

NGO Report on the Convention on the Right of the Child

The Implementation of the Convention in Japan and the Problems of the Japan's Third Periodic Report

Revised Summary

Committee for NGO Reporting on the CRC (JAPAN)

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January 2010

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[Abbreviations]

CO: concluding observations/comments adopted by the following treaty bodies concerning Japan

*CEDAW: Committee on the Elimination of Discrimination Against Women (July 2003)

*CERD: Committee on the Elimination of Racial Discrimination (March 2001)

*CESCR: Committee on Economic, Social and Cultural Rights (August 2002)

*HRC: Human Rights Committee (November 1998)

CRC: Convention on the Rights of the Child

GR: Government Report (second periodic report submitted by Japan under the CRC)

UN Committee : Committee on the Rights of the Child

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Introduction

Preparing Entity and Purpose of the Report

This summary report was prepared to highlight the problem areas and challenges of the Third Report of Japan, under article 44, paragraph 1, of the Convention on the Right of the Child, and therefore help the Committee on the Rights of the Child (U.N Committee) examine the Government report more effectively and adequately.

The report was prepared by Committee for NGO Reporting on the Convention on the Rights of the Child (NGO Committee). The key members of NGO Committee have started observing the UN Committee since the second meeting(1992) and played a role as liaison between the UN Committee and Japanese society as well as working on implementation and dissemination of the Convention in Japan.

The Committee submitted two NGO reports to the UN Committee in response to the Government report in 1997 and 2003, and provided the NGO Committee with the information by observing the examination and followed up the General Comments by the UN Committee. The General Research Institute on the Convention on the Rights of the Child, which was granted the special consultative status by the United Nations Economic and Social Council (ECOSOC), acts as a secretariat.

The present report mainly focuses on the problems of the Third Report of Japan for the preliminary examination scheduled in February 2010.

The contents of the Third Report of Japan shows very little progress from the Second Report. One could even argue that it was rather retrogressed. The report does not demonstrate the reality of Japanese children. It fails to make clear the problem areas and challenges and hence cannot expect a constructive dialogue at the UN Committee. However, due to change of government, which took place after the preparation of the report, it is expected that the new government will have the change of attitude with regards to the implementation of the Convention. It is our hope that, when the new government is requested to submit the “additional information” after the preliminary examination, it will submit the report, which aims to revise the problem areas as much as possible, to the UN Committee and correspond sincerely to the examination of the report by the UN Committee.

Main Problem Areas of the Third Report of Japan: Overall Condition

With regard to the enforcement of the Convention by the Government prior to the preparation of the Third Report of Japan, there have been a few welcoming progresses such as ratification of two optional protocols, partial amendments of the Child Welfare Law, Child Abuse Prevention Law, and the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, all of which were amended to enhance the child advocacy. However, the Third Report of Japan contains the following main problems.

- (a) The report lacks the basic stance on effectively implementing the Convention using the regular reporting system. The report has many sections which only state “see Paragraph XX of the Second Report of Japan”. For example, Article 20 (children deprived of a family environment), which talks about the foster-family system and Children’s Home, only states “See Paragraphs 244-248 of the Second Report of Japan”. The Third Report lacks the stance to examine the situation of implementing the Convention after the Second Report and does not try to identify challenges ahead.
- (b) Most of the second Concluding observations have not been implemented, indicating that the Government has not responded to the UN Committee’s Concluding observations (recommendations) in good faith. Remarks relating to the second Concluding observations (i) mentions the previous Concluding observations only formally, (ii) fails to understand the contents of the recommendations by the UN Committee, or (iii) repeats the existing points without clearly disagreeing with the comments expressed by the UN Committee during the examination process. For example, despite the fact that the UN Committee expressed concerns over the discrimination against children born out of wedlock in two concluding observations, no action was taken to improve the situation [GR paras.216-219]. The similar recommendations were received from CERCR, HRC, CEDAW.
- (c) The report lacks the basic understanding of the Convention. The report does not refer to the general comment and there are a few sections which indicate the lack of basic understanding of the Convention. It is particularly so for the general principles of the Convention, such as the prohibition of discrimination, the best interests of the child, Right for views of the child. For instance, it states that “aspects such as the formulation of school regulations and organization of curricula do not personally involve individual children and are not considered to be subject to the right of expressing their opinions as provided for in Article 12, paragraph 1” [GR para.205].
- (d) The report does not reflect “child rights-based approach”. Efforts reported to be made for the implementation of the Convention are in reality the legislation and policies which lack the perspective of the right and goes against safeguarding the child’s rights, as seen in the example of enactment of the Basic Law for anti-declining birthrate measure, full amendments of the Fundamental Law of Education and the Juvenile Law, activities of Education Rebuilding Council. Furthermore, the report does not refer in any way to the Formulation of the National Youth Development Policy, on which the second concluding observations recommended an overall review based on the rights-based approach, and continue to cite the same Formulation as the national action guideline for implementing the Convention [GR para.32]. In addition, it provides the detailed information regarding the protection of children from being crime victims, child abuse, and harmful information. This indicates the tendency to attach much more importance to the aspect of the protection.
- (e) The report lacks the important information and does not demonstrate the reality of children and the impact of measures and policies. For instance, no data is provided in relation to Article 2 on

Non-discrimination [GR paras.143-163]. Also for the education section, the important data is not provided and it seems as if the information is intentionally hidden (there is no data on school non-attendance [GR para.408], upper secondary school dropouts [GR para.409], bullying [GR paras.410-412], suicide [GR paras.183-185], corporal punishment at school [GR paras.260-261].

- (f) The report lacks the approach to learn from efforts of local governments. It refers to formulation by local governments of ordinances in relation to the rights of the child [GR para.40] and establishment of ombudspersons at the local level [GR para.46] but without giving any details. And these examples were as a result of the efforts of local governments and not due to the initiatives or support of the Government as recommended by the second Concluding observations.
- (g) The report lacks the approach to have the sincere dialogues and work together with NGOs and civil societies. During the preparation process of the Third Report of Japan, there were four opportunities to “exchange opinions” with NGOs and civil societies (out of which two were unilaterally called by the Ministry of Foreign Affairs). But none of requests and suggestions from NGOs and civil societies was reflected. No efforts were made to listen to the voices of children regarding the implementation status of the Convention. There was not even an opportunity to “exchange opinions” for the preparation of the reports on the two Optional Protocols.

Toward Constructive Dialogue and the Effective Implementation of the CRC

Since the third report of Japan has the basic problems mentioned above, it is necessary for the U.N. Committee to be provided, generally, with the following additional information at the minimum:

- (a) Brief descriptions on the implementation of the second concluding observations of the U.N. Committee for each recommendation;
- (b) Data on the actual situation of children and on the effectiveness of various measures, including data on non-discrimination, non-attendance at school, school dropout at the upper secondary level, bullying, suicide and corporal punishment, child abuse and neglect as well as juvenile justice;
- (c) Explanation on policy changes under the new Government;
- (d) Explanation on prospects for the implementation of the CRC and, in particular, the establishment of structures and systems for the promotion and monitoring of the effective implementation of the CRC;
- (e) Explanation on prospects for the establishment of a government institution (ministry) in charge of effective and comprehensive implementation of child policies as well as for the enactment of a Fundamental Law on the Rights of the Child (tentative title), which is to be the foundation of the promotion and protection of children’s rights;
- (f) Information on municipal initiatives to implement the CRC, along with their outcomes and challenges in the provision of support by the central government; and,
- (g) Preparation of the additional information on the basis of “constructive dialogue” with the

relevant NGOs, which should be undertaken after the pre-sessional working group in February 2010 and before the formal consideration by the U.N. Committee.

In addition, when a human rights situation has not been improved after the alleged victims have exhausted domestic procedures, they should be able to make individual petitions to the relevant human rights treaty bodies. For this purpose, it is necessary to adopt the third Optional Protocol to the CRC at an early stage, which makes it possible to make individual petitions to the UN Committee on the Rights of the Child. The Government of Japan should make positive contributions to the adoption of the third Optional Protocol to the CRC.

I. General Measures of Implementation

1-1. The Scope of the Reservation Should Be Made Clear and Declarations Be Withdrawn

In spite of the UN Committee's recommendations [initial CO para.28, second CO paras.8-9], the government does not sincerely consider the Committee's recommendations. It has not withdrawn the reservation to Article 37 (c) nor made its scope clear. Similarly, the government has not taken an action in withdrawing its declaration on Articles 9 (1) and 10 (1) regardless of doubts in their legitimacy and necessity [GR paras.6-10]. The reasons are as same as those in the initial report, which indicates that it has not sincerely considered the Committee's recommendations.

Recommendations

The Government and the Diet should withdraw the reservation to Article 37 (c). In the meantime, the Government should make it clear, through the notification to the Secretary-General of the UN, that the reservation is only applied when "adults" are 18 and 19 years of age and that the principle of "separation of children from adults" continues to be applied in other cases. The Government should also withdraw the declarations to Article 9 (1) and Article 10 (1) and admit, in particular, that the provisions of Article 9 (1) are applied to cases of deportation under the Immigration Control and Refugee-Recognition Act.

1-2. "Protection"- Oriented Amendments to Domestic Legislation

As the measures taken to harmonize national legislation with the provisions of the Convention, the Government report presents amendments to legislation concerning such matters as protection of children on the Internet as well as child prostitution [GR paras.11-20]. While the efforts to make amendments to some legislation are recognized to some extent, the contents of amendments still have much more importance on protection and lacks consideration to rights-based approach. These tendencies are demonstrated clearly in measures to protect children from being crime victims [GR paras.169, 186-190], protection from harmful information [GR 243-256], and protection from child abuse and neglect [GR paras.306-342]. It is not clear how and if the voices of children were heard and reflected in order to make protection more effective.

While the Act to Support Training of Children and Young People (2009) stipulates that the relevant policies shall be pursued "in accordance with the philosophies of the Convention" (Article 1) and that "the views [of children and young people] shall be adequately respected and their best interests be taken into consideration" in the development and implementation of support measures, the Act as a whole cannot be regarded as being founded on the rights of the child.

Recommendations

1. The Government and the Diet should undertake thorough review of national legislation, taking into consideration "a rights-based approach" reflected in the previous recommendations by the UN Committee. In the light of Article 12, in particular, they should establish systems to hear the views of children in the process of legal reform and reflect them in legal amendments in practice.
2. A Fundamental Law on the Rights of the Child (tentative title), which is to be the foundation of the

promotion and protection of children's rights, should be enacted.

1-3. No Precedents of the Application of the Principles or Provisions of the Convention to Judicial Judgments

Despite the recommendations of the Committee [initial CO para.29, second CO para.10], the Government report does not provide sufficient information on precedents where the principle and provisions of the Convention were directly applied to judicial judgments [GR paras.23, 26]. There are precedents where the principles or provisions of the Convention were applied to judicial judgments. For example, this year, the court refers to the principle of the Convention over the case regarding a nationality of a child born out of wedlock between Japanese and non-Japanese and ruled that the current Nationality Act violates the Constitution. However, the example is still a very rare case and the courts remain passive in applying the CRC and other human rights treaties.

Recommendations

1. Courts should fully recognize that it is their obligations under international and national law to consider the provisions of the CRC in cases which concern children's rights, in accordance with Article 3 (1) and Article 4 of the CRC, the Vienna Convention on Law of Treaties and Article 98 (2) of the Constitution of Japan, and that the application of the CRC is one of their functions. In interpreting its provisions, courts should adopt internationally agreed interpretations, including the ones indicated by the Committee on the Rights of the Child and other human rights treaty bodies. The Supreme Court should conduct research on the application of human rights treaties in court and take necessary measures, including the provision of information to and training of judges.
2. The international obligations stated in the previous paragraph are applied to the Government as well. When the State stands on the defense in court, the Government should provide arguments in accordance with the internationally agreed interpretations of the human rights treaties, refraining from insisting on restrictive arguments.

1-4. Comprehensive Policy for Children Is Yet to Be Formulated

Despite the concern expressed by the Committee that the National Youth Development Policy is not a comprehensive plan of action [second CO para.12], the Government report still introduces the National Youth Development Policy as a comprehensive measure [GR para.32]. Although the National Youth Development Policy was revised in 2008, the revision did not guarantee the participation of civil societies and children and the child rights-based approach is still not incorporated, as recommended by the Committee [second CO para.13]. Moreover, policies and measures listed in the Government report are neither comprehensive nor do they set their primary goal as safeguarding the rights of the child [GR paras.34-34].

Recommendations

1. The Government and the Diet should develop a comprehensive national plan of action for children of all ages on the basis of children's rights.

2. In the development of policies affecting children, specific time-bound goals as well as indicators and procedures for evaluation should always be included. In order to ensure the principles of the best interests of the child and respect for the views of the child in the policy-making, “child impact assessment” and child participation procedures should be introduced.

1-5. No Agency Is Established for the Coordination of Policy

Although the Committee clearly pointed out that the Committee for the Promotion of Youth Policy cannot be considered as a sufficient agency for the coordination of policy [initial CO para.8], the Government report list the Headquarters for Youth Development as an agency in charge of the coordination of policy [GR para.36]. The coordination of policy is currently handled in individual categories such as youth policy and child abuse. There is no mechanism to specifically coordinate policies relating to child rights in an integrated manner. This lack of coordination leads to problems in various areas such as the comprehensive examination of the implementation of the Convention and safeguarding the rights of children who are before school age. Several local governments have taken proactive measures of formulating regulations on children’s rights. The Government, however, has not made sufficient efforts to introduce and promote this encouraging example to other local governments.

Recommendations

The Government should establish a policy coordination body represented by all the public authorities involved in the implementation of the CRC as well as relevant NGOs and civil society organizations. The establishment of the focal points for the rights of the child should also be encouraged at the local level, together with further efforts to coordinate national and local policies, including by sharing information on and replicating innovative initiatives.

1-6. Adequate Data Has Not Been Collected and Presented

The third government report does not collect or provide enough information, resulting in the situation of the child and the effectiveness of the policy being unseen. Moreover, it does not at all provide the data related to Article 2 of the Convention (right against discrimination) [GR paras.143-163], but remarkably reduces important data on education. Statistics about the abundant of data highlighted in the previous consideration such as corporal punishment [GR paras.260-261], bullying [GR paras.410-412], and non-attendance at school [GR para.408] are inadequately given. This raises doubt that the government may lack sincere attitudes to the dialogue with the Committee.

Recommendations

In order to ensure that the actual situation of children’s rights can be understood, the Government should strengthen data collection systems further, paying attention to the UN Committee’s reporting guidelines. These measures should be taken under the leadership of a comprehensive coordination body for the implementation of the CRC, in consultation with NGOs and civil society. In order

to ensure the effective use of such data, a comprehensive white paper on children, separate from white papers of the relevant ministries, should be published.

1-7. There Is No Independent Human Rights Monitoring System at National Level

Despite the UN Committee's recommendation [initial CO para.32, second CO para.15], there is still no independent monitoring system at national level to monitor the implementation of the Convention or child rights [GR paras.44-45]. Similarly, the Government has "no plan to establish" a child ombudsperson [GR. para.44]. Although it aims to establish a new human rights remedy system led by the Human Rights Committee which is independent from the Government, the envisaged Human Rights Committee hardly meets the requirements in the UN Paris Principles, and the Committee on the Rights of the Child's General Comment No. 2 on various points such as its independence and focus on children. On the other hand, there is an increase in municipal child ombudsperson establishment or its equivalents, which work effectively in each area. However, despite the Committee's recommendation [second CO para.15(d)], human and financial resources to operate the mechanism are vulnerable due to the lack of government's support. Moreover, without a mechanism to periodically evaluate the implementation of the Convention, a follow-up on the Concluding Observations is not carried out.

Recommendations

In the light of the UN Paris Principles and the UN Committee's General Comment No.2, the Government and the Diet should urgently establish an ombudsperson for children or its equivalent with the guarantee of adequate independence, powers and resources. If they choose to establish an independent Human Rights Commission, a member or special unit should be assigned specifically to be in charge of children's issues. The experiences of existing ombudspersons for children and similar bodies at the local level should be fully considered in the establishment of such bodies.

1-8. The Best Interests of the Child Are Not Fully Considered in the Budgets under the Structural Economic Depression

Due to economic depression, child-related sectors are also under strict financial control. However, this is not touched upon in the government's report [GR paras.51-55]. While the new Government plans to start to provide "child benefits" in the fiscal year 2010/11 as one of the primary appealing policies, it still tends to put emphasis on the measures on the declining birthrate or support for child-rearing in the budget allocation. Since it leads to insufficient budget allocation for children's development itself, financial and human resources are not secured enough to the needs in education and child welfare, as is indicated in the present report. Although the economic depression has brought about adverse effects, including an increase of the number of students who drop out of high school due to "economic reasons", the Government does not refer to this and other phenomenon in its report. The new Government, however, has the policy of making teachings at the upper secondary level free of charge in principle.

Recommendations

The Government and the Diet should take necessary measures to ensure the adequate consideration of the best interests of the child in the process of budget formulation, including the establishment of a coordination body represented also by the Ministry of Finance, and the introduction of special procedures in the deliberations on the budget. In particular, services in such fields as education, child protection and day-care should be explicitly defined as the rights of the child through legislation and policies, followed by the allocation of adequate financial and human resources.

