, and allocation of budget prompting effective performance based on uniform standards throughout Japan; as such it raises a concern that it may invade mental freedom. (Document 13)

223. (4) Following the amendment of the Fundamental Law of Education, the “reform” of major three education-related acts took place in 2007.

In case of the “reform” of the School Education Act, it newly introduced a provision to set objectives in compulsory education (Article 21), listed items with multi meanings such as “a loving attitude towards one’s country and home town,” “a sense of discipline,” “correct understandings of the history,” “understanding roles of homes and families” and etc., and further it confirms the authority of the Minister of Education, Culture, Sports, Science and Technology in compiling school curriculum guidelines by expressly setting forth the authority to determine the matters relevant to “school curriculum” by the Minister of Education, Culture, Sports, Science and Technology (Article 33), which implies its intention to enhance the control. In addition, new positions such as “vice principal,” “principal teacher (*shukan kyoyu*)” and “leading teacher (*shido kyoyu*)” (Article 27) were created in schools to classify the job grade into small classes with each principal on top in school operation. As a provision of obligations of schools to provide assessment and information (Articles 42 and 43) was established, each school may be demanded to improve its educational level after discussion and presentation of improvement action plans, not in accordance with the issues they recognize themselves, but in compliance with the criteria set by the Minister of Education, Culture, Sports, Science and Technology.

224. In case of matters related to the Teachers License Act, the teaching license that had been effective for unlimited period was revised to be in effect for ten years, and a condition is added that unless having received and completed at least 30 hours training sessions approved by the Minister of Education, Culture, Sports, Science and Technology for renewal of the license within two years prior to the expiration of the effective term, the teaching license may not be extended. Together, as a result of “reform” of the Special Act for Education Personnel, educational personnel who were judged as unfit for teaching are required to receive “training for improving teaching skills” and they may not receive the training sessions for renewal of the teaching license during the improvement training period. This amendment has the same meaning to have changed the position of teachers to a ten-year term employment. In addition to the fact that the training sessions for license

renewal have not been sufficiently prepared, there are various concerns that those issues may impede them to devote themselves to educational activities, due to issues related to or underlying in the evaluation of “educational personnel who are judged as unfit for teaching” and assessment system of educational personnel. (Please refer to the CEART Investigation Team Report of 2008.)

225. Related to the Act on the Organization and Operation of Local Educational Administration, now the Minister of Education, Culture, Sports, Science and Technology is vested with the authority to demand local boards of education to take “corrective” measures stating specific contents thereof, in case of “invasion of right of students to education” arising or resulting from violation of laws or neglect, and to give instructions to local boards of education, which are subject to obligation to obey the instructions, in case “it is required to protect a student’s life and body urgently,” which causes a concern that it may become a threat to the autonomy of education in local areas resulting from “orders” beyond guiding advice to be issued on the ground of the above reasons.
- 226.(5) Concurrently with the abovementioned “reforms” of educational laws and regulations, the following “reforms” were made based on the first, second and third report (December 2007) and the final report (January 2008) by “the Education Rebuilding Council” described in Paragraph 33 of the Government Report.
227. [1] In the Initial report, issues and measures were proposed in connection with “reforms” of major three education-related laws as follows: 10 % increase of learning hours and nationwide surveys on academic ability as measures to “review ‘relaxed education (*Yutori Kyoiku*)’ and improve scholastic performance”; making more use of a system prohibiting attendance and promoting alliance with the police for “disciplined classrooms that children can learn safely”; “teaching disciplines and thoroughly familiarizing students with basics as a member of social community”; introduction of a renewal system to teaching credential; radical reforms of board of education system; revision of school curriculum guidelines; establishment of school system related to responsibility, and so on.
228. In the second report, as specific measures to “review ‘relaxed education (*Yutori Kyoiku*)’,” the following items are proposed: providing support in the fields of the number of teachers and budget responding to the results of the surveys on academic ability; realization of a salary system for teachers responding to assessment in order to improve the quality of teachers; enhanced school selection system; “mandatory teaching of moral education,” and etc.
229. In the third report, proposals are made such as enhanced education for the elite including promotion of a unified lower and upper secondary school education system,

review of education based on ages, consideration of grade skipping or early college entrance, as well as an education voucher system under which the budget is to be allocated in proportion to the number of students enrolled and which is expected to improve the quality of schools through introduction of an element of appropriate competition. And the final report sought for follow-ups of the first through the third reports.

**230.** [2] The surveys on academic ability in the first report and the school selection system proposed in the second report by “the Meeting on Education Rebuilding” are expected to have numerous harmful effects on the education, including further competitive education.

**231.** The nationwide surveys on academic ability are said to be conducted annually by the Minister of Education, Culture, Sports, Science and Technology with cooperation of local boards of education on all the sixth graders of elementary schools and third graders of junior high schools, commencing from April 2007. The test results will be informed to each school and student, but the publication of the test result of each school and municipality is made depending on the decision of respective schools and boards of education, and once it was decided that respective prefectural boards of education shall not disclose the test results of each school and municipality in its district because the publication of them would cause more severe competition in education and a biased view. However, regarding the nationwide survey on academic ability of FY 2008, test results were disclosed at the school level using the Information Disclosure system and those of city, ward, town or village were disclosed at governors’ judgment in several cases. Thus the concern of furthering the competitive education is being realized.

**232.** In addition, regarding the school selection system, negative effects are surfacing such as tie between a school and its community being cut off and drastic decrease in selectors of some schools due to rumors resulting in consolidation or closing down of schools, causing a movement to review the introduced school selection system.

However, the third report issued on December 2008 by the Council for Promotion of Regulatory Reform that reviews basic policies of financial matters in accordance with the Cabinet Office Establishment Act recommends promotion of the school selection system and of publication of test results of the nationwide surveys on academic ability by city, ward, town and village as well as by school, grade, class and course, and seeks the Ministry of Education, Culture, Sports, Science and Technology to publish the progress of the publication of such test results. In addition, it recommends to consider study of the education voucher system that will allocate budget responding to the number of students enrolled through the school selection system and its model operation, alleging to secure incentive for improving schools.



233. Thus, it is hard to say that measures to take away competitive atmosphere in education are under consideration; rather in fact measures to further competition take place or are considered.

234. [3] In connection with the recommendations of promotion of the system prohibiting attendance and alliance with police made by “the Education Rebuilding Council,” a notice titled “Concerning Guidance to Students with Problem Behavior” issued by Director-General, Elementary and Secondary Education Bureau of the Ministry of Education, Culture, Sports, Science and Technology in February 2007 seeks “to notify the police immediately and respond (to such students) in cooperation with the police without trying to solve the school by itself,” and not to hesitate to “prohibit attendance ,” thus expanding the previous “limit” regarding “corporal punishment and discipline” and presenting “an idea” containing that “Not all the disciplines made through use of physical force is not prohibited as a corporal punishment,” and to “guide students with problem behavior with stern and uncompromising attitude.” As such, there is a concern that control, enlightenment and forcing type education through threatening and abandonment may prevail.

235. (6) Revision of official curriculum standards (Courses of Study) in 2008

The official curriculum standards (Courses of Study) for elementary and junior high schools of 2008 are the materialization of the Government Report, Paragraph 424, which, as conversion from “relaxed education (*Yutori Kyoiku*),” increased the number of classroom hours by 10 %. In addition, units are increased more than before by moving the lesson items to lower grades and etc. which put more burden on children, forcing children to take supplementary lessons outside schools in order to digest them.

Underlying reason for these situations is that the revised School Education Act established a framework that allows to discriminate a group that learns basic and fundamental courses from a group that learns further by “making use of” those courses, by stating “...to have acquire basic knowledge and skills, and foster abilities to think, judge, express and other abilities necessary to solve issues using such basic knowledge and skills” (Article 30 Paragraph 2).

236. Unlike the Government Report, Paragraph 424, there is a concern that children who cannot secure opportunities to take supplemental lessons due to various condition and are slow to understand will not be able to advance to the “making use of” stage if they didn’t complete the “basic and fundamental learning” and when they enter the “making use of” stage they have to catch up with the advanced learning and be excluded from experiencing the fun of learning in the form of “making use of”, resulting in severer competition for

selecting the elite.

237 . Further, regarding the concern of contradiction between the “educational objectives and purposes,” which are set forth in the abovementioned revised Fundamental Law of Education and the School Education Act, and the freedom of thought and conscience, the ethics is to be treated as the major item and to be taught through other subjects, thus in each subject, ideas of “respecting traditions and culture,” “fostering a loving attitude towards one’s country and region” “correct understanding of the history” and so on are reflected. In particular, impacts by political pressure can be seen, for example, in a change of wording from a mere “proposal” to a more assertive statement of “educating (students) so that they can sing the national anthem,” as being announced as a result of public comments soliciting. Concerns are arisen that execution of the Courses of Study that force such disciplines and values as above on children may invade the freedom of thought and conscience of children, their parents and educational personnel.

### 3 Current conditions regarding the CRC’s concerns under the reform

238 . The CRC repeated its “recommendation concerning the excessively competitive school system” in the Concluding Observations of the second review, Paragraph 6, stating that sufficient countermeasures have not been taken in response to the recommendation it made in the Concluding Observations of the first review, Paragraph 43, and expressed its concern regarding the Concluding Observations of the second review, Paragraph 49 (a) as stated above.

The Government Report, Paragraph 423 considers that the excessive competition for admission has eased due to improvement in the selection method for admission to high schools and lower birthrate; however, as stated in “2” above, in fact the “reform” executed in a hasty manner has not eased the competition for entrance into schools, but rather forces younger children into the competition and widened the gap. Such intensified competition puts heavier burden on Japanese children mentally and physically, who have more distinctive tendency towards depression than children of other countries.

(1) Intensified competition in elementary and junior high schools (competition among younger children)

[1] Negative effect by academic ability surveys

239. As stated above (Paragraphs 230 - 232), the first nationwide survey on academic ability was conducted. At that time, some misconducts by certain principals of elementary and junior high schools of a ward in Tokyo were discovered, such as excluding certain students from the survey without obtaining prior consent of the parents and indicating false answers during the survey on academic ability, and such misconducts became a big social scandal.

If test results (ranking) of public schools of a city, ward, town, village and prefecture as a block are publicized following the introduction of the school selection system to public schools, such results will work as an important factor in selecting a school, which may affect on increase or decrease of the number of students applied and may result in consolidation or closing down of schools in decremental trend in terms of the number of students, or may directly relate to the budget it acquires. As such, we must say that tougher competition arising from the educational “reform” is the cause of the abovementioned misconducts.

Further, the test results (ranking) of a city, ward, town and village as a block publicized by the Tokyo metropolitan government show the tendency that the communities with higher marks and lower marks remain unchanged with the gap being widened. The ranking may be connected with the economical gap; in fact the ward described at the beginning of this section is ranked lower among 23 Tokyo metropolitan government wards. In addition, among the schools of the said ward, a certain correlation is recognized between the average marks of the tests and the rate of subsidies for school expenses.

[2] Influence by promotion of unified lower and upper secondary school education system into public schools

**240.** In accordance with the revision of the School Education Act in 1999, schools under the unified lower and upper secondary school education system are enacted and such public schools are established one after another throughout Japan. The number of schools under the unified lower and upper secondary school education system increased drastically from four schools in 1998 to 149 in 2007 (“Concerning establishment and plans of schools under the unified lower and upper secondary school education system in respective municipalities” published by the Ministry of Education, Culture, Sports, Science and Technology in August 2007). In the revision of this law it was concerned that the revision might trigger competition among younger children, and it was agreed that no achievement test would be made in selecting students. However, since those schools require less tuition fees than private schools and expected to have higher performance standards, public schools under the unified lower and upper secondary school education system have gathered interests of people, with the ratio to be accepted to those schools being as competitive as ten to twenty some times. Thus in fact competition for admission gets tougher forcing many to attend cram schools for preparation for entrance examination.

As stated above, establishment of public schools under the unified lower and upper secondary school education system, along with the school selection system, has caused intensified competition at the elementary and junior high school levels.

## (2) Widened gap through diversified high school entrance exam methods

241. The Tokyo metropolitan government, which proceeds the reform of high school system including a method to screen applicants to high schools ahead of any municipalities, is carrying out extensive consolidation, closing down and reorganization of schools and giving “characters” and “features” to each school in accordance with its public school reform promotion plan. (For example, full-time high schools are classified into higher level schools (including schools under the unified lower and upper secondary school education system), middle level schools and schools with students who need encouragement (“Encouragement School”), and then further divide such middle level schools into “higher middle level schools” and “average middle level schools” and “middle level schools that require discipline efforts,” trying to thoroughly pursue for characters and features of schools.)

242. According to the “Attitude Survey of Tokyo Citizens on Public High Schools of Tokyo” published in April 2007, positive impressions about metropolitan high schools are given on items “reasonable tuition fees” “relaxed and free atmosphere” and etc., and they have negative points on “classes responding to students’ interests and concerns” and “classes responding to abilities of students,” and many citizens want the public schools “to tackle to improve existing educational contents and lifestyle guidance and consider that it is not necessary to increase “new type of public schools” over the number under the current plan.” The survey also shows that they do not support the idea of ““New type of public schools’ under the reform promotion plan for metropolitan public schools shall be increased over the number being planned.”

244. Rather, while the entrance exams for schools with focus on admission to college incrementally become competitive, Encouragement Schools suffer from issues such that “(Since they) do not test the applicants’ academic abilities in selection, it is assumed that children without motivation for learning apply to those high schools,” and “It is doubtful that schools can foster human resources who can survive the competitive society without making term tests,” which is making the gap between schools being widened.

## (3) Mental and physical effects on children

245. According to an attitude survey on junior high and high school students conducted by the Tokyo Metropolitan Government, the children have tendency to have strong concern or depressing feeling and tend to be low in self affirmation. Negative conditions exist in fairly high percentage of children, such as “do not want to do anything” (60 %), “cannot think of anything” (35 %) and “sometimes feel not so good” (30 %). Among children of the world, the Japanese children are outstanding in terms of loneliness and low self affirmation.

For such Japanese children, it is feared that the present conditions where competition has increased and the gap has widened due to the educational “reform” that promotes competition would work towards giving more pressure and strengthening their concern and depressive feeling.

**B Establishing Conditions for Protecting the Right of Children to an Education (Article 28)**

- 1 A national field survey should be made on children who are denied access to education due to economical hardship and the factors causing such condition and effective measures to eliminate such factors should be presented from a standpoint of a right-based approach.
- 2 Thirty-students classes should be realized throughout Japan for small class education.
- 3 Effective measures to ease teachers of physical and mental burden such as long hard work should be presented.

1 Improvement of conditions to ensure right to education of people with economical hardship  
246. (1) The Government Report, Paragraph 390, points out “school expense subsidies” as a supporting program to parents mentioned in Paragraph 275, and noting the loan program of school expenses to qualified students who have difficulties attending school for financial reasons , it alleges that “ (Support for families for education purposes)” is made in Paragraph 391. And Paragraph 393 addresses the free education system for compulsory education as a condition. However, no data has been presented as of how these “school expense subsidies” program and loan method “scholarship” program have been effective on improvement of access to education.

247. (2) While the school expenses subsidy program exclusively for children of school age provides subsidies to the persons requiring public assistance defined under the Public Assistance Act from the national treasury, subsidies from the national treasury to persons who are recognizably in financial difficulties almost similar to the person requiring public assistance were abolished in connection with transfer of tax revenue sources from FY 2005 and the program being transferred to respective municipalities for operation. The situations of school expenses subsidy programs operated by municipal level should be addressed, but no data has been published yet.

248. Among children and students of long absence, the percentage and the number of children of long absence due to “financial reason” have been decreasing. The result of the nationwide surveys on academic ability and learning attitude survey of FY 2007 revealed

that elementary and junior high schools with children subject to the subsidies in a higher rate get lower marks than those with such children in a smaller rate, and as for such schools having a higher rate of such children the average marks of such schools varied more widely.

This results indicate that the school expense subsidies are not enough to ensure learning and basic academic ability of children whose family cannot afford to provide expenses for education at home such as supplementary after-school lessons due to financial reason, though subsidies support a part of school-related expenses that parents have to bear. As such, measures are sought for in order to eliminate academic gap that links with existing economical gap, but no such effective measure has been shown.

249. (3) The most of financial support extended to students of high schools and over are loans of school expenses set forth in Paragraph 391, which are not grant that requires no repayment. If living conditions of their parents have changed to require financial support, support to be provided to them is far from being sufficient. Therefore, though the percentage of high school students of long absence due to “financial reason” is gradually decreasing, it represents about 25 times more than that of junior high school students.

When looking into the condition in a big city, Tokyo, according to a 2006 survey, out of students of long absence, 336 students answered “financial reason” as the reason of long absence, which represents 5.2 % (3.5 % nationally), and 48 % of them subsequently left the school (the nationwide withdrawal rate of students due to long absence is 35.4 %.); the percentage of children who cannot attend schools or have to leave schools due to financial reason is particularly higher in big cities.

250. The Government Report, Paragraph 399, reported the enrollment rate of high schools reached 98 % in FY 2004. In the Nationwide School Basic Survey of FY 2005, the enrollment rate of high schools is 97 . 6 % and the withdrawal rate reached 2.1 %. On the other hand, the enrollment rate of high schools of children who reside in foster homes was 87.6 % as of April 1, 2005, and 11.7 % of them left the school in the middle in FY 2005 though they entered some kind of secondary schools after graduation of junior high schools in accordance with a survey (by National Council of Foster Homes (*Zenkoku Jido Yogoishisetu Kyogikai*)), which indicates that the children of foster homes have less opportunities to learn at high schools.

251. In addition, the enrollment rate of high schools from the families under public assistance is becoming lower. Regarding the families under public assistance, it is announced that commencing from FY 2005 “high school attendance expenses” will be provided as expenses to acquire skills under occupational assistance, but the grant is only

for the period when the student is on the roll of formal school years of specified schools, and if the student repeats the same course he/she is forced to leave the school because the financial support is cut off. Though national statistics are not available, as far as the city of Tokyo concerns, the enrollment rate of high schools in the entire Tokyo reached 97.1 % of students graduated junior high schools in March 2007, but that of children from families requiring public assistance in Itabashi ward was 93.5 %. The enrollment rate to full-time high schools was 90.3 % in the entire Tokyo, but regarding the children from families requiring public assistance in Itabashi ward was 72.7 %. These numbers imply their financial disadvantage in admission to high schools and academic gap resulting from the economical gap.

252. The Government Report shows neither the national data of the situations nor countermeasures against the situations where such economical conditions as mentioned above are causing a gap in educational opportunity and children under economical hardship have difficulties in accessing to higher education, and the Government should address them.

## 2 Improvement of conditions to ensure a sufficient number of teachers

### (1) Ensuring statutory number of teachers

253. [1] The Government Report, Paragraph 392, states that it improved the statutory number of teachers, and Paragraph 427 refers to Paragraph 273 of the Second Government Report that stated that the public schools ensure appropriate number of teachers in accordance with a method specified by respective prefectural governments in compliance with the statutory standards.

254.[2] However, regarding the required number of educational personnel that it said improved, the report does not express the number of teaching staff out of such number and their percentage. It states that the number was “improved” but in fact such number includes administrative personnel in schools who do not teach children, including advisers and managerial positions that were newly created resulting from the “reform” under the School Education Act of 2007.

255. In addition, it doesn't show the ratio of different employment type of teachers such as (irregularly employed) full-time instructors and part-time instructors. As a result of the introduction of market economics and new liberalism, full-time instructors (full-time working style with the employment agreement being renewed for each half a year) and part-time instructors (part-timer who works only for lesson hours) of irregular employment have been increasing. When comparing the survey results of 2001 of the School Basic Survey with those of 2008, the total number of teachers and full-time instructors among the

statutory number of teachers of public elementary schools was increased by 6 , 071, of which 5,863 or 97 % represents increase of full-time instructors, and during the same term, part-time instructors who have other jobs increased by 7,911. As for public junior high schools, although the total number of teachers and full-time instructors among the statutory number of teachers has decreased by 11,983, but full-time instructors have increased by 3,325 and part-time instructors who have other jobs increased by 2,707.

**256.** The reasons why the statutory number of teachers was “improved” are from the necessity of small group instruction for each class of specified subject grouped with ability, provision of higher education, and establishment of special needs classes with smaller number of students, etc., but the smaller classes are not the norm and ordinary classrooms remain accommodating forty students. Therefore, the “improvement” in the statutory number of teachers does not warrant careful and flexible instructions all the time at small classrooms. Further, the increase of full-time instructors under unsecured employment agreement and part-time instructors who do not stay at schools all the time does not mean to provide teachers whom children can always rely on. The situation set forth in the following paragraph regarding excessively long and hard works of teachers also indicates that the appropriate number of teachers has not been securely retained.

(2) Heavier burden on teachers at school

**257.** [1] It is reported that due to introduction of the School Assessment System following the revision of the School Education Act coupled with the enhancement of personnel assessment system, teachers at schools are forced to work excessively long hours under tight schedule in order to prepare and deal with various documents alleging for accountability. According to a survey on working conditions conducted by the Ministry of Education, Culture, Sports, Science and Technology in 2006 first time in forty years (Nationwide sampling survey; the report being published in May 2007), overtime per month including holidays, in use of simple average method, reached 40 hours or more and 20 hours work at home, while at schools they could not take breaks in compliance with the Labor Standards Act. The survey also reports that over 33 % of the entire teachers worked overtime 45 hours or more per month without counting work at home (the Ministry of Health, Labor and Welfare specifies 45 hours or more overtime per month as a “red line of death from overwork”), the burden on the school teachers have been increased in the form of long and tight works, which illustrates the situations at schools where the appropriate number of teachers has not been securely retained.

**258.** [2] Under these situations, the Government Report, Paragraph 420, describes training regarding human rights under “Educational Objectives (Article 29)” with intention to



improve various training courses, and the actual conditions are as follows:

While mandatory “basic training for newly hired teachers” has been provided to educational personnel as public employees, who are responsible for the most of public schools, frequently off the educational sites, the term of probational period for them as public employees is extended to one year under the Special Act for Educational Personnel and duties on school affairs are imposed on them to the extent similar to other educational staff. The situation seemingly adds further burden on those first year teachers.

259. In addition, the “10th year training” overlaps with the “training for renewal of teaching license” for every ten years that was created in connection with introduction of teaching credential renewal system. The training session will start soon for FY 2009, though the detailed conditions have not been set, and anxieties are spreading among school teachers. In particular, the “training for improving teaching skills” program was newly established for educational personnel who were judged as unfit for teaching, and during the training period those personnel are not entitled to attend the training session for renewal of license, which, combined with issues relevant to the criteria of unfit for teaching and procedures thereof (please refer to Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART) in November 2008 regarding assessment and judgment of inappropriate (unfit) teaching), is causing confusion that is not suitable for school teachers as professional teaching position.

260. On the other hand, due to pressures arising from the revisions of the Fundamental Law of Education and the School Education Act because school teachers are demanded to achieve “Objectives of Education (goals)” newly established and because in connection with the nationwide surveys on academic ability the test results by class are distributed to schools, where the assessment system of educational personnel has been penetrating in such a form as directly relating to wages. As such, isolated teachers at schools are forced into competition, autonomy and independency inherent to their specialty as teachers being damaged, and even the sphere of freedom of thought and conscience being threatened; i.e., such situation has to be said that it lacks the premises for successful training concerning human rights.

261. [3] In addition, during the 10 year period between 1996 and 2005, though the total number of teachers on the roll has decreased, the number of educational personnel who took sick leave increased 1.85 fold, of which those who suffered from mental sickness has tripled. The rate of teachers on sick leave to the entire teachers on roll has clearly arisen for the said period from 0.39 % to 0.76 %; leaves due to mental sickness from 0.14 % to 0.45 %; and the rate of leaves due to mental sickness to total teachers on sick leaves have increased

from 36.5 % to 59.5 %, which indicates that a mental load is heavily imposed on school teachers so as to impede their mental health.

Further, in 2007 among the newly hired teachers with condition to be formally employed after one year, 1.38 % of them were not employed, while in 2002 the rate was 0.64 %; it represent the increase of over two fold in the rate and over three fold in terms of actual number. In addition, 103 out of 301 would-be-teachers who were not employed in 2007 left school due to sickness. It is assumed that persons who left school due to mental sickness represent high percentage among those resignees, and according to a report some committed suicides, which implies newly hired teachers are under a heavy mental load.

262. [4] It is apparent that if school teachers have to bear such a big load as mentioned above, they cannot respond fully to the right to learn of the children. The Government should report actual conditions thereof and effective measures to improve such.

**C. The Situation with Control that makes Leisure and School Life Suffocating (School Rules • Student Guidance • Discipline • Corporal Punishment)**

Actual conditions should be grasped regarding school rules, student guidance, discipline, and corporal punishment that suffocate children making their school lives hard accurately and realistically, and effective measures to improve such should be presented.

1 School rules and student guidance

263. The Government Report, Paragraph 413, merely repeats the measures regarding school rules set forth in the Second Government Report. The conditions surrounding the issue, however, have never changed since the time when the Initial Government Report issued.

264. Student guidance is a counseling service provided to students on daily life in order to help them shape personality, but it gives pressure on children, because it evaluates their attitudes at school to make reference materials for entrance examinations in the form of school recommendation. In addition, cases of corporal punishments and verbal abuses under the disguise of student guidance are not rare and in fact such guidance makes children's school life suffocating. Even some suicide cases are considered attributable to corporal punishment, verbal abuse, high-handed or excessive guidance and reproach. Examples are as follows: a case where a student jumped out of a school building window and killed himself while a teacher is giving guidance (a junior high school in Nagasaki (March 2004)), a case where a student killed himself right after guidance given in

suspicion of cheating on a test (a high school in Saitama (May 2004), and a case where a child committed suicide after the child was guided with violence and verbal abuse for a trouble among children (an elementary school in Fukuoka (March 2006)).

Student guidance directly connects with various human rights and rights of children more than the education of subjects. Effective policy on student guidance should be established responding to actual circumstances and training from such a view should be given so that the student guidance can be a guiding service beneficial for ensuring right to learn and right to grow as a human being.

## 2 Discipline at schools

**265.** With regard to “discipline” the Government Report, Paragraph 414, only refers the Second Government Report. Though the Second Report of JFBA (VII E) pointed out the existence of actual disciplines and lack of notification and hearing procedures and the Second Concluding Observations (Paragraph 36(c)) sought for establishment of specific rules for procedural security, the problematic condition has not changed up to present since the time of issuance of the Concluding Observations, and now issuance of recommendation to voluntarily leave school by private junior high schools has prominently increased.

**266.** This recommendation to voluntarily leave school means an action by a school such as forcing a parent of a student who made nonmaterial violation of the school rules to write a writing to the effect “in case of second violation, he/she shall leave the school” and at the next violation at discretion of the school it demands the student to leave the school based on the writing. The form is a recommendation requesting the parent and the student to leave the school voluntarily, but in fact it has the same meaning with enforced expulsion from school. By forcing a child into voluntarily requesting for leaving school, an opportunity to protest against the school is ripped off; i.e., this actual situation indicates that it is a kind of discipline.

**267.** Since this is de facto discipline and hardly included in statistical materials, reference material that shows the actual number nationwide is not available. But in Tokyo where severe competition is ongoing for entering into private junior high schools, recently requests for consultation regarding the recommendation for voluntarily leaving school have made to bar associations increasingly. In March 2005, Principals Association of Junior High Schools in Tokyo requested Private High School Federation “voluntarily restrain from easily imposing discipline of expulsion from school.” Drastic increase of discipline of expulsion from school might give impact on operation of public schools.

**268.** As another de facto discipline used often is “being grounded at home” that is not treated as legally specified “out-of-school suspension.” When a de facto discipline of “being

grounded at home” is ordered, the parent is forced to sign a writing to the effect “in case of second incident, he/she shall leave the school,” which is used to pressure the student into receiving the recommendation to voluntarily leave school when he/she had a behavior problem next time.

However, there is no data available regarding actual conditions of these de facto disciplines and the details are not grasped, which indicates less progress in taking measures and responding to unreasonable disciplines, especially de facto disciplines that are to be avoided.

### 3 Corporal punishment (Paragraphs 415 - 416) at schools

269. With regard to the Government Report concerning corporal punishment, Paragraphs 415 - 16, please refer to the section “IV H 2” above (Paragraph 114) describing Paragraphs 260 - 261.

## **D. Bullying and School Violence (Paragraphs 410 - 412)**

The Government should understand and identify the background of problem behaviors including bullying and school violence from a viewpoint as to whether the growth of children is ensured, and also it should understand and identify actual structure and process about what causes bullying, encourage measures in accordance with a rights-based approach so that all children can spend their school life safely, and readjust the measures only to accuse and remove victimizers.

### 1 Actual conditions of bullying

270. Violence at schools including bullying is an issue regarding which a concern is expressed in the CRC’s Initial Concluding Observations and the Second Concluding Observations and is considered as one of the major issues.

The number of bullying cases recognized is reported declining in the ten-year period between 1995 and 2005 from 60,096 cases (total number of occurrences of elementary, junior high schools and high schools) in 1995 to 20,143 cases (total number of occurrences of elementary, junior high schools and high schools) in 2005. (“Survey on various issues related to student guidance including problem behaviors by students, etc” of FY 2007)

271. However, in response to a series of suicide cases resulting from bullying, the Government reviewed and changed the definition of bullying that had focused on objective circumstances to a definition heavily taking into consideration the feeling of victims. As a

result, the number of bullying recognized in FY 2006 reached 125,000 cases.

Further, though previously a statistics of the Ministry of Education, Culture, Sports, Science and Technology had reported zero case of “suicide due to bullying” in the period from FY 1999 to FY 2005, as a result of review it reported that bullying is recognized in 12 suicide cases.

272. In surveys independently conducted by municipal governments on actual conditions of bullying in public elementary and junior high schools, 34.1 % elementary school children and 12.1 % junior high school children answered “Yes” to a question “Have you bullied in your current grade?” according to a survey result of “Emergency Anonymous Survey on Bullying” of FY 2006 published by the Owariasahi City Board of Education, and in the “Regarding Survey Result of ‘Kumamoto Emergency Anonymous Survey on Bullying’” (published on February 6, 2007), 20.4 % of elementary school children and 12.9 % of junior high school children answered “Yes” to such a question. In addition, in the “Regarding Survey Result of ‘Kumamoto Emergency Anonymous Survey on Bullying’” (published on February 6, 2007), 8.9 % of elementary school children and 15.1 % of junior high school children answered “Yes” to a question “Have you ever suffered from or worried about bullying so much as to want to die?”

From these survey results, at last the actual conditions have come to surface and revealed that many children are suffering from bullying at schools.

The Ministry of Education, Culture, Sports, Science and Technology notified that in case a child is forced to change schools due to bullying, the transfer should be permitted flexibly, but each board of education has different policy and treat such transfer differently, and one example reported is that a school board conditioned (for the family) to change the place of residence for the change of schools, which would place additional burden on the child and the family.

## 2 Actual conditions of school violence

273. According to the survey on problematic behaviors by children conducted by the Ministry of Education, Culture, Sports, Science and Technology in FY 2007, the number of occurrences of violent acts reached about 53,000 cases in total in elementary, junior high and high schools, which represents the largest number since the survey has started. Measures exclusively responding to violent acts are urgently required, because, though the number of students are declining, violent incidents are increasing in all levels of schools from elementary schools to junior high schools and high schools, and FY 2007 saw the increase by about 8,000 cases from the previous year, of which violence among students represented 5,000 cases and damage to property represented about 2,000 cases, and 30

percent of the total violent acts were committed by 3rd graders of junior high schools.

Since the above number of violent incidents among students seemingly includes a considerable number of assaulting acts of bullying, the increase of violent acts inversely proportional to the decrease of the number of students would not be appeared if measures by the Government against bullying were successful. Further, the fact that the large number of violent acts was committed by the 9<sup>th</sup> graders, we insist, demonstrates worries and pressure they have and feel related to admission to higher education.

### 3 Measures by the Government against bullying and school violence

274. The Government, with regard to such serious issue of bullying and violence at schools, expressed that it will take a stern position to combat bullying, stating (it) “will give guidance so as to thoroughly make (students) understand that ‘Bullying never be allowed as a human being.’” (Paragraph 410)

275. This basic position applies not only to bullying but also other problem behaviors of children as shown in “Urgent Proposal to Bullying Problem” issued by the Education Rebuilding Council in November 2006 and “Execution of what we can do under laws and regulations against children who engage in antisocial behavior such as violence and review of notification, etc.” set forth in “the first report” dated January 24, 2007.

276. As specific measures, the Ministry of Education, Culture, Sports, Science and Technology issued notice, “Regarding guidance to students who engage in problem behaviors” on February 5, 2007, stating therein, “If a problem behavior is likely to constitute a crime, especially in case of injury case at school...immediately report such incident to the police and respond to it in cooperation with the police,” and “do not hesitate to consider imposing measures such as prohibiting attendance against students who repeat problem behaviors such as bullying or violent acts.”

277. As a result of promotion of harsh penalty-oriented measures against problem behaviors of children including bullying victimizers, more and more the police involves with cases of problem behaviors by children at schools. The cases involving violent acts by children at schools and guided by the police as measures by relevant authorities by year are as follows: 11 cases in FY 2005, 18 cases in FY 2006 and 40 cases in FY 2007 for elementary schools, and 622 cases in FY 2005, 698 cases in FY 2006 and 923 cases in FY 2007 for junior high schools. The numbers in FY 2007 increased by 2.22 times for elementary schools and by 1.32 times for junior high schools from the previous year respectively. (“Survey on various issues related to student guidance including problem behaviors, etc.” of FY 2007, and (Reference 5) “Measures taken by relevant authorities against assaulting children until FY 2007” (Elementary, junior high and high schools)).

For reference sake, cases to be referred to a child guidance center as other relevant authorities are 31 in FY 2005, 30 in FY 2006 and 51 in FY 2007 for elementary schools, and 232 in FY 2005, 284 in FY 2006 and 290 in FY 2007 for junior high schools, which represents the second largest authority chosen following the police.

Thus, the cases where schools notify and use the police as a part of guidance to assaulting children are especially increasing.

#### 4 Mistakes in the Government's above measures

278. However, this policy with harsh punishment that emphasizes the alliance with the police is fundamentally wrong in the following two points:

First of all, it is wrong because it does not take into account the underlying background reason why such children are making problem behaviors. Quite a few factors can be hidden behind the problem behaviors by the children, including cases that the child him/herself has been victimized or his/her human rights are invaded somewhere else, that he/she couldn't give sufficient opportunity to develop self-affirming feeling, or that the problem behavior is resulting from physical or mental illness. Even though the measures with harsh penalty by the police might be effective for a part of children who make problem behaviors, such measures cannot effectively foster reform of all the children with various problems. Alliance with an agency most relevant to respective problems of respective children are sought for.

279. Secondly, the measures are lack of understanding of complex nature of the bullying among children. In the current bullying acts among children, anyone can be the target of bullying and the target changes one after another. Therefore, children who hate to engage in bullying in fact are forced to participate in bullying from fear that without participating in the bullying they might be chosen as the next target. In addition, even within a group that leads bullying has a bullying and bullied relationship within the group, and such bullying and bullied relationship is reversed with the lapse of time. So, it is not a simple problem that can be solved by punishing a part of children.

280. Under these circumstances, measures to only cut off a part of victimizers are not effective in clarification of causes of bullying acts, and rather can give further pressure on children.

Given the above considerations, any of the measures taken by the Government so far might be said far from the background or actual conditions of bullying, and it is hard to expect any successful outcome in the future.

#### **E. School Non-Attendance and High School Dropout etc,**

- 1 In order to improve stressful school life that can work as a trigger for school non-attendance , effective measures should be presented using a right-based approach so as to make a school as a place where children altogether can spend safely and securely.
- 2 Effective measures should be presented using a right-based approach so to avoid dropping out and to secure opportunities for children to learn even after dropping out.

#### 1 School non-attendance (Paragraph 408)

**281.** (1) Regarding school non-attendance , the Second Government Report described them as “increasing year by year” (Paragraph 263 (1)), and the Third Government Report again stated that “...remain still in a considerable number” and described it as a big issue (Paragraph 408).

According to the School Basic Survey, though the total number of children has been decreasing, non-attendant children have increased year by year and the sum of non-attendant children at elementary schools and junior high schools reached 138,722 in 2001 (elementary schools: 26,511; and junior high schools: 112,211). After a small decrease from 2002 through 2005, the number picked up again in 2006 and 2007, and in 2007 the percentage of non-attendant children peaked at 1.2 %, with 129,254 non-attendant children to the total number of elementary and junior high school children of 10,756,987. (Survey on various issues related to student guidance including problem behaviors, etc. of FY 2007)

The Second Government Report, Paragraph 263 (1), stated its intention to realize a happy school life and improve an educational counseling system to solve the issue of school non-attendance , but when looking into the actual conditions of the incremental non-attendance as set forth above, in this sense, these measures were not effective in preventing non-attendance .

**282.** (2) The Third Government Report only describes that school non-attendance is caused “due to psychological, emotional, physical, or social factors and backgrounds,” avoiding discussion based on the philosophy how the school education should be.

Accordance to the surveys on various issues related to student guidance including problem behaviors, etc. conducted in FY 2006 and FY 2007, however, 15.4 % of elementary school children and 23.5 % of junior high school children in FY 2006 and 14.8 % of elementary school children and 23.5 % of junior high school children in FY 2007 answered “Yes,” in total, to the question “A ‘bullying’ or ‘friend-related problem excluding



bullying' has triggered school non-attendance ." A certain number of children every year do not or cannot attend school due to bullying or trouble in relationship with friends.

These survey results imply that constantly serious conflicts and frictions exist among students due to bullying, etc. at school nowadays, so attention should be given to the fact that such problem has been repeated among children. And it is obvious that the underlying factor therefor is overly competitive nature of the school system that has not been corrected and forces children to spend stressful school life.

**283.** (3) Given the actual and current conditions of school non-attendance , all the children should be ensured to access to learning whatever situations they are in, and all the children who do not or cannot attend school should be ensured to obtain support, in particular, support in admission to higher education even they receive education outside the school system. Further, as JFBA pointed out in the Second Report of JFBA, Paragraph 336, consideration should be given to alternative educational system that is free from the framework of the School Education Act. The Government Report, however, does not refer to these points.

## 2 High school dropouts

**284.** The Government Report, Paragraph 409, alleges that the Government promotes measures such as improvement of the selection system and diversified schools and school curricula. But the ratio of the number of high school dropouts to the total number of students who attend high schools remained about the same level; 2.1 % in FY 2005, 2.2 % in FY 2006 and 2.1 % in FY 2007, according to the School Basic Survey conducted by the Ministry of Education, Culture, Sports, Science and Technology. As reasons of dropout, until 1998 "change of course" represented the top answer, but 1999 and after "unfit to school life and learning" has been the top reason keeping around 37 % - 38 %. In the School Basic Survey of FY 2008, the enrollment rate of high schools including correspondence courses reached the record high of 97.8 %, but almost two out of five dropouts left schools that they had wanted to enter because they could not enjoy or felt uneasy with school life or learning.

**285.** As one of the measures that the Government takes for the purpose of diversified selection, public schools under the unified lower and upper secondary school education system have increased, which, as stated above, intensified competition for admission to junior high schools. Introduction of unified lower and upper secondary schools to public schools prompted grading of public schools, which results in effect reverse to such request for review of the current measures, which are furthering competition in entrance exams, as set forth in the Second CRC Recommendation. In addition, a discipline of expulsion from

school can be applied to middle graders of the public schools under the unified lower and upper secondary school education system that could not be allowed previously (Under the School Education Act, public junior high schools have no option to impose a discipline of expulsion from school to students.), creating a new problem of actual expulsion from public junior high schools.

286. Further, it is understood that the Second Concluding Observations (Paragraphs 49 (b), 50 (a)) seek for measures to prevent dropping out due to economical hardship and to enhance and improve scholarship system by national and municipal governments. As stated above, however, difficulties to go higher education due to financial reason and dropping out due to family reason are observed now, which are prominent in private high schools. The Government measures, however, do not respond directly or effectively to the financial hardship. On the contrary, the current Government Report neglects two measures that were listed in the Second Government Report; i.e., “reentry to high school by dropouts” and “ensured chances to attend college through the university entrance qualification examination,” and it can be suspected as a setback of measures related to dropping out.

287. Measures related to dropping out should include a program that allows dropouts to re-enter a high school, in addition to measures to reduce the number of dropouts. In Japan, in these years evening part-time high schools have been accommodating dropouts from full-time high schools, and the Ministry of Education, Culture, Sports, Science and Technology recognizes such circumstances. However, as stated below (“ F 1”), consolidation and closing out of part-time high schools have been proceeding without giving any consideration to actual needs.

#### **F. Efforts to Deal with Other Matters of Concern**

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| <ol style="list-style-type: none"><li>1 It should be understood precisely that evening part-time high schools provide educational opportunities to children with various difficulties and should review the closing down and consolidation unless effective measures are to be introduced as well so as not to restrain any educational opportunities.</li><li>2 The textbook authorization system should be transparent and open.</li><li>3 Survey should be made on actual demands for night junior high schools, and effective measures to ensure children of learning opportunity through a right-based approach.</li></ol> |
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1 Issue of closing down of evening part-time high schools (Paragraphs 401, 402 and 423)

**288.** CRC expressed a concern about the proposed closing down of evening part-time high schools in Tokyo that give flexible educational opportunities to dropouts, in the Concluding Observations in the review of the Second Report (Paragraph 49(e)).

The Government Report explained in Paragraphs 401 and 402 that there is no need to worry about because the Tokyo Metropolitan Government works toward establishing independent day and evening part-time schools where the class system will be divided into morning, afternoon, and night classes responding to the decreasing numbers of students at evening part-time schools and to meet the diversified needs of students, giving flexible educational opportunities to dropouts. In fact, the Tokyo metropolitan government is pursuing major restructuring of evening part-time high schools in accordance with the reform promotion plan of Tokyo Metropolitan public high schools.

**289.** However, as pointed out in the previous two JFBA reports, the above plan of closing down of evening part-time high schools is developed based on an assumption that the working juveniles have decreased recently, which is far from actual conditions. Many students are actually forced to work as part-timers, not full-timers, and it is essential that a part-time high school is located nearby so that many of such students may be able to work and learn at school, and this condition would be deprived of. While the economical gap between the rich and the poor is widening, needs for part-time jobs of the children in financial difficulties are ever increasing accordingly. It is feared that the substantial closing down of evening part-time schools may result in forcing many children to give up high school education and attending schools.

It is also doubtful that the independent day and evening part-time schools that are established newly under the reform with “characters and features” seeking for efficiency and rationality can serve to provide safe harbor for dropouts as previous part-time schools did.

## 2 Textbook authorization system (Paragraph 400)

**290.** Regarding the textbook authorization system in the Government Report, Paragraph 400, the Concluding Observations of the second review expressed a concern stating, “..a part of history textbooks is insufficient or one-sided” (Paragraph 49 (g)).

**291.** In the year 2007, it was revealed that at the time of textbook authorization the description implying the Japanese Army had “enforced” the Okinawa residents to commit “group suicide” at the “Battle of Okinawa” was forcibly deleted. The authorization system was criticized with the assembly of 100,000 Okinawa residents, etc., seeking for reform of the textbook authorization system to ensure a transparent and open system. However, as the amendment draft of authorization rules and standards under discussion

proposes to publish the summary of the minutes of the Textbooks Authorization and Research Council ex-post facto without recording the entire minutes of the meetings or opinions of textbook researchers at the meetings also ex-post facto, the realization of transparency and disclosure receded backward.

**292.** Additionally, since this proposed amendment seeks to respond with virtues with multiple meanings listed as educational objectives under the revised Fundamental Law of Education and the revised School Education Act, and included in the official curriculum standards (Courses of Study), a concern is arising that without realizing transparency the contents of textbooks would be controlled through the textbook authorization system. In addition, selection and layout of descriptions and contents, limitation on the quantity of advanced items is abolished and also criteria such as “..neither too advanced nor too low comparing with the ability...” is deleted; so, there is a new concern that textbooks could become those for allowing the educational gap to exist and for further widening such gap.

### 3 Others

#### (1) Issue of night junior high schools

**293.** Publicly operated junior high school night classes (night junior high schools) keep decreasing from the 87 schools in 1954 as the peak to 35 schools in 8 prefectures in April 2005. The night junior high schools are established for people who could not attend or finish compulsory education in their due ages due to the war or poverty. Many of students are middle and advanced aged, but these schools are also serving to supplement educational needs and rights of children who have not completed compulsory education due to truancy, and foreigners 15 years old and over who newly came to Japan are also attending the schools. However, due to the decrease of night junior high schools, some students have difficulties to attend school and in some cases no night junior high school is available within commutable area, thus children are losing opportunities to learn elementary and secondary education. JFBA, in the opinion paper of August 10, 2006, requested the Government to conduct a survey on needs to establish night junior high schools, provide financial measures to establish such and to expand the people qualified to attend existing schools in response to actual conditions, but the Government Report has not referred to such issues.