1-9. Increasing Impoverishment of Children Complicates Safeguarding Their Rights

The social expenditure relating to children and families is 4.33 trillion YEN accounting for 0.83% of GDP (2-3% in European countries) and it is very low. According to the cross-country comparison conducted by OECD using the common definition of terms, the poverty rate of children in Japan was 13.7% in 2004. In 2009, the new Government announced for the first time that the relative poverty rate in Japan was 15.7%. Moreover, if we compare the income from work and the income after “redistribution” which deducts taxes and social security fee and adds social security benefit, such as pension and child allowance, Japan is the only country among OECD members where the poverty rate is higher after the redistribution. This indicates the phenomena in which the government’s redistribution makes poor households even poorer. This fact makes safeguarding children’s right more difficult.

Recommendation

1. The Government should undertake thorough study on the realities of child poverty, making use of the existing findings by private organizations and researchers.
2. The Government and the Diet should make the reduction of child and family poverty as one of the major pillars of a comprehensive policy for the protection and promotion of children’s rights (see 1-4) and take effective interventions and budgetary measures to ensure that children living in families in need of social support or protection, including single-parent households, can fully enjoy their rights to education, health and standards of living.

1-10. Cooperation with Civil Society in the Area of International Cooperation Is Not Enough

The first goal of the Millennium Development Goals (MDGs), which contains a total of eight goals to be achieved by 2015, is to reduce poverty and hunger. In order to address this problem, OECD-Development Assistance Committee (DAC), of which Japan is a member, approaches the above problems with ODA in pursuit of achieving the MDGs. However, records show that Japan’s ODA amount has decreased from ranking 2nd in 2005 and 3rd in 2006 to 5th in 2007. Also, despite the UN Committee’s recommendation [second CO paras.18-19], the ODA amount as the percentage of GNI has decreased from ranking 16th in 2005, 18th in 2006 to 20th in 2007. NGOs, which are said to be representing civil society, are allocated only 2.8% of the Japanese ODA in 2004, 1.0% in 2005, 0.9% in 2006, and 2.5% in 2008. These figures include the allocation to non-Japanese NGOs.

Therefore, the actual cooperation with Japanese NGOs, which can be categorized as the collaboration with the Japanese civil society and supported mainly through Grant Assistance for Japanese NGO Projects, JICA's grass-root technical cooperation, and the Japan Platform for the emergency assistance, only represents a small proportion.

Recommendations

1. While ongoing efforts are now being made to dramatically increase the number of ODA projects involving NGOs, in accordance with the "Five-Year Plan towards strategic cooperation with NGOs" formulated by the Ministry of Foreign Affairs (MOFA) in 2007, there is a need, as was discussed in the Partnership Promotion Committee of the NGO-MOFA Regular Meeting, to develop various schemes for enabling different types of NGOs to be involved, with a view to promoting cooperation with civil society further. With regard to the total amount of ODA, which is in the decreasing trend, ODA as a percentage of GNI (gross national income) needs to be promptly increased to the DAC average (0.7% in the future), and the allocation for NGOs among the total ODA should also be increased accordingly.
2. As was discussed at the first ODA Policy Council in 2009 of the NGO-MOFA Regular Meeting, in order to represent the aid policy of Japan who are one of the major ODA donors in the world, NGOs operating in the project country should participate in the ODA Taskforce meeting in the project country to not only reflect the cooperation with the civil society of Japan, but also to reflect the voices of beneficiaries and local communities.
3. As discussed at the first ODA Policy Council in 2009 of the NGO-MOFA Regular Meeting, the time-line and other relevant information should be shared with relevant parties well in advance so that they will have sufficient time for their preparation.

1-11. Issues Concerning the Basic Education Aid Committed by Japanese ODA

Japan's basic education aid (bilateral) to conflict-affected fragile states has been in decline since 2005 and it amounts to only USD 24 million in 2007. Moreover, only 17% of Japan's basic education aid is allocated to conflict-affected countries (DAC average: 27%) between 2005 and 2007, while 46% to middle-income countries (DAC average: 25%), and 38% to other low-income countries (DAC average: 34). It should be noted that Japan allocates only 0.8 % of its ODA to basic education in 2005, which is much lower compared with the DAC average 1.8%. Instead, Japan focuses on assistance for higher education, which amounts to 52 % of its ODA. Japan's educational response in humanitarian emergencies is also below the UNOCHA target.

Recommendations

1. Japan needs to increase allocations of basic education aid, and allocate at least 50 % of basic education aid to conflict-affected fragile states. It also needs to ensure flexible and long-term financing to these counties through a mechanism such as the Education Transition Fund to be set up within the framework of the Education for All-Fast Track Initiative.
2. In humanitarian response to emergency situations including conflict, assistance in other sectors than education is often prioritized, but Japan needs to integrate basic education response into any phases

of humanitarian assistance and commit financing to do so. This includes support for the Education Cluster established in the framework of a cluster approach initiated by the Inter-Agency Standing Committee (IASC) for more effective humanitarian response.

3. The quality of basic education programs needs to be ensured in accordance with the Article 29 of the UN Convention on the Rights of the Child as well as the International Network for Education in Emergencies (INEE) Minimum Standards. Basic education programs should not escalate the risk of violence and conflict, especially in terms of content of education or curriculum, language policy, and the safety of learning spaces, for which Japan needs to support host governments. As the issues of teacher shortages and low quality of teachers are remarkable especially in conflict-affected fragile states, to support recurrent cost including teachers' salary is inevitable to maximize the effect of teacher training that Japan has been implementing. Finally, providing not only formal schooling but also non-formal education programs where needed is important, in order to ensure an equal right to education of the child regardless of gender, ethnicity, economic background and so on.

1-12. CRC and Concluding Observations Have Not Been Disseminated Adequately in Terms of Quality and Quantity

Although the government states that it continues to undertake public relations for the Convention through leaflets and events [GR paras.78-87], no official surveys on the awareness of the Convention have been made. No new measures have been taken to raise awareness on the Convention either, except those done by municipality. In school curriculum [GR para.88], for example, "morals" seem to be more emphasized than "rights". In society in general, the laws also state about "children's duties" and negative discourses about child rights are widely seen.

Recommendations

1. The Government should conduct multi-perspective surveys on the extent to which the CRC is known among children, parents and the general public, with a view to formulating comprehensive and systematic strategies to improve the awareness of the CRC and the rights of the child. In planning and implementing the strategies, adequate consultation and collaboration with children and relevant civil society organizations and NGOs should be undertaken. Attention should also be paid to children who do not attend school, children who belong to linguistic minorities and children with disabilities. In the light of the previous recommendation of the UN Committee [second CO para.33], such dissemination should be undertaken with a view to enabling children to exercise their rights in reality and adults around them to assist the exercise.

2. The Government should have knowledge of local municipalities' information activities and provide informational and financial assistance in particular. Such assistance is especially necessary for the dissemination targeted at foreigners as well as people with disabilities.

3. The Ministry of Education should promote dissemination of and education on the CRC at school in a systematic way, including through developing educational programmes on the rights of the child and the CRC as well as collecting and publicizing best educational practices. Systematic human rights

education should also be promoted in accordance with the plans of action for the World Programme for Human Rights Education.

1-13. More Dialogue and Cooperation with Civil Society and NGOs Is Required

In spite of the UN Committee's recommendations [second CO paras.18-19], dialogue and cooperation between the Government/authorities and civil society and NGOs is still not permanent and systematic. There are differences in the attitude to civil society and NGOs among authorities and municipalities as well. While "public comment" procedures and other mechanisms have been introduced in an attempt to reflect broader views of civil society, there is much room for improvement in the ways of their operation.

Recommendations

1. In the light of Article 4 of the CRC, which includes human resources in its wordings "available resources", the Government and the Diet should establish procedures and mechanisms to involve civil society and NGOs in the implementation and dissemination of the CRC, with a view to reflecting their experiences and perspectives in legal reform and policy formulation. It is necessary to institutionalize dialogue and cooperation with NGOs, including through establishing a coordination body represented by NGOs and making it a rule to include civil society and NGO representatives in councils or committees that deal with the issues concerning children.
2. The Government should further improve "public comment" procedures and other mechanisms to reflect the public's views on policies. In particular, it is necessary to ensure sufficient time for submission, to make the procedures widely known, to allow a diversity of ways to express views and to publicize the outcomes in an appropriate way.

II. Definition of the Child

2-1. Definition of the Child

As a result of the amendments to the Juvenile Law in 2007, the age at which a child may be placed into a juvenile training school was lowered from 14 to approximately 12 years of age, making it possible to send children who are 12 or 13 years of age to juvenile training schools instead of support facilities for development of self-sustaining capacity, which had been the only option before the 2007 amendments (See VIII-8B). In the meantime, the different minimum ages for marriage between boys and girls (18 and 16 years respectively) have not been changed [GR paras.115 & 138-139] in spite of the U.N. Committee's recommendation [initial CO para.35 and second CO paras.22-23]. The issue of the low age of sexual consent under the Criminal Code (13 years) and the high age at which the court must hear a child in family proceedings (15 years) remain unresolved. In 2009, the governmental Legislative Council proposed the lowering of the age of majority to 18 from 20 under the existing law.

Recommendations

The Government and the Diet should review the age of criminal responsibility and the age at which criminal procedures can be applied to juveniles, with a view to exempting at least children under 16 years of age from criminal liability. Different minimum ages for marriage between boys and girls should be redressed as soon as possible. The age at which a child must be heard in family proceedings (15 years) should be lowered, and consideration should be given to raising the age of sexual consent (13 years).

III. General Principles

3A: Non-Discrimination

3A-1. Proactive Measures for Resolving the Discrimination are Insufficient

In order to protect children from any forms of discrimination, the Committee recommended to “undertake all necessary proactive measures to combat societal discrimination through, inter alia, public education and awareness campaigns” [second CO para.25]. However, no proactive measures such as human-rights education are taken. The government report refers to the school curriculum but no details are given as to the contents and how children’s right is taught [GR paras.148-149]. Also, despite the inquiry and recommendation of the Committee [second CO para.17 and others], no data is provided in the report with regard to discrimination. In addition, the current measure to be taken for relief in case of discrimination [GR para.146-147] is insufficient since it is not adequately supported by the antidiscrimination law and does not possess the effective authority for correction. For this reason, many children who are more vulnerable to violation of rights, such as children affected by HIV/AIDS and sexual minority, continue to suffer from the social discrimination.

Recommendations

1. The Government and the Diet should take effective measures to protect children from all forms of discrimination, including through human rights education. On the basis of the statistics collected in a proactive manner with a view to understanding the realities of discrimination, the formulation of effective and practical policies should be considered.
2. In the light of the recommendations by the CERD [CO 10 & 12], the CESCR [CO 39] and the HRC [CO 9], the Government and the Diet should consider enacting comprehensive anti-discrimination legislation. Remedies for cases of discrimination should also be made effective, for example, by undertaking a comprehensive revision of the Human Rights Protection Bill, which aims to establish a Human Rights Commission, in accordance with the UN Paris Principles as well as the UN Committee’s General Comments No.2 (2002) and No.5 (2003).

3A-2. Backlash against efforts for eliminating discrimination against women

We recognize that efforts are made to improve legislations regarding gender-equality and various measures are taken accordingly [GR paras.155-158]. The notion of gender-equality has seen some progress. However, in the absence of concrete process to make the society aware that the

prohibition of gender discrimination is a matter of human rights, the above mentioned efforts are not sufficient enough to tackle the strong backlash against the gender-equality and adverse effects of recession. At one point, the education sector seemed to show a progress as an increasing number of high schools and universities changed their system from single-sex education to co-education. But the sector is now also embroiled in the backlash. The Fundamental Law on Education has been amended in December 2006 and the article on “co-education” has been removed. This raised a concern about the discrimination against women in the education sector. This has been pointed out by the Committee on the Elimination of Discrimination against Women in the 6th concluding comments [paras.43-44] but has not been reexamined.

Recommendations

The Government, in particular the Cabinet Office, should strengthen policies to promote gender equality from the human rights perspectives, in close collaboration and coordination with the relevant ministries and local authorities. It should also promote gender equality in education further by reviewing the amended Fundamental Law on Education in the light of the sixth concluding comments of the CEDAW.

3A-3. Discrimination against child born out of wedlock continues to be justified

Despite the recommendation of the UN Committee [initial CO para.35 & second CO para.25], and repeated recommendations presented by CESCR [CO para.12], HRC [CO para.41], and CEDAW [CO paras.35-36], the Government continues to justify the discrimination against child born out of wedlock. Moreover, although the report does not refer to this point, the Nationality Act was amended in December 2008 enabling child born out of wedlock between non-Japanese mothers and Japanese fathers to acquire the Japanese nationality even in the case of postnatal affiliation. Before the amendment, in order to acquire the Japanese Nationality, these children needed to be affiliated as pre-born baby. However, the amendment was not a measure taken in response to the recommendation of the Committee, but rather responding to the unconstitutional judgment of the Supreme Court.

Recommendations

1. In the light of the CRC and other international human rights treaties, the explicit recommendations repeatedly made by the UN Committee on the Rights of the Child and other treaty bodies and legal practices in other countries, the Government and the Diet should abolish all the legal provisions and institutions that are discriminatory against children born out of wedlock. In addition, it is also necessary to take steps to eliminate social discrimination and biases against such children, including through awareness-raising campaigns.
2. In order to ensure the right of the child to know his/her parents (Article 7 of the CRC), the current system of paternal recognition should be reformed. Special attention should be paid to the following points: (a) when the father enters his name voluntarily as the father in the notification of birth, it should be interpreted that the father recognized the child as his own; (b) time and expense required in

paternity suits should be reduced, and; (c) effective procedures should be introduced for establishing paternity.

3A-4. Policy for disabled persons does not give sufficient consideration to safeguarding the rights and social inclusion of disabled persons

The Basic Law for Persons with Disabilities, which is the comprehensive foundation for policy relating to disabled persons [GR para.151], was partially amended in 2004 to clearly stipulate as a fundamental principle that no one shall be allowed to discriminate against persons with disabilities and that the Government of Japan and local governments have responsibilities to promote welfare of persons with disabilities through taking measures for supporting their independence and social participation. However, section 2, paragraph 3 of the same law stipulates that persons with disabilities are “given” the opportunity to participate in social, economical and cultural events. This indicates that their social participation is still not safeguarded as their rights. Also, there is no policy for persons with disabilities, which is based on the concept of safeguarding the right and social inclusion. According to the survey conducted in 2007 by the Cabinet Office, only 49% of the population was aware of the amendment of the Basic Law for Persons with Disabilities, and 27.5% knew about the Disabled Persons Week, which was laid down by the above Law in order to raise awareness and interest regarding disabilities and persons with disabilities. Only 18.3% knows about the disability convention, which Japan signed in 2007. This general lack of awareness regarding measure and policies for disabled persons presents problems.

Recommendations

In the light of Articles 2 and 23 of the CRC as well as the Convention on the Rights of Persons with Disabilities, the Government and the Diet should change the policies concerning people with disabilities into those with the orientation of the protection and promotion of their rights as well as inclusion. The Government, in particular the Ministry of Health, Labour and Welfare and the Ministry of Education, should conduct education and awareness-raising (including training at workplace) on the rights of children and persons with disabilities, in cooperation with the relevant authorities and private organizations, with a view to eliminating negative attitudes and biases against children with disabilities. For this purpose, it is necessary to ratify the Convention on the Rights of Persons with Disabilities early and without any reservations.

3A-5. Institutional Discrimination against Korean Schools

Korean residents in Japan, the victims of Japanese colonial rule, established Korean schools just after the end of WW2 all over Japan in order to teach Korean culture and language to their children born in Japan. The Japanese government has been imposing systematic discrimination against Korean schools since their establishment. Even though International Human Rights Treaty bodies, including the Committee of the Rights of the Child [initial CO para.35, second CO para.25], HRC [CO para.13], CERD [CO para.16] recommend again and again to the Japanese government to

correct disadvantages which Korean children are facing with in recent years, discriminatory treatment is still remained as it has been.

Since diploma of Korean school is not admitted as direct qualification for university entrance examination, graduates of Korean school still have to pass “individual examination” to be given by individual university. In addition, not only the government subsidy is not realized but even donations for Korean school by Korean school children’s parents and supporters are not benefited to preferential treatment in the taxation system on donation, which help schools gather donations. It should be noted that verbal and physical violation toward Korean school students are caused by systematic discrimination for Korean schools and being neglectful of its duties to amend such discriminatory policies by Government of Japan. In recent years, the activation of xenophobic civil society movement has led to, not only harassment against individual pupils/students, but also attacks on Korean schools by xenophobic groups. In December 2009, they swarmed around a Korean school in Kyoto (First Kyoto Korean School) and made abusive cries in front of the school. Violence against Korean children has repeatedly happened because of the Japanese Government’s inadequate measures for eradication and investigation of such violent act.

Recommendations

1. The Government of Japan should approve Korean schools as regular schools in accordance with “schools” as defined by the School Education Law and eradicate all disadvantages foreign and ethnic schools suffer like qualification for university entrance examination and preferential treatment in the taxation system on donations to schools. The Japanese government should treat Korean schools as same as Japanese public ones, not private ones, since Korean history, culture, language and similar subjects are not taught at public schools. The Japanese Government should provide adequate subsidies for Korean elementary and junior high schools to introduce free education like Japanese ones.
2. The Government of Japan should immediately take measure to correct discriminatory treatment for Korean school graduates when they take university entrance examination.
3. The Japanese government should implement more decisive and effective measures to eliminate incidents of verbal and physical violence against Korean schoolchildren. In addition, the Government of Japan should strengthen the activities for human rights education and enlightenment in order to eradicate discrimination and violence.