#### (2) Other references

**294.** On Paragraph 398 (secondary education), which describes a unified lower and upper secondary school education system as diversified character oriented education, please refer to “A 3 (1) [ 2 ] ” above.

On Paragraph 399, which reports on free education and scholarship, please refer to “B

1 (3)” above.

Regarding relationship between the description of promoting education taking into consideration of human rights and the guidance related to the national flag and the national anthem in Paragraph 419, please refer to “ D The Freedom of Thought, Conscience and Religion” above.

Regarding Paragraph 421 (easing and prevention of stress and school non-attendance ), on the issue relevant to (1) school non-attendance , please refer to “ E 1 School non-attendance ”, and relevant to (2) improvement of selection system to high schools, please refer to “ A 3”.

On Paragraph 422, (1) school non-attendance , please refer to “ E 1 School non-attendance ” above.

On Paragraph 423 (2) improvement of selection system to high schools, please refer to “ A 3”.

Regarding Paragraph 424 (Reexamination of curricula to alleviate the competitiveness in the school system), please refer to “ A 2 (6)” above.

## **VIII Special Protection Measures (Articles 22, 32, 33, 34, 35, 36, 37 (b)-(d) 38, 39, 40)**

### **A. Children in Situations of Emergency**

#### **1 Refugee children**

(1) International and national laws applicable to children recognized as refugees and specific procedures applying to them

**295.** Recently both the number of people who applied for recognition of refugee status and the number of people who were recognized as refugees have increased in Japan, and in 2007, 816 people applied and 41 people obtained refugee status. The number of people who obtained the status is still smaller than that of other countries. Besides the most of refugees recognized were from Myanmar, and only six applicants from other than Myanmar were recognized as refugees.

**296.** Out of applicants for refugee status, the number of people who were not granted the refugee status but allowed to stay in Japan for humanitarian considerations has increased as well, and in 2007 the number reached to 88. However, in this case also the most of the applicants who were granted with the status of residence were those from Myanmar, and only 19 applicants other than from Myanmar were approved to stay in Japan.

**297.** Further, Japan is a member country to “Convention against Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment,” and it is obliged under the Convention not to send a person back or deliver a person to a country where the person would become subject to torture based on substantive reasonable ground. Notwithstanding such obligation, any procedures to warrant the performance of such obligation do not exist, and even residence status from a humanitarian standpoint mentioned above is granted at discretion of the Minister of Justice.

It is feared, as a result of such fact, that there may be quite a few refugee children who are not protected under the Japanese laws, though they would be entitled to refugee status.

(2) Protection and humanitarian assistance to enjoy rights set forth in the Convention on the Rights of the Child

**298.** Refugee children are placed in an unstable position in terms of social welfare. Only refugees with over one year residence status out of applicants for refugee status can enter the National Health Insurance in principle and the most of people who are applying for refugee status do not have such residence status. In addition, applicants for refugee status (excluding those with one year or longer residence status) and even foreigners who have been allowed to stay in Japan as considered they need to be protected in Japan from a humanitarian point of view, and, as a result of that, have been granted the status of “Specified Activities” could not receive public assistance in principle. Furthermore, in actuality, children without residence status are excluded from child allowance and child rearing allowance

**299.** To those who are in financial difficulties among applicants for refugee status, Refugee Assistance Headquarters of Foundation for the Welfare and Education of the Asian People, being consigned by the Japanese Government, provides welfare money but the amount is lower than that of the public assistance. Furthermore, the fund is limited, and actually at the year end of 2008, the payment of the welfare money was suspended due to drastic increase of applicants.

(3) Measures adopted for protecting and ensuring the rights of unaccompanied children

**300.** As the applicants for refugee status increase, it seems that the number of unaccompanied children who apply for refugee status is also increasing. When unaccompanied children apply for refugee status, however, staff of a child guidance center may attend at the interview, but not a lawyer as a legal professional. This is against the opinion of the Office of the United Nations High Commissioner for Refugees (UNHCR), resolution of the Council of the European Union, and interpretation by European Commission on Refugees and Asylum Seekers; those bodies consider support from both

professionals of legal and welfare essential. As far as we know, there is no special program available such as training for personnel who would handle such cases.

## 2 Children under the Deportation procedures

**301.** In connection with deportation procedures, there are some conventions and covenants such as the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. However, though Japanese administrative authorities and courts have issued progressive judgments in these years such as "...should "refer to" or "consider the intention of" the Convention on the Rights of the Child<sup>15</sup>, the prevailing idea is such that "under international customary law, in principle, the state has no duty of accepting a foreign national, and may freely decide whether to accept a foreign national into the country, and if a foreign national is to be accepted, on what condition this should be allowed...ICCPR is also based on this principle under the international customary law ...the rights under ICCPR shall be ensured only within the framework of alien residence system under the Immigration Control and Refugee Recognition Act." (the Tokyo District Court, May 8, 2003), and various international human rights treaties are "conditioned on that the state has right to decide at its discretion whether or not accept a foreign national to enter or reside to the state, and it does not apply to a "specific treaty" that would restrict the principle under the international customary law set forth in the judgment on McLean Case." (Judgment by the Fukuoka High Court of March 7, 2005) Therefore, there is no precedent where these conventions or covenants have expressly applied on judgment of residence of foreign children, and under current conditions the Immigration Control and Refugee Recognition Act, a domestic law, is prevailing over the treaties regarding residence of foreigners.

**302.** Further, Japan has not taken Amnesty-like policies that grant legal residence status to foreigners who have not residence status if certain conditions are met, and each case is judged by the Minister of Justice at his discretion whether special residence status should be granted or not. The Government has de facto standards on this issue, and in principle, in

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<sup>15</sup> For example, "...in making judgment whether or not grant special residence permit to the foreigner, the Minister of Justice as Appellee should take into consideration the spirit and intention of treaties on international human rights (ICCPR and the Convention on the Rights of the Child) as important factors," judgment by the Fukuoka High Court of March 7, 2005 (the judgment being referred above in this document), "Given the content of Article 3 of the Convention on the Rights of the Child, this point should be considered materially when issuing the order of deportation," judgment by the Tokyo District Court of May 19, 2003, "For a minor child whose parent is alive, generally speaking, it is his/her best interest to live a life under the parent, therefore, the opinion that a minor child should not be separated from his/her parent against the parent's intention is a prevailing opinion from the standpoint of the child's well-being," judgment by the Tokyo District Court of August 28, 2007, and etc. In addition, the Tokyo District Court issued a judgment on March 30, 2004 in the intention to apply the principle of equality to administrative discretion.

a case of a foreign family none of whom has residence status<sup>16</sup>, if a child has not become a junior high school student before completion of the deportation procedures, special residence status would not be granted to the family. Therefore, in quite a few cases foreign children who were born in Japan, educated in Japan and spoke Japanese as their mother tongue suddenly forced to suspend the education and be deported<sup>17</sup>.

Thus, best interests of the child are not fully taken into consideration in making judgment of residence status, including deportation of foreign children.

## **B. Children in the Administration of Juvenile Justice**

- 1 Since all the following measures introduced in accordance with the amendment of the Juvenile Act in 2007 have problems from the view points of the Convention and international standards, these provisions should be reverted to those before the amendment:  
grant of investigative authority to the police of juveniles under 14, referral of certain cases committed by juveniles under 14 to a family court in principle, lower the age to be placed in juvenile training schools, placing in juvenile training schools as a disciplinary measures against violation of conditions of probation
- 2 It should be examined whether or not the juvenile hearing observation program by the victims that was introduced in accordance with the amendment of the Juvenile Act in 2008 has caused a negative effect on welfare function of the juvenile hearings.
- 3 The measures introduced in accordance with the amendment of the Juvenile Act in 2000 should be reverted to the provisions before the amendment: i.e., the principle of referral to a public prosecutor in certain cases, lowered age subject to criminal punishment, and extension of period of protective detention (pretrial detention).
- 4 The Official Attendant Program, in which court appoints lawyer for juveniles in certain serious cases, should be expanded to at least all the juveniles deprived of their liberty under pretrial detention to materially ensure the right of children referred to juvenile hearings to receive support from a lawyer.

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<sup>16</sup> The Nationality Act of Japan adopts jus sanguinis; children who were born in Japan would not be granted Japanese nationality unless one of the parents has Japanese nationality (excluding cases where neither the father nor mother is known, or they are stateless).

<sup>17</sup> Recently a case of a Filipino family became a center of attention. In that case, a child who was in the 5th grade of a elementary school when a deportation order was issued became a junior high school student while the litigation was pending ( Case of the Calderon family ) . In this case, the mother had been working in Japan for 14 years and the father for 13 and a half years before the deportation order issued, and the child could speak only Japanese. The Japanese Government finally acknowledged granting residence status only to the child.



5 Use of alternative measures to detention in a juvenile classification home should be reinforced so that pretrial detention may be used as the last resort for juveniles subject to juvenile hearings.

6 The following measures shall be taken in order to prevent false charges against juveniles and eliminate unlawful investigation.

(1) The Government should immediately establish rules that require investigative authorities such as the police to record the entire process of interrogations by electronic devices such as video recording (visualization of criminal investigation process).

(2) The police, the prosecutors' offices and courts should substantially and promptly guarantee to juvenile offenders the right to remain silent, the right to examination of witness, the right to cross-examination, and the right to receive support of official lawyer at no cost (Court-Appointed Counsel and Official Attendant Appointment Program), and expressive rules regarding such rights should be established.

(3) Regarding investigation of juvenile cases, special regulations considering the characteristics of juveniles and in accordance with international standards should be established.

(4) The Government should guarantee the right to defense of juveniles and acknowledge the right to have counsel present at interrogation. A principle of exclusion of evidence should be established, if such evidence was taken through an interrogation that was conducted without allowing counsel present in spite of hi/her request.

(5) The Japanese Government should abolish substitute prisons (*daiyo kangoku*) (a police cell which is a detention facility under control of the police), and should expressly provide that juveniles may not be placed in a substitute prison.

(6) The Government should thoroughly educate police officers, prosecutors, judges, and attorneys regarding human rights.

7 Capital punishment should not be imposed for offenses committed by 18 and 19 year old juveniles.

8 Treatment of juveniles should be made not in a juvenile prison that is a facility to carry out criminal punishment, but in a juvenile training school that is an educational facility.

9 Matters such as communications with the outside, complaint filing, hair style and clothing, and discipline in juvenile prisons should be improved. In addition, female convicts should be given equal opportunity to treatment with male convicts.

10 At a juvenile training schools, communications with the outside should be permitted widely. A complaint filing system about the treatment should be introduced.

11 An education program in the probation should be improved and probation officers should be increased in order to coordinate with treatment at juvenile training schools and juvenile prisons.

12 Facilities that accommodate juveniles who do not have place in the society should be increased. In addition, the Government should acknowledge the roles of the private facilities that currently accept them, to which appropriate budget should be allocated.

## 1 Revision of Juvenile Law

### (1) The Concluding Observations of the CRC on the Second Government Report

**303.** The consideration of the Second Government Report pointed out issues regarding the revised Juvenile Act of 2000, and the CRC's Concluding Observations made recommendations as follows:

[1] "It is concerned that many of the reforms were not in the spirit of the principles and provisions of the Convention and international standards on juvenile justice, in particular, with regard to the minimum age of criminal responsibility, which was lowered from 16 to 14 years, and pre-trial detention, which was increased from four to eight weeks. It is concerned that an increasing number of juveniles are tried as adults and sentenced to detention, and that juveniles may be sentenced to life imprisonment." (Paragraph 53)

[2] "Review the existing possibility for Family Courts to transfer a case against a child of 16 years or older to a criminal court for adults with a view to abolishing this practice." (Paragraph 54)

The Japanese Government had not considered these recommendations seriously, and furthermore, it newly revised the Juvenile Act twice, and JFBA considers such revisions have material problems under the Convention or international standards on juvenile justice.

The Third Government Report has not mentioned about the two revisions of the Juvenile Act that have taken place after the submission of the Second Government Report. (It only referred to 'the official attendant program' in Paragraph 460). The following is contents and issues thereof.

### (2) Framework of juvenile justice system in Japan

**304.** Under the Japanese juvenile justice system, persons under 20 years of age are, in principle, provided with protective measures by a family court unlike adults, and only exceptional cases are to be referred to criminal trials. The minimum age transferrable to criminal trials was, as stated above, lowered from previous 16 to 14 following the revision of the Juvenile Act in 2000.

**305.** On the other hand, the minimum age of criminal responsibility is defined as 14 and older under the Penal Code, and an act of juveniles under 14 years old which violates the penal acts is referred to as an '*illegal behavior*' distinguished from a crime. Such juveniles are, if committed an '*illegal behavior*', firstly sent to a Child Guidance Center, a welfare facility, to pursue the recovery from delinquency through welfare treatment. When the Center considers the recovery there is impossible, it will refer them to a family court where protective measures are to be provided. Even in such cases, referral to a juvenile training school that accompanies detention was limited to 14 years old and older, and juveniles under 14 years of age were only allowed to admit in a Support Facilities for Development of Self-sustaining Capacity, which is a welfare facility.

Such framework of the juvenile justice was drastically changed by the amendment of the Juvenile Act in 2007.

(3) Details of the 2007 amendment of the Juvenile Act

**306.** The details of the revised Juvenile Act, which was established on May 25, 2007 and entered into effect on November 1, 2007, are as follows:

**307.** [1] Grant of authority to investigate children of '*illegal behavior*' to police officers

As stated above, acts of violation of the penal acts by juveniles under 14 years of age are not deemed as crimes, and therefore police officers were not considered to have authority to investigate over them. However, following the amendment, police officers are vested investigative authority over them, including the right of compulsory investigation such as seizure and search.

**308.** [2] With regard to certain cases of an '*illegal behavior*' (a case where an act with criminal intent resulted in death of victims and a case where an act whose statutory penalties are death penalty or imprisonment for life or not less than 2 years, if committed by a person of 14 years or older,), it sets forth that a Child Guidance Center shall refer such cases to a family court in principle.

**309.** [3] Lowered minimum age subject to transfer to a reformatory

The minimum age to be placed in a juvenile training school was lowered to 'about 12 years old' from 14.

**310.** [4] Measures taken against violation of general and special conditions during probation (placement in a juvenile training schools , etc.)

In case of violation of general and special conditions during probation, following a certain procedure, it now becomes possible to place in a juvenile training school / a support facility for development of self-sustaining capacity.

**311.** [5] The Official Attendant Program

In cases where a juvenile is charged to have committed certain serious crimes (crimes with criminal intent resulted in a death of a victim and crimes whose statutory penalties are death penalty or imprisonment for life or not less than 2 years), and the juvenile is detained in a juvenile classification home as a measure of protective detention (pretrial detention), the family court may appoint a lawyer for the juvenile, which is referred to as an '*official attendant*' in the government report, if the juvenile does not already have one and the court considers it necessary.

#### (4) Problems of the 2007 revised Juvenile Act

**312.** Such amendment of 2007 as stated above was introduced in the midst of public sentiment seeking for severe punishment to juvenile under 14 years old, who could not be investigated by the police and not be placed in a juvenile training school, driven by a series of incidents including a abduction-murder case by 12 year old boy in July 2003 and a classmate stabbing-murder case by a 11 year old elementary school student in June 2004, and the then Minister said, "The Parents should be dragged through city streets and have their heads cut off."

The 2007 amendment has problems as follows:

##### [1] Grant of authority to police officers to investigate juveniles under 14 years old

**313.** It is a well-known fact that young juveniles under 14 years old are immature and they often make false confession influenced by implication by an investigator or ingratiating himself with an investigator. In Japan, cases of false confession resulting from high-handed investigation are not rare.

Investigation without due consideration to the characteristics of young juveniles by police officers who are specialists in criminal investigation might lead to a contrary direction from finding the truth and resulting in filing the juvenile with false charge. Therefore, the hearing should be made by welfare related persons, such as child welfare officers of the Child Guidance Centers, for example, who understand the characteristics. It is problematic to have granted the police the authority to investigate them.

Article 40 Paragraph 3 of the Convention states, "States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law" and (b) in the same provision states, "Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected." The approach to juveniles under 14 years old from a welfare standpoint in Japan should have been promoted given the intention under the Convention, and the change to a legal approach, on the contrary, is apparently problematic

from the Convention's point of view.

**314.** Before 2002, the notice of National Police Agency concerning juvenile policing provided that parents shall be present at an interrogation of juveniles in principle. However, in 2002, the notice was abolished and the Police Rules of Engagement for Children was established. In the rules, such a provision was not provided. In October, 2007, the Rules were amended in accordance with the amendment of the Juvenile Act. In the amended rules, provisions were added which provides that in interrogating juveniles of '*illegal behavior*' (under 14 years old) or young juveniles whose tendencies indicates possibility of committing crime, "Due consideration should be given to presence by parents of the subject juvenile or a person who are considered appropriate from a standpoint of protection and care of such juvenile." The provision only admits the presence of parents in interrogation of those juveniles at discretion of the police, which is insufficient. In interrogating other juvenile suspects alleged to have committed crimes, nothing was provided concerning presence of their parents, which is problem.

[2] Principle of referral to a family court

**315.** The principle of referral to a family court from Child Guidance Centers narrows their discretionary authority concerning certain serious cases and restricts possibility to pursue a treatment based on a welfare approach. Children who commit serious cases tend to be raised in unsound environments such as child abuse and broken homes. Thus, welfare based approach is all the more important for them. It is problematic to refer them to a family court and put them subject to protective measures through procedures of the juvenile justice.

Similar to the above, it is problematic under Article 40 Paragraph 3 of the Convention.

[3] Lowered minimum age subject to place in a juvenile training school

**316.** A juvenile training school is a facility where protective measures under physical restraint are provided to juveniles who committed delinquency, and the base is on group discipline training. On the other hand, Support Facilities for Development of Self-sustaining Capacity also accommodate them, but are welfare facilities aiming at "rearing again" in a homely environment to supplement them with a chance of development that those children lacked in their childhood. Welfare approach, i.e., providing opportunities to "rearing again," should be applied to juveniles under 14 years old, even if the person committed a serious delinquency. This amendment of the Juvenile Act, together with the principle of referral to a family court stated above, result in discipline training by detaining juveniles who committed serious delinquency in a juvenile training school, which is a part of toughened penalty.

Similar to the above, it is problematic under Article 40 Paragraph 3 of the Convention.

[4] Countermeasures such as placing in a juvenile training school, etc. against violation of conditions during probation

317. Family courts may decide probation as one of protective measures. This is a measure taken while staying at home and the subject juvenile lives under custody of a probation office and a civil volunteer probation officer. During the probation, general and special conditions are to be established such as to visit the volunteer probation officer every month, to work regularly, not to go outside at midnight, etc. Previously, probation offices and volunteer probation officers carefully and patiently watched the juvenile and tried to help the juvenile restart his/her life again without repeating wrongful acts, even if the juvenile violated the conditions.

318. As a result of the amendment, if such violation is repeated, the family court may decide to place the juvenile in a juvenile training school or a Support Facility for Development of Self-sustaining Capacity with certain procedures, even the juvenile has not repeated delinquency.

This means to secure compliance of conditions by punishment, and such punishment leads to tough result of placement in a juvenile training school. From a view specified in Article 40 Paragraph 1 of the Convention “in a manner consistent with the promotion of the child's sense of dignity and worth” and the view set forth in Article 37 (b), “physical restraint of a child shall be used only as a measure of last resort,” the above presents a problem.

In addition, protective measures may be ordered such as placement in a juvenile training school, even the child has not committed a new delinquency, which may violate the double jeopardy rule and presents a problem under Article 14 Paragraph 7 of the International Covenant on Civil and Political Rights.

319. [5] Introduction of ‘the official attendant program’ is the only point to be valued in this revised Juvenile Act. But, it is not sufficient and the reason will be described later.

320. As stated above, the revision of 2007 includes provisions that are considered against the Convention and international standards on juvenile justice.

The Concluding Observations on the Second Government Report states, “Ensure the full implementation of juvenile justice standards, in particular articles 37, 39 and 40 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), in light of the Committee’s 1995 day of general discussion on the administration of juvenile justice” (Paragraph 54 (a)).

On the other hand, the Government Report simply alleges, “In response to the Eighth International Joint Conference on the Prevention of Crimes and Treatment of Offenders, the juvenile justice system in Japan is run in line with the purpose of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and with the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guideline), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty as well, measures in line with the purpose of the standards will continue to be promoted while taking Japan’s current social, political, and cultural conditions into account through reasonable efforts” (Paragraph 469). However, it is apparent that the fact is not so.

(5) Amendment of the Juvenile Act in 2008 and its issues

**321.** By the revised Juvenile Act, which was established on June 11, 2008 and entered into effect on December 15, 2008, a system was introduced under which a victim may attend the juvenile hearing.

To be specific, regarding a case that resulted in death of a victim or a grave threat to the life of a victim, the victim and the surviving family members may be allowed to attend the juvenile hearings.

The introduction of such hearing system with the victim and surviving family members present pose such problems as, the child will be daunted and hard to speak frankly, which will make rehabilitation of the child difficult and the fact finding difficult; judges, being conscious of the victim, also have difficulties to ask questions to care the child, which will lower a function of juvenile hearings with sympathy and kindness; and it will become difficult to provide highly private facts of the child that are necessary to make decision on protective measures.

2 Amendment in 2000

(1) The CRC’s Concluding Observations on the Second Report regarding the 2000 amendment

**322.** In the amendment made in 2000, the followings are introduced:

Prosecutors’ involvement with judgment and prosecutors authority to file petition for acceptance of appeal;

Extension of the period of protective detention (pretrial detention) from 4 weeks to 8 weeks;

Lowered minimum age subject to criminal trials from 16 or older to 14 or older; and

System of the principle of referral to a public prosecutor regarding certain cases (a case which resulted in death of victims by acts done with criminal intent).

About these issues, the CRC’s Concluding Observations on the Second Government

Report made recommendations as follows:

“It is concerned that many of reforms were not in the spirit of the principles and provisions of the Convention and the international standards on juvenile justice, in particular, with regard to the minimum age of criminal responsibility was lowered from 16 to 14 years, and pre-trial detention, which was increased from four to eight weeks.”

“It is concerned that an increasing number of juveniles are tried as adults and sentenced to detention, and that juveniles may be sentenced to life imprisonment.” (Paragraph 53)

“Review the existing possibility for Family Courts to transfer a case against a child of 16 years or older to a criminal court for adults with a view to abolishing this practice.” (Paragraph 54)

The Japanese Government did not consider these recommendations seriously, and the Government Report has not directly answered to this point either. However, there are problems as follows:

(2) Regarding the principle of referral to a public prosecutor

**323.** The Government Report describes regarding the principle of referral to a public prosecutor, “a juvenile... will face criminal charges in extremely limited cases .... Such conduct, from the perspective that an irreplaceable life has been taken away in order to commit a personal crime, is a serious antisocial and immoral act. Therefore, the said Act, ...clearly specifies the principle whereby juveniles will also face criminal charges when such a grave act has been committed, is believed to be necessary in order to develop the juvenile’s sense of standards and encourage his/her sound development. In addition, the family court may...opt for protective measures. Thus, this system of having juveniles referred to public prosecutors does not contradict the purpose of the juvenile justice standards.” (Paragraph 459)

**324.** However, due to the revision of the Act, the rate that criminal trials are chosen is drastically increasing.

According to the report by the Supreme Court, during the five year period between April 2001 and March 2006, the number of referral to a public prosecutor and the referred rate of the children subject to the principle of referral to a public prosecutor are as follows. When compared with the ten year average transferred rate before the revision, as for either of homicide, injury causing death, or robbery causing death, the rate of transferred to prosecutors have increased substantially, showing progress of toughened penalty.

	Total	Referral to a public	Referred rate	Ten years before revision



		prosecutor		
Homicide	77	44	57.1 %	24.8 %
Injury causing death	190	108	56.8 %	9.1 %
Dangerous driving causing death	29	27	93.1 %	-
Abandonment by a Person Responsible for Protection causing death	3	0	0 %	-
Robbery causing death	50	37	74.0 %	41.5 %
Total	349	216	61.9 %	

According to the statistics of 2006 and 2007, the number of referrals to a public prosecutor and the rate are as follows:

	Total	Referral to a public prosecutor	Transferred rate
Homicide	39	17	43.6 %
Injury causing death	35	16	45.7 %
Robbery causing death	23	11	47.8 %

325. It is necessary to review such principle of referral to a public prosecutor, and at the same time the current conditions under where children referred are treated exactly in the same manner and procedures by the same court with adults should be improved.

JFBA proposed, with regard to procedures of criminal trials for juveniles, the Court shall establish a general provision that seeks for humanitarian procedures while taking into consideration characteristics and ability of juveniles, juvenile defendants shall be detained at juvenile classification homes in principle after prosecution, and that courts should be able to restrict open trials taking into consideration sentiments of juvenile defendants (“Opinion on the Review of the 2000 Amendment of Juvenile Act after Five Years”).

326. Further, in May 2009, *Saiban-in* (lay judge) system was introduced for certain serious cases. This is different from the jury system in the US, and a unique system in Japan where three professional judges and six amateur judges try a case together and decide the sentence as well as guilty or not-guilty through conference among them. Even juvenile

cases are not excluded from the *Saiban-in* (lay judge) system, without exception. A criminal court may transfer a child back to a family court when it judges protective measures are suitable following examination in the criminal trial. If the attorney insists transfer to a family court, it is necessary to assert and prove facts relevant to the child's history such as how he/she was raised up to the details including highly sensitive private matters. It is an issue if it is possible to examine the child under the *Saiban-in* (lay judge) system while protecting his/her privacy in line with the philosophy of the Juvenile Act.

(3) Lowered minimum age subject to criminal punishment

327. The Government Report states that, "under the extremely grave circumstances that showed no signs of significant decline in the numbers of heinous crimes committed by 14 and 15-year old juveniles, it was considered that in order to contribute to the sound growth of juveniles, a clear stipulation of the situation that if they commit a crime they can be subject to punishment even if they are 14 or 15 years of age, was necessary in order to enhance their respect for social norms and to have them realize the responsibilities that come with social living," and it "does not contradict the purpose of the juvenile justice standards." (Paragraph 480)

The Government Report itself admits that the purpose of the revision is to prevent crimes through tough penalty, which is apparently against international standards including the Riyadh Guideline.

328. According to the report by the Supreme Court, during the five year period from April 2001 to March 2006, three juveniles under 16 years old were referred to prosecutors and tried in criminal courts (two for injury causing death and one for robbery and rape). Out of these three, two juveniles accused of injury causing death were transferred to family courts following judgment by the criminal courts that protective measures were appropriate for those juveniles, and ended to be placed in juvenile training schools (in addition, other two juveniles were referred to public prosecutors because of traffic related crimes). Accordingly, only one child was tried in a criminal trial and actually sentenced criminal punishment.

The fact that the number is so small shows that there is no such condition as, "...under the extremely grave circumstances that showed no signs of significant decline in the numbers of heinous crimes committed by 14 and 15-year old juveniles."

329. On the other hand, though the number is small, three children who were referred to prosecutors and became subject to criminal trials had been placed in detention facilities together with adults without giving any educational care (their rooms are separated from those for adults though). One of the juveniles was reported that he was too scared because of being placed in an open court packed with observers to even look up easily and he could

only answered “yes” to every question made by the attorney and prosecutors at the trial. (Opinion on the Review of the 2000 Amendment of Juvenile Act after Five Years by JFBA on March 16, 2006)

(4) Extension of the period of measures for detention and shelter care (pretrial detention)

**330.** The Government Report describes, “...this system is used only in cases where a large amount of evidence needs to be examined in order to establish the facts, and such cases are extremely limited. Further, an appeal system for decisions on measures of detention and shelter care was introduced to guarantee the rights of the child.”(Paragraph 489)

According to the report by the Supreme Court, during the five year period between April 2001 and March 2006, the number of juveniles whose term was extended specially over four weeks for the measures for detention and shelter care was 249, among which 46 juveniles became subject to detention measures for over four weeks, 95 subject to over five weeks, 47 subject to over six weeks, and 61 subject to over seven weeks.

**331.** Given the fact that the number of juveniles ordered to become subject to the measures for detention and shelter care is around 17,000 to 20,000 per year, the above number may seem small. As a mentally unstable case is reported, however, due to a long period of physical restraint, a mental and physical impact by such measures on the juveniles should be studied, and further it should be reviewed that such restraint is made for the shortest appropriate period under Article 37 (b) of the Convention.

3 Insufficient rights of children to receive support from attorneys

(1) Concluding Observations on the Second Report and the Third Government Report

**332.** In the Concluding Observations on the Second Report, it is recommended to “provide legal assistance to children in conflict with the law throughout the legal proceedings.” (Paragraph 54 (e))

The Third Report of Japan states as, “In family court trials, juveniles and guardians have the right to appoint counsel (Article 10 Paragraph 1 of the Juvenile Act). In the decision procedures of measures for detention and shelter care, the court judge explains this to the juvenile (Article 19-3 of the Rule of Juvenile Proceedings), and the court clerk in charge of the case issues or sends a document explaining the procedures and rights to the juvenile and guardians prior to the trial, which also contains information regarding the right to appoint counsel”(Paragraph 472), and explains that the ‘official attendant system’ in which a court appoints counsel was expanded due to the revised Juvenile Act of 2007 (Paragraph 460).

(2) Actual situation regarding appointment of attendant attorneys

**333.** However, out of juveniles who are to be tried by family courts, only a very small number

of children receive support from attorneys, so it is far from the condition that “legal assistance is secured throughout the legal proceedings.”

The rate of attorneys attending to juveniles who are involved with general cases (excluding traffic related cases including violation of the Road Traffic Act, causing death or injury through negligence in driving) is as follows;

Year	Total number of general incidents	Attorneys attended	Percentage
2002	83,609	4,346	5.2 %
2003	81,511	4,583	5.6 %
2004	78,916	4,134	5.2 %
2005	70,017	4,358	6.2 %
2006	63,551	4,230	6.6 %
2007	59,636	4,147	7.0 %

In comparison with the number of juveniles who were detained in juvenile classification homes, the percentage is not very high.

Year	The number of juveniles detained in classification homes	Attorneys attended	Percentage
2002	19,330	4,346	22.5 %
2003	20,047	4,583	22.9 %
2004	18,756	4,134	22.0 %
2005	17,115	4,358	25.5 %
2006	15,667	4,230	27.0 %
2007	13,644	4,147	30.4 %

(2) Insufficient ‘official attendant program’

334. The biggest reason is because the official attendant program in which court appoints attorneys for juveniles is extremely insufficient. Juveniles themselves do not have money and in many cases the families of delinquent juveniles are not wealthy. Even if they have money, many parents do not want to spend the attorney’s expenses for their children if the family is not functioning. Accordingly, in order to ensure juveniles the right to receive

support from attorneys, in the first place, it is necessary to improve the system to appoint attorneys at the expense of the state, and it is nonsense for judges to explain the right to appoint attorneys and distribute documents thereof to the juveniles without such system.

335. In these 15 years, the number of attendant attorneys appointed has increased with support of Assistant Program for Attendant Attorneys in Juvenile Protection Cases that is funded by all of the attorneys throughout Japan and with such fund attorneys' fees are paid. Out of 4,229 attorneys attended in 2006, 3,653 (86.3 %) were attendant attorneys supported by the program.

336. Although due to the revision of the Juvenile Act in 2007, the official attendant program was improved, it covers only serious cases. Therefore, only 522 'official attendants' were appointed for one year period from November 2007 to October 2008.

Article 37 (d) of the Convention provides for that "Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance," and JFBA insists that the 'official attendant' program shall apply to all the children detained in juvenile classification homes. The Government should improve and expand the 'official attendant' program.

#### (4) System of official defense counsel for suspects at a stage of investigation

337. The system of official defense counsel for suspects at a investigation stage has been substantially expanded from May 2009. The most of detained suspects are subject to the system. However, even though the law was revised, the official defense counsel system applies only after the detention warrant is issued, and does not apply to a stage of "arrest" that may span 72 hours at most prior to the detention.

338. The Government Report states, "Arrested suspects are permitted to directly contact their attorney." (Paragraph 508), but in fact, the contact becomes possible at the arrest stage through a duty attorney (*Toban Bengoshi*) system operated by bar associations, and the expenses of the attorneys are funded by a fund operated by bar associations.

Such attorneys' fees at the arrest stage, however, shall be borne by national budget in the first place, and in order to ensure "the right to prompt access to legal ... assistance" set forth in Article 37 (d) of the Convention, the arrest stage shall be subject to the official defense counsel system.

#### 4 Detention of juveniles

##### (1) The Concluding Observations on the Second Report and the Third Government Report

339. In the Concluding Observations on the Second Report, recommendation is made to "strengthen and increase the use of alternatives to detention, including pre-trial detention, in order to ensure that deprivation of liberty is used only as a measure of last resort."

(Paragraph 54 (c))

The Third Government Report, however, with regard to this point, does not mention to “strengthen and increase the use of alternatives to detention,” but states, “the measures for detention and shelter care in family court proceedings are only taken when necessary to conduct the trial” and merely presents statistical data. (Paragraph 489)

(2) Actual situations of pre-trial detention

340. According to the statistical data shown in the Third Government Report, the number of measures for detention and shelter care decreases year by year, but this is only because the entire case number is decreasing.

When looking at the percentages of measures for detention and shelter care, it has been 20 % or over since 2000; i.e., it has not decreased at all. Rather the percentages had remained flat between 10 to 15 % during 1990s, so compared with such period it has increased. It is doubtful as of whether the pre-trial detention has been “used only as a measure of last resort.”

Under the Juvenile Act, measures for pre-trial care by a family court probation officer are provided for, but rarely used. The better use of the measures should be discussed.

	Total	With measures for detention and shelter care	None	Percentage of cases measures taken
2000	76,737	18,072	58,665	23.6 %
2001	79,998	17,803	62,195	22.3 %
2002	83,676	17,721	65,955	21.2 %
2003	81,558	17,818	63,740	21.8 %
2004	78,969	16,736	62,233	21.2 %
2005	70,088	15,476	54,612	22.1 %
2006	63,630	14,124	49,506	22.2 %
2007	59,697	12,391	47,306	20.8 %

5 False charges in juvenile cases

341. (1) Maybe because the Japanese Government does not want to admit existence of false charges in juvenile cases, it has not mentioned at all about false charges in the Initial through Third Government Reports. It failed to face the conditions under which illegal

investigations are conducted, to report such and to describe measures to prevent them. (JFBA Initial report [596])

According to the statistics published by the Japanese Government<sup>18</sup>, however, **roughly 100 cases** every year for some decades, or even some hundreds cases in some years, out of general protective cases excluding traffic-related cases, were determined not to hold trials for the reason of no-delinquency (i.e. not-guilty) after filing to family court, or judged as no-delinquency after trials. (Document 14)

Some famous cases are as follows:

**342. [ 1 ] Case of a false charge of a gang group by Higashi Chofu Police Station (1976)**

In 1976, two juveniles (both 16-year old at that time) out of four members who were alleged complicity were detained for 96 days in total through three arrests and two detentions in investigative stage and family court proceedings. They were alleged to have “confessed” theft of totaled over 200 cases, and the amount of money and articles stolen were 20 million yen in cash, 2,000 rings, 500 wrist watches, 100 necklaces, etc. The police laid the blame for the most of unsolved and accumulated cases in the territory on the juveniles. The family court decided as no-delinquency (not guilty) for all the theft cases.

**343. [ 2 ] False charge for an Osaka old woman murder case (1979)**

In 1979, an old woman who ran a small candy store was strangled to death, robbed of over 100,000 yen in cash. About nine months later, a boy in the 6<sup>th</sup> grade of elementary school (11-year old) “confessed” but judged “no delinquency” through activities of attendant attorneys. It was a case of a child whose act was not criminally responsible but sent to a family court as *‘illegal behavior’*.

**344. [ 3 ] False charge for a Kashiwa girl murder case (1981 - 1987)**

In a case where a girl in the 6<sup>th</sup> grade (11-year old) was stabbed in the right chest and right wrist with a knife, a boy (14-year old) was interrogated by the police and falsely “confessed” in about three hours, and then a family court decided to place him in a juvenile training school.. The boy asserted non-guilty at the school through activities by attendant attorneys, and the Supreme Court for the first time admitted to file an ‘retrial’ under the Juvenile Act (1983).

**345. [ 4 ] False charge for Ayase mother and child murder case (1988 - 1989)**

In midday in November 1988, a housewife and her 7-year old child were murdered in their apartment home. About five months later, three juveniles (15 year-old males) were

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<sup>18</sup> “The Annual Report of Judicial Statistics- Juvenile-total number of completed general protection cases” by the Supreme Court

falsely confessed and arrested due to such forcible acts by the police as to push them around by holding their collars or slap or thrust against a wall. In September 1989, the family court decided “not guilty” (no fact of delinquency) after thorough activities of attendant attorneys (nine attorneys). One of the boys had insisted that he is innocent to prosecutors and judges in vain. When he was back to the police, he was shouted at and slapped there, so he made a suicide attempt from a fear<sup>19</sup>.

Issues surfaced from this incident were as follows: illegal supplemental investigation by the police of a witness of an alibi; and the first attorney failed to hear the assertion of innocence by the boy subject to the investigation and adhered to the assumed story of the police.

**346. [ 5 ] Soka Case (1985 - 2003)**

In the junior high school girl murder case of 1985 (so-called “Soka Case”), boys asserted “not guilty” (no fact of delinquency), and appealed through to the Supreme Court but was judged “guilty.” Later, however, a civil suit brought against the juveniles by the bereaved family of the deceased victim worked to prove that the charge was false. In March 2003, the juveniles prevailed in the civil suit, and their “not guilty” was confirmed after 18 years. (JFBA’s second report, Paragraphs 412 and 413)

**347. [ 6 ] Yamagata Meirin Junior High School murder case (1993 - present)**

In juvenile hearings and civil suits, seven former students and a group of attorneys are still working to clear the false charges (JFBA’s second report, Paragraphs 414 through 417).

**348. [ 7 ] Chofu Station South Exit mob violence case (1993 - 2001)**

Six juveniles were sent to a family court alleged to have committed injury and violation of the Act on Punishment of Violent Act at a street in front of the Chofu Station South Exit in 1993. They asserted false charges, and five out of six juveniles were found ‘guilty’ and sentenced to place in a juvenile training school. Those five juveniles appealed to the high court and then all were remanded. After the remand hearing in the family court, though one child received judgment of no delinquency (not guilty), the remaining four juveniles were referred to prosecutors as deserving criminal trials. And after supplemental investigation, five including the one with judgment of no delinquency were prosecuted to criminal trials. The district court dismissed the prosecution for one minor at that time due to prohibition of disadvantageous changes. However, accepting an appeal by the prosecutor, the high court made a decision stating it did not consist of disadvantageous

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<sup>19</sup> Compiled by Committee on Children’s Rights, JFBA “Police Activities on Juveniles and Children’s Rights” (p.61 – 62)



changes in the interlocutory judgment, but as a result of appeal by juveniles, the Supreme Court held the decision of the district court because criminal punishment is generally and typically more disadvantageous than protective measures, and the dismissal of prosecution was finalized. As for the case of the other four juveniles remained pending at the district court, prosecutors withheld the prosecution because the dismissal judgment was expected. Thus, the criminal trials were closed. Those four persons, excluding one who won no delinquency, sought for criminal compensation in order to confirm 'not guilty', and after seven years of various conditions, all of four won the compensation in full amount and were proved 'not guilty.'

**349. [ 8 ] Osaka district court chief judge attack case (2004 - 2008)**

February 2004, while walking back home at night, the then chief judge of the Osaka district court was attacked by a group of juveniles, robbed of ¥63,000 in cash and received serious injury on the pelvis which took two months to heal. With suspect of bodily injury through robbery two juveniles (14-year old and 16-year old) were arrested and one child who was 13 at that time were taken to the police, and they "confessed" on the first day of the investigation. Further, they named two adult male acquaintances and "confessed" that the incident was made by the boys and the adults. Based on their confession, the police arrested those two adults and brought them before the Osaka district court. Two juveniles aged 14 and 16 at that time were sent to the Osaka family court. Those two adult males kept asserting their innocence at the police station and a detention center. Those two adult males who were sought for eight years imprisonment by prosecutors won 'not guilty' judgment at the first instance in March 2006 being followed by a judgment of 'not guilty' at the second instance in April 2008, and the judgment was finalized. The boy of 13 at that time was placed in a Support Facility for Development of Self-sustaining Capacity by a Child Guidance Center to which the Osaka Prefectural Police referred. He left the facility and filed a civil suit against the police seeking compensation alleging that the police forced him to confess. With regard to the 14-year old boy, at that time, the Osaka family court decided protective measures of placing in a juvenile training school in March 2006. Then following the appeal by the boy, in May 2007, on the first appellate trial, the Osaka High Court determined remand, and in December 2007, the Osaka Family Court found no-delinquency. However, the prosecutor appealed against the ruling, and the second appellate trial was held in the Osaka High Court, which decided remand in March 2008; the boy side appealed again and in July the Supreme Court revoked the decision of remand made by the Osaka High Court, and the family court decision of no-delinquency was finalized. With regard to the 16-year old boy, at that time, the Osaka family court decided

protective measures of placing in a juvenile training center in July 2004, and then he filed a petition to revoke the disposition of placing in a juvenile training school in November 2005. In February 2006, he left the juvenile training school, and in the same month the Osaka family court determined revoke of the disposition. The prosecutor filed a petition for acceptance of appeal at the Osaka High Court, but in September 2008, the Osaka High Court dismissed the appeal. (Revoke of protective measures and decision of no-delinquency by the family court was finalized, which is equivalent to non-guilty judgment in a retrial court in criminal case of adults.) Here, all of four juveniles referred to juvenile hearings and criminal proceedings were granted with not-guilty, no-delinquency judgment and those judgments were finalized.

**350. [ 9 ] Gotenba case (2001 - present)**

At the night of September 16, 2001 in a park of Gotenba-city, Shizuoka-prefecture, ten boys (aged 16 and 17 at that time) were arrested for the reason of attempted rape of a girl (15-year old at that time) only based on the victim's testimony. At an investigation stage, those ten boys "confessed" and they were found "guilty," though the date of the incident, one of the cause of actions, was changed by one week in the middle of trial, without taking into consideration the weather conditions and alibis on the day.

Five boys out of ten did not deny the "confession" and received disposition such as placement in a juvenile training school, but one of them asserted innocence and made petition for a new trial in February 2008 and the trial closed in December 2008.

Other five boys asserted innocence at juvenile hearings. One boy was held "not guilty (no delinquency)" by the first instance of a family court in 2004 (this judgment would be finalized if the case were before the amendment in 2000), but prosecutors filed a petition for acceptance of appeal, and after accepted the appeal, the boy was referred to prosecutor and prosecuted, then was sentenced to two years and six months imprisonment with suspension of execution for four years by a criminal court (2007). He appealed for not guilty to the Supreme Court, and in April 2009, the appeal was dismissed. The four then juveniles were referred to prosecutors and became subject to criminal trials. While they kept asserting their innocence, the judgment by the second instance that sentenced to one year six months imprisonment without suspension was finalized by the Supreme Court (April 2009). Still there is a possibility to file a petition for 'retrial' but it is a serious problem that children have to fight for a long time to gain non-guilty through criminal trials.

Recently, though an adult case, the Toyama Rape False Charge Case (2007) gathered attention of the public because a real offender was found after the falsely charged

person had served his prison term. As for juveniles as well, false charge cases have been occurred since quite some time ago (1950) where the juvenile was found not guilty after completion of a juvenile training school when a real criminal was found and sentenced to imprisonment. How many children have been cried because of false charges? It is awfully cruel for them that it requires a long time to be found not guilty.

(2) Reasons that cause false charges regarding juveniles

351. As results of analysis of the cases mentioned above and other juvenile cases, it is found that false charges regarding juveniles are caused because,
352. [ 1 ] the police does not change the manner of investigation which excessively depend upon confession;
355. [ 2 ] the police easily detains children in substitute prison (*daiyo kangoku*)(police cells) and they use illegal means for investigation such as violence, threat, leading;
356. [ 3 ] the police has tendency to make investigation based on assumption and not to put focus on physical evidences and modern scientific evidences, as well as their lack of interview skills to drag information out of juveniles; and
357. [ 4 ] in Japan, police officers work under character of anonymousness and individual responsibility of police officers has not been established as a system. When a police officer cause a damage on a child while performing his/her duty, in general it is impossible to pursue the officer's civil liability with precedence or application of the State Redress Act and it is hard to prevent illegal acts by police officers.
358. (3) In order to prevent the false charges to juveniles and to eliminate illegal investigation, the following is absolutely imperative.
- 359.[ 1 ]The Government should immediately establish rules that require investigative authorities including the police and prosecutor to record the entire interrogatory process in video recording (visualization of criminal investigation process). About this issue, Paragraph 19 of the Concluding Observations of the Committee on the International Covenant on Civil and Political Rights (ICCPR) (October 2008) states, "The state party should ... ensure the systematic use of video recording devices during the entire duration of interrogations...with a view to preventing false confession."
360. [ 2 ] The police, the prosecutors' offices and the courts should promptly and substantially guarantee to juvenile offenders and children of '*illegal behavior*,' the right to remain silent, the right to examination of witness, the right to cross-examination, and the right to receive support of official lawyer at no cost (Court-Appointed Counsel and Official Attendant Program), and expressive rules regarding such rights should be established.
361. [ 3 ] Regarding investigation of juvenile cases, special regulations considering the

characteristics of juveniles and in accordance with international standards should be established.