3A-6. Children of Returnees from China Face Identity Crisis between the Two Countries

The Government of Japan had promoted immigration to China from 1930s to 1945, but the Japanese immigrants in the northeastern part of China became refugees at the end of the Second World War. The Japanese immigrants in China were displaced and they have returned to Japan from 1980s to now. Bullying and discrimination by Japanese classmates and neighbors against the third and fourth generations of the former war-displaced Japanese after return to Japan are not on the ebb [GR para.148-149, second CO para.24-25]. The City of Tachikawa, Tokyo, had delegated coordinators for schools which the children of returnees from China enrolled in throughout each

year[GR para.582], but the city abolished the system of the coordinators in 2004 and started to delegate translators for the schools for only 4 months in each year. This is a retrograde step of an advanced system for children of returnees from China. Children, of returnees from China, who committed a crime have a risk of being ordered to forcible deportation in the current immigration act [GR paras8, 124, 177, 237, 285-288, 492, 494].Reunification of families of returnees from China is in effect unable in case that parents of children of returnees from China are ordered to forcible deportation with the reason of illegal stay or others.

Recommendations

1. The State Party should prohibit bullying and discrimination against children of minorities in accordance with the Article 2 and 29 (1) of the Convention and take measures to promote human rights education and awareness raising that all children can learn respect of multiculturalism.
2. The State Party should take appropriate measures to ensure enough access to school education in accordance with the Article 28. Moreover, the State Party should equalize school education in minority languages with formal education in official guidelines for school teaching and commit enough financial and manpower facilities in view of the spirit of the Article 30 of the Convention.
3. The State Party should change education for minority children from assimilation to Japanese nationals to education that protect their identity in compliance with the Article 2 and 8 of the Convention.
4. The State Party should take measures to amend the Guidelines of Special Stay Permit of the Immigrant Control administration in order to ensure that children and adults who have foreign nationalities can keep unification of family in accordance with the Article 3, 9 and 10 of the Convention even if they commit a crime or violate the Immigration Control Act.

3A-7. Children of Buraku Communities Are Still Being Discriminated

Discrimination against Buraku communities is based on the social strata as well as designated professions and places of residence, established in the early 17th century, which can be compared with the caste system in India. While there has been certain progress through the official abolition of this system and the adoption of different special measures, people from Buraku communities continue to be subjects of social discrimination. In spite of the UN Committee's recommendations [second CO para.25], there is no reference in the government report as was the case in the second report.

Recommendations

In the light of Article 2 of the CRC as well as recommendations by the HRC, the CERD and the CESCR, the Government should take effective measures to eliminate discrimination against Buraku people, including the ratification of ILO Convention No.111 (Discrimination in Employment and Occupation), the adoption of comprehensive anti-discrimination legislation, the creation of effective mechanisms for remedies, guarantee of access to higher education and further efforts for awareness-raising. It is also necessary, especially for the Ministry of Education, to take further measures to ensure equal access by children from Buraku communities to education, in particular upper secondary

(high school) education.

3A-8. Ainu Children Were Deprived of Their Identity, Culture and Language

The Ainu, Japan's indigenous people, have been deprived of their land, mother tongue and culture through exhaustive assimilation policies as well as facing social discrimination and disadvantages in education. Although the government accepts that there are human rights violations against the Ainu, which it has been "actively engaged in combating" [GR para.581], it does not at all clarify about the actual circumstances or provide details on the measures. As indicated by HRC [CO para.32], the Ainu are not publicly recognized as indigenous people and their political, economic, social and cultural rights, including the rights to language and their own education, are not guaranteed. This is why Ainu children continue to lose capability to bring back and preserve their own identity. In addition, the Japanese also have little knowledge of the history and present situation of the Ainu.

Recommendations

The Government should take necessary measures to eliminate discrimination against the Ainu people and to ensure the rights of their children under Article 30 of the CRC, under the explicit recognition of their indigenous nature, in accordance with the UN Declaration on the Rights of Minorities (1992) and the ILO Convention No.169 (Indigenous and Tribal Peoples) as well as the recommendations by the HRC, the CERD and the CESCR. In the light of the UN Committee's General Comment No.11 on "Indigenous children and their rights under the Convention" (2009), attention should be paid in particular to ensuring equal access to education in general as well as ethnicity education such as learning of the Ainu language and to incorporating education on the history, culture and actual conditions of the Ainu people into general school and social education activities in an active manner.

3A-9. Children in Okinawa Suffer from Consequences of the Past Assimilation Policies and the Present Existence of U.S. Army

Okinawa, an islands prefecture located in the southern part of Japan, was an independent country called "Ryuku Kingdom" until it was invaded by Japan in 1879, after which it has been the subject systematic discriminatory policies. As a result of assimilation policies, including the prohibition of their indigenous language called uchina-guchi and the oppression of Ryukyu's traditional religion, the rights of children in Okinawa under Article 30 of the CRC have been denied. In addition, due to the concentration of the U.S. military forces there, their right to education and other rights have been violated significantly compared to children living in other areas. Furthermore, "Amerasian" children who were born between U.S. soldiers and Okinawan women continue to be discriminated against through the denial of the right to education, the right to know their parents and the right to claim maintenance, because the government has not taken special measures in spite of the U.N. Committee's recommendation [second CO para.25].

Recommendations

In the light of Articles 29 and 30 of the CRC as well as the concluding observations of the HRC, the Government should recognize the Okinawan (Ryukyu) people as an indigenous people who has their own language, culture and history, on the basis of which cultural and educational policies should be pursued. Recognizing the fact that the children of Okinawa have been forced to bear far more burdens than children living in other areas do, the Government should negotiate with the United States for the revision of the Japan-U.S. Security Treaty and the consolidation and reduction of the U.S. military bases, with a view to ensuring the principles of non-discrimination (Article 2 of the CRC), the best interests of the child (Article 3) and the right to life, survival and development (Article 6). Necessary measures should also be taken to protect the rights of Amerasian children, especially in the field of nationality, recovery of maintenance and education.

3A-10. Children of Foreign Nationals Do Not Enjoy Their Own Languages and Cultures

Since public education in Japan is primarily aimed at raising “Japanese” [second GR para.273], the right of children from abroad to learn mother tongues and mother cultures are not guaranteed, as is recognized by the Government [GR para.399]. Consequently these children gradually unlearn their mother tongues and, due to lack of adequate instruction of Japanese language, tend to become “semi-lingual” who cannot speak both languages in a satisfactory manner. Disregard for their mother cultures has led to gaps between them and their parents and discord in the family. Cultural diversity of pupils and students is ignored in Japanese-oriented public education, and children from abroad are often teased and discriminated. The Ministry of Education maintains the policy not to recruit foreign nationals as full-time teachers, restricting the potentials for multicultural education both for children from abroad and Japanese children.

Recommendations

The Government, in particular the Ministry of Education, should guarantee bilingual education for children of foreign origin as their right, including teachings of their mother tongue and mother culture, with a view to helping the establishment of their identity and communication with their parents. The establishment of their own classes and schools should also be guaranteed and supported. Further, multicultural education should be promoted in and outside school for both Japanese children and children of foreign origin, and teachers who have foreign nationalities should be actively recruited as one of the effective means for this purpose.

3A-11. Children of Foreign Nationals Do Not Have an Access to Education, Healthcare and Social Security

Despite the statement in the government report [GR. para.154], children of foreign nationals are not the subjects of compulsory education. Support for acquiring Japanese language is extremely lacking, while bilingual education is not at all considered (see 3A-10). As a result, there are many children who do not attend school and there is no official record of such number. Enrolment rate in upper secondary education, which is not compulsory, is around 40-49% but that is still low.

Long-term economic depression keeps forcing foreign schools to close down, while the number of children who do not attend school during compulsory years of education is also rising. Similarly, in healthcare, some children of foreign nationals do not receive appropriate medical treatment or health services because their parents often do not obtain the information on healthcare services provided free of charge by municipalities, and, in some cases, because some authorities refuse to issue foreigners health insurance cards.

Recommendations

1. In the light of the recommendations by the CERD and other concerns, the Government, in particular the Ministry of Education, should take measures to ensure that children of foreign origin receive primary and secondary education in some way or other. In order to ensure the right of those who wish to learn in public schools to do so, it is necessary to give strong guidance to municipal boards of education not to refuse enrolment of undocumented children and over-age children, to develop educational methods for supporting learning of Japanese and for providing bilingual education, to provide the necessary number of teachers and to admit all applicants into high school.

2. The Government, in particular the Ministry of Health, Labour and Welfare, should allow undocumented immigrants to join the national health insurance scheme and give effective guidance to municipal authorities to prevent the exclusion of documented immigrants from the scheme. It is also necessary for the national and local governments to ensure that health information is provided in all the relevant languages so that children of foreign origin and their families can obtain necessary health and medical information.

3B: The Best Interests of the Child

3B-1. The Need to Have Explicit Provisions on Children's Rights and the Principle of the Best Interests of the Child in Legislation

While many laws have been amended or enacted since the previous report, only the Act to Support Training of Children and Young People (2009) refers to the CRC and provides for the need to respect children's views and to take their best interests into consideration, in spite of the U.N. Committee's recommendations [Initial CO para.35]. The only pieces of legislation that explicitly aim at protecting children's rights are the Child Prostitution and Child Pornography Act and the Child Abuse Prevention Law. While the importance of the best interests principle has been shared more or less in the fields of family proceedings and child welfare, the principle was virtually overruled in the field of juvenile justice due to the amendments to the Juvenile Law (see VIII-8B).

Recommendations

The Government and the Diet should provide for the principle of the best interests of the child (Article 3 (1) of the CRC) explicitly in the laws, regulations and other documents concerning children. It is also necessary to establish mechanisms and procedures to ensure this principle, taking into consideration the principle of respect for the views of the child (Article 12). In addition, judges, prosecutors, lawyers

(including legal representatives of the Government) and other judicial personnel should receive training to secure the best interests of the child.

3B-2. Adequate Attention Has Not Been Paid to the Best Interests of the Child in Policy Decision-Making

The best interests of the child are hardly treated as a primary consideration in legislative and policy decision-making processes. This holds true in the deportation procedures for undocumented children, in which the framework of the immigration control system is usually given a priority.

Recommendations

In order to ensure that the best interests of the child be a primary consideration in legislative, policy, budgetary and other decision-making process, the Government and the Diet should make institutional arrangements, such as the introduction of “child impact assessment” procedures and the establishment of an ombudsperson for children. It is also necessary to take measures to take the views of children systematically into consideration in decisions on bills or policies which closely relate to children.

3C: Right to Life, Survival and Development

3C-1. Loss of Children’s Lives Due to Inadequate Minimum Standards

The Government Report has no reference to accidents, including traffic accidents and those at school and at home, which are one of the leading causes of death among children and adolescents. Preventive measures that have taken so far in this regard remain insufficient. In particular, cases of death of young children have occurred in unlicensed day-care facilities, which are outside the scope of the Minimum Standards on Child Welfare Institutions and thus have operated without adequate supervision by the authorities.

Recommendations

While being careful not to put excessive restrictions on creative initiatives by civil society organizations, the Government should establish necessary safety standards and other minimum standards for playground equipments in parks and other places, day-care facilities and other relevant facilities and institutions, followed by appropriate supervision of their observance. In addition, all necessary measures should be taken to prevent traffic, school and domestic accidents and to ensure appropriate responses to the accidents that have happened, including the comprehensive re-planning of community roads, the provision of safety and first aid education and the expansion of pediatric emergency care arrangements.

3C-2. Children suffering from stress at school

Despite recommendations from the UN Committee [initial CO para.43, second CO paras. 40(a), 50(a)] and CESCR [CO para.58], no sufficient measures were taken to relieve stress of children

in education system. Rather, the Government became inactive arguing that “competition in upper secondary school admission has begun to slow down owing to the decrease in the population under 15 years of age” [GR para.423]. However, the reality is that more and more children go to private tutoring schools for supplemental study or preparation for advancing to college. In addition, as more options become available such as public schools with unified lower and upper secondary school system, the competition starts at a younger age. More children have psychosomatic disorders and more than half of children in a higher-grade at elementary school and in junior high school claim that they are tired. Various surveys show that children are most concerned with Article 31 (the right of the child to rest and leisure). The number of children who commit suicide remain high and support at individual level such as providing a school counselor [GR para.185] seems insufficient.

Recommendations

In the light of the recommendations by the CESCR [CO 58], the Government, in particular the Ministry of Education, should undertake comprehensive reform of the education system in accordance with the relevant provisions of the CRC as well as the relevant general comments of the UN Committee on the Rights of the Child and the CESCR. The reform should cover effective measures to prevent discrimination on the basis of one’s school background, the introduction of the system to admit all the applicants into high school in accordance with the obligations under Article 28 of the CRC, a comprehensive review of the university entrance examination system and the placement of school social workers for reconciliation at school.

3C-3. U.S. Military Bases Threaten Life, Survival and Development of Children in Okinawa

Due to the concentration of the U.S. military bases in Okinawa (75% of all the U.S. military bases in Japan), children in Okinawa, in particular, have been subject to severer violation of their rights to life, survival and development as well as to safety and health, compared to children in other areas. Accidents caused by the U.S. military personnel, including during military operations, as well as rape and other forms of sexual violence against girls continue to be big problems. The noise of fighter planes and other aircrafts have caused health problems, including hearing problems due to the noise, and the increase of underweight birth.

Recommendations

Recognizing the fact that the children of Okinawa have been forced to bear far more burdens than children living in other areas do, the Government should negotiate with the United States on an urgent basis for the return of the lands that had been confiscated in violation of international law, with a view to ensuring the principles of non-discrimination (Article 2 of the CRC), the best interests of the child (Article 3) and the right to life, survival and development (Article 6). At the same time, it is necessary to take immediate measures to eradicate negative consequences of the presence of the U.S. military bases on the education, health and development of the children of Okinawa, including through the reduction of the military bases and the abolition of military training by revising the highly discriminatory Japan-U.S. Security Treaty. In addition, effective measures should be taken to protect the children of Okinawa from

sexual violence and crime by U.S. military personnel, including through the effective law-enforcement against them.

3D: Respect for the View of the Child/Child Participation

3D-1. The Rights of Children to Express Their Views and to Have Them Respected Are Not Ensured Sufficiently

Little progress has been achieved with regard to the principle of respect for the views of the child. In most areas, there are no legal provisions that guarantee explicit rights of children to express their views, the Act to Support Training of Children and Young People being the only exception. There are far less provisions which call for respect of their views. The measures referred to by the Government [GR paras.192-202] are, in most cases, not more than guidance of desirable practices or measures that should be sought for; they are neither legal entitlements nor what is actually practiced in a systematic manner. In some areas, children are legally restricted to express their views; for example, the Administrative Procedures Law and the Administrative Appeal Law are not applied to dispositions taken at schools or juvenile institutions, or to decisions concerning the placement of children in child welfare institutions. Even in family proceedings, in which it is required to hear children above a specified age, the age of threshold (15 years) is too high in the light of the developmental stage of the child and the present international trends. In juvenile proceedings, free expression of the views of the juvenile is sometimes hampered by the introduction of the prosecutor's involvement and the collegiate court system (see VIII-8B).

Recommendations

1. The Diet and the Government should amend major laws concerning children, including the Child Welfare Law and the School Education Law, with a view to introducing explicit provisions on the principle of respect for the views of the child, and make necessary legal and procedural arrangements to ensure the effective implementation of the principle. Such arrangements should include: repealing the provisions excluding the application of the Administrative Procedure Act and the Administrative Appeal Law to the areas closely relating to children; and introducing legal obligations for schools, child welfare institutions and juvenile correctional facilities to hear children, respect their views and prohibit adverse treatment on the basis of their views.
2. In addition, the Diet and the Government should take policy, administrative, budgetary, educational and other measures to support and encourage children to express their views and be involved. These measures should include: training and the development of relevant materials for all professionals who work with and for children; awareness-raising campaigns among parents, the public and children themselves; the promotion of the creation of "appropriate bodies" (Article 12 (2) of the CRC), including NGOs; the establishment of other appropriate mechanisms for representation; the provision of access to necessary information for expressing views and participating; education for developing children's capacity to express their views and participate; and financial support for children's participation.

3. In order to implement the previous recommendations, the Government should disseminate the UN Committee's General Comment No.12 (2009) for all those concerned with children and consider the ways to translate it into specific measures.

3D-2. View Expression and Participation by School Children Remain Difficult

Child participation in school remains difficult, as pointed out by the UN Committee [initial CO para.13, second CO para.27]. There are still no provisions explicitly requiring school authorities to hear students in suspension and other disciplinary measures [GR para.193]. Moreover, while the government states that “[a]spects such as the formulation of school regulations and organization of curricula do not personally involve individual children and are not considered to be subject to the right of expressing their opinions as provided for in Article 12, paragraph 1” [GR para.205], there are school regulations that infringe privacy as well as covering life outside school.

Recommendations

1. In accordance with Articles 12 and 28 (2) of the CRC, the Diet and the Government, in particular the Ministry of Education, should amend the School Education Law and the relevant regulations in order to oblige schools to make notifications to the child before taking disciplinary action against or suspending him/her, to provide him/her with an opportunity to explain him/herself and to appeal against the decision. All appropriate measures should also be taken to protect children from being forced to withdraw "voluntarily" from school.

2. In order to implement the second concluding observations of the UN Committee [para.28(d)] and in the light of Article 12 and other provisions of the CRC, the Diet and the Government, in particular the Ministry of Education, should guarantee the right of children to participate in school management under the School Education Law and other relevant laws and make institutional arrangements for this purpose. In the decision-making concerning the formulation of or amendments to school rules as well as the contents of teachings, in particular, it is necessary to ensure children's active participation in accordance with the UN Committee's General Comment No.12 as well as paras.21 (c) and 31 of the Riyadh Guidelines.

3D-3. Problem about Child Participation in Legislative Process and Policy Making

While the government's attitude towards child participation in policy making [GR para.211] is welcomed, no measures are taken into practice. This came from the factors such as the absence of procedures in hearing the views of the child, the opportunities for children to be heard not being widely recognized, and limited time for comments submission. In fact, the views of the child have never been systematically sought for in crucial legislative amendment or policy making related to children. Moreover, it is considered that the voices of children aged older than 15 (adolescents) must be heard in a family trial, but those of younger children are still significantly limited. While the government encourages volunteer-like participation, it has carefully refrained from touching upon child participation which can lead to transformative impact on school or community. The notice of

the Ministry of Education (1969), which denies the right of upper secondary school students to be involved in political activities, remains valid.

Recommendations

In the light of Article 12 of the CRC, the UN Committee's General Comment No.12 and the provisions of the Riyadh Guidelines, the Government and the Diet should take measures to ensure effective expression of views and participation by children in actions, legislative reform and policy development concerning children at local, municipal and national levels. Such measures should include the introduction of child-friendly procedures to hear them, such as questionnaire surveys and public hearings for children, the effective involvement of children in councils and other bodies and the organization of "children's parliaments" and "Children's Diet". In this regard, attention should be given to the improvement of conditions for participation, such as guaranteeing access to necessary information, taking follow-up measures (including reporting back and explaining after decisions), ensuring appropriate representation of children and providing financial support. The notice of the Ministry of Education titled "On the Political Knowledge and Political Activities in Upper Secondary School" should be withdrawn immediately, on the basis of its incompatibility with the objects of Articles 13 and 15 of the CRC.

IV. Civil Rights and Freedoms

4-1. Protection of Children's Privacy Remain Inadequate

In spite of the U.N. Committee's recommendation [initial CO para.36, second CO para.34], additional measures have not been taken to further protect children's privacy. Systematic guidelines have not been developed concerning the treatment of personal information, including its disclosure to other public and private bodies, as well as search and seizure of personal properties. Problems have also arisen through media coverage and posting on the internet of crime, affecting privacy of both juvenile offenders and victims of such crime .

Recommendations

The Government should recognize the right of the child to control information about him/herself in accordance with his/her age and maturity and take legislative, administrative and educational measures to protect privacy of the child. The Ministry of Education, in particular, should develop guidelines concerning the disclosure of personal information about pupils/students at the disposal of school as well as the issue of search and seizure of their personal belongings, with a view to provide direction and guidance to each school through municipal boards of education. The Ministry of Health, Labour and Welfare, on their part, should revise the Minimum Standards for Child Welfare Facilities with a view to improving privacy of the child and develop and implement guidelines for the protection of children's privacy at child welfare institutions.

4-2. Media environment surrounding children and problems of media literacy

What is needed in modern society where media information is everywhere is the media

literacy enabling children to proactively live through this society. The Government report places much emphasis on shielding children from harmful information and considering the development of media literacy as a part of measures to block off harmful information [GRparas. 243-256]. This approach does not bring about empowerment of children and open civil discussion regarding the media. The Education Rebuilding Council of the Government suggested to prohibit elementary and junior high school students from possessing mobile phones and some local governments established a regulation requesting guardians to make best efforts not to allow these students to possess mobile phones. These are excess regulations. The Government report also fails to articulate the vision of how the media environment should be provided to children in line with the Convention and what the Government, media companies and the public should do for that.

Recommendations

The Government, in particular the Ministry of Internal Affairs and Communications and the Ministry of Education, should promote media literacy among children in the light of UNESCO's relevant declarations. In this regard, it is necessary to provide financial and other forms of assistance to initiatives led by civil society including NGOs, enabling them to develop materials and train facilitators. In order to ensure that media corporations fulfill their social responsibility by improving the media environment for children, the development and implementation of specific standards for programmes and advertisements targeted at children, in collaboration with the public including children themselves, should also be encouraged. It is also necessary to encourage and support children's participation in the media.

4-3. Introduction of National Flag and Anthem Threatens Children's Freedom of Thought and Conscience

Hinomaru (Sun-Rising Flag) and *Kimigayo* (Emperor's Era) were formally recognized as the national flag and anthem of Japan respectively through the enactment of the Act on the National Flag and the National Anthem in 1999. During the drafting process, representatives of the government repeatedly stated that the bill "is not intended to impose duties to respect the national flag and anthem on the people" and that they "have no intention to interfere with what pupils and students think with a view to forcing them to behave in certain ways". Nevertheless, guidance and pressure by the boards of education and other authorities is prevalent in practice, often amounting to *de facto* imposition. The forceful introduction of the national anthem and flag in school ceremonies have given a lot of adverse impact, sometimes inducing threats by rightist forces on schools. In addition, the promotion of moral education that only focuses on the mentality of individual children, including through the use of *Kokoro no Noto* (Notebook for Heart and Mind), is likely to interfere with children's thought and conscience.

Recommendations

The Government, in particular the Ministry of Education, should take all necessary measures to ensure that the rights of the child under the CRC, inter alia, the right to thought, conscience and religion (Article 14), the right to express opinions freely concerning matters affecting them and to have them

respected (Article 12) and the right to educational environment that permits for a diversity of values (Article 29), are not infringed in the course of the introduction of the national flag and anthem in school events and ceremonies. In particular, it is necessary to stop surveys on the rates of schools that have introduced them in entrance and graduation ceremonies, which put unnecessary pressure on educational practices.

4-4. School regulations without due process

School regulations of Japanese schools are determined at the discretion of schools. Many rules are ambiguous and abstract making it difficult for children to make judgments by themselves. As a result, children have to act based on unspoken agreement and by reading the atmosphere of a group. The content of school regulations clearly touches upon freedom of expression, matters of self-determination and students' lives outside of schools. Personal lives of students are substantially subject to disciplinary measures. The rules to be followed in the school life are ambiguous and process to be respected by schools in case of disciplinary measures are at the discretion of schools. School regulations not only try to control freedom of expression and the right to self-determination, but also has a problem with due process. It is a violation of Section 2 of Article 28.

Recommendations

The Government, in particular the Ministry of Education, should change the existing practices that allow for *de facto* disciplinary measures on the basis of ambiguous rules, by encouraging review of the existing school regulations and other rules for the purpose of making it clear what should be observed by children at school. It should also introduce legal provisions for due process that should be complied with by the school authorities when they take disciplinary or similar measures. Specifically, provisions on due process should be introduced in the regulations established by local educational authorities (the regulations on school management); alternatively, local educational authorities should give guidance to schools under their jurisdictions to include such provisions in their school regulations.

4-5. Measures against violence at schools are going against the Convention rather than just being insufficient

The Government report states that corporal punishment at schools is “strictly prohibited under Article 11 of the School Education Law ... promoting their awareness on this matter” [GR para. 260]. However, corporal punishment is widespread in reality and, even after some teachers have been punished, the Government does not report figures relating to corporal punishment at schools and the number of teachers punished. Recommendations of the Committee [initial CO para.45, second CO para.36] has not been implemented. Instead, Ministry of Education, Culture, Sports, Science and Technology has issued *de facto* “acceptance of corporal punishment” in February 2007. This recognized that there is “permitted corporal punishment” when deemed necessary by schools or teachers and it is different from corporal punishment prohibited by the law. In April 2009, the

Supreme Court ruled that overbearing action of the teacher towards the 2nd-grade boy (grabbing a boy by the collar and hold him against a wall) was not a corporal punishment. This decision will bolster the trend. These examples go against Article 19 and section 2 of Article 28.

Recommendations

The Government, in particular the Ministry of Education, should develop and implement a comprehensive programme of action to prevent and resolve violence at school, taking into consideration the recommendations from the UN Committee's general discussion on "Violence against Children within School and Family". In this regard, it is necessary, inter alia, to cover all forms of violence at school, to hear pupils/students and other stakeholders and to promote human rights education and learning about rights, an essential in the prevention of violence. It is also necessary to develop appropriate and adequate arrangements for responding both to victims and perpetrators, to improve in-school complaint mechanisms so that children can seek for and receive help without fear and anxiety and to conduct awareness-raising campaigns against corporal punishment among children, teachers, parents and the community. Furthermore, legal amendments should be made to regulate and prohibit corporal punishment by parents/guardians, with a view to preventing violence at home.

V. Family Environment and Alternative Care

5-1. Separation of Child from Parents against the Best Interest of the Child

In spite of the U.N. Committee's recommendation [second CO para.8], the declaration on the paragraph 1 of the article 9 has not been withdrawn. Recently, the parents of 14 years old girl, who had been raised in Japanese and in the Japanese culture was arrested for illegal entry. The parents did not have any criminal record by then and the girl explicitly expressed her will to stay together with her parents and the local assembly support them unanimously, but the Minister of Justice finally presented two options, either three of them should return to the Philippines together or Noriko should be left alone in Japan. Finally, the parents returned to the Philippines voluntarily on April 13th. This decision is questioned in light of the best interest of the child. Moreover, the Government of Japan has stuck to the initial decision even after UN Special Rapporteurs contacted with and requested information from the Government of Japan. Thereafter the Ministry of Justice made clear the criteria for issuing special permission for residence in 2009. As a result, undocumented foreigners who have entered Japan with disguised passports are to be deported uniformly, without consideration of other circumstances, which has led to unjust violation of the right of children born in Japan.

Recommendations

1. The Government should withdraw its declaration on Article 9 (1) of the CRC. The Ministry of Justice, in particular, should adopt rights-based responses to children of undocumented foreigners who have entered Japan illegally, in accordance with the relevant international trends. Furthermore, independent mechanisms should be established urgently so that the families at risk of deportation can

easily seek for advice and make complaints.

2. When a human rights situation has not been improved after the alleged victims have exhausted domestic procedures, they should be able to make individual petitions to the relevant human rights treaty bodies. For this purpose, it is necessary to adopt the third Optional Protocol to the CRC, which makes it possible to make individual petitions to the UN Committee on the Rights of the Child.

5-2. Family reunification in the best interests of the child

Separation from family in case of child abuse is handled by the Child Guidance Center and the process is strengthened for the forced separation based on the Child Welfare Law. However, depending on the handling of the Child Guidance Center, not all the cases give priority to the best interests of the child. In the cases handled by the Child Guidance Center, the tendency is that the process prioritizes the position of guardians over the best interests of the child, as it requires the consent of guardians (not necessary for temporary shelter) for forced separation.

It is welcomed that, through the amendments to the Child Welfare Law, the Family Court is to review the possibility of family reunification every two years in cases of forced separation of children from their families. Children in residential child care facilities, however, cannot receive benefit from the review because they are placed in the facilities on the consent of their guardians.

Recommendations

Since children in residential child care facilities are excluded from periodic review (every two years) by the Family Court, the Government, in particular the Ministry of Health, Labour and Welfare, should introduce assessment mechanisms for all children living under social care.

It is also necessary to strengthen family reunification programmes and other responses for the guardians who have been forced to separate from their children due to child abuse and neglect or other reasons, on the basis of the rights and best interests of the child.

5-3. Gaps in Procedures for Temporary Protection in Cases of Child Abuse and Neglect

In 2008/2009, child guidance centers dealt with 42,664 reported cases of child abuse and neglect. In 3,195 cases, abused children were separated from their parents and placed into temporary protection by child guidance centers; 3,254 cases were placed in child welfare facilities. Child guidance centers have the power to separate abused children from their parents and to provide them with temporary protection on their own initiative. Children cannot go to school while they are under temporary protection, however. There are restrictions on belongings, places of residents and outings. These restrictions are left to the discretion of child guidance centers, which are administrative organs, without judicial involvement. While temporary protection can be challenged through administrative suits, it is virtually separation of children and parents without judicial review, which is incompatible with Art.9 (1) of the CRC.

Recommendations

Virtual lack of judicial review in the temporary protection procedures (separation of children from

their parents), which is incompatible with Art.9 (1) of the CRC, should be urgently redressed by introducing prior or *ex post* judicial review in temporary protection.

5-4. Problems in the policies for ensuring the maintenance of children

Only 19% of the single-female-parent households in Japan receive child support after divorce or other reasons. The amount is average 42,000 YEN and the payment rate of child support is very low. IN 2004, the Government has revised the Civil Execution Act with regards to collection of child support [GR para.296]. Also, the counseling and support center for the child support has been established since 2006 but all the measures are just superficial. Japanese men often lack the awareness that father has support obligation even after the divorce and payment of child support is only “best effort” under the Act on Welfare of Mothers with Dependents and Widows. For this reason, children from single-female-parent households are subjected to poverty.

Recommendations

The Government, in particular the Ministry of Health, Labour and Welfare, should formulate and implement comprehensive policies for securing the maintenance of children. It is necessary, specifically: (a) to change the forms of the notification of divorce in order to make the space for registering the agreements concerning the maintenance of children; (b) to realize the system of deduction of the maintenance from salaries; (c) to make it easy to apply for enforcement of the agreements concerning the maintenance of children in case of non-payment; and (d) introduce the system of public advancement of the maintenance of children without suspending the benefits for children of single-mothers. In addition, proactive measures should be taken to promote social awareness that it is the parents’ duty to pay the maintenance of children.

5-5. Alternative care is still provided mainly in institutions

The number of children who are forced to leave families and provided with alternative family environment has increased from 28,913 in 2000 to 30,846 in 2007. The number of children who are entrusted to foster parents seems to have increased from 2,211 in 2001 to 3,870 in 2008. However, considering that 3,322 children were entrusted in 1985, alternative family-like environment for the social care is more commonly provided at institutions (over 90% are enrolled in institutions for group care). In order to make the environment at the Children’s Homes more similar to alternative family-like environment, the Government revised the law to promote the establishment of small-scale group home. While the effort is recognized, standards for facilities and staffing of group homes to make the environment more family-like are currently insufficient.

Recommendations

It is necessary to provide children in social care with a variety of options, including residential child care facilities, small-scale child care facilities (group homes), family homes (group homes combined with foster care), foster care and adoption, and to allow them to decide by themselves. In order to prevent inequalities in support programmes for independent living as a result of the children’s decisions, the

Government should promote foster care and improve residential care, including care provided at residential child care facilities, along with the improvement of quality of life and the expansion of support programmes for independent living through the realization of small-scale care. For this purpose, the Government should urgently review the relevant minimum standards to allocate more financial and human resources.

5-6. Inadequate standards of institutional care

The government increased the per-capita room area for Child Welfare Facilities with the revision of the Minimum Standards for Child Welfare Facilities and also takes budgetary measures [GR para.276]. But it assumes the renovation of facilities. Many institutions made little progress with renovation and reconstruction of facilities due to financial difficulties. As a result, many institutions provide the living condition, which is lower than the minimum standards. Also, many facilities have not created the environment, which could cater for individual cases, and the basic rights of children such as ensuring privacy is not protected.

Recommendations

The living conditions in residential child care facilities should be improved, including by making it a rule to secure private rooms for children so that they can have their own living space. For this purpose, the Government, in particular the Ministry of Health, Labour and Welfare, should urgently implement necessary measures to ensure the interests of children in these facilities, including securing the budgets for reforming and/or reconstructing the facilities and restricting the capacity for each living unit.

5-7. Rights of children are not adequately safeguarded in institutions

In the absence of improved staffing standards, many facilities have to hire part-time staff in order to cover staff shortages. As a result, it is progressively difficult for children and part-time staff to build the relationship of trust and attachment providing that part-time staff could only work for short period of time. While the number of children who needs specialized treatment such as the case of child abuse increases, it is difficult for institutions to ensure that staff are equipped with adequate skills and expertise because many of them are part-time staff.

In order to prevent corporal punishment at child welfare facilities, the Government, through revision of the Child Welfare Law and other measures, made a notification requirement for facility staff and established a system to protect children by introducing the system to file complains within institutions. While these efforts are valued, only a few local governments distribute “Children’s Rights Note”, which has been prepared for the purpose of informing children of their rights when they are moving into facilities and preventing the violation of rights within facilities.

Recommendations

In order to ensure qualified professionals by improving their treatment, the Government should consolidate the systematic treatment of the staff working in residential child care facilities and other child welfare facilities, taking their expertise into consideration. Since training of the staff, which is conducted at

the only center that exists in the country, measures should be taken to ensure that all the staff can benefit from training. With a view to enabling the staff to secure the protection and promotion of the rights of children placed in facilities, it is also necessary to introduce/reinforce third-party advocates (ombudspersons) for children who are empowered to receive complaints from children or the staff of facilities. Furthermore, “Children’s Rights Note” should be systematically introduced to make their own rights known among children.

5-8. Insufficient support to foster families

With the revision of the Child Welfare Law in April 2009, the Government has revised the foster family system to a large extent, making the training of foster parents mandatory and increasing the allowance to foster parents. However, the allowance for foster parents who wish for adoption was abolished and foster parents who are relatives of children receive no allowance. Support for foster parents and children remain insufficient.

Recommendations

The Government, in particular the Ministry of Health, Labour and Welfare, should continue to strengthen systematic support, respite care and professional care for foster parents and children in foster care, with a view to protecting and promoting their rights. Since children are excluded from the scope of the Child Welfare Law when they become 18 years old, being forced to rely on personal efforts of their foster parents due to lack of specific support mechanisms, it is urgently necessary to improve support for young people who had been in foster care. The right of the child to know their origin should be guaranteed for the lifetime, by changing the present practice of keeping the relevant materials at the child guidance center only until the child becomes 25 years old.

5-9. Adoption without giving consideration to the child's best interests

The Japanese civil law regulating adoption does not refer to “the child’s best interests” or “for children” and Japan remains to have the old and traditional image of adoption for the family or for parents.