362.[ 4 ]The Government should guarantee the right to defense of juveniles and acknowledge the right to have counsel present at interrogation. A principle of exclusion of evidence should be established, if such evidence was taken through an interrogation that was conducted without allowing counsel present in spite of his/her request. Regarding the right to have counsel present, Paragraph 19 of the Concluding Observations of Committee on the ICCPR (October 2008) states, “The state party should... guarantee the rights of all the suspects to have counsel present during interrogations.”

363.[ 5 ]The Japanese Government should abolish substitute prison (*daiyo kangoku*) (a police cell which is a detention facility under control of the police), and should expressly provide that juveniles may not be placed in a substitute prison (*daiyo kangoku*), as stated in Paragraph 18 of the Concluding Observations of Committee on the ICCPR (October 2008).

364. [ 6 ] The Government should thoroughly educate police officers, prosecutors, judges, and attorneys regarding human rights. It should consider the statement made by the Committee on the ICCPR in the Concluding Observations of October 2008, “The State party should ensure that the application and interpretation of the Covenant form part of professional training for judges, prosecutors and lawyers and that information about the Covenant is disseminated at all levels of the judiciary, including the lower courts.” (Paragraph 7).

## 6 Capital punishment to juveniles

365. In Japan, capital punishment may not be imposed for offenses committed by juveniles below 18 years old. Under the Juvenile Act persons below 20 years old are treated as minors; however, capital punishment may be imposed for offenses committed by such minors aged 18 and older.

In connection with this issue, an 18-year old boy was sentenced to life imprisonment by a district court in a murder case where he killed a mother and a baby in 1999, and a high court supported the sentence, but the Supreme Court overturned the appellate court’s ruling in June 2006, and remanded it. In response with the decision, the Hiroshima High Court sentenced capital punishment to the defendant in April 2008.

In these 40 years, two death penalties were sentenced for offenses committed by minors; one is a case where four persons were murdered between 1968 and 1969 and the other is a case where four persons were murdered in 1992, and both were committed by then 19-year old boys. On the other hand, in the above case, the number of victims murdered was two and the age when he committed the crime was 18, so it causes a concern

that this judgment may loose the standards for application of capital punishment to juveniles.

## 7 Treatment of juveniles

### (1) Problem of the increasing number of juveniles placed in juvenile prisons

**366.** The CRC made a recommendation in the Concluding Observations on the Second Government Report to review the existing possibility for Family Courts to transfer a case against a child of 16 years or older to a criminal court for adults with a view to abolishing this practice (Paragraph 54 (d)). As mentioned in 2 (2) above, the percentage remains high. And the most of juveniles who were referred to a criminal court for adults were sentenced to imprisonment and placed in juvenile prisons.

**367.** The juvenile prisons are facilities to be designed to accommodate, in principle, persons up to 26 years old, and the most of the convicts there are adults aged 20 and over. For example, Kawagoe Juvenile Prison, the biggest juvenile prison in Japan, out of 1777 male convicts placed in the prison, the number of juveniles under 20 years old were only 7 as of the year-end of 2007. The juvenile prisons are facilities to constrain freedom of adults and enforce prison works; so providing care of welfare to children is not their main purpose. Therefore, placement of children to such facilities causes numerous problems.

As such, treatment and disposition in juvenile prisons fails to comply with Rule 26.1 of the Beijing Rules, which requires (for the Government) to provide care, protection, education and vocational skills to assist juveniles in assuming constructive and productive role in society. Individual issues are to be described below.

### (2) Treatment in juvenile prisons

#### [1] Education

**368.** Individual treatment suitable to ages is not provided

The Third Government Report states that juveniles are treated fairly and appropriately in accordance with their specific age (Paragraph 461 (Paragraph 296 of the Second Government Report)).

However, it cannot be said that juvenile prisons provide children elaborate treatment with care responding to their specific age. The minors possible to be placed in juvenile prisons are widely diversified in age from 16 to 19, so treatment suitable for a specific age should be required, but for example, convicts aged 16 and 19 are basically treated in the same manner, and different programs are not provided individually.

**369.** Insufficient vocational training programs

In addition, the Report states that vocational training has been further improved and

expanded in juvenile prisons (Paragraph 462).

This does not apply to juvenile convicts. Only a small number of facilities provide minors with prison works and vocational training separated from adults, but those children could not experience varied works or vocational training from various jobs. At facilities that provide prison works and vocational training to minors together with adults, those minors seemingly can choose programs from those for adults, and in such case, because the juveniles are not separated from adults, the treatment violates Article 49 Paragraph 3 of the Juvenile Act, Article 37(c) of the Convention and Rule 26.3 of the Beijing Rules, which require separation from adults.

**370.** Hours allocated to education is not sufficient.

A personalized treatment plan is developed in accordance with the juvenile's personality, and various treatments has been introduced, for example, individual guidance including a personal interview, diary writing etc., guidance by type of treatment and other forms of guidance with the use of various treatment techniques (Paragraph 464).

But still, there is a big difference in education from those in juvenile training schools.

Juvenile prisons are required to provide prison works and education including vocational training within eight hours a day. While all the time are devoted basically to education at juvenile training schools, at juvenile prisons, education is provided only for the remaining hours after deducting the time for prison works from the eight hours. Further, the education actually taken place at juvenile prisons is a mere vocational training in a limited type of jobs, and academic education, cognitive behavioral therapy or training for daily living has not been conducted. It merely guarantee for opportunities to study by themselves in free time and take tests such as English Proficiency Test or Certificate for Students Achieving the Proficiency Level of Upper Secondary School Graduates, etc.

In this meaning, the actual condition is completely different from the statement in the Initial Government Report, Paragraph 260, which described the same treatment is made in juvenile prisons as those in juvenile training schools.

**371.** Insufficient individual treatment

Since many of juvenile training schools are small in size with capacity of about 100, all the staff tries to pay attention to the children there with care. In addition, a person in charge of a dormitory is responsible for individuals, provides supplemental vocational training, and grasps the subject children's entire life. On the other hand, in case of prisons, big facilities with over 500 inmates are not rare, and officers do not work in cooperation, since duties of officers are defined to the detail for respective officers.

Further, the number of officers of juvenile training schools represents about 30 to 50

percent of children accommodated, but in juvenile prisons that represents only about 20 percent, which is too small. Without sufficient number of officers, sufficient education cannot be provided, and consequently their focus is on management.

Of course the personalized treatment is an improvement, but the contents are different from the individual treatment in juvenile training schools, and apparently individual involvement will be far less.

372. Prison term does not link with a child's necessity for education.

A family court determines the term of detention at a juvenile training schools responding to the seriousness of problems to be corrected and the juvenile training school develops an educational plan for the child for appropriate term. However, the prison term at juvenile prisons do not relate to the need of the child to correct the problem, but it will be determined through judgment in criminal trials based on the act and the seriousness of the result. The child will be treated differently from adults until the child becomes 20- year old after the imprisonment, and after that no special treatment or care would be provided. Besides, educational programs corresponding with the seriousness or ability of each child are not prepared at juvenile prisons.

[2] Communications with the outside

Limited visits and communications

373. Under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, no limit is established in the number of visits and letters. However, in operation of the law, at the first stage of treatment, the communication is limited up to two visits and four letters per month for a juvenile, which is not reasonable. This is not enough to keep relations with the family and friends. Such restriction should not be allowed from the intention of Rule 60 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (hereinafter referred to as 'the UN Rules'), which expresses as follows: "Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defense counsel."

Regarding visits, though the Ordinance on Penal Institution and Treatment of Inmates requires to ensure at least 30 minutes, the duration may be shortened to five minutes at the facility's discretion, and in many cases, in fact, only about ten minutes' visits are allowed. Such operation of the Ordinance is not permissible from the original intent of the Ordinance, and such restriction should be abolished.

Attendance of staff at visits

374. With regard to visits, though the law sets forth only that it may have a designated staff

member attend a visit (Article 112 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees), in application, in general, a staff member attends a visit, even a case of a visit by an attorney. Therefore, it is difficult for juveniles to complain about their situations in prisons to attorneys. Letters are also inspected in principle. In Europe, inmates may be able to meet visitors in a big room without being heard and a case of attendance by a staff member is very limited. Japan should follow this example and guarantee sufficient communications.

#### Hard access to juvenile prisons

375. Since there are only seven juvenile prisons in Japan, many are placed in a prison far from where the family lives. Being accommodated in remote facilities hampers visits substantially.

#### Interpretation expenses are borne by juveniles.

376. In connection with visits and communications in a foreign language, it is specified that it may charge the expenses to the inmate (Article 70 Paragraph 2 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees), which may substantially restrict foreign juvenile convicts' communication with the outside if they are not wealthy. In addition, it is against the intention in Rule 6 of the UN Rules stating, "Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings."

#### [3] Hair styles and clothing

377. Male convicts are compelled to have their hair cropped short except those classified as 1<sup>st</sup> class or those soon to be released. In case of girls, each prison designates some hair styles from which they have to choose. Juveniles, same as adults, have to wear the clothing common in convicts and are not permitted to put their own clothing on, which violates Rules 36 of the UN Rules stating, "To the extent possible juveniles should have the right to use their own clothing."

#### [4] Disciplines

378. Confinement for a period not exceeding thirty days may be imposed on even juveniles (Article 151 Paragraph 1 Item 6 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees), but during the confinement, none of the communications with the outside, even with a family member is not permitted. This is against Rule 67 of the UN Rules which regarding disciplinary proceedings provides for as, "...the restriction or denial of contact with family members should be prohibited for any purpose."

#### [5] Issue of female juvenile convicts



**379.** There is no juvenile prison exclusively for female juveniles, and they are placed in the same prison with adult convicts of 27-year or older and treated in the same way. It means that female juvenile convicts could not get enough education and care suitable for juveniles compared with a case for male convicts. This violates Rule 26 Paragraph 4 of the Beijing Rules which specifies, “Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.”

**(3) Treatment in Juvenile Training Schools**

**[1] Communications with the outside**

**380.** Visit by a family member is restricted, as a rule, to once a month (Paragraph 611, the Initial JFBA Report), which is against the intension set forth in Rule 60 of the UN Rules .

Visits of and correspondence to and from friends and girl/boy friend other than family members are seldom permitted (Paragraph 612, the Initial JFBA Report), and this rule also hampers the juvenile from reintegrating with the society because human relationships are cut off. It also violates Rule 61 of the UN Rules that provides for “Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.”

**[2] Filing complaint**

**381.** Inmates of penal institutions, such as prisons, can use the Complaint Filing Program including application for examination, report of the fact and filing of complaint, regarding treatment and conditions there, but juveniles placed in juvenile training schools cannot use the program, which is a problem.

In compliance with Rule 75 of the UN Rules “Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative,” a complaint filing program should be established for every juvenile regarding all the treatments and conditions.

**382.** In particular, evaluation of performance is an issue directly link to the time of parole and complaint about it should be able to be filed, but still a complaint filing system has not been established (the Initial JFBA Report, Paragraph 614), and it is against Rule 19 of the UN Rules which specified “every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements.”

**383.** The Penal Institutions Visiting Committee is set in penal institutions and juvenile inmates may use the visiting committee program, but juvenile training schools do not have one. In accordance with Rule 72 of the UN Rules stating, “Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function,” a system that inspects facilities should be newly established in juvenile training schools as well.

The lack of the system seems to be the major reason why the violent incident in the Hiroshima Juvenile Training School was not discovered earlier.

#### (4) Probation

##### [1] Educational programs

**384.** The Third Government Report lists programs such as the categorized treatment system, voluntary service in welfare institutions, social activities (Paragraph 466 (the Initial Government Report, Paragraph 261) and Paragraph 467). However, those programs are operated only by private volunteer probation officers without remuneration. Aging of volunteer probation officers has become an issue, and their ability to communicate with juveniles is another issue. Such elaborate guidance as asserted in the Government Report is not working in fact. The government should allocate budget and enhance it systematically.

Further it states the probation officers encourage juveniles attentively (Paragraph 467), but a probation officer handles about 100 – 200 cases in average at the same time; it is extremely limited cases that probation officers can perform flexible treatment in their own way on juveniles.

##### [2] Weak alliance within facilities regarding treatment

**385.** Juvenile training schools and juvenile prisons exchange written information with respective probation offices. But with certain exceptional cases that require communications and conferences with a probation office such as a case of juveniles who have difficulties to find place to reside, what is done by both is merely exchanges of written information. Therefore, the tie with a probation office is not very solid both for juvenile training schools and juvenile prisons. As mentioned above, each of probation officers handles quite a few cases and cannot fully perform what should be done, so the probation officers should be increased.

#### (5) Offenders' rehabilitation

**386.** Not a few juveniles have difficulties to find homes to go back to or guardians to take them in when reentry to the society from a correctional institution. And those juveniles tend

to be late in release from the institution and be treated unfavorably. Those juveniles are often placed in rehabilitation facilities which are meant for adult parolees, and the capacity for juveniles is only about 15 % of the total accommodation, and in the first place it is difficult to be accommodated there. Even if successfully admitted, they may get harmful influence from adult parolees, and if they cannot adjust to the life in the institution, they are forced out of the institution resulting in losing steady ground for living. Such conditions are against Rules 24 and 29 of the Beijing Rules. Accordingly, facilities that accommodate juveniles who were released from correctional institutions and guide to reintegrate into the society shall be increased promptly.

387. In Japan, recently the number of private shelters has increased gradually for juveniles who have no place to go back to, and some institutions admit such juveniles released from correctional facilities. Appropriate budget should be allocated to them. (Rule 29 of the Beijing Rules and Rule 34 of the Riyadh Guideline)

### **C. Children in Situations of Exploitation; Physical and Psychological Recovery and Social Reintegration**

- 1 The Government should establish a system with human resources and facilities to provide professional care for physical and psychological recovery of children who suffered from sexual exploitation, including forensic interview which is an interview method to draw statement from children and to use such as evidence at judicial stages.
- 2 The Government should promptly research the actual conditions of works of children, and take measures to prevent children from commercial exploitation and to improve working conditions so that young people could work with hope.
- 3 In order to prevent drug abuse, the Government should improve and expand official support for recovery and take appropriate measures for children who are involved with drug, not merely for controlling them but from a standpoint of protection.

#### 1 Sexual exploitation and sexual abuse

388. It was epoch making in Japan that the amendment of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography expressly provided that “the purpose of the Act is to protect the rights of children” in Article 1.

According to the police report, they arrested 307 cases related to child pornography in the upper half of 2008, which is the worst record since 2000, and the number of victimized children reached to 165 or increased by 36.4 % for the same term, which is also the worst

record. The victims of child prostitution cases were 439, and that of sexual abuse were 34 out of cases caught by the police for the same term. Responding to the rapid increase of crimes including child prostitution cases using website dating service, “Law About Regulation of the Act which Attracts Children Using Internet Dating Sites” (“the Law on Regulation of Website Dating Sites”) was enforced in November 2003, and a part of the law was amended and enforced in December 2008. After the enforcement of the Act, the number of children victimized by using website dating services was, as the police found, 724 (for the year 2008).

**389.** With regard to the protection and mental care for sexually abused children, it is provided for to take appropriate measures to protect children who were under adverse influence physically and psychologically so as to recover from the influence and to develop with dignity as an individual under the Act on Punishment of Child Prostitution and Child Pornography, and the Child Abuse Prevention Law. In reality, however, sufficient measures have not been taken.

**390.** At a stage of welfare care at Child Guidance Centers and legal stages at the police, prosecutors’ offices and courts, interviews have to be made with sexually abused children in numerous occasions. However it is extremely difficult to get accurate information out of children if they are repeatedly asked because children’s ability is limited to express themselves responding to their ages and also they are easy to be impacted by implication and guided. Information admissible for legal debates cannot be obtained unless a professional who thoroughly recognizes children’s cognitive ability interviews the children without guiding, while paying attention to characteristics of children susceptible to implications and guidance, responding to their growth level. Therefore, the forensic interview was developed and adopted by various countries. There are variations in the forensic interview. For example, one system is to obtain required and correct information by video recording the process of interview of a child, while professionals including child welfare officers, police officers, prosecutors, and psychologists who are trained for interview with children are checking the monitor of the video camera, avoiding secondly damage caused by repeatedly made interviews. In Japan, however, neither judges nor prosecutors understand that special attention shall be paid in hearing from victimized children. It is necessary for sexually abused children to tell the fact in an environment with mental care for their safety and physical and mental recovery, but at present coordination is not made among Child Guidance Centers, the police and prosecutors’ offices. In order to prevent secondary damage of children, the Government should promptly set up the forensic interview system.

## 2 Economic exploitation of children (including child labor)(Article 32)

### (1) Need to grasp actual working conditions

**391.** In Japan economic exploitation of children including child labor is regulated in accordance with the Labor Standards Act and the Act on Control and Improvement of Amusement Business, etc.

Despite of the control above, illegal cases of child labor have been occurred as shown in a case where an employee of outsourcing company was arrested by having a junior high school student register and work. Further, according to questionnaires to young workers conducted by a private organization, about the half of young workers have experienced illegal work conditions such as nonpayment for overtime. In addition, attorneys hear from juvenile delinquents to whom they worked as an attendant in juvenile proceedings about stories of children who engage in entertainment business and dangerous construction works, and children who work less than the statutory minimum wage; and the number is not small. Thus, even in Japan economic exploitation of children, including child labor does exist, against the intention of the Convention. The Government should take additional measures to prevent economic exploitation of children by making research of actual working conditions of child labor.

### (2) Necessity to support young workers

**392.** Due to general trend of increasing mobility of employment such as expansion of non-regular employment, it becomes difficult to train young workers to improve vocational skills under consistent guidance and working conditions. So, those who start working after graduation from junior high school and high school dropouts may be placed in an unfavorable position in the society. Young workers have difficulties to have hope for the future, often feeling that they would only be exploited and be discarded by companies. The Government should provide diversified support including improvement of working conditions and assistance in skill development of young workers so that they could commence working with hope for the future.

## 3 Drug abuse

**393.** As mentioned in the Government Report (Paragraphs 525 and 532), the number of arrests of drug crime offenders among juveniles is decreasing but still remains high. Drug abuse among juveniles is a serious concern.

The Government of Japan formulated the Five-Year Drug Abuse Prevention Strategy and is making efforts in arrest of supply sources, education of juveniles regarding hazardous nature of drugs, early detection of drug abusers and regulation. The efforts by

the Government, however, lack measures from the view point of protection of children who became drug abusers. Additional measures should be taken while taking into account each of the following.

394. First of all, it is necessary to take measures responding to causes that make children use drug. According to questionnaires conducted by JFBA to juvenile delinquent, their guardians and attendants in 2001, the outstanding character of juveniles who committed drug crime was their experience of psychological abuses and neglects by parents, and many insisted, "My parents do not pay attention to me. My parents do not listen to me." At schools, many seem to have experienced corporal punishments by teachers and have difficulties to form good relationship with others in school. On the other hand, only a small number of people pointed out lack of social moral as a cause of drug abuse. Thus assuming that environmental and psychological problems cause drug abuse, education of drug abuse could not be easily attained by merely informing the hazardous nature of drugs or by threatening them through regulation. It is required to take measures from a wider standpoint after research and study on environmental and psychological factors to the detail about how children be dragged into drug abuse.
395. Secondly, some measures are necessary to support children who became drug abusers for more effective recovery by providing easier access to medical and rehabilitation institutions and through more close affiliation among those institutions. For that purpose, additional medical institutions exclusive for that purpose should be established and more subsidies should be extended to private rehabilitation facilities such as DARC (Drug Addiction Rehabilitation Center).
396. Thirdly, responding to drug abuse, treatment of children who became subject to legal measures should be improved. Current condition is quite insufficient, since effective medical programs have not been instituted for drug abusers at juvenile training schools generally. The Government should develop individual and detailed cure programs while paying attention to children's living conditions and psychological problems, in tandem with legal, administrative, medical and welfare institutions.

**D. Children Belonging to a Minority or an Indigenous Group (Article 30)**

<p>1 It is required to recognize the Ainu as indigenous people with unique language, religion and culture and take measures and allocate budget in order to eliminate discrimination and disparities in school education.</p>
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2 The Government should affirmatively guarantee opportunities to learn Ainu language and history and culture of the Ainu, as well as posting such as one of curriculum at school.

## 1 Overview and issues of the Government Report

**397.** With regard to children belonging to ethnic minorities or indigenous groups (Article 30), Paragraph 580 of the Third Government Report refers to Paragraphs 112, 113, 514, 515 and 516 of the Second Government Report, only mentioning awareness raising activities. And when looking at those Paragraphs and Paragraphs 51 and 52 of the Initial Government Report which are further referred by Paragraphs 109 of the Second Government Report, nothing particularly mentioned except general descriptions such that human rights organs under the Ministry of Justice engage in awareness raising activities for the purpose of promotion and penetration of the idea of human rights; it appeals to the public of the importance of understanding and recognition of the Ainu people during the annual Human Right Week; human rights organs under the Ministry of Justice are to take appropriate measures in case of discrimination in which the Ainu people are included; and children are educated at schools to respect human rights free from discrimination and bias.

**398.** In addition, Paragraph 581 of the Third Government Report merely states that there have been slander and defamation cases against the Ainu people among cases handled by a human rights organ under the Ministry of Justice, and that the issue is tackled through counseling on human rights, and investigations and resolutions are made regarding human rights infringement cases, but that is all. Nothing more detailed facts and how they have been handled is described, so it is unknown how such relates to children's rights.

**399.** Similarly, Paragraph 582 of the Third Government Report only refers to Paragraph 50 of the Initial Government Report, which makes general description such as allowances under the Child Welfare Law, the Child Rearing Allowance Act and the Special Child Rearing Allowance Act, etc. are not subject to nationality requirement and educational opportunities are given to all the children, without mentioning current conditions of the Ainu children particularly.