In case of adoption of the minor, the permission of the Family Court is required in principle. However, if the adopted minor is the lineal ascendant of the adoptive parent or the adoptive parent’s spouse, the permission is unnecessary. On this point, the Government explains that “the lineal ascendant of the minor is the adoptive parent or the adoptive parent’s spouse, adoption that goes against the welfare of the child such as giving up such child for adoption entirely for the parent’s convenience is most unlikely” [GR para.299). However, in reality, it is not unusual that stepfather or stepmother become abuser and one cannot argue that the interests of the child are ensured under the current system.

Recommendations

The Government should take measures to transform the system of adoption into the one aimed at ensuring the best interests of the child, including by: (a) stipulating explicitly by law that adoption is a

system for securing the interests of the child; (b) providing for the right of the child to express his/her views in adoption so that adoption truly becomes a system for securing the interests of the child; and (c) making it obligatory to have the authorization by the Family Court or other judicial body when a minor is adopted, even if he/she is the lineal ascendant of the adoptive parent or his/her spouse.

5-10. Need for ratifying the Hague Convention and establishing the special law for inter-country adoption

Despite the recommendation of the UN Committee [second CO paras.39-40], the Government has not ratify “the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption of 1993” (the Hague Convention). Moreover, although Japan does not have the special law regarding inter-country adoption [GR para.302], 500 cases of inter-country adoption are reported every year by applying to regulations for adoption within a country. The percentage of inter-country adoption is very high compare to the total number of adoption cases. There is no public organization responsible for inter-country adoption and cases are usually supported mainly by private organizations. These organizations do not have any screening process and the only requirement is the notification to the prefectural governor [GR para.301]. No clear standard is defined for their roles. In addition, no public regulation is in place for persons traveling overseas for adoption or for adopted children traveling overseas after adoption. There is no registration system for adopted children and no mechanism for monitoring and following up adopted children when they travel overseas.

Recommendations

In order to secure the interests of the child in inter-country adoption, the Government should sign and ratify the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption. The ratification should be followed by the enactment of a special law on inter-country adoption, which aims at the prevention of exploitation of children through the process, including by imposing stricter conditions than domestic adoption. It is also necessary to establish a public body that deals with all the issues concerning inter-country adoption, including follow-up of cases of inter-country adoption of children.

VI. Basic Health and Welfare

6-1. Law to Support the Independence of Persons with Disabilities rather retrograde the welfare for persons with disabilities

Formulation of Law to Support the Independence of Persons with Disabilities in October 2005 [GR paras. 346-348] brought chaos to the welfare service for the disabled. Before the law, the usage fee for welfare service of the disabled was based on the principle of ability to pay. The law however introduced the new system in which the disabled have to pay 10% of the service. As a result, utilization rate of facilities have reduced and some facilities were forced to close down. In case of

children with disabilities placed in facilities, from the perspective of child welfare, the cases were considered as “placement in facility” and they were exempted from the cost of placement, school equipments and medicals care. However, as a result of applying to this law, Child Guidance Centers were reexamined and children were divided into two categories: “placement” and “contract usage”. If categorized as “contract usage”, various costs have to be paid. Fees were also increased for children with disabilities who stay at home and use day-service. The same law talks about providing support to disabled persons for the employment but no progress has been made. The new government has already decided to abolish this law, but the new policy is yet to be determined.

Recommendations

The Government and the Diet should ratify the Convention on the Rights of Persons with Disabilities early without reservations and take the following measures, among others:

- (a) The Law to Support the Independence of Persons with Disabilities should be replaced by another piece of legislation, which is based on the protection and promotion of rights of children and persons with disabilities in accordance with the purposes and provisions of the Convention on the Rights of Persons with Disabilities.
- (b) In order to ensure the rights of children with disabilities to live in the community with others, the home helper and guide helper programmes should be replaced by the personal assistant programmes, whereby children/persons with disabilities are provided with human support necessary for them to live in the community without gaps and in a user-led way. At the same time, it should be confirmed on an urgent basis that children with disabilities should not be placed in institutions against their will and on the basis of disabilities. Children with disabilities should not be prevented from participating in community activities on the basis of disabilities, and the existing programmes specifically for them should be made open to children without disabilities.
- (c) Consideration should be given to the introduction of sanctions against local authorities and private employers who are reluctant to employ persons with disabilities.

6-2. Insufficient personnel and physical condition for Special Needs Education

As the expectation for education of children with disabilities becomes higher, the number of children who receive education in schools and classes for children with disabilities and recourse room system increases. However, many schools and areas still have no class for children with disabilities and recourse room system and infrastructure have not been fully developed. The Government report provides the data on current situation of special needs education [GR para.358 and others] without giving details of what these 39,000 children learn in resource room. Only half of children can study in special classes and recourse room at their own schools. Many others have to go to other schools. In April 2007, the system of “special school” was converted into that of ‘Special Needs Schools’ that enables the provision of education for children with developmental disabilities. But no special measures were taken to develop personnel and physical condition. Safeguarding of the right to education of children with disabilities is in critical condition.

Recommendations

In the light of the UN Committee's General Comment No.9, the Convention on the Rights of Persons with Disabilities, UNESCO Salamanca Declaration and other relevant international instruments, the Government, in particular the Ministry of Education, should amend the School Education Law with a view to making it a rule to ensure inclusive education for children with disabilities. In order to ensure the implementation of this principle, necessary arrangements should be made in terms of human and financial conditions to enable children with disabilities to learn in schools in the community together with children without disabilities. In the light of Articles 12, 23 and 28 of the CRC, the will of the children with disabilities and their parents should be respected to the maximum degree in the provision of advice on school enrolment and support for learning. In particular, existing practices that force the parents to provide cooperation in integrated settings should be eliminated.

6-3. Comprehensive Services Are Necessary for Adolescents

In spite of the UN Committee's recommendations [second CO paras.45-46], lack of comprehensive, community-based and age-specific services for adolescents has contributed to the worsening of their health. Problems involving adolescents, such as sexual behaviour and substance abuse, still tend to be treated as delinquency issues rather than as health issues. The development their life skills, including the capacity of self-determination, has not been given much emphasis; primary responses have been a threatening type of education, in which only risks of such behaviour are stressed, and the delivery of unilateral messages. It is hard for adolescents to find services which provide them with accurate information, non-judgmental counselling and useful skills to enable them to face developmental and social challenges in a positive manner.

Recommendations

The Government should address a variety of challenges faced by adolescents primarily from the perspectives from physical, mental and psychological health, promoting life skill education for children and adolescents as well as the development of comprehensive community-based services specifically targeted for adolescents. In these kinds of education and services, emphasis should be placed on the provision of accurate information, non-judgmental responses and support for life skill development as well as respect for confidentiality and privacy of adolescents. In order to expand these kinds of education and services, more resources should be allocated to child welfare services and NGOs rather than to the police.

6-4. Mental Health of Adolescents Is Not Addressed Satisfactorily

Partly because of the sensational media coverage of juvenile problem behaviour and crime, more and more attention is given to the problems of adolescents' mental health. The phenomenon of "withdrawal", young people withdrawing into home or personal room without physical contact with the outside world, is recognized as social problem. However, discourses on and responses to these problems generally focus only on individual personality of children and young people or on family

environment, without exploring social and cultural factors which have contributed to these problems. The same is true for “education of the heart” [GR para.263(3)] and other measures to deal with children’s mental health problems [GR para.363]. On the other hand, the tendency to “medicalize” these problems or non-attendance at school remains strongly, considering them as pathological problems and attempting to deal with through placement into mental health institutions or medication. On the whole, responses have not been based on the perspective of empowering children and families.

Recommendations

The Government, in particular the Ministry of Education and the Ministry of Health, Labour and Welfare, should develop measures with emphasis on empowerment of children, young people and their families in dealing with the issues of children and young people’s mental health, focusing not only on individuals and families but also on the environment in which they live in, in the framework of a plan of action to improve adolescent health. In the light of the UN Committee’s General Comment No.5 (Adolescent Health and Development), particular emphasis should be placed on life skill education. In addition, appropriate regulations and independent monitoring mechanisms should be established to prevent human rights violations in psychiatric responses to children and young people.

6-5. Problems in Food Education

The Basic Law on Food Education was enacted in June 2005 [GR para.365]. To begin with, it is questionable whether the law should touch upon one’s diet in his or her private life, which is very much of individual freedoms. The issue is controversial. Also even after the enactment of the Basic Law on Food Education, the system is insufficient to implement the Law and only 2648 nutritionist are allocated among over 30,000 elementary and junior high schools. Moreover, the time and budget allocated for the food education is being reduced. Furthermore, with the current condition of largely relying on the imported food, there is a concern that, even with the standard to regulate the amount, repeated consumption of the residue-prone postharvest agricultural chemicals and genetically modified products might affect children. As the situation of famine is getting worse worldwide, the Government cannot secure the necessary food for children unless it revisits the current situation and change the policy, which increases food self-sufficiency.

Recommendations

The Government, in particular the Ministry of Education, should review “food education”, which is not rights-based, and transform it into “education on food for life”. In addition to undertaking comprehensive review of the curricula to ensure certain time for education on food throughout the year, arrangements for the promotion of education on food at school should be reviewed and municipal boards of education should provide advice for the reinforcement of the arrangements. It is also necessary to allocate budgets for education on food to each school, with a view to promoting the use of NPOs and outside lecturers. Also, the Government should actively promote food production without using chemical materials, providing subsidies for sustaining food production without environmental burdens and ill effects

on physical health. The Government should establish and implement child-specific standards concerning all kinds of agricultural chemicals and food additives.

6-6. Sharp increase of sexually transmitted disease and resistance against education on reproductive health

Despite the recommendation of the UN Committee [initial CO para.42 & second CO para.46(a)] and the statement of the Government report [paras.364, 369, 373-377], effective education and provision of service for reproductive health is extremely limited. Sexually transmitted disease increases among early adolescent and HIV/AIDS infection rate among young adults indicates exceptional increase compared to other developing countries. There is no special care provided for teenage mothers. In spite of this reality, backlash against education on reproductive health remain strong and in some cases teachers who try to proactively implement the education are pressured to discontinue.

Recommendations

The Government, in particular the Ministry of Education and the Ministry of Health, Labour and Welfare, should adopt a plan of action to improve adolescent health, including reproductive health of adolescents, which contains target figures for the reduction of sexually transmitted diseases, HIV/AIDS and abortion. In this regard, emphasis should be given to the development of education and community-based services which are sensitive to the special needs of adolescents, in the light of the UN Committee's General Comments No.4 (HIV/AIDS) and 5 (Adolescent Health and Development). Such a plan of action should reflect adolescents' views in a systematic way and be implemented in close collaboration with youth organizations and other NGOs in the provision of the education and services. Support should be given to teenage mothers and their partners, including counseling, educational and occupational assistance and the provision of opportunities for community exchanges.

6-7. Children waiting for admission and “quality of day-care”

In order to enhance and strengthen measures to tackle the declining birthrate, the Government formulated the Focused Strategy ‘Japan That Supports Children and Families’ [GR para.34], and started measures, such as “new strategy for zero children waiting for admission”, to reduce children waiting for admission to day-care centers [GR para.386]. This led to a decrease of the published number of children waiting for admission across the country. However, with the worsening economy situation, the number has once again increased in April 2008 accounting 19,550 children, which is an increase of 1,624 from the previous year. Currently, even requests from families with urgent priority, such as single parent family, family looking for a job or trying to return to work after parental leave are not addressed. In addition, with the easing of regulations, day-care centers try to attract as many entries as possible by lowering the standard of facilities and staffing, which is already low compared to foreign countries, and pay little attention to the standard of facility in which children live and play. Authorized day-care centers are overcrowded with children and room

for children to live and play is getting narrower. As more and more part-time staff positions take over full-time, it is increasingly difficult to sustain a stable staffing level in order to improve the quality of the service. Securing the child-friendly “quality of day-care” is in a crisis situation.

Similar problem applies to clubs for after school activities for children in the lower grades of elementary school. Club facilities were regulated as best efforts of municipalities and, after the plan for child and childcare was adopted, the number of facilities increased from 4,500 in 1994 to 17,583 in 2008. However, in terms of the quality, facilities and their performance standards remain as best efforts under the guideline set by the Government and there are cases where one facility accommodates 200 children in urban area. It is requested that the Minimum Standards for Child Welfare Facilities is adequately institutionalized.

Recommendations

The Government, in particular the Ministry of Health, Labour and Welfare, should secure necessary financial resources for ensuring “quality of day-care”, on the basis of the notion of the child as the subject of rights, and “quantity of day-care”, which makes it possible to secure public day-care for all the children in need of the service, at the same time. It is also necessary to raise the Minimum Standards for Child Welfare Facilities, including those concerning day-care centers, to institutionalize the standards of the number of the staff and to improve treatment of the staff.

6-8. Impoverishment of single-parent family due to restriction of the Child-Rearing Allowance

There are said to be 1.2 million single-female-parent households in Japan. Their average annual income is about 2.13million and the earnings through work is about 1.71million. It is extremely low compared to the Japanese standard. On average, one household has two children. Despite the high employment rate of 85%, the comparative poverty rate of Japanese single-female-parent household is high accounting for over 60%. Redistribution of taxes and social security rather increases the poverty rate, and measures taken by the Government to reduce poverty yields opposite effects in reality. In order to compensate for the low wages of mothers of single-female-parent household, the Child-Rearing Allowance is provided (1 million households receive the allowance) [GR paras.57, 275, 383, 387]. But in 2002, it was decided that the income limitation for full payment of the Child-Rearing Allowance was largely decreased and that, after five years, the allowance would be reduced by half. With an appeal of the parties concerned, it was later decided that the full allowance could be continued after five years, if the certificate of employment is submitted. However, in reality, there are cases where the full allowance is not paid. This system does not guarantee the life security of children if certificate of employment is not provided. Such system presents a serious problem. Also the impoverishment of single-male-parent household is increasing, as it is not provided with the Child-Rearing Allowance.

Recommendations

The Government, in particular the Ministry of Health, Labour and Welfare, should conduct baseline surveys to understand the number of single-parents living in single-mother and single-father

households, their living conditions and difficulties faced by them, with a view to informing the relevant policies. The reduction of the amount of the child-rearing allowance as well as the working requirement for receiving the allowance after five years should be abolished, and active support should be provided for single-parent families in need. The child-rearing allowance should be given not only to single-mother households but also to single-father households.

6-9. Additional allowance for mothers on public assistance was abolished

The take-up rate of welfare system (recipient households about 1million) is said to be 15-20% in Japan. The application is inhibited and people who are in need of welfare are unable to receive it. Although it is not mentioned in the Government report, welfare mothers have been provided with addition support for possible special expenditure. However this additional support had been reduced in stages since 2005 and abolished in 2009. Because the employment of mothers is a condition for alternative measures, if mothers cannot work due to depression after DV, truancy, minor handicap or disease, nothing is provide to them. Abolishment of additional support, which was used for the purchase of school equipment, private tutoring school, school trip and uniforms and school bags, worsen the impoverishment of children from single-female-parent household and, in some cases, forced these households to cut down the cost of food. The new administration decided to reactivate the additional support from December 2009, but the plan has not been determined for the year 2010 and after.

Recommendations

The Government, in particular the Ministry of Health, Labour and Welfare, should undertake comprehensive review of the relevant policies for securing child support, including by reintroducing the additional allowance for mothers on public assistance on permanent basis and preventing discouragement of the application for public assistance.

VII. Education, Leisure and Cultural Activities

7-1. Competition in education system is not reduced

Although the Government states that “competition in upper secondary school admission, however, has begun to slow down owing to the decrease in the population under 15 years of age” [GR para.423], in reality, competitive principles in education system is intensified and spread among lower aged children, because of establishment of unified lower and upper secondary school system following the amendment of the School Education Law in1998 and uncertainty due to recession. Also, starting from April 2007, “nationwide surveys on academic ability and learning context” have been given to sixth-grade elementary school student and third-year junior high school student and so far three surveys took place. Surveys, however, contributed to intensifying the competition for higher scores instead of meeting the original meaning of utilizing the results for improving the future conditions. The Government refers to the revision of the Courses of Study as a tool to reexamine

curricula to alleviate the competitiveness in the school system [GR para.424]. However the content is shifting over into inoculation ensuring children acquire basic skills and knowledge and placing much importance on developing proactive attitude towards study. It lacks the right-based approach and does not give consideration to children's rights to education.

Recommendations

In accordance with Articles 3, 6, 12, 29 and 31 of the CRC, the Government, in particular the Ministry of Education, should ameliorate the excessively competitive nature of the education system, with a view to preventing adverse impact on children's physical and mental health. For this purpose, it is necessary to undertake comprehensive review of the Course of Curriculum, to abolish the National Survey on Academic Skills and Learning Situations involving all the pupils and students in specific grades and to review the curricula with participation of all the stakeholders, including children, in the light of the UN Committee's General Comments No.1 and No.12 as well as the CESCR's General Comments No.11 and 13 and in accordance with the UN Committee's previous recommendations [paras.49 and 50].

7-2. The "Education Reform" Process Is Neither Rights-Based nor Responsive to What Is Happening in the Field

The UN Committee [initial CO para.43 & second CO para.50] as well as CESCR [second CO para.50] has called for a comprehensive review of the education system in the light of the provisions and principles of the CRC. While the Government refers to some measures in this regard [GR paras.408 & 421-422], they are of a reactive nature and have not led to satisfactory results. The problem is that, during the process of major reforms of the education system undertaken so far, there has been total lack of a child rights-based approach; education is primarily considered as a tool to serve specific policy objectives, such as adjustment to the globalization or the development of patriotism. During the process, the provisions of the CRC or the general comments of the UN Committee and the CESCR have barely been referred to or mentioned; systematic measures have not been taken to involve civil society, children and young people on a broad basis.

Recommendations

The Government, in particular the Ministry of Education, should shift its emphasis on child rights-based educational reforms, fully reflecting the UN Committee's General Comments No.1 and No.12 as well as the CESCR's General Comments No.11 and 13. As a prerequisite for this, official translation of these general comments should be prepared immediately and disseminated widely. During the course of such educational reforms, effective participation of children, their guardians, teachers and other teaching staff and NPOs should be ensured.

7-3. Amendments to the Fundamental Law on Education goes against the purposes and provisions of the Convention

One of the main purpose of the current education reform is to create awareness as "Japanese" and patriotic sentiment among children. Having this as a main reason, the Fundamental

Law on Education, which had the content in line with the Convention, was revised in December 2006 [GR para.25]. In the process of revising the Law, no reference was made to the Convention or the first general comment of the Committee. The revision of the Fundamental Law on Education goes against the rights-based approach and has the tendency of controlling the people. The revised Fundamental Law on Education emphasizes “development of new Japanese” and seeks “loving attitude towards Japan”. It ignores the fact that there are minority children who are different from Japanese in terms of ethnic group, language and nationality.

Recommendations

In the light of the CRC and the UN Committee’s General Comments, the Diet and the Government, in particular the Ministry of Education, should review the existing Fundamental Law on Education fully in accordance with the rights-based approach, with a view to amending it. In this process, effective participation of children, their guardians, teachers and other teaching staff and NPOs should be guaranteed.

7-4. Development of educational condition falls behind the needs of children, Worsening working condition of teachers/staff

Japanese public expenditure to education is only 3.4% of GDP and the lowest standard among OECD members. Although local governments are allowed to make class of average 30 children at their own discretion, the government’s standard is class of 40 children (elementary and junior high schools). Therefore, despite the remark on the Government report 392, many teachers have to give lessons to class of 30-40 children. Under the tight fiscal policy, the Government reduces national minimum (minimum support by the Government) as much as possible and promotes local optimum (optimum state in each region), leading to increased regional gap for educational condition.

According to the survey of working condition conducted by the Ministry of Education, Culture, Sports, Science and Technology for the first time in 40 years, the number of teachers and staff who take less than 10 minutes break a day or work overtime increased by five times compared to 40 years ago. Working condition of teachers and staff is increasingly worse. With the harsh working condition and strengthened management, more and more teachers and staff damage their mental health due to stress. The number of teachers and staff who are on leave of absence due to mental disorder has tripled from 1,715 (1998) to 4,995 (2007) over the past decade. More focus has been placed on strengthening the management by removing “teacher lacking in teaching ability” or “unqualified teacher”, than on improving the working condition. As a result of revision of three education related laws (Education Personnel Certification Act, School Education Act, Act on the Organization and Operation of Local Educational Administration) following the revision of the Fundamental Law on Education, the concept of management, evaluation, and selection was brought in schools and worsening the above trend.

Recommendations

In the light of Articles 4, 28 and 29 of the CRC, the Government, in particular the Ministry of Education and the Ministry of Finance, should seek for the allocation of adequate financial and human resources so that quality of education can be ensured and improved. It is necessary, in particular, to set the standard class size at 30 pupils/students per class, to increase the number of teachers further and to conduct research on overwork of teachers for the purpose of identifying and implementing specific measures for improvement. Measures should also be taken to prevent the expansion of regional discrepancies in education conditions through the process of decentralization.

7-5. Unequal opportunities for education at high schools

The portion funded from household finance in the education spending is high accounting for 22%. It is 53.4% for high schools and the highest among OECD members. For this reason, an increasing number of children are forced to give up advancing to higher education due to financial condition of their families. Many children with foreign nationality have to change or leave schools when their guardians are suddenly fired. The number of new graduate from junior high school who wishes to apply for evening high schools or correspondence course high school has increased over the past decade. Although the standard for tuition exemption became tougher, the rate of tuition exemption for evening high schools shows the tendency to increase. The government report refers to the scholarship as an education support for qualified students who have difficulties attending school for financial reasons [GR para.391], but they are mainly just loans. Moreover, many evening high schools are closed or merged and the subsidy for supper was also cut in many prefectural and city governments, leading to worsened support condition. Having these in the background, dropout figure of evening high schools is extremely high of 13.6% (average 2.1%) and it is difficult to say that the equal opportunity for education is guaranteed.

Recommendations

In the light of the provisions of Article 28 of the CRC and Article 13 of the International Covenant on Economic, Social and Cultural Rights, and in accordance with the recommendation by the CESCR [CO34], the Government should withdraw the reservation to Article 13 (2)(b) of the Covenant, make compulsory education completely free of charge and introduce free education at the upper secondary level (including Korean schools and other schools for children of foreign origin), thereby redressing inequality in educational opportunities due to the high proportion of household burdens in educational expenditures. Furthermore, the Ministry of Education should take measures to ensure that students do not give up schooling because of financial reasons, including by reviewing the criteria for the exemption of tuition fees at evening high schools and correspondence high schools, maintaining different forms of high schools and expanding subsidies for night meals and other forms of support.

7-6. Difficulties Faced by Students with Disabilities in Access to Higher Education

In Japan, where the enrolment rate at the tertiary level is high, students with different disabilities have also tried to go to universities and colleges. However, the Government does not

explain anything about access to higher education by students with disabilities, which means that such access has no place in policy-making and is not recognized as entitlements. As a result, no effective measures have been taken to counter discrimination against students with disabilities in higher education. There are still a considerable number of higher education institutions that do not allow them to sit for examinations or that do not give any special consideration to their needs on the campus life. Since the provision of information and other forms of support are not officially provided in relation to access to higher education, students with disabilities have to resolve problems on their own with the support of people around them.

Recommendations

In the light of Articles 2, 23 and 28 and 29 of the CRC, the Government, in particular the Ministry of Education, should eliminate discrimination against students with disabilities in university entrance examinations and campus life, by taking legislative measures (such as the adoption of legislation for the purpose of protecting and promoting rights of persons with disabilities) or other legally-binding measures, with a view to entitling all children with disabilities to choose higher education for their life options. In the light of Article 28 (1) d of the CRC, it is also necessary to establish information systems on higher education for children with disabilities and to provide necessary support.

7-7. Bullying Continues to Be a Big Problem

The Government does not provide data on school violence and bullying in its report [GR paras.410-411], although it is appreciated that the Ministry of Education reviewed the definition of bullying in 2007 and decided to collect data on the number of bullying cases that had come to the attention of the school authorities, instead of the number of cases that had been formally recognized as bullying. The annual number of bullying cases that had come to the attention of the school authorities amounts to some 100,000, and a series of suicide had occurred as a result of bullying since the fall of 2006. The problem is so persistent that 2.5 cases of bullying are acknowledged at each school. While the Government refers to measures to promote cooperation between schools, families and communities [GR para.411], such measures have increasingly become of a punitive nature, with an emphasis on guidance based on “uncompromising attitude” toward bullies, promoting temporary suspension if necessary. These kinds of punitive responses, which are not more than reactionary measures, will not lead to the effective solution of bullying, especially bullying on the Internet through “school underground sites”, which is hard to be detected. While “school counselors” and “counselors for children and parents” have been introduced to strengthen complaint mechanisms, they work on a part-time basis and cannot provide sufficient support. School violence is on the increase every year, amounting to 54,378 cases in 2008. Children are exposed to violence at school, which threatens their right to learn in a safe and secure environment.

Recommendations

The Government, in particular the Ministry of Education, should review its punitive approach to bullies, making appropriate and adequate arrangements for providing support both for victims and

perpetrators. As a prerequisite for this, a comprehensive programme of action should be developed and implemented to prevent and resolve violence at school, followed by such measures as increasing the number of teaching staff and employing “school counselors”, “counselors for children and parents”, “school social workers” and other professionals on a full-time basis. It is also necessary to promote human rights education and learning about children’s rights, which is essential for the prevention of violence.

7-8. Measures against non-attendance persist in bringing children back to schools

In the same way that the first and second Government report did not provide the data, the current Government report does not provide the data on non-attendance [GR para.280]. It is the same for high-school dropout [GR para.409]. In Japan, 120,000 elementary and junior high-school students refuse to go to school in recent years and 60,000 high school students refuse to go to school. Main reasons for non-attendance are human relationships with teachers and friends including bullying, and sense of discomfort and mistrust for public education. The government takes measures aiming to bring these children back to school instead of solving the problem and making schools suitable environment for children. This attitude leads to undermining the best interests of the child and their rights to live and develop. Although the UN Committee requested to review the education system [initial CO paras.22, 43], in reality, non-attendance is interpreted negatively and the process of taking measures to taking children back to school is strengthened [GR para.408]. No efforts have been made to address violation of human rights towards truant children and to safeguard the rights of children to study outside of schools. In 2007, high school dropout was 72,854 and dropout rate was 2.1%, showing the decrease. However, the increasing reasons for dropout are maladaptation in schools and in learning (including discomfort for human relationships and atmosphere).

Recommendations

The Government, in particular the Ministry of Education, should undertake comprehensive review of the school education system from the perspective of fulfilling children’s right to learn. In addition to recognizing children’s right to rest, with a view to ensuring that children who do not attend school are free from pressures to attend school, the Government should change the policy of getting children back to school and guarantee a diversity of learning and development opportunities outside school as well. In envisaging support for children who do not attend school, it is necessary to respect the Declaration on the Rights of School Refusing Children (see Annex 1-1), prepared by children who do not attend school themselves in August 2009.

7-9. Alternative Forms of Education Should Be Recognized as a Way to Ensure the Right to Education in an Appropriate Manner

Children’s human rights are violated in various ways in Japanese schools. Parents are obliged to send their children to schools under the School Education Law, however, and children are not entitled to learn through diverse forms of education other than school education, such as “free

school” or home-based education. It is persistently considered in society that “children have the obligation to go to school”, and it is rarely recognized that education is first and foremost the *right* of the child. Consequently, many children have to face the dilemma of whether to keep going to school while enduring human rights violations or to stop going and face risks of being socially disadvantaged as well as discriminated and prejudiced against. Their parents also have to face this dilemma, making many of them unable to give effective support to their children.

Recommendations

In order to ensure the rights of the child to education (Articles 28 and 29 of the CRC) in an effective manner, and in the light of other provisions of the CRC, inter alia, Article 3 (best interests of the child), 6 (the right to life, survival and development) and 12 (respect for the views of the child), 5 (respect for parental guidance) and 18 (1) (parental responsibility), the Government, in particular the Ministry of Education, and the Diet should amend the School Education Law and other relevant legislation and adopt a law on alternative education, with a view to approving “free school”, home-based education and other forms of alternative education, followed by necessary institutional arrangements. In this regard, the Policy Proposals from Free Schools (see Annex 2), issued by the National Free School Network, should be respected.

7-10. Participation of Children, Parents and Community Members in School Management Is Not Adequate

While education at alternative schools or home-based education is not officially recognized, ongoing deregulation of education has led to the establishment of diverse forms of schools managed by a variety of actors. An increasing number of municipalities have introduced the school choice system, in which parents and children can choose a school within a specified area, instead of the existing system, in which children are enrolled in a school specified by the board of education. The trend requires careful examination to ensure that the best interests of the child are not hampered further along with the acceleration of commercialism and competitiveness. On the other hand, the powers of the headmaster have been strengthened in existing public schools, making it more difficult to involve teachers, pupils/students, parents and community members in school management in legitimate ways.

Recommendations

The Government, in particular the Ministry of Education, should conduct adequate impact assessment to see whether deregulation in the field of education may not give adverse effects on children’s right to education and, in particular, ensure that commercialism and competitiveness is not accelerated in the field of education, that quality of education will not become worse and that discrepancies are not widened. At the same time, on the recognition that the school is organized by collaborative efforts of the education administration, school administrators, teachers and other teaching staff, pupils/students, parents and the community, school management councils and other forms of democratic mechanisms for school management should be promoted, instead of the present policy that

seeks for the reinforcement of the principal's authority. The results of teacher's performance evaluation should be disclosed to the teacher concerned, and independent appeal procedures should be introduced. At the same time, performance of school administrators should also be evaluated by teachers and other teaching staff.

7-11. Human Rights and Child Rights Education Has Gone Rather Backward

Despite the UN Committee's recommendation [initial CO para.44 & second CO 21(d)] and explanation in the government's report [para.419], measures to systematically introduce human rights education into school curriculum remain lacking. Human rights, especially child rights education has rather moved backward partly due to the argument that juvenile crimes are the results from "too much emphasis on human rights and freedom in education". Duty and responsibility are emphasized instead of child rights exercise, and the state's established "moral education" is imposed arbitrarily on children. Moral education, which shows the state's excessive interference in educational content and is feared to possibly deprive the right to freedom of thought and conscience [CRC, Article 14], is embedded into school education activities through the new government curriculum guideline. Therefore, education on child rights, including CRC, does not receive much support from the government.

Recommendations

In the light of Articles 42 and 29 (1) of the CRC as well as the UN Committee's General Comment No.1 (aims of education), and also in the framework of the UN Decade for Human Rights Education, the World Programme for Human Rights Education and the policies under the Act on the Promotion of Human Rights Education and Awareness-Raising, the Government, in particular the Ministry of Education, should improve human rights education, including on the rights of the child and the CRC, instead of the present policy that seeks for strengthening "moral education" at school. For this purpose, it is necessary to develop educational programmes, to collect and publicize best practices and to promote linkage and collaboration among the relevant policies and organizations, including NGOs. Emphasis should be placed, not only on respecting rights of others, but also on exercising one's own rights in an appropriate and active manner.

7-12. Improvement Has Not Been Achieved in the Textbook Screening System

In spite of the U.N. Committee's second concluding observations [para.50] and the recommendations by the CSCER [second CO para.59], the Ministry of Education has authorized the use of a history textbook that attempts to justify past colonization of and invasion into Asian countries, including through ignoring "wartime comfort women" and denying "the Nanjing Massacre". In addition, the number of the boards of education that decided to use the textbook has increased since the previous government report. Meanwhile, the Ministry of Education has discouraged detailed description of the historical facts, especially when it concern colonization and invasion, and forced textbook authors to write to the benefit of the Government, through the

textbook screening procedures. The present administration of the textbook screening system continues to be deficient, in that it has authorized textbooks that go against the aims of education under Art.29 (1) of the CRC. The underlying problem is the fundamental deficiencies of the present textbook screening system that are likely to bring about authoritarian interference with what is taught at school and what is written in textbooks.

Recommendations

In order to ensure that draft textbooks that are not compatible with the aims of education under Article 29 (1) of the CRC are not authorized as textbooks and to stop issuing compulsory screening opinions that are not compatible with the said aims of education in the textbook screening system, the Government, in particular the Ministry of Education, should take necessary measures on an urgent basis, such as the revision of the textbook screening criteria and the termination of arbitrary administration of the system, also in the light of the CESCR's recommendation [CO 59]. At the same time, it is necessary to undertake comprehensive review of the present textbook screening system, which has often led to authoritarian interference in what should be taught and what should be written in textbooks, including through the possible introduction of a free publication system for textbooks.

VIII. Special Protection Measures

8A: Trafficking in Persons & Sexual Exploitation

8A-1. The Efforts against Child Trafficking Remains Inadequate

The number of identified TIP (Trafficking in Persons) victims decreased to 36 in 2008, down from 43 in 2007, 58 in 2006 and 117 in 2005, which only reflects the fact that the Government of Japan is not able to catch up with the increasingly sophisticated act of trafficking. The Government has not taken effective measures to criminalize the act of trafficking for labor exploitation in the Industrial Trainee and Technical Internship Program (the "foreign trainee program"). The Government has also not taken sufficient measures against international false marriage and adoption. The Government's efforts in prevention of TIP and protection for trafficking victims are insufficient. The Government responded that they would take care of trafficking victims, including trafficked children, based on the National Plan of Action on TIP and that protection of trafficked children is guaranteed by the Child Welfare Law and the Law for Punishing Acts Related to Child Prostitution and Child Pornography[GR para.20, 562], but there are problems such as lack of professional interpreters, multi-lingual hotline, mid-term and long-term assistance and limited financial assistance to NGOs in charge of prevention. The Government has also not ratified Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime as they insist that they could not ratify UN Convention against Transnational Organized Crime due to lack of necessary legislation [GR para.541].

Recommendations

The Government should sign and ratify the Protocol concerning trafficking in persons to the UN Convention against Transnational Organized Crime as well as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse at an early stage. In the light of the recommendations by the HRC [2nd CO 23] and the CEDAW [6th CO 43], the early enactment of a comprehensive law for the prevention of trafficking in persons and the protection of victims should be considered. Such a piece of legislation should include, inter alia, the following components: (a) financial assistance for establishing privately-run hotlines, accessible for 24 hours throughout the year, not only for (potential) victims of trafficking but also for all the people who are not familiar with the Japanese language and culture; (b) legislative measures to make recognized victims of trafficking eligible for public assistance and to provide necessary support allowances; (c) the introduction of prevention programmes, including training that is necessary to protect oneself against sexual exploitation and abuse, for all children regardless of their nationality status (foreign, Japanese or stateless), including victims of trafficking and those who are at high risk of being victimized; (d) thorough human rights education for adults who have contact with children; and (e) stricter responses against prostitution/sex industries using children as well as more rigorous arrest and prosecution of those who are involved in child prostitution and child pornography.