Thus, the Government Reports have stated nothing but general descriptions since its Initial Report, failing to address current situations in which the children belonging to ethnic minorities and indigenous groups experience, and their issues and specific measures for them. Such reports cannot be said as a Government Report, and such failure makes the points extremely difficult to understand.

## 2 Lack of examination responding to the CRC's Concluding Observations

**400.** This fact clearly tells that the Government has not taken any specific measure for children belonging to ethnic minorities and indigenous groups in Japan since it ratified the Convention.

**401.** (1) The Initial Concluding Observations, under Paragraph 13 stated “The Committee is concerned that the general principles of non-discrimination, the best interests of the child and respect for the views of the child are not being fully integrated into the legislative policies and programs relevant to children, in particular in relation to children from vulnerable categories such as those belonging to national and ethnic minorities, especially Ainu,” and in Paragraph 35 stated, “The Committee recommends that discriminatory treatment of minority children, including Korean and Ainu children, be fully investigated and eliminated whenever and wherever it occurs.”

**402.** (2) In the Concluding Observations on the Second Report as well, under Paragraph 24, it states as “The Committee is concerned that ...societal discrimination persists against... Ainu children and other minority groups,” and in Paragraph 25 description is made as, “...The Committee recommends that the State party undertake all necessary proactive measures to combat societal discrimination and ensure access to basic services, in particular, ...for children of the Ainu and other minorities,” further in Paragraph 49 (f) concerned, “Children of minorities have very limited opportunities for education in their own language,” and Paragraph 50 (d) recommended to “expand opportunities for children from minority groups to enjoy their own culture, profess or practice their own religion and use their own language.”

**403.** (3) As both CRC’s Concluding Observations are individual and specific, the measures that have been made by the Government responding to those Observations shall be examined. However, any trace showing that the Government had instituted such measure could not be found.

### 3 Current conditions and future issues

**404.** (1) June 6, 2008, a resolution, “The government shall recognize the Ainu people as indigenous people with unique language, religion and culture” was passed at the plenary sessions of both houses of the Diet.

This resolution means that long-awaited various rights as indigenous people of the Ainu people were recognized as a basic standpoint of the State, driven by the Hokkaido Toyako Summit held in July 2008 where the Ainu reside, in addition to adoption in September 2007 by the U.N. general assembly of the United Nations Declaration on Rights of Indigenous Peoples consisting of 46 articles, including right of self-determination in political, economical, or social terms and right to land and resources forfeited without



consent.

405. (2) Following the adoption, the Government established “Expert Panel on Ainu Policy” on July 1, 2008, and commenced comprehensive and detailed review. The discussion is underway while taking into consideration actual lives of the Ainu people and history of policy on the Ainu.

According to a survey result conducted by the Hokkaido municipal government in 2006 of “Current Living Conditions of the Ainu people,” the population of the Ainu was 23,782 as of 2006, and the number of households was 8,274. The places discrimination occurred were 39.1 % at working places and 21.7 % at schools. As of the enrollment rate of high schools, the national average is 98.3 %, while that of the Ainu people is 93.5 %; as of the enrollment rate of universities, national average is 38.5 %, while that of the Ainu people is 17.4 %, showing a substantial educational gap, which has been widening in recent years. Since 1988 as a part of welfare programs for Utari (Ainu people), the Hokkaido municipal government has expanded scholarship program in order to promote enrollment of Ainu children to high schools and universities, but the educational gap has not been eliminated yet. According to the survey on actual living conditions of the Ainu jointly conducted by Hokkaido University Center for Ainu & Indigenous Studies and Hokkaido Ainu Association, to the question regarding their living, 33.5 % answered “in poverty,” and 40.5 % answered “a little insufficient.” Regarding annual income of households, most households belong to the group from 2 million yen to less than 3 million yen, and the average is 3,558,000 yen, which represents only about 60 % of the average annual household income in Hokkaido.

406. (3) It is necessary to provide opportunities to learn the Ainu language and the history and traditional culture of the Ainu at each class room in order for the Ainu children to enjoy the right “to enjoy their own culture, profess or practice their own religion and use their own language” guaranteed by Article 30 of the Convention. “The Act on the Promotion of Ainu Culture and Dissemination and Enlightenment of Knowledge about Ainu Tradition” was enforced in July 1997, and gradually the history and tradition of the Ainu has been taught at schools in use of hours for ‘Comprehensive Learning’, but still it has not be incorporated into the curriculum guidance program yet. Preparation and distribution of study materials (side readers for elementary and junior high school students) and training of teaching staff are issues to be tackled in the future. Considerable budge will be necessary to carry out these measures, but at present budget is not allocated very sufficiently.

**. Optional Protocol to the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict**

- 1 The status of Youth Cadets of the Self-Defense Forces should be changed from “self-defense officials” to “students” promptly. In addition, details of the education of Youth Cadets of the Self-Defense Forces and their path after graduation should be disclosed.
- 2 The Government should expressly specify the acts prohibited by the Optional Protocol as criminal acts under national laws.
- 3 The Government should enact a law that has universal jurisdiction over material human rights-related violations under international human rights laws, including the issue of child soldiers.
- 4 The Government should take specific measures to prompt birth registration of children of foreign nationalities, especially who have no status to reside.
- 5 In order to promptly find children of foreign nationalities who have fallen victims to armed conflict in their homeland should they seek for protection to Japan, training should be provided to officials of Immigration Bureau, etc. Further, the Government should newly establish a system to protect such children as obligations and at the same time put in place a support system for physical and psychological recovery of children.

1 Introduction

407. The Japanese Government ratified “the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict” (hereinafter referred to as “First Optional Protocol”) on August 2, 2004. The ratification of the First Optional Protocol was recommended in the previous Concluding Observations, and we recognize the Japanese Government has ratified this protocol, though not promptly.

The improvement of and harmonization with domestic laws, however, have remained at the minimum level required for the ratification regarding Youth Cadets of the Self-Defense Forces, and the Government did not expressly specify the acts prohibited under the First Optional Protocol as criminal acts, nor took administrative or budgetary measures necessary to perform the prevention.

408. The Japan Maritime Self-Defense Force and the Japan Air Self-Defense Force suspended enrollment of Youth Cadets of the Self-Defense Forces after the recruitment in the FY 2006 (enrolled in April of FY 2007). Also as for the Japan Ground Self-Defense Force,

amendments to relevant laws were to be made so as to change the status of Youth Cadets of the Self-Defense Forces from “self-defense officials” to simple “students”, but due to delayed preparation, children of 15 years old or older are still recruited as “self-defense officials” in FY 2009.

## 2 Youth Cadets of the Self-Defense Forces

- 409.(1) The Government Report asserts that the education for the Youth Cadets of the Self-Defense Forces complies with the provisions and principles of Articles 28 and 29 of the Convention on the Rights of the Child since they offer all Youth Cadets the opportunity to receive secondary education that is based on the curriculum guidelines, they offer the possibility for them to pursue other careers or to go on to regular universities after completing, they paid sufficient attention to the dignity of Youth Cadets, and so on. (Paragraph 9). In addition, it states that the length of education for Youth Cadets is approximately 1,700 hours per year and the proportion between academic education prescribed in the general high school curriculum guidelines and military training required as the Japan Self-Defense Forces Personnel in the curricula is roughly 1:1 (Paragraph 20).
410. (2) Certainly, Youth Cadets of the Self-Defense Forces are granted as high school diploma upon completion of three-year courses, and they are not obliged to become self-defense officials. According to the website of Youth Technical School to which Youth Cadets of the Self-Defense Forces will be enrolled, however, subjects of student squads mainly consisting of ethical education and combat training represent 835 hours, and technology-related lessons are added by 135 hours in the second year, and 475 hours in the third year. Therefore, in the third year, out of 1,700 hours of the annual school hours, 1,300 hours or more are devoted to education required for self-defense officials.
411. Further, Youth Cadets of the Self-Defense Forces have to follow a very detailed schedule from uprising at six in the morning till lights-out at eleven in the night in order to digest the lessons above. Under such conditions, it is concerned that in fact it will be extremely difficult to choose a different path other than self-defense officials after graduation. The breakdown of the student squad lessons consisting of 835 hours annually is as follows: 112 hours for ethical education; 112 hours for arms training; 56 hours for duties; 119 hours for basic training; 97 hours for combat training; 88 hours for outdoor services; 38 hours for fighting; and 44 hours for others.
412. Therefore, in order to judge as of whether the education conducted in “Youth Technical School” is in compliance with provisions and principles set forth in Articles 28 and 29 of the Convention on the Rights of the Child, the disclosure of the information relevant to

details of the curriculum, rate of dropouts, career path of the students, etc. of the school is essential, and the Japanese Government should disclose such in the Government Report.

413. (3) Advertisements in public-relation magazines of local municipal governments solicit junior high school students to become Youth Cadets of the Self-Defense Forces by using an advertising copy such as ,“Get certificate of high school graduates while earning salary as self-defense officials.” In the midst of rapid deterioration of economic and employment environments, the number of children who want to join the Self-Defense Force due to financial reasons will increase because the system enables children complete high school education while earning wages, which must sound appealing. But as mentioned above, it is doubtful that the curriculum is consistent with the intention of the Convention on the Rights of the Child, and under current situation it is concerned that they may have difficulties to go to a path other than that to self-defense officials. Therefore, it should stop to solicit junior high school students by appealing salary or certificate of high school graduation, and instead it should provide appropriate information so that the children and parents may make appropriate judgment on their future path.

### 3 Prohibition of Recruitment and Use of Children by Armed Groups that are Distinct from the National Armed Forces (Article 4)

414. (1) The Government Report states that legal measures necessary to criminalize recruitment and use of persons under the age of 18 years by armed groups that are distinct from the national armed forces as well as all possible measures to prevent such acts are adopted through the provisions of “the Child Welfare Law” and “the Labor Standards Act” (Paragraph 23).

However, in case of violation of “Article 34 Paragraph 9 of the Child Welfare Law” about which the Government Report considers as “legal measures required,” the statutory penalty is “imprisonment for not more than three years or fine of not more than one million yen” (Article 60 Paragraph 2 of the Child Welfare Law), and if a perpetrator is not negligent about his or her unknown of the child’s age , he/she is immunized (Article 60 Paragraph 4 of the same Act). In case of violation of “Article 62 of the Labor Standards Act” the statutory penalty is merely “imprisonment of not more than six months or fine not more than 300,000 yen” (Article 119 Paragraph 1 of the Labor Standards Act).

Conscripting or enlisting children under the age of fifteen years into the national armed forces or armed groups, or using them to participate actively in hostilities is a grave war crime, and imprisonment for a specified number of years, which may not exceed a maximum of 30 years, or a term of life imprisonment will be charged under the “Rome

Statute of the International Criminal Court” (Article 8 Paragraph 2 (b) xxvi and Paragraph 2 (e) vii, and Article 77 of the Statute). Foreign countries expressly designate these acts as criminal acts under domestic laws and quite a few of them establish legislation admitting universal jurisdiction.

415. The Japanese Government joined to ICC in October 2007, but it did not made amendments to the domestic laws necessary to make the ICC identified crimes as crimes thereunder, but only made minimum improvement of domestic laws relevant to cooperation with and delivery to ICC.

416. The issue of child soldiers is an issue of extremely grave violation of human rights calling for cross-border efforts. As such, the recognition of the Japanese Government seems quite loose since it considers the abovementioned laws serving sufficiently as legal measures and preventive measures for the issue. The Japanese Government should promptly show its posture that it would never permit to immunize grave invasion of human rights by designating the acts that are prohibited by the First Optional Protocol as criminal acts and by establishing legislation admitting universal jurisdiction.

417. (2) The Government Report explains the birth registration system as a program to prevent children from recruitment and use by armed groups and that even children of foreigners are required to be registered on the birth registry (Paragraphs 29 - 33).

418. As pointed out in Paragraph 84, however, there are numerous obstacles that hamper children of foreign nationalities especially children without resident status to reside from the birth registration

Therefore, the Japanese Government should remove these obstacles and take specific measures so that children of foreign nationalities may be registered to the birth registration promptly after the birth.

4 Ensuring the effective implementation and enforcement of the provisions of the Protocol (Article 6)

419. According to the Government Report, “In Japan, children do not join the armed forces, and are prevented from joining other armed” (Paragraph 42).

Children, as being defined under Article 6 Paragraph 3 of the Optional Protocol, to whom State parties shall accord " all appropriate assistance for their physical and psychological recovery and their social reintegration”, are not restricted to those who are recruited or used in hostilities within the State parties' own jurisdiction.

In these years Japan has seen rapid increase in the number of people who apply for

asylum. Many of the applicants are from countries about which use of child soldiers by the state or armed groups is reported. Accordingly, there is a possibility that children who were recruited or used by a state army or armed group or in hostilities are included within the asylum seekers or immigrant workers.

It is essential to find such children at early stage in order to provide effective protection to them, and for such purpose appropriate training should be provided to officials who are in charge of application for asylum and immigration control. In addition, a support system should be established in tandem with specialists in various areas for physical and psychological recovery of children who were involved with armed conflicts.

## **II Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography**

Please refer to V E (Paragraphs 145 - 148), H (Paragraphs 161 - 162), and VIII C 1 (Paragraphs 388 - 390).

**Judgment by the No. 3 Petty Bench, Supreme Court, April 28, 2009  
(Case example concerning corporal punishment)**

**(All the facts)**

- (1) The appellee in the case as of November 2002 was a second grade male child at elementary school of this case and he was 130 cm in height. “A” was working as a teacher in charge of the No.3 class of the third grade at this school, and he was 167cm in height. “A” had never met the appellee before.
- (2) During recess time following completion of the first period on November 26, “A” was squatting down in the corridor on the first floor of the school building and was trying to calm a third grade male child who was throwing a tantrum because he wanted to play with the computer.
- (3) The appellee, who was passing by at the time, threw himself on the back of “A” and started giving him a shoulder massage. When “A” asked the appellee to remove himself, the appellee continued to massage the shoulders of “A.” “A” then turned his upper body around and, using his right hand, pulled free from the appellee’s grasp.
- (4) When several sixth grade female students walked by there, the appellee, with a male classmate, started kicking the girls. “A” stopped them and cautioned them about behaving in that manner.
- (5) After this, as “A” was walking back towards the staff room, the appellee from behind kicked “A” twice in the buttocks and ran away.
- (6) Angered by the appellee’s behaviour, “A” ran after him and caught him. “A” then pressed the appellee against the wall by grabbing the appellee’s clothes about the chest with his right hand and scolded him in a loud voice, saying “Don’t do that again!”(hereinafter referred to as “the conduct”).
- (7) At about 10:00 pm on the same day, the appellee began crying at home and reported to his mother that a teacher with glasses at the school had acted violently towards him.
- (8) The appellee subsequently began to repeatedly show the same symptoms of screaming at night as well as a loss of appetite, and it became difficult for him to go to school. As a result, the appellee underwent treatment at a hospital and, after his symptoms gradually eased, he recovered and resumed going to school and no longer experienced such problems at home.
- (9) During this time, the mother of the appellee, continued to protest very vehemently to the authorities at the school concerning the conduct of “A” towards her son.

**(Decision by the High Court)**

- (1) The act of grabbing a person by the front of the clothing is a violent act often seen in physical combat, and if this were meant to catch the appellee, it would seem that it would have been possible to do so in a gentler manner, such as grabbing him by the hand.
- (2) In light of the age of the appellee and the disparity in height between the appellee and “A,” both of whom had never met each other, the fear felt by the appellee can be presumed to have been quite substantial.

Therefore, in view of the combined above factors, the conduct of “A” is deviated from the scope of what is socially accepted as educational guidance, and comes under corporal punishment, which is completely prohibited in the proviso of Article 11 of the School Education Act, and is therefore illegal.

**(Decision by the Supreme Court)**

According to the above facts, the appellee threw himself over the back of “A” as “A” was trying to calm another child, who was in the midst of a tantrum, and proceeded to give a shoulder massage to “A.” After acting mischievously with another male student by kicking several female students who were walking by, the appellee also proceeded to kick twice about the buttocks of “A,” who had earlier cautioned the appellee about his behaviour towards the female students as he made his way back to the staff room. The appellee then ran away. “A” allegedly then pursued the appellee, caught him, pressed him against the wall by grabbing his clothes about the chest, and scolded him in a loud voice by saying “Don’t do that again!” (“the conduct”). Therefore, although this conduct by “A” was clearly a use of tangible force on the body of a child, it was intended to provide guidance to the appellee not to repeat behaviour such as kicking other people, etc. It is obvious that this action was not intended to inflict physical pain on the appellee as a punishment. “A” did conduct himself in this way out of personal anger at becoming the target of the mischievous behavior of the appellee and, despite a slight lack of gentleness in his conduct, on the basis of the objective, mode and time carried out, such conduct does not deviate from the scope of educational guidance permitted to a teacher to exercise on a student and, therefore, should be considered as not coming under corporal punishment in the proviso of Article 11 of the School Education Act. Therefore no illegal act in the conduct of A is deemed to have taken place.



Document 2 for Submission to the CRC

**Number of Suicides Committed by Minors**

Government agency from which data was collected	Ministry of Education, Culture, Sports, Science and Technology		National Police Agency
	Ministry of Health, Labour and Welfare		
Subject	Students of public elementary, junior high and high schools		Less than 20 years of age
Segment	Overall	Reason (single main reason)	Total
2000	147	Family 18 School 16 Illness 10 Problems with the opposite sex 9 Psychiatric disorder 10 Other 81	547
2001	134	Family 17 School 8 Illness 5 Problems with the opposite sex 4 Psychiatric disorder 11 Other 79	542
2002	123	Family 15 School 8 Illness 5 Problems with the opposite sex 6 Psychiatric disorder 11 Other 73	447
2003	137	Undisclosed	568
			Total
		Order of suicide as the cause of death by age (at 5- year intervals)	
		No. 1 between the age of 15 and 19 No. 3 between the age of 10 and 14	598
		No. 2 between the age of 15 and 19 No. 4 between the age of 10 and 14	586
		No. 2 between the age of 15 and 19 No. 5 between the age of 10 and 14	502
		No. 2 between the age of 15 and 19	613

					No. 3 between the age of 10 and 14	
2004	125	Family 11 Illness 3 Psychiatric disorder 6	School 12 Problems with the opposite sex 3 Other 78	549	No. 2 between the age of 15 and 19 No. 3 between the age of 10 and 14	589
2005	103	Family 11 Illness 6 Psychiatric disorder 10	School 10 Problems with the opposite sex 3 Other 60	556	No. 2 between the age of 15 and 19 Below No. 5 between the age of 10 and 14	608
2006	Undisclosed			577	No. 2 between the age of 15 and 19 No. 3 between the age of 10 and 14	623
2007	Undisclosed			Undisclosed	Undisclosed	548

The legal age in Japan is 20 years old.

Numerical figures of the Ministry of Education, Culture, Sports, Science and Technology are compiled from annual figures from “Survey on various issues related to student guidance including problem behaviors, etc.” Subject years are from April of that year until March of the next year. Subject years may differ with other government agencies.

Numerical figures of the Ministry of Health, Labour and Welfare were compiled from the summary of Vital Statistics of Japan (actual) for the respective years. The order of cause of death is the order in that age group of the cause of death selected by the Ministry of Health, Labour and Welfare.

Numerical figures of the National Police Agency were compiled in June 2008 from the summary documents on suicides during 2007 prepared by the Community Police Affairs Division, Community Safety Bureau, National Police Agency.

**Trends in the Incidence of AIDS  
(by year, less than 19 years of age)**

Year	No. of infected persons	Less than 19 years of age	No. of people who contracted the disease	Less than 19 years of age
1985	0	0	6	0
1986	0	0	5	0
1987	55	0	14	0
1988	23	1	14	0
1989	80	2	21	0
1990	66	5	31	1
1991	200	23	38	1
1992	442	39	51	0
1993	277	2	86	4
1994	298	10	136	2
1995	277	9	169	1
1996	376	14	234	1
1997	397	5	250	2
1998	422	7	231	1
1999	530	7	301	2
2000	462	7	329	2
2001	621	8	332	1
2002	614	10	308	0
2003	970	8	336	2
2004	780	12	385	1
2005	832	11	367	1
2006	952	19	406	0
2007	1082	14	418	0
<b>Total</b>	<b>9756</b>	<b>213</b>	<b>4468</b>	<b>22</b>

Adopted from the 2007 Annual Report on Trends in the Incidence of AIDS prepared by the Committee on AIDS Trends, Ministry of Health, Labour and Welfare.

### **Case Example of Human-Rights Relief at the Nanao Special Support School reported by the Bar Association**

Based on a decision that sex education provided by teachers at the Tokyo Metropolitan Nanao Special Support School had been inadequate, the Tokyo Metropolitan Board of Education forcibly intervened in the school's affairs from July to September 2004 by implementing disciplinary measures against teaching staff which included pay cuts, reprimands, written admonitions, and strong warnings.

In response to this action, the Tokyo Bar Association delivered the following cautionary notice to the Tokyo Metropolitan Board of Education on January 24, 2005:

This kind of intervention on the part of the Tokyo Metropolitan Board of Education is a violation of the right of the children to learn, and the freedom to provide education by the teachers who guarantee the rights of the children to learn. Therefore, the Tokyo Bar Association advises the said board of education to: (1) Revoke illegal disciplinary measures against relevant staff, (2) return teaching materials required for sex education in the classroom and reinstate the previously existing educational content and methods, and (3) refrain from intervening in sex education which is conducted on the basis of the consensus of the teaching staff and parents.

**Report on “Research Concerning the Securing and Training of Young Pediatric and Obstetric Doctors”  
(Announced on June 28, 2005) (Abstract)**

In attempts to resolve the problem of the shortage of pediatric and obstetric doctors, a study entitled “Research Concerning the Securing and Training of Young Pediatric and Obstetric Doctors” was conducted by the MHLW Grants System (Integrated Research Project on the Child and Family) for three years through FY 2002 – 04 (Chief researcher: Shigehiko Kamoshita, Director, Social Welfare Corporation, San-Ikukai Hospital). The report was prepared and the outline was released as follows:

Gist of research results

1. Current state

(1) Pediatric doctors

- 1) The problem in the system for providing pediatric medical treatment lies not in the insufficient number of doctors but in the maldistribution and lack of clarity in the division of roles of doctors. The number of pediatric doctors for a population of 100,000 children under the age of 15 in Japan is 79.9. In comparison with 56.5 doctors for the same population of children under the age of 18 in the United States, Japan’s ratio is in no way inadequate. On the other hand, the number of pediatric doctors per medical facility at 2.5 is low, and centralizing the assignment of doctors in major central hospitals is necessary.
- 2) The number of pediatric doctors in the last 10 years has not decreased, but has actually increased slightly. However, the actual workforce has clearly decreased. The most notable reason for this is the turnover in female doctors, who currently account for 50% of all pediatric doctors, due to marriage, childbirth, and child rearing. Therefore, developing an environment where female doctors can continuously engage in pediatric clinical care throughout their life is an urgent issue.
- 3) There is an imbalance in medical treatment needs and medical treatment services during public holidays and nighttime for pediatric medical treatment. The working hours of physicians employed in hospitals and university hospitals significantly surpass statutory working hours, and the reasons for the heavy workload of doctors are overtime and emergency work at night. In medical facilities where the balance of payments of the hospital for pediatric departments is calculated, about 40% of pediatric departments were found to be in deficit. Therefore, a review of the pediatric medical treatment system by regional medical service area and radical measures for reducing deficits are necessary.