8A-2. Victims of Sexual Exploitation Are Treated as “Delinquents”

Some positive measures have been taken to combat commercial sexual exploitation of children, including the enactment of the Law on Child Prostitution and Child Pornography [GR paras.551-560]. While this is appreciated, problems remain in that emphasis has been placed more on arresting and punishing perpetrators than on the provision of care and protection for child victims, that there have been little successful cases of extra-territorial application of the above-mentioned law and that comprehensive consolidation of legislation has not been conducted in relation to sexual abuse in general. The greatest concern is that the principle of decriminalization of child victims has not been fully applied. The situation became worse when the Online Dating Sites Regulation Act was adopted with a view to introducing criminal sanctions against children who offered themselves for prostitution. Concern has been expressed that victimized children are discouraged from seeking help due to fear of being punished.

Recommendations

The Government should undertake comprehensive review of the Law on Child Prostitution and Child Pornography and other relevant legislation, with a view to ensuring comprehensive responses to sexual exploitation and abuse of children. It is essential to have explicit provisions on the principle of decriminalization of child victims and their rights to care and protection. In this regard, the provisions criminalizing children in the Online Dating Sites Regulation Act should be repealed. In addition, it is necessary to seek for empowerment of children and young people in the framework of a plan of action for the improvement of adolescent reproductive health and to involve them actively in legislative reforms,

policy development and awareness-raising campaigns.

8A-3. Master Plan for Disaster Prevention without the Perspective of Children

The Master Plan for Disaster Prevention by the Central Disaster Prevention Council was formulated in 1963, fully revised in 1995, based on lessons learned from the Great Hanshin-Awaji Earthquake. It went through the last revision in February 2008 which incorporated comprehensive countermeasures for addressing issues that dealt with prevention to reconstruction in the case of various disasters. The latest Master Plan demonstrates a more positive stand on incorporating the gender-equal standpoint. The Master Plan was revised to include “infants” as an object of protection in July 2005, but the perspective of children is still yet to be incorporated.

Recommendations

Perspectives of children need to be incorporated in the next revision of the Master Plan for Disaster Prevention. In order to pursue disaster prevention reflecting perspectives of both men and women, it is necessary to further promote the participation of women in the process of the formulation of policies and principles of disaster prevention and in actual activities on the field, thereby establishing disaster prevention schemes which incorporate perspectives of gender-equality and of children.

8B: Juvenile Justice

8B-1. Amendments of Juvenile Law

i. Towards toughening the Law: Amendments to the Japanese Juvenile Law in 2000

<Contents of amendments in 2000>

- (i) The public prosecutor was excluded from juvenile trial: the public prosecutor can take part in proceeding involving juveniles and given the right to appeal
- (ii) Trial by a single judge (facing juveniles): appointment of more than one judges (part of the transformation of the juvenile procedures into criminal procedures)
- (iii) The minimum age at which criminal punishment can be applied was 16: lowered to 14 years old
- (iv) Whether the case is taken to the criminal court or not is determined case by case basis: Juveniles over 16 who commit murder or acts with lethal consequences should, in principle, be punished according to the Criminal Law
- (v) Reduction of a life sentence to imprisonment for 10-15 years for juveniles under 18 was mandatory: it is now discretionary
- (vi) The maximum period of pre-hearing detention was 4 weeks: it can be extended up to 8 weeks

These amendments reflect big retreat from the CRC and other international standards on juvenile justice. In the second Concluding Observations, the UN Committee expressed concerns about the lowering of the age at which criminal procedures can be applied, the increase of the number of juveniles who are subjected to criminal trials and the extension of the period of pre-trial detention, among others [para.53] and recommended that the Government should strengthen the use of alternatives to detention in order to ensure that deprivation of liberty is used only as a measure of last resort [para.54 (c)] and that it should “[r]eview the existing possibility for the Family Court 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” [para.54 (d)].

The Government ignored these recommendations, however, and has not taken any action to address them. Furthermore, the 2000 amendments was followed by more amendments which are in contradiction to the principle of juvenile protection (child well-being) emphasized in the Juvenile Law. Not only those recommendations of CRC were not implemented but also the further amendments were made to toughen the law in 2007 and 2008.

ii. Amendments to the Japanese Juvenile Law in 2007 and 2008

<2007 amendments >

- (i.) Under the previous law, in case of juvenile offenders, the principle was the welfare treatment and the Family Court were involved only when juvenile offenders are transferred from Child Guidance Centers to the Family Court. Even when the Family Court decide the disposition, it was a welfare treatment. (placement in welfare institutions in case of institutionalization). It has been revised as follows.
 - a) Serious juvenile offenders ((1)cases of the death of the victim occurring as a result of the

juvenile's intentional criminal act, and (2)cases of capital punishment, imprisonment for life or limited time over 2 years, and imprisonment without work) are, in principle, taken to the Family Court

b) Establishing police investigation procedures for cases relating to juvenile offenders

c) Cases where the Support Facilities for Development of Self-Sustaining Capacity was an only option: now juveniles aged roughly 12 or older can be sent to the Juvenile Training School

(ii.) Breach of the conditions and provisions under the probation: the probation office may apply for his/her placement in facilities such as Juvenile Training Schools

<2008 amendments >

Juvenile Trial is closed to the public: victims (including their families) can sit in the trial

(a) Revision on Treatment of Juvenile Offender

The amendments of 2007 mainly concern the treatment of juvenile offenders. It made it possible for juvenile delinquents who are younger than 14 years old to be placed under the Juvenile Training School which is the judicial organ, instead of welfare institutions as it was the case under the previous law. It is a policy to toughen the law regarding the juvenile offenders.

(b) Treatment in case of breach of the conditions under probation

The 2007 amendments established a system to place juveniles under the probation into institutions such as the Juvenile Training School if juveniles do not respect or breach the conditions and provisions under the probation. This demonstrates the tendency of strengthening surveillance instead of establishing the trust and becomes a problem for due processes.

International general standards (e.g. Article 18, 19 of "The Beijing Rules") encourage expansion of probation as a non-institutional treatment. Probation emphasizes the case work function which establishes the trust relationship over time and private volunteer probation officers who are on site also emphasized the same (please refer to paragraph 467 of the Government's report which talks about probation). The amendments, however, enhances the restrictions by intimidation and it goes against the general meaning.

To start with, the breach of conditions and provisions under the probation is neither a crime nor a status offence intended by the Juvenile Law. The probation also works as a basis for non bis in idem (Article 46, paragraph 1, Juvenile Law). If a juvenile is already under probation, further disposition may pose a risk of the breach of the principle of non bis in ideam under Article 39 of the Constitution of Japan or the breach of double jeopardy rule. It is also against the paragraph 7, Article 14 of the International Covenant on Civil and Political Rights and paragraph 8 of the General Comment no.10. Furthermore, it is in contradiction to the UN Committee's recommendation to "ensure that children with problematic behavior are not treated as criminals" [second CO para.54(f)].

(c) Amendments in 2008: Juvenile audience program for victims

The 2008 amendments launched a juvenile hearing audience program and made it possible for victims and their families to sit in the trial, which had been previously closed to the public. The report published by The Government does not refer to this point (only referring to paras.147-150 of

the second report [GR para.477]). The amendments in 2000 stipulated that victims and their families are now permitted to have their opinions considered in juvenile hearings, apply for permission to view and copy records and to apply for the outcome of the trial to be conveyed directly to them by the court. These amendments were made without any verification of possible problems arising from the revision.

Hearing audience program for victims not only makes it difficult to protect the privacy but also breaks down the principle of juvenile trials. Close-door Juvenile trials made it possible for Judges and inspectors to establish sincere communication and work on the emotions of juveniles on trial and contribute to their rehabilitation. The audience program for victims may risk the trial to become superficial and make it difficult for juveniles to be themselves and reflect on what they have done. This is against Article 40.1(vii), paragraph 65 of the General Comment no. 10 (Children's rights in juvenile justice, hereinafter simply called the General Comment no.10) and paragraph 2, Article 14 of the Beijing Rules, and should be abolished.

The government is glossing over the necessary revisions by offering victims to participate in the trials. There has been no progress in providing treatments victims genuinely needs. The government is expected to take necessary measures immediately to provide sufficient economical support and psychological care to victims and their families instead of changing the criminal procedures and allowing participation in juvenile trials.

(d) Expansion of official attendant

Under the 2008 amendments, an official attendant can be appointed in case of certain serious crimes, although the appointment is at the discretion of the judge. The revision is positive but there are remaining challenges.

Recommendations

Hearings should be organized regarding the problems outlined under point i. and ii. (except for (d)), with a view to amending the Juvenile Law again and restoring it to the original one. It is necessary to:

- (a) Raise the age at which criminal procedures can be applied again to 16;
- (b) Abolish the system of semi-mandatory transference to criminal procedures;
- (c) Abolish the involvement of prosecutors and their (virtual) right to appeal;
- (d) Abolish the system of discretionary council of judges;
- (e) Reintroduce commutation for those who were under 18 years of age at the commission of crime;
- (f) Abolish the extension of the period of pre-trial detention and establish an effective system to ensure that deprivation of liberty is used as a last resort and for the shortest period;
- (g) Abolish the system of semi-mandatory reference to the family court in case of serious breaches of law by children under 14 years of age, making it discretion of the child guidance center again;
- (h) Raise the age at which the juvenile can be placed into a juvenile training center again to 14;
- (i) Make the child guidance center to inquire cases of breaches of law by children under 14 years of age;
- (j) Abolish the system of placing juveniles into juvenile training centers due to non-compliance with the conditions on probation; and,

- (k) Keep juvenile trials not open to the public by abolishing the provisions that allow victims and the deceased to observe juvenile trials.

8B-2. Amendments relating to age

i. Lowering the legal age at which a person may be subject to criminal disposition

The Japanese Juvenile Law is applicable to those under 20 years of age. The minimum age of criminal responsibility is 14 years old. In order to hold juveniles criminally responsible, the decision on the criminal disposition is required from the Family Court which conducts the juvenile trials. Prior to the amendments to the Juvenile Law in 2000, juveniles could not be given criminal dispositions until the age of 16 at the time of the disposition at the juvenile trial. However, as already mentioned in the section 1, the 2000 amendments lowered the age of criminal responsibility. It means that children who are at the age of the compulsory education could face the criminal punishment. The revised law become effective from April 2001 and by March 2003, five juveniles (all of them 15 years old) received criminal punishments.

In paragraph 480 of the Government's report, the government claims that the revision is for "the sound growth of juveniles". On the other hand, it argues that "juveniles under 16 years of age who are sentenced to imprisonment with or without work, may receive correctional education in a juvenile training school until he/she reaches 16 years of age" and criminal punishment will contribute to the sound growth of juveniles. Taking measures such as this already says that lowering the age of criminal responsibility is nothing but toughening the measures.

ii. Principle of referral to a public prosecutor

The purpose of the Japanese Juvenile Law is the "sound growth" of juveniles and its system is to treat juveniles on case by cases when deciding the disposition. It has always kept the principle of protectionism. However, with the amendments in 2000, a juvenile who is 16 years of age or older at the time of a crime will face criminal charges in cases of the death of the victim occurring as a result of the juvenile's intentional criminal act (it is called "the principle of referral to a public prosecutor"). The amendments put more stress on the consequence of an action rather than the individuality of an issue relating to a juvenile. It is not in line with an ideal of "sound growth" of juveniles which the Juvenile Law argues. The amendments largely weaken the principle of protectionism and the proportion of criminal punishments has increased in reality. The UN Committee made the recommendation [second CO para.54(d)] on this matter but it has not been implemented at all. The Government claims that it is "necessary in order to develop the juvenile's sense of standards and encourage his/her sound development" [GR para.459].

The principle of referral to a public prosecutor has been applied as follows. Since 2004, when the recommendation by the UN Committee [second CO para.54(d)] was made, the rate of the application of criminal sanctions is on the increase every year, with the exception of the year 2006 when the rate of the application of protective dispositions increased.

(Application of the principle of referral to a public prosecutor)

Year	Number of juveniles subjected to final decision	Number (and rate) of juveniles subjected to criminal sanctions	Number (and rate) of juveniles subjected to protective dispositions
2002	83	44 (53.0%)	39 (47.0%)
2003	76	51 (67.1%)	25 (23.9%)
2004	79	45 (57.0%)	34 (43.0%)
2005	51	36 (70.6%)	14 (27.5%)
2006	35	17 (48.6%)	16 (45.7%)
2007	42	32 (76.2%)	10 (23.8%)
2008	26	20 (76.9%)	5 (19.2%)

Source: *White Paper on Crime* for each year. The total sum of the rates of sanctions/dispositions does not amount to 100 in 2005, 2006 and 2008 because there were cases of non-dispositions.

iii. Revision regarding the treatment of juvenile offenders (lowering the age for those who are subject to be sent to juvenile training schools)

The 2007 amendments mainly concern the treatment of juvenile offenders and it is a part of measures which toughens the law.

In case of juvenile offenders (under 14 years of age), the welfare treatment was the general principle and the Family Court was involved only when juveniles is transferred from the Child Guidance Center to the Family Court. The decision of the Family Court was also welfare treatment (placement in Child Welfare Institutions in case of detention in institutions). Under the homelike environment at the Child Welfare Institutions, efforts to ensure “re-development” of children have been pursued and practiced. It is only natural considering their age.

However, the 2000 amendments abandoned the principle of welfare. The former director of the National Support Facilities for Development of Self-Sustaining Capacity, who has dealt with juvenile offenders of serious cases, was called to give unsworn testimony in the Diet which discussed the amendment bill. He stated that the previous law was achieving an effect and not giving problems and questioned the timing of the amendment.

- a) Serious juvenile offenders ((1)cases of the death of the victim occurring as a result of the juvenile’s intentional criminal act, and (2)cases of capital punishment, imprisonment for life or limited time over 2 years, and imprisonment without work) are, in principle, taken to the Family Court
- b) Establishing police investigation procedures for cases relating to juvenile offenders
- c) Cases where the Support Facilities for Development of Self-Sustaining Capacity was an only option: now juveniles aged roughly 12 or older can be sent to Juvenile Training Schools

This is going back from the provision under Article 40.3(b) “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” and against paragraph 10 of

the General Comment No.10.

The Government referred to the issue of lowering the age for those who are subject to be sent to juvenile training schools under Article 3 (Best Interest of the Child), and used casuistry saying that “for the purpose of giving juveniles the most appropriate form of treatment”, the Family Court is now able to “send children under 14 years of age (approximately 12 years of age or above) to a juvenile training school if the court deems it especially necessary, so that such children may receive corrective education at an early stage for the purpose of rehabilitation”[GR para.173].

Since the amendments became subject to criticisms even within the Diet, measures were taken to staff Juvenile Training Schools with those with similar functions as Support Facilities for Development of Self-Sustaining Capacity. This policy, however, may harm the growth of children as juveniles are more likely to be surrounded by many adults but with limited interaction with other children. Juvenile offenders often have problems rooted in the family such as abuses and it is essential for them to be placed in a homelike environment as it was the case before the amendments, instead of correctional institution such as Juvenile Training Schools. Not only this completely goes back from the principle of non-institutional treatment promoted under the international standards of juvenile justice but also goes against 54b of the Concluding Observations. It should be emphasized that it is completely against paragraph 10 of the General Comment No.10.

As it was decided to take serious juvenile offenders to the Family Court in principle, the police was given investigation procedures for cases relating to juvenile offenders. This issue is quite serious.

Even before the amendments, in reality, the police investigated the cases and it has caused the false charges. Although the provision was introduced to call for the assistance of lawyers on a voluntary basis, juvenile offenders will not be notified of the right of silence based on the reason that “Juvenile offence case is not a crime”. This presents a risk of false charges regarding juvenile offenders. Considering the age of juveniles, the investigation should be conducted by Child Guidance Centers.

Recommendations

The Juvenile Law should be amended again and restored to the original one with regard to the above-mentioned points. It is necessary to:

- (a) Raise the age at which criminal procedures can be applied again to 16;
- (b) Abolish the system of semi-mandatory transference to criminal procedures;
- (c) Abolish the system of semi-mandatory reference to the family court in case of serious breaches of law by children under 14 years of age, making it discretion of the child guidance center again;
- (d) Raise the age at which the juvenile can be placed into a juvenile training center again to 14; and,
- (e) Make the child guidance center to inquire cases of breaches of law by children under 14 years of age.

8B-3. Detention

i. Detention during investigation

Paragraph 488 of the Government's report on CRC says that, during an investigation, "a juvenile may not be detained without unavoidable reason; and protective detention of a juvenile pending proceeding is available as an alternative measure to detention". The letter of the law indeed says so, but in 2007, 12.2% was arrested and, out of those who are arrested, 77% were detained for "unavoidable reason", despite Juvenile offences are often minor cases. The text set by The Government has become a dead law.

ii. Detention for trial proceeding (extension of protective detention)

With regard to the compliance with the provision of the CRC (Article 37(c)), providing that "detention shall be used only as a measure of last resort and for the shortest possible period of time", the UN Committee has made recommendations twice, first in the initial concluding observations [para.48] and then in the second ones [para.54(c)]. Nevertheless, the 2000 amendments extended the period of pre-trial detention. The Government argues under paragraph 489 that it is applicable only in cases where a large amount of evidence needs to be examined [GR para.489]. However, before the amendments, in case the examination of evidence required a long time, juveniles were released from the detention for the period of further examination. The time required for examination of evidence, therefore, cannot be used as a reason for the extension of detention period.

For five years after the revised law came in effect, 249 juveniles had their detention period extended (46 juveniles over 4 weeks, 95 over 5 weeks, 47 over 6 weeks, 61 over 7 weeks; from April 2001 to March 2006; Supreme Court). The percentage of detention treatment which was somewhere between 10-15% in 1990th has become 20% or more after 2000.

iii. Detention as a measure of last resort and for the shortest possible period of time

Problems regarding the detention has seen no progress both for the investigation and trial proceedings period. The partial amendment of the Juvenile Law in 2000 has introduced an appeal system for decisions on measures of detention and shelter care but it was introduced just because detention period was extended.