(2) Obstetric doctors

- 1) The number of obstetric doctors joining departments has clearly decreased in the last decade. Already over 40% of obstetric doctors are 60 years of age or older and the number of obstetric doctors in the work force is set to rapidly decrease in the future. Furthermore, the number of female doctors is rapidly rising and already account for over 50% of young doctors. Therefore, as with pediatric departments in hospitals, providing support to enable female doctors to continue working throughout life is an urgent issue.
- 2) Reasons indicated as contributing to the decrease in the number of the doctors wanting to become obstetricians include the view among doctors that the presence of a doctor is not necessary during the delivery of a child as well as the low remuneration for the amount of work and responsibilities involved. In addition to these reasons is the considerable number of perinatal lawsuits brought against obstetricians (over 30% of all medical lawsuits are related to obstetrics and gynecology departments). Furthermore, the duties of obstetric treatment, the irregular hours for the provision of medical services, and the large number of medical lawsuits are causes of significant stress among many obstetric and gynecologic doctors.
- 3) Every year, around 300 doctors become obstetricians and gynecologists. However, medical treatment is becoming increasingly specialized and in addition to the area of obstetrics itself, many specialist areas are developing such as specialists in infertility, general gynecologists, and specialists in gynecological cancer. Consequently, the absolute number of obstetric specialist doctors dedicated to childbirth is decreasing, and the centralization of doctors in local central hospitals for obstetric medical services is necessary.

Document 6 for Submission to the CRC

<b>NAASH: National Agency for the Advancement of Sports and Health</b>		
Address	Site Map	Inquiries
Disaster Mutual Aid Benefits		NAASH Top Page

Top Page > Statistics Information > Conditions of the occurrences of disasters and benefits by the types of schools (2007)

**Incidence of Disasters and Benefits by Types of Schools (FY2007)  
(Amounts have been rounded down to the nearest thousand)**

Type of School	Medical expenses (injuries, illness)				Special payment for disabilities		Special payment for death		Total	
	No. of occurrences (cases)	Rate of occurrence (%)	No. of benefits paid (cases)	Benefit amount (thousand yen)	Benefit rate (%)	No. of benefits paid (cases)	Benefit amount (thousand yen)	No. of benefits paid (cases)	Benefit amount (thousand yen)	Benefit amount (thousand yen)
Elementary school	483,848	6.83	753,610	4,259,219	10.64	90	201,720	7	154,000	4,614,939
Junior high school	420,895	11.71	768,014	5,398,439	21.37	124	357,260	25	616,000	6,371,699
Full-time	234,163	7.02	533,367	5,620,458	15.98	250	1,058,455	35	777,000	7,455,913
Part-time	2,224	2.11	4,533	45,837	4.30	10	32,140	0	0	77,977
Correspondence	380	0.31	1,073	14,654	0.88	2	8,300	1	14,000	36,954
Technical colleges	2,753	4.66	6,077	71,627	10.28	3	2,460	2	42,000	116,087
Kindergartens	27,883	2.00	42,108	224,758	3.02	7	14,960	1	14,000	253,718
Day-care centers	40,711	2.24	59,024	279,265	3.24	11	17,980	4	56,000	353,245
Total	1,212,857	6.93	2,167,806	15,914,261	12.38	497	1,693,275	75	1,673,000	19,280,536

Note:

- In addition to the above items, 5,662,000 yen in benefits was paid for costs for visiting hospitals in remote areas (2,802 cases), 8,500,000 yen in benefits was paid for expenses for floral offerings (50 cases), and the total amount of the benefits including these costs was 191,294,698,000 yen.

2. The number of incidents means the number of disasters for which benefits for medical expenses were paid for the first time during the relevant fiscal year.
3. The rate of occurrence =  $\text{No. of incidences of injuries and illness} \div (\text{No. of subscribers} - \text{No. of students requiring protection}) \times 100$  (%)
4. The rate of benefits =  $\text{No. of cases where benefits were paid for the medical expenses} \div (\text{No. of subscribers} - \text{No. of students requiring protections}) \times 100$  (%)
5. Because amounts are rounded down to the nearest 1,000 yen, there are cases where the sums of figures do not match the totals shown.

Source: National Agency for the Advancement of Sports and Health website



**Notification Concerning the “Convention on the Rights of the Child”  
(Notification of the Administrative Vice Minister of Education, May 20, 1994)**

The Convention on the Rights of the Child (hereinafter referred to as “Convention”) was promulgated as Convention No. 2 of May 16, 1994 and will come into force on May 22, 1994. An outline and the complete text of the Convention are as attached.

In view of the fact that many of the world’s children (in the application of the Convention, “children” is defined as all persons under the age of 18) live in difficult circumstances including poverty and hunger, the purpose of this Convention is to promote respect for and protection of the human rights of children from an international perspective.

The Convention enshrines the same principles as Japan’s Constitution, the Fundamental Law of Education (Law No.25, March 31, 1947), the International Covenant on Economic, Social and Cultural Rights (Covenant No. 6, August 4, 1979) and the International Covenant on Civil and Political Rights (Covenant No. 7, August 4, 1979), both of which Japan is a member state to, in upholding respect for basic human rights. Therefore, special revision to Japan’s laws and ordinances related to education will not be required as a result of the Convention coming into force. However, from the outset the need to give adequate consideration to the human rights of children and to provide education which values each and every child is extremely important. With this in mind, it is vital that further efforts are made to improve education as the Convention comes into force and it is essential that this is widely known and understood not only by relevant persons in primary and secondary education, but society as a whole.

The main points of concern in relation to education are given below. You are asked to pay careful attention to these.

The Ministry requests that the members of prefectural boards of education promote thoroughness in carrying out the purport of the Convention in the respective boards of education in cities and towns under their jurisdiction, that the governors of prefectures promote the same in private schools and school corporations, etc. under their jurisdiction, and, likewise, that the chancellors of national universities promote the same in schools and institutions under their jurisdiction.

1. Greater effort is needed in promoting a spirit of respect for basic human rights broadly to the Japanese people through school education and social education and for deepening the understanding of people regarding the obligation to respect children as individuals with their own characters and personalities in light of the principles of the Convention.

In line with the aims of the Convention, and in the spirit of the Constitution and the Fundamental Law of Education, respect for fundamental human rights must be strongly promoted in schools (here “schools” refers to elementary, junior and

senior high school, vocational schools, schools for the blind, schools for the deaf, schools for children with disabilities and kindergartens; the same applies hereafter) through the entire spectrum of educational activities.

Furthermore, it is extremely important for schools to instill in children an accurate understanding of both their rights and obligations from the outset, and in the spirit of the Constitution and the Fundamental Law of Education, guidance should be provided across the entire spectrum of educational activities.

2. Bullying and school violence are major problems with serious implications for the physical and mental well-being of children. The principles of the Convention must be observed through determined efforts to deal with these problems through the close cooperation of schools, families and local communities. With an adequate awareness of the problems of refusing to attend school and dropping out of high school by some children, we must also make further efforts to deepen our understanding of young students as individuals and to respect their individuality so that we may provide them with appropriate guidance.
3. Corporal punishment is strictly prohibited by Article 11 of the School Education Act. Increased efforts must be made to eliminate corporal punishment.
4. Articles 12 through 16 of the Convention provide for the rights of the child with respect to the right to express opinions and the right to freedom of expression. However, schools in Japan may provide guidance and instruction for school children within a range that is reasonable and necessary for achieving educational goals and establish school rules. School rules are standards of a certain scope aimed at the management of sound school life and promotion of further growth and development of students and therefore should be decided at the responsibility and discretion of the school.  
School rules relate to the daily education and guidance of children, and ongoing consideration should be given to these to ensure that they are appropriate in terms of the actual circumstances of school children, their parents' wishes, local conditions and other factors.
5. Regarding the right to express opinions, Article 12-1 of the Convention states that as a general principle the opinions of young students must be given appropriate consideration according to their age and level of maturity but the article does not state that this principle must be adhered to in all situations. Schools must adequately ascertain the state of young students in terms of their stage of development and bear in mind the need to provide more appropriate and specific education and guidance.
6. Disciplinary action in schools such as admonition, suspension and expulsion must be carefully and appropriately administered with genuine educational considerations. At such times, the individual circumstances of students should be taken into consideration by providing, for example, the opportunity to listen to the circumstances and views of the students concerned. Furthermore, disciplinary

measures taken must not be mere sanctions but should have real educational outcomes.

Furthermore, when measures for prohibiting attendance under Article 26 of the School Education Act are taken, arrangements to provide for the opportunity to listen to the views of the students and their parents should be made.

7. Education in schools concerning the national flag and national anthem is intended to develop an understanding in young students of the importance of their country's national flag and national anthem and to nurture feelings and an attitude of respect for these. Likewise, such education is intended to develop in students an attitude of equal respect for the national flags and national anthems of all the other countries. This education is intended to give children the fundamental and basic information required as citizens and is not intended to restrict children's freedom of thought or conscience. Efforts to improve education in this area should continue.
8. When education and guidance regarding the Convention on the Rights of the Child are being provided, the word *kodomo* (child) may be used instead of *jido* (child).

### **Case Example of Human Rights Relief at Tokorozawa High School**

The Japan Federation of Bars Association on January 26, 2001 made the following request to the principal of Tokorozawa High School, a prefectural school of Saitama Prefecture, and the Saitama Prefecture Board of Education:

At the time of the introduction of the Japanese national flag and national anthem in the enrollment ceremony for the 1997 academic year, the graduation ceremony for the same academic year, and the enrollment ceremony for the 1998 academic year, Tokorozawa High School, a prefectural school of Saitama Prefecture failed to fulfill its obligations to students by denying them the opportunity to express their opinions and by failing to provide a sincere response to their opinions and an accompanying explanation. Despite the students' undertaking procedures for student council decisions approved of by staff meetings, the school authorities failed to respect their efforts entirely, and made neither efforts in consensus-building with the students or in gaining their understanding by adequately engaging in discussion with them. These are actions in violation of the right of students to express opinions and the right of the petitioners to participate in school activities, rights which are guaranteed to them under Article 12 of the Convention on the Rights of the Child.

Furthermore, the letter bearing the names of the principal and the Board of Education of Saitama Prefecture, which was sent to students enrolling in the 1998 academic year and their parents and which conveyed misleading information that those who failed to attend the enrollment ceremony would not be allowed to enroll, psychologically coerces new students to attend the enrollment ceremony and contravenes Article 9 of the Constitution and Article 14-1 of the Convention on the Rights of the Child and violates the freedom of thought and freedom of conscience of new students who, in support of the student body activities of the high school or in opposition to the national flag and national anthem, were planning to refuse to attend the enrollment ceremonies due to their particular views.

The JFBA demands that the principal, when holding school events in the future such as enrollment and graduation ceremonies, provide students and the student council with the opportunity to express their opinions and to participate as important participating members in decision-making processes. The JFBA further demands that when the opinions of students and/or the student council are at variance with the views of the principal, the principal make efforts to engage in sincere discussion with students and the student council and give adequate explanations and engage in adequate consultation in efforts to gain the understanding of the students and the student council. In addition, the JFBA demands that acts such as the sending of letters that contradict the facts and psychologically coerce new students into attendance at enrollment ceremonies never be repeated.

The JFBA further demands that the Saitama Prefecture Board of Education never again commit an act such as the sending of letters that contradict the facts and coerce new students psychologically into attendance at enrollment ceremonies never be repeated.

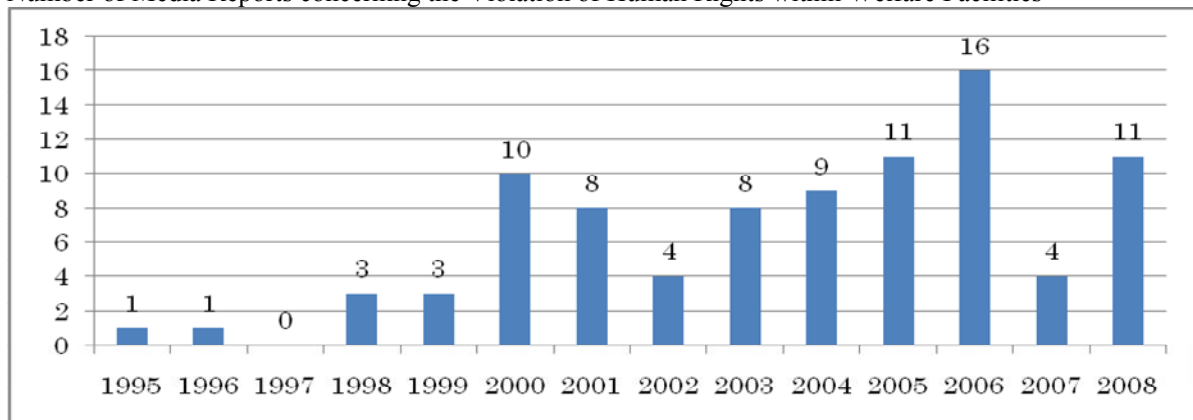
**2008 Japan Society for Prevention of Child Abuse and Neglect  
14th Academic Conference in Hiroshima  
Association for Intolerance of Child Abuse in Institutions**

☆ **In 14 years, there were 89 cases of violation of human rights within welfare facilities.**

The number of cases of violations of human rights within welfare facilities known to the society alone as cases reported by the media during the 14 years from 1995 to 2008 was 89. As awareness of the rights of the child increases, the number of cases reported by the media is also said to be increasing.

Excluding facilities which were reported more than once, a total of 82 facilities, or 15.5% of 560 child welfare facilities in Japan, were implicated as offending facilities in media reports for violating the rights of children and for misconduct. It may be assumed that this number of media reports is basically the “tip of the iceberg.”

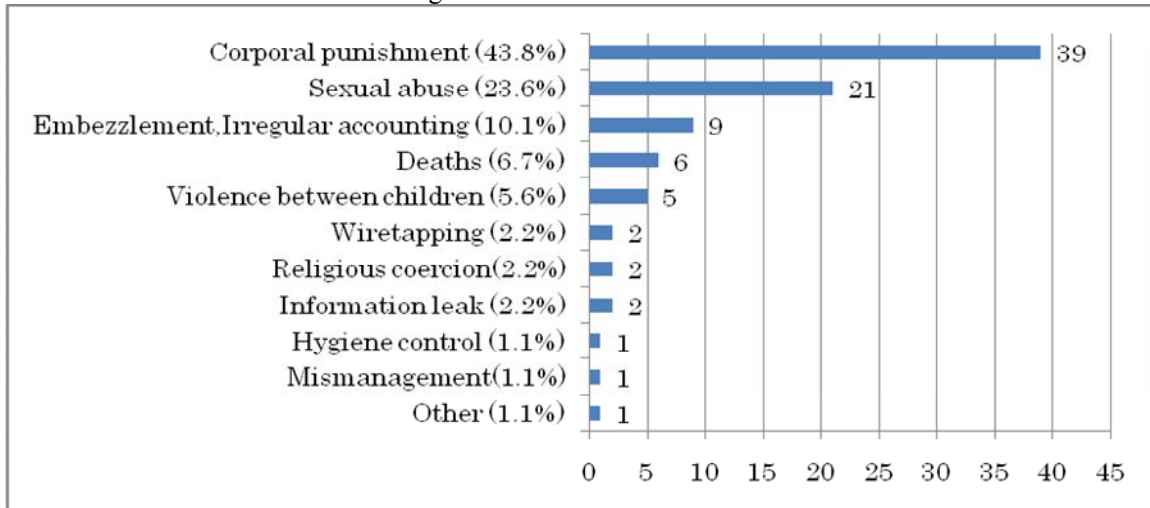
Number of Media Reports concerning the Violation of Human Rights within Welfare Facilities



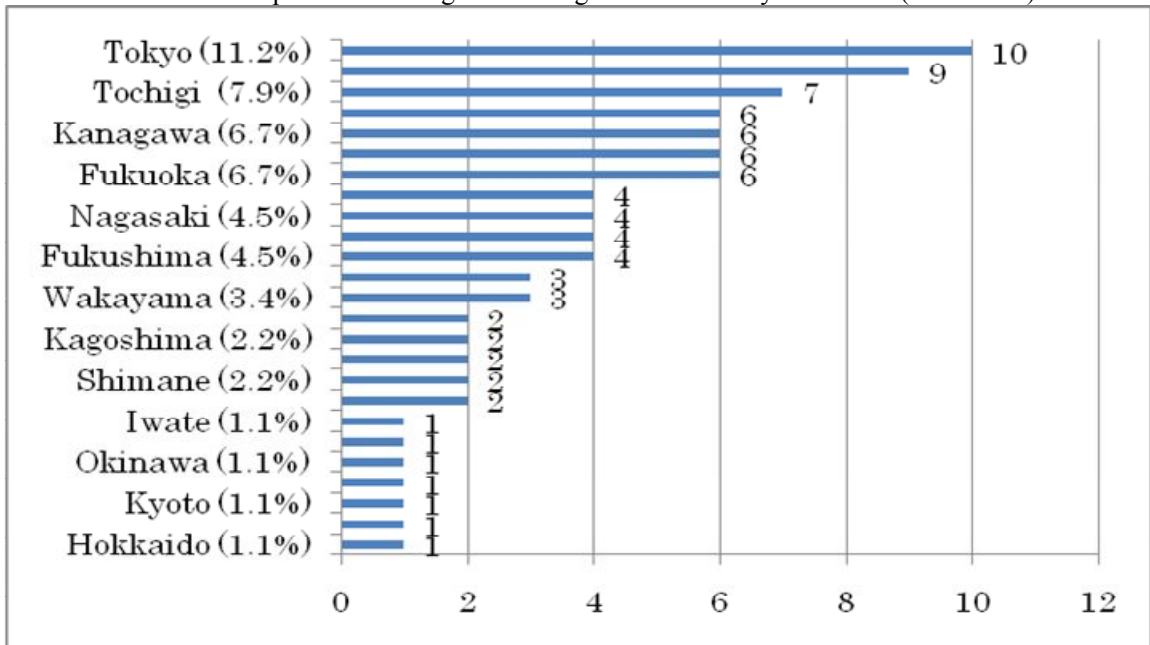
☆ **Corporal punishment comprised 43% and sexual abuse 24% of violations of human rights in welfare facilities.**

According to media reports, violations of human rights within welfare facilities were comprised of: 39 cases of corporal punishment (43.3%), followed by 21 cases of sexual abuse (23.6%). These two offenses combined, at 66.9%, account for slightly less than 70% of all violations. During the seven years from 1995 to 2001, prior to the rise in consultations on abuse, 17 out of 26 reported cases (65.4%) were related to corporal punishment. However, during the seven years from 2002 to 2008 when consultations on abuse increased, 22 out of 63 cases (34.9%) were related to corporal punishment. In other words, although the number of incidents increased by 5 cases, the ratio of media reports concerning corporal punishment decreased.

Breakdown of Violations of Human Rights within Welfare Facilities



Breakdown of Media Reports concerning Human Rights Violations by Prefecture (1995-2008)



Sexual abuse by staff in welfare facilities increased 2.5-fold from six to 15 cases. Sexual abuse cases accounted for six out of 26 cases of violation of human rights, or 23.1% of those, from 1995 to 2001, and 15 out of 63 cases, or 23.8% of those, from 2002 to 2008, remaining at roughly the same level.

They often say, “It is difficult to adequately cope with the needs of abused children when more than 60% of all children coming into welfare facilities are victims of abuse.” It seems that the increasing number of abused children coming into welfare facilities is being used as an underlying cause to explain the increase in abuse in institutions. However, the increased awareness of the rights of the child seems to have resulted in a decrease in the number of cases of

corporal punishment. According to standards for foster parents, persons convicted of violations of the Child Pornography Law are not allowed to become foster parents. In welfare facilities too, systems for eliminating staff with tendencies toward violence and pedophilia are necessary.

Violation	1995-2001	2002-2008	Total
Corporal punishment (43.8%)	17	22	39
Sexual abuse (23.6%)	6	15	21
Embezzlement, irregular accounting (10.1%)	1	8	9
Deaths (6.7%)	1	5	6
Violence between children (5.6%)	1	4	5
Wiretapping (2.2%)	0	2	2
Religious coercion (2.2%)	0	2	2
Information leak (2.2%)	0	2	2
Hygiene control (1.1%)	0	1	1
Mismanagement (1.1%)	0	1	1
Other (1.1%)	0	1	1
Total	26	63	89

December 14, 2008

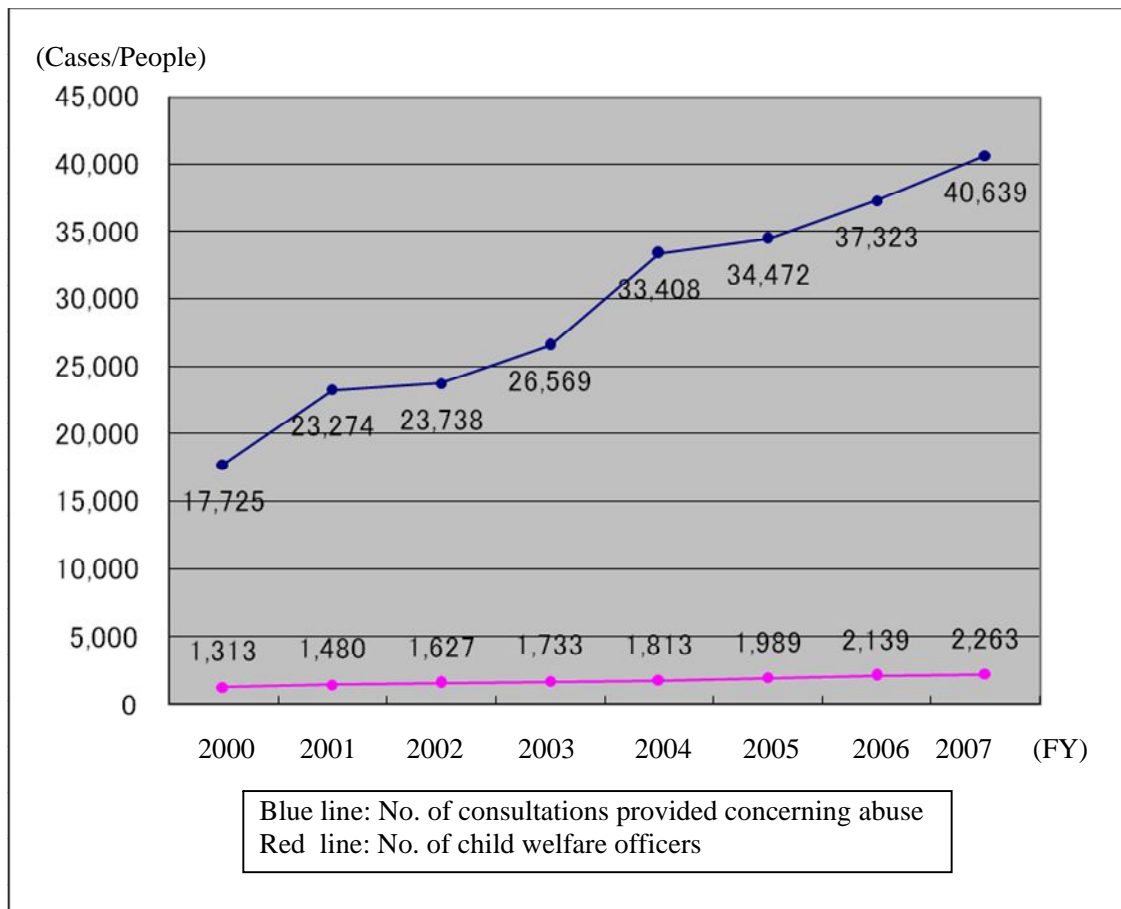
Association for Intolerance of Child Abuse in Institutions (E-mail: STOP@yogo-shisetsu.info)

Source: Association for Intolerance of Child Abuse in Institutions  
 “STOP abuse within the foster homes”



Document 10 for Submission to the CRC

	No. of Cases of Consultation concerning Abuse Provided	No. of Child Welfare Officers
2000	17,725	1,313
2001	23,274	1,480
2002	23,738	1,627
2003	26,569	1,733
2004	33,408	1,813
2005	34,472	1,989
2006	37,323	2,139
2007	40,639	2,263



## Case examples concerning children with disabilities

- (1) February 2004: A male teacher of a public junior high school in Hachioji in Tokyo placed a male student with disabilities under restraint using the toy handcuffs.
- (2) June 2004: Three teachers in charge of individual support classes at a city-run elementary school in Yokohama city repeatedly inflicted corporal punishment and abused a total of four children (three male and female students who were in the first and second grades and a male student in the 6th grade) over a period of two years.

A male teacher, between FY2002 and FY2003, was alleged to have dropped a tool box from the desk intentionally to the floor and made a male student in the first grade at the time get on his hands and knees to pick up the fallen articles. He kept him in that position for about one hour, claiming that he was teaching the boy how to clean up. On another occasion, the same teacher supposedly kept a student inside a cardboard box for 10 to 20 minutes on the pretense of calming him down from a state of anxiety. On another occasion he supposedly kicked the buttocks of a student who was on his knees wiping the floor on the pretext of correcting the student's bad posture for wiping the floor. During FY2003, two other female teachers, as if following the example of the male teacher, also repeated the abusive act of placing students in cardboard boxes.
- (3) October 2004: A teacher in charge of individual support class at a city-run elementary school in Yokohama between FY2001 and FY2003 hit the buttocks of five students and made them stand in the corridor for a long period of time for punishment. This teacher made the students to remove their underwear when hitting them, and the duration of student standing in the corridor sometimes reached over three hours. Although this teacher admitted giving corporal punishments, he also made excuses by saying that the punishment by hitting was effective in calming down the students.
- (4) October 2004: A teacher at a municipal junior high school in Yokohama who touched the breast and lower body of a female student (13 years old at the time) who has intellectual disability made an apology to the parents of the student after the incident by saying he was sorry. However, during the investigation of the incident, he completely denied the incident. In the court, the teacher claimed that students with disabilities needed physical contact and that the female student in question was a liar. The defense lawyer of the teacher also claimed that the statement made by the female student was forced upon her by her parents and thus had no credibility. However, the judge pointed out that statements made by the fellow teachers who witnessed the indecent acts, and statements made by the female student were precise and detailed. The judge also mentioned that the

student had stated the defendant had committed other acts of indecency as well, and the habitual nature of acts committed by the defendant was recognized.

- (5) In November 2004 at a municipal elementary school in Koganei, Tokyo, a male student (8 years old) with autism who was in a class for children with disabilities was locked inside the storage room of the gymnasium on the second floor of the school building and suffered serious injuries to his jaw, which took about one month to heal completely. The Koganei Metropolitan Police Station suspected that the panic-stricken male student fell from the window to the ground floor about five meters below, after the male teacher (27 years old) shut him inside the storage room. Police interviewed the male teacher on suspicion of professional negligence resulting in bodily injury.
- (6) In a court case in which a young girl (16 years old) with intellectual disabilities from Urayasu, Chiba Prefecture claimed to have suffered sexual abuse from a former male teacher (49 years old) who had been one of her class teachers in elementary school, the family sued the prefecture, the city of Urayasu, and the teacher for damages of about 20 million yen. In December 2008 the Chiba District Court acknowledged the claims of the abusive acts in part and ordered Chiba Prefecture and Urayasu, which were responsible for the management of the school in question, to pay a total of 600,000 yen in damages.

Document 12 for Submission to the CRC

**Main precedents concerning the decommissioning of day care centers and their privatization**

Court	Date of Judgement	Details of Claims	Illegitimacy of the closure of day care center	Rationale	Conclusion	Comments
Osaka District Court	October 27, 2005	A. Revocation of the action to decommission the day care center B. Claim for damages	Legitimate	1. There is a rational reason for disposition by decommissioning 2. Day care services are being continued at a new day care center 3. Procedures for maintaining day care services of a certain standard had been planned	All claims dismissed	
Osaka High Court	January 20, 2006	A. Revocation of the action to decommission the day care center B. Claim for damages	Legitimate	1. There is no contract for the use of the day care center (public statutory agreement) between the municipality and the parents (no changes following revision of Article 24 of the Child Welfare Act), and entry to the day care center is entirely by administrative action 2. There was rationality in the objective of the	All claims dismissed	

Osaka High Court	April 20, 2006	<p>A. Revocation of the action to decommission the day care center</p> <p>B. Claim for damages</p>	Legitimate	<p>decommissioning and privatization of the day care center, which was to achieve fiscal effects, eliminate waiting lists, and provide extended day care by expanding the services.</p> <p>3. Placing considerable burden on certain children or parents and thereby making it effectively impossible to receive day care services at a day care center overstep the discretion of the local public authority or its head. However, in this case the children were able to receive day care services of the same standard of the day care center in this case, and therefore, the above rationale does not apply.</p> <p>With the decommissioning of the day care center to be entrusted to the discretion of the appellee (city)</p> <p>1. The objective of the decommissioning (cost reduction) is</p>	Acknowledged the nonfulfillment of obligations (breach of ancillary obligations), and accepted the claim in 2	Because a contract had been concluded between the appellant and the appellee (city) regarding the use of the day care center, and in view of its purpose, it was decided that a handover period of only three months was a
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Yokohama District Court	May 22, 2006	A. Revocation of the action to decommission the day care center B. Claim for damages	Illegal	<p>justifiable</p> <p>2. There are commensurate cost reduction effects (through the decommissioning)</p> <p>It is legitimate in terms of procedures (explanation and hearing procedures are not required)</p> <p>1. Privatization itself is not directly illegal</p> <p>2. However, there is a need to respect the interests of the children and the parents to receive day care services at a specific day care center</p> <p>3. When agreement (by the children/the parents) cannot be reached, there is a need for a rational reason to justify violation of their interests as well as alternative</p>	(in part)	violation of nonfulfillment of obligations by the appellee.
				<p>The decision merely declared A as illegal, and (by circumstantial judgment) the dismissed the claim. It did accept B (in part)</p>	<p>Because the building and the grounds of the day care center had already been sold, and the staff were already working in a new workplace, the environment of the previous day care service could not be restored. On the grounds that the revocation of the establishment of an ordinance would cause unnecessary confusion, the decision stopped at declaring the action illegal.</p>	

Tokyo High Court	January 29, 2009	Same as above (appellate court decision of the above decision by the Yokohama District Court)	Legitimate	Disposition of the case, which proceeded under conditions where neither constructive discussion nor recovery of a relationship of trust could be expected, was illegal. 1. The establishment of the revised ordinance in this case does not apply to an administrative disposition, which is the subject of the protest action 2. Details of the revised ordinance in this case cannot be said to be a clear violation of the interests of the appellees	Revocation of the original decision of the action being illegal	The above decision by the Yokohama District Court was overturned and the establishment of an ordinance to decommission the day care center was not deemed to be illegal.
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Osaka High Court	March 27, 2007	Suspension of the establishment of the revised ordinance		<p>It is difficult to determine as fact that the appellant, as the administrative agency, intends to establish the revised ordinance proposal as an ordinance, and therefore it is deemed that there is a strong possibility the claim will be dismissed on the grounds that the subject for suspension itself does not exist.</p>	<p>Revocation of the original decision allowing suspension</p>	<p>The withdrawal of the revised ordinance proposal itself, which was the subject of the suspension, precluded establishment of the ordinance. Therefore, it was determined that there was a strong possibility the claim would be dismissed on the grounds that the subject of the claim for suspension does not exist.</p>
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**Comparison of the revised (2006) and original (1947) versions of the Basic Act on Education**

<b>Basic Act on Education (Act No. 120 of 2006)</b>	<b>Basic Act on Education (Act No. 25 of 1947)</b>
<p>Preamble</p> <p>We, the citizens of Japan, desire to further develop the democratic and cultural state we have built through our untiring efforts, and contribute to the peace of the world and the improvement of the welfare of humanity.</p> <p>To realize these ideals, we shall esteem individual dignity, and endeavor to bring up people who long for truth and justice, honor the public spirit, and are rich in humanity and creativity, while promoting an education which transmits tradition and aims at the creation of a new culture.</p> <p>We hereby enact this Act, in accordance with the spirit of the Constitution of Japan, in order to establish the foundations of education and promote an education that opens the way to our country's future.</p>	<p>Preamble</p> <p>Having established the Constitution of Japan, we have shown our resolution to contribute to the peace of the world and welfare of humanity by building a democratic and cultural state. The realization of this ideal shall depend fundamentally on the power of education.</p> <p>We shall esteem individual dignity and endeavor to bring up people who love truth and peace, while education which aims at the creation of culture general and rich in individuality shall be spread far and wide.</p> <p>We hereby enact this Act, in accordance with the spirit of the Constitution of Japan, with a view to clarifying the aims of education and establishing the foundation of education for new Japan.</p>
<p><b>Chapter I . Aims and Principles of Education</b></p>	
<p><b>(Aims of Education)</b></p> <p><b>Article 1</b></p> <p>Education shall aim for the full development of personality and strive to nurture the citizens, sound in mind and</p>	<p><b>Article 1. Aims of Education</b></p> <p>Education shall aim at the full development of personality, striving to nurture the citizens, sound in mind and</p>

<p>body, who are imbued with the qualities necessary for those who form a peaceful and democratic state and society.</p>	<p>body, who shall love truth and justice, esteem individual value, respect labour and have a deep sense of responsibility, and be imbued with the independent spirit, as builders of the peaceful state and society.</p>
<p><b>(Objectives of Education)</b>  <b>Article 2</b>  To realize the aforementioned aims, education shall be carried out in such a way as to achieve the following objectives, while respecting academic freedom:</p> <p>( i ) to foster an attitude to acquire wide-ranging knowledge and culture, and to seek the truth, cultivate a rich sensibility and sense of morality, while developing a healthy body.</p> <p>( ii ) to develop the abilities of individuals while respecting their value; cultivate their creativity; foster a spirit of autonomy and independence; and foster an attitude to value labor while emphasizing the connections with career and practical life.</p> <p>( iii ) to foster an attitude to value justice, responsibility, equality between men and women, mutual respect and cooperation, and actively contribute, in the public spirit, to the building and development of society.</p> <p>( iv ) to foster an attitude to respect life, care for nature, and contribute to the protection of the environment.</p> <p>( v ) to foster an attitude to respect our traditions and culture, love the country</p>	<p><b>Article 2. Educational Principle</b>  The aims of education shall be realized on all occasions and in all places. In order to achieve the aims, we shall endeavor to contribute to the creation and development of culture by mutual esteem and co-operation, respecting academic freedom, having a regard for actual life and cultivating a spontaneous spirit.</p>

and region that nurtured them, together with respect for other countries and a desire to contribute to world peace and the development of the international community.	
<b>(Concept of Lifelong Learning)</b> <b>Article 3</b> Society shall be made to allow all citizens to continue to learn throughout their lives, on all occasions and in all places, and apply the outcomes of lifelong learning appropriately to refine themselves and lead a fulfilling life.	[added]
<b>(Equal Opportunity in Education)</b> <b>Article 4</b> Citizens shall all be given equal opportunities to receive education according to their abilities, and shall not be subject to discrimination in education on account of race, creed, sex, social status, economic position, or family origin.	<b>Article 3. Equal Opportunity in Education</b> Citizens shall all be given equal opportunities to receive education according to their abilities, and shall not be subject to discrimination in education on account of race, creed, sex, social status, economic position, or family origin.
(2) The national and local governments shall provide support in education to persons with disabilities, to ensure that they are given adequate education in accordance with their condition.	[added]
(3) The national and local governments shall take measures to provide financial assistance to those who, in spite of their ability, encounter difficulties in receiving education for economic reasons.	(2) The national and local governments shall take measures to provide financial assistance to those who, in spite of their ability, encounter difficulties in receiving education for economic reasons.
<b>Chapter II . Basics of Education</b> <b>Provision</b>	
<b>(Compulsory Education)</b>	

<p><b>Article 5</b> Citizens shall be obligated to have children under their protection receive a general education pursuant to the provisions of other acts.</p>	<p><b>Article 4. Compulsory Education</b> Citizens shall be obligated to have children under their protection receive nine-year general education.</p>
<p>(2) The objectives of general education, given in the form of compulsory education, shall be to cultivate the foundations for an independent life within society while developing the abilities of each individual, and to foster the basic qualities necessary for those who form our state and society.</p>	<p>[added]</p>
<p>(3) In order to guarantee the opportunity for compulsory education and ensure adequate standards, the national and local governments shall assume responsibility for the implementation of compulsory education through appropriate role sharing and mutual cooperation.</p>	<p>[added]</p>
<p>(4) No tuition fee shall be charged for compulsory education in schools established by the national and local governments.</p>	<p>(2) No tuition fee shall be charged for compulsory education in schools established by the national and local governments.</p>
<p>[deleted]</p>	<p><b>Article 5. Co-Education</b> Men and women shall esteem and cooperate with each other. Co-education, therefore, shall be recognized in education.</p>
<p><b>(School Education)</b> <b>Article 6</b> The schools prescribed by law shall be of a public nature, and only the national government, local governments, and juridical persons prescribed by law shall</p>	<p><b>Article 6. School Education</b> The schools prescribed by law shall be of a public nature and, besides the national and local governments, only juridical persons prescribed by law shall be</p>

be entitled to establish them.	entitled to establish them.
(2) The schools set forth in the preceding paragraph shall, in order to fulfill the objectives of education, provide a structured education in an organized way suited to the mental and physical development of the recipients. It shall be carried out in a way that emphasizes instilling the recipients with respect for the discipline necessary to conduct school life, and strengthening their own motivation to learn.	[added]
[see (Teachers) Article 9]	(2) Teachers of the schools prescribed by law shall be servants of the whole community. They shall be conscious of their mission and endeavor to discharge their duties. For this purpose, the status of teachers shall be respected and their fair and appropriate treatment shall be guaranteed.
<p><b>(Universities)</b>  <b>Article 7</b>  Universities, as the core of scholarship activities, shall cultivate advanced knowledge and specialized skills, inquire deeply into the truth and create new knowledge, while contributing to the development of society by broadly disseminating the results of their activities.</p> <p>(2) University autonomy, independence, and other unique characteristics of university education and research shall be respected.</p>	[added]

<p><b>(Private Schools)</b>  <b>Article 8</b>  Taking into account the public nature of privately established schools and their important role in school education, the national and local governments shall endeavor to promote private school education through subsidies and other appropriate means, while respecting school autonomy.</p>	<p>[added]</p>
<p><b>(Teachers)</b>  <b>Article 9</b>  Teachers of the schools prescribed by law shall endeavor to fulfill their duties, while being deeply conscious of their noble mission and continuously devoting themselves to research and self-cultivation.</p> <p>(2) Considering the importance of the mission and duties of the teachers set forth in the preceding paragraph, the status of teachers shall be respected, their fair and appropriate treatment ensured, and measures shall be taken to improve their education and training.</p>	<p>(From Article 6, above)  (2) Teachers of the schools prescribed by law shall be servants of the whole community. They shall be conscious of their mission and endeavor to fulfill their duties. For this purpose, the status of teachers shall be respected and their fair and appropriate treatment shall be ensured.</p>
<p><b>(Education in the Family)</b>  <b>Article 10</b>  Mothers, fathers, and other guardians, having the primary responsibility for their children's education, shall endeavor to teach them the habits necessary for life, encourage a spirit of independence, and nurture the balanced development of their bodies and minds.</p>	<p>[added]</p>

<p>(2) The national and local governments shall endeavor to take necessary measures supporting education in the family, by providing guardians with opportunities to learn, relevant information, and other means, while respecting family autonomy in education.</p>	
<p><b>(Early Childhood Education)</b>  <b>Article 11</b>          Considering the importance of early childhood education as a basis for the lifelong formation of one’s personality, the national and local governments shall endeavor to promote such education by providing an environment favorable to the healthy growth of young children, and other appropriate measures.</p>	<p>[added]</p>
<p><b>(Social Education)</b>  <b>Article 12</b>          The national and local governments shall encourage education carried out among society, in response to the demands of individuals and the community as a whole.</p> <p>(2) The national and local governments shall endeavor to promote social education by establishing libraries, museums, community halls and other social education facilities, opening the usage of school facilities, providing opportunities to learn, relevant information, and other appropriate means.</p>	<p><b>Article 7. Social Education</b>          The national and local governments shall encourage education carried out at home, in places of work and elsewhere in society.</p> <p>(2) The national and local governments shall endeavor to attain the aims of education by the establishment of such institutions as libraries, museums, community halls, etc., by the usage of school facilities, and by other appropriate means.</p>
<p><b>(Partnership and Cooperation among Schools, Families, and Local Residents)</b>  <b>Article 13</b></p>	<p>[added]</p>

<p>Schools, families, local residents, and other relevant persons shall be aware of their respective roles and responsibilities regarding education, and endeavor to develop partnership and cooperation.</p>	
<p><b>(Political Education)</b>  <b>Article 14</b>  The political literacy necessary for sensible citizenship shall be valued in education.</p> <p>(2) The schools prescribed by law shall refrain from political education or other political activities for or against any specific political party.</p>	<p><b>Article 8. Political Education</b>  The political literacy necessary for sensible citizenship shall be valued in education.</p> <p>(2) The schools prescribed by law shall refrain from political education or other political activities for or against any specific political party.</p>
<p><b>(Religious Education)</b>  <b>Article 15</b>  The attitude of religious tolerance, general knowledge regarding religion, and the position of religion in social life shall be valued in education.</p> <p>(2) The schools established by the national and local governments shall refrain from religious education or other activities for a specific religion.</p>	<p><b>Article 9. Religious Education</b>  The attitude of religious tolerance and the position of religion in social life shall be valued in education.</p> <p>(2) The schools established by the national and local governments shall refrain from religious education or other activities for a specific religion.</p>
<p><b>Chapter III. Education Administration</b></p>	
<p><b>(Education Administration)</b>  <b>Article 16</b>  Education shall not be subject to improper control and shall be carried out in accordance with this and other acts; education administration shall be carried out in a fair and proper manner through</p>	<p><b>Article 10. Education Administration</b>  Education shall not be subject to improper control, but it shall be directly responsible to the whole citizens.</p> <p>(2) Education administration shall, on the</p>



appropriate role sharing and cooperation between the national and local governments.	basis of this realization, aim at the adjustment and establishment of the various conditions required for the pursuit of the aims of education.
(2) The national government shall comprehensively formulate and implement education measures in order to provide for equal opportunities in education and to maintain and raise education standards throughout the country.	[added]
(3) The local governments shall formulate and implement education measures corresponding to regional circumstances in order to promote education in their respective regions.	[added]
(4) The national and local governments shall take necessary financial measures to ensure the smooth and continuous provision of education.	[added]
<p><b>(Basic Plan for the Promotion of Education)</b></p> <p><b>Article 17</b></p> <p>In order to facilitate the comprehensive and systematic implementation of measures for the promotion of education, the government shall formulate a basic plan covering basic principles, required measures, and other necessary items in relation to the promotion of education. It shall report this plan to the Diet and make it public.</p> <p>(2) Local governments, referring to the plan set forth in preceding paragraph,</p>	[added]

shall endeavor to formulate a basic plan on measures to promote education corresponding to regional circumstances.	
<b>Chapter IV. Enactment of Laws and Regulations</b>	
<b>Article 18</b> Laws and regulations necessary to implement the provisions stipulated in this Act shall be enacted.	<b>Article 11. Additional Rule</b> In case of necessity appropriate laws and regulations shall be enacted to carry the foregoing provisions into effect.

Source: Ministry of Education,Culture,Sports,Science and Technology website

## Trends by calendar year of the number of non-delinquency cases out of general protective cases excluding traffic-related cases

year	judged as no-delinquency after trials	not to hold trials for the reason of no-delinquency	total
1980	258	255	513
1985	289	226	515
1986	233	180	413
1987	244	177	421
1988	263	150	413
1989	305	125	430
1990	233	85	318
1991	183	119	302
1992	154	80	234
1993	154	108	262
1994	118	98	214
1995	106	62	168
1996	83	63	146
1997	93	36	129
1998	94	34	128
1999	73	25	98
2000	86	17	103
2001	68	14	82
2002	87	16	103
2003	76	22	98
2004	89	43	132
2005	72	36	108

Note: Compiled from the Annual Report of Judicial Statistics by the Supreme Court of Japan  
Procedures for calculating statistics changed in 1999.