Furthermore, children who received the criminal punishments by the Family Court will be detained at the detention center, which is the criminal institution, without any assistance during the criminal trial. Since the amendments in 2000 lowered the legal age at which a person may be subject to criminal disposition and established a new system of the criminal disposition (principle of referral to a public prosecutor), a number of juveniles who receive the criminal disposition has increased. The issue is quite serious, since the new principle affects the children who are at the age of compulsory education. Even if the detention is necessary, juveniles should be detained at facilities where assistance and care can be provided (e.g. juvenile classification home) and also for the limited amount of time.

iv. Making "daiyo-kangoku (substitute prison)" permanent • • legalization of the system of substitute detention

The Government has been repeatedly recommended to abolish the *daiyo-kagoku* (substitute prison), as it could be a breeding ground for confessions, by the HRC and other human rights treaty

bodies (for example, see the fifth concluding observations of the HRC [para.18]). Nevertheless, The Government has ignored the recommendation. Furthermore, in 2006, the Government legalized the system of substitute detention, which allows the detainment at the police detention facilities instead of detention centers (criminal facilities) into law (same as “daiyo-kangoku” in substance). In Japan, the suspect is still taken to the detention centers at the investigation stage. They are put under the police control for 24 hours a day and interviewed for a prolonged time. Although the system of appointing official defense counsel for suspects has been expanded since May 2009, detention centers remain the breeding ground for confessions because the defense counsel has no right to be present for the investigation and visualization is also insufficient. The system of substitute detention should be abolished.

Recommendations

1. An effective system needs to be established which makes detention as a measure of last resort and for the shortest possible period of time.
2. The system of substitute detention should be abolished.

8B-4. Due process – expanding lawyer’s assistance

Since May 2009, the system of appointing of official defense counsel for suspects (including juveniles) in detention has been largely expanded. Also the amendments of 2008 introduced the system of appointing official defense counsel (counsel --- “official attendant”) for juvenile trials in case the juvenile is under detention for the serious offence. While we welcome both progresses, there are still many problems yet to be addressed.

The appointment of an official attendant is only for serious offences and at the discretion of the judge. Therefore, even if the suspect appoints the official counsel during the investigation, in most cases, an official attendant is not appointed during the hearings. The counsel falls off the map suddenly at the trial proceedings.

Also the appointment of official defense counsel for suspects cannot be applied during the arrest. Furthermore, juvenile offenders can only appoint the private counsel for the investigation. The amendments that gave the police the right of investigation should be reversed and investigation of juvenile offenders should have the official attendants based on Article 40.3(b).

Recommendations

Appointment of official defense counsel for suspects should be expanded to the point of arrest and the system should be introduced in which an official attendant can be appointed during the trial proceedings under the same condition for state-appointed attorneys for crime victims. A system of official attendant should be established to the investigation of juvenile offenders.

8B-5. Treatment

i. Fallback of non-institutional treatment

Since 2000 (the year the Juvenile Law was revised. The amendments have been discussed

for several years before the actual amendments), the transfer to Juvenile Training Schools has increased, and probation (at home) and no disposition has reduced. If tentative probationary supervision as a moderate treatment is actively practiced, placement at institutions could be reduced largely.

Paragraph 11 of the General Comment no.10 states that “the use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society” All the more reason, the International documents including various conventions states that the deprivation of liberty “shall be used only as a measure of last resort and for the shortest appropriate period of time” (Article 37 (b)) and the Beijing Rules sets various provisions for disposition measures which do not involve the use of institutionalization.

ii. Violence in correctional institutions – concerning GR paras. 263, 264 and 461

【Physical assault at Juvenile Training Schools】

It was reported that 52 juveniles which is more than half of the inmates at the Hiroshima Juvenile Training School, had been exposed to some sort of violence from March 2008 to April 2009. Four staff have been arrested and indicted on the total of 115 cases of assault and cruelty by special public officers. In August 2009, at the same Juvenile Training School, the chief officer (chief of the education division) was arrested on assault and cruelty by special public officers for his violence in September 2005.

The Government decided to introduce the system where, just like a prisoner, a juvenile may file a complaint regarding the treatment directly with the Minister of Justice starting September 2009. However the direct claim of prisoners to the Ministry of Justice is currently not effective. It is an appeal system and questionable whether the system will bring the improvement.

The problem is that staff at these institutions lack the senses and understanding of human rights and believes that it is inevitable to use violence as a part of the treatment (as a matter of fact, the arrested chief officer claimed that the violence was a part of education). The closed environment also presents a risk.

Recommendations

1. The current situation needs to be reviewed in the light of the CRC and other international documents. The tentative probationary supervision could actively tried and the detention should be done strictly as a measure of last resort and for the shortest possible period of time. Investigation staff at the Family Court needs to be increased for the tentative probationary supervision to be fully operated.
2. The Government should conduct thorough trainings to ensure that the inmates of correctional institutions are guaranteed of the right not to be subjected to torture and other cruel, inhumane or degrading treatment or punishment. The government should further examine the system stipulated under paragraph 263 and 264 of the third report and further introduce regular hearings by the third party, and the system to guarantee the inmates are not subjected to any form of violence and receive the treatment respecting the human rights.

8B-6. Policy regarding the juvenile justice

i. Rehabilitation and reintegration after coming out of institutions

The UN Committee recommended to “strengthen rehabilitation and reintegration programmes” [second CO para.54(g)]. The Government report refers to vocational training and probation at the correctional institutions as a way to “encourage them to reintegrate and play a constructive role in society” [GR para.461]. However, it cannot be regarded as “rehabilitation and reintegration programmes” [GR para.467].

When juveniles are released from Juvenile Training Schools, they are placed under probation and receive support. In case juveniles have nowhere to return to, there are rehabilitation facilities that they can go to. There is a problem in either case.

To begin with, “Offenders Rehabilitation Act”, which was enacted in 2007, changed the principle of relief and rehabilitation from the casework to the oversight. This is not a rights-based approach, but rather emphasizes formalities and control of juvenile delinquency. It goes against “strengthening rehabilitation and reintegration programmes”.

There are not many rehabilitation facilities for juveniles, and juveniles are not allowed to stay there for a long time. The problem is not only caused by material limitation as such, but also by the type of support offered at such facilities. At rehabilitation facilities, they give the guidance on “smooth independence”. But children, who have nowhere to go after leaving facilities, usually lack the foundation for human relationship, and it’s difficult to go back to and continue working. It is essential for rehabilitation and reintegration programmes to have a component of establishing the human relations. The main text includes reports from the private shelter which accepts such children.

【From the field (1)】

Children who have lived in support facilities for development of self-sustaining capacity or juvenile training schools for an extended period, however, feel confused at life in the Home or social life, because they have put emphasis on conformity with daily routines and rules and on evaluation from others. When they get accustomed to life in the Home and start to feel that they are safe and secure there, their suppressed desires explode, leading to regression or harsh behaviour to see if other can be relied upon. Apparently many of them have not been able to achieve appropriate development; they seem to have grown up without care and respect from the people around them, not being able to go through age-appropriate stages of development. (see Annex 3)

Paragraph 95 of the General Comment no. 10 recommends that the necessary resources is given to non-governmental organizations as they “play an important role not only in the prevention of juvenile delinquency but also in the administration of juvenile justice”. The report explains this clearly.

ii. Delinquency prevention led by the police

(a) Juvenile Policing

Under the Japanese juvenile justice system, the police is just an investigating authority. However, in reality, the police conducts various “activities for sound growth”. As a result, areas and matters which should be essentially dealt by by education/welfare organization are left to the police, resulting in the vicious circle.

(b) Patrolling activities of the police

The UN Committee made the following recommendations in the second Concluding Observations, but the progress is yet to be made.

53. the Committee is concerned at reports that children exhibiting problematic behavior, such as frequenting places of dubious reputation, tend to be treated as juvenile offenders.

54. f) Ensure that children with problematic behavior are not treated as criminals.

In response, the Government argued, under paragraph 470 (Measures ensuring juveniles with problematic behavior are not treated as criminals), that patrol activities for juveniles with delinquent behaviors and ongoing support for recovery do not treat juveniles as criminals. However, 110 to 120 per 1000 juveniles are given guidance as “juvenile with delinquent behavior”. In case the guidance is given, the document is filed and later used for the juvenile trials. (some police forge the document to improve their performance). When the police give the guidance, it is not only for the delinquency prevention but also to implement the control-style policy of the police for “sound growth” of juveniles. This is not the right-assured approach to support the growth and development of children.

(c) Issues with delinquency prevention led by the police

As it is stated in the Riyadh Guidelines, it is essential to respect a child’s personality from infancy to prevent delinquency. A child-centered approach should also be pursued. The Riyadh Guidelines suggests an approach which is based on welfare, education, and the right of children, and that “Formal agencies of social control should only be utilized as a means of last resort”.

However, the delinquency measure in Japan is mainly led by the police, which is the formal agency for social control. These measures strengthen normative consciousness with a top-down approach and not a rights-based approach. It is the same at the local level and the network of activities led by the police is growing. Furthermore, The Government lists the police as the main corresponding organization for child abuse. The police is expected to handle abused children because they likely become “involved in delinquency” [GR para.309,327,329,333,336,338). However, the delinquency measure or care givne by the police often present the reverse effect such as preventing the welfare function as well as the development of child’s abilities.

【 From the field (2)】

“Leave me alone!”, the girl screamed. She kept walking without wiping her blood. She does not drag her foot. I felt that she must have had no one who said to her, “that looks painful!”. She had not one around her who takes care of her. She must have learned to protect herself by ignoring her pain. (see Annex 3)

iii. Social welfare approach in accordance with the Riyadh Guidelines

The Japanese delinquency prevention measure led by the police is a top down control system. Considering the situation and environment of children with delinquency, these measures are too far removed from fundamental solutions. As the Riyadh Guidelines states, respecting the personality of children from early childhood is important and it is important to support the recovery of children, who were raised without such respect. The report from the field demonstrates that fact.

【From the field (3)】

They have lived in fear every day, struggling to see how they are seen by the adults around them. I feel anxious about their future, wondering whether they can lead responsible life, on the basis of their own choice about employment and human relationships, when they become adult and go out into society. (see Annex 3)

Recommendations

1. The Government should enhance measures for rehabilitation and reintegration of children who are released from institutions in terms of both human resource and materials and promote provision of resources to the private sector. It needs to develop a flexible program in support of rehabilitation and reintegration so that these children can grow and develop peacefully and return to the society.
2. As suggested in the previous recommendation, children with problem behaviors should be guaranteed not to be treated as a criminal.
3. Instead of delinquency prevention program led by the police, the program in accordance with the Riyadh Guidelines should be implemented. For that;
 - (a) Treatment of children with problematic behaviors should be handled by protective measures of children including effective support for the rearer such as parents, and measures addressing the fundamental causes of such behaviors.
 - (b) Recognize the importance of the social welfare approach and set aside the budget for the proper implementation.

8B-7. Expansion of negative campaign and its effect

Paragraph 96 of the CRC General Comment no.10 states that “children who commit offences are often subject to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency, and results regularly in a call for a tougher approach”. The same can be said in case of Japan. This tendency supported and led to the amendments of the Juvenile Law, and the amendments in return further expended the negative campaign. It even caused the big chorus of “Even juveniles should make up with their lives” for the trial of the particular juvenile case.

Recommendations

The Government should scientifically examine how the legislative policies on juvenile justice can affect the society as whole and based on the examination, share the facts and findings with the society. It should also correctly inform the society of the International Standards and meanings and position of the Juvenile Law. Furthermore, in order to avoid the degradation of the right of juveniles, the Government needs to address the issue of economical assistance and psychological care for the victims.

Optional Protocol to the Convention on the Rights on the Sale of Children, Child Prostitution and Child Pornography

Since there are no specific points to mention with regard to the Government report on the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, the present report briefly points out some problems reflected in the Government report on the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography.

The Government has reinforced countermeasures in this field, including by establishing the Internet Hotline Center, whose operations are entrusted by the National Police Agency to a private organization [GR para.83], opening anonymous hotlines to promote reporting of cases of child victimization and considering “blocking” of child pornography websites.

Children continue to be victimized through sexual exploitation, however, partly because the Government and society in general is too “tolerant” toward sexual objectification of children in the media and social attitudes. The number of children victimized through prostitution and pornography on the Internet is increasing, along with the number of children who become victims of peeping pornography or “junior pornography” (in which children who wish to become idols/stars are used as models of photographs for sexual purposes). In January-June 2009, the number of victims in child pornography cases that were dealt with by the police amounted to 218 in total, an increase by 51.4% from the figure in the same period in the previous year. In 2008, the police took action on 676 cases of the production and/or provision of child pornography, the highest level ever recorded. The Government report does not refer to these and other realities.

While many states have adopted legal provisions against simple possession of child pornography as well as images of child sexual abuse, Japan has not prohibited simple possession of child pornography and images of child exploitation. The third World Congress against Commercial Sexual Exploitation of Children pointed out that this has contributed to the distribution of child pornography and other images of child sexual abuse across borders.

Although prostitution through online dating sites was banned under the Online Dating Site Regulation Law, an increasing number of children have become victims of prostitution and pornography through other forms of websites, such as those for self-introduction or gaming sites. Since there are no shelters for adolescents from dysfunctional families or who have been abused by parents, an increasing number of them have become victims of sexual exploitation after attempting to find places of stay through Internet sites for runaways.

There are still tourists who go abroad to be involved in child prostitution. Some of them publish their experience of child prostitution on their blogs or through other ways on the Internet. Since such publication itself is not prohibited, it contributes to child prostitution tourism. In Cambodia, for example, Japanese tourists were arrested on the charge of taking nude photographs of several boys in 2008 and on the charge of being involved in prostitution of a 13-years-old girl in September 2009.

While the UN Committee recommended “preventive measures ... such as materials on relevant legislation on the sexual abuse and exploitation of minors and education programmes, including programmes in schools on healthy lifestyles” [second CO para.52], such materials have not been sufficiently developed and relevant school education programmes have not been promoted. Meanwhile, there is a risk that children and young people may become perpetrators of child sexual exploitation, seeing child pornography as profitable business after having witnessed a flood of child pornography on the Internet. Indeed, in recent years, there has been an increase in the number of cases in which children and young people were arrested on the charge of child pornography offenses.

In order to ensure effective implementation of the present Optional Protocol, it is necessary to take concrete measures in accordance with the Rio Declaration and Plan for Action, the most recent international agreements in this field, adopted by the third World Congress against Commercial Sexual Exploitation of Children that was held in Brazil.

Recommendations

The Government should disseminate and implement the Rio Declaration and Plan for Action, adopted by the third World Congress against Commercial Sexual Exploitation of Children, paying special attention to the following challenges (see also 8A-1 and 2).

1. Legislative amendments

The Law on Child Prostitution and Child Pornography should be amended in the light of the following considerations.

- (a) In order to enable children to protect themselves against sexual exploitation and abuse, explicit provisions should be introduced with regard to the provision of sexuality education and human rights education, including appropriate media literacy education, for children and adults.
- (b) Protection and care of victims should be strengthened by making it explicit rights of children who were victimized through child prostitution and child pornography. In addition, child-friendly procedures should be introduced in judicial proceedings, including care in hearing from children.
- (c) The production, provision and dissemination, intentional obtainment and possession of child pornography, including virtual images and descriptions containing exploitation of children, should be illegalized. Sufficient consideration should be given to freedom of expression and prevention of false accusations in this regard. The intentional use of, access to and viewing of such images should also be regulated, even if these acts do not involve physical contact with children.
- (d) In the light of Article 12 of the CRC, children’s views should be heard in the process of amendments to the Law on Child Prostitution and Child Pornography, on the condition that adequate and appropriate information be provided to children. This should be explicitly mentioned in the amended Law.

2. Other measures

In addition, immediate measures should be taken in the following areas.

- (1) Child pornography

- i. Self-regulation of the sale of pornographic magazines at convenience stores should be promoted.
- ii. Awareness-raising activities should be actively conducted with a view to changing social attitudes and environment that are tolerant about child pornography.

(2) Child prostitution

- i. Awareness-raising should be conducted with regard to the risks of sexual exploitation on the Internet, including the one accessed through mobile phones, both through dating sites and other forms of contact sites.
- ii. The regulation of sexual exploitation on the Internet accessed through mobile phones should be strengthened.

(3) Development of materials, awareness-raising and educational programmes

Educational and other materials should be prepared and disseminated with regard to laws concerning sexual abuse and exploitation. Education on children's rights and sexuality education programmes should be implemented at school. It is necessary, in particular, to provide rights-based sexuality education and human rights education on sexuality, with a view to ensuring that children become neither victims nor perpetrators of sexual exploitation, and to train teachers who can provide such education programmes.

(4) International cooperation

- i. Collaboration with civil society and NGOs should be undertaken to prevent tourism for child prostitution and child pornography.
- ii. Support for the reinforcement of law-enforcement capacity should be provided to the countries receiving Japanese who intend to be involved in child prostitution and child pornography.

Annex 1-1: Declaration on the Rights of School Refusing Children

The preamble

We, children, have a characteristic personality.

However, most of school refusing children experience to be injured by people who can not understand our worry and pain in social values which attending to official school is natural.

We declare it for all adults to appeal our rights. We ask adults, especially parents and teachers, to hear our voices, and respect our thoughts, sense of values, and the best interest for us. We appeal this declaration to change a society which all of school refusing children and children going to school with pain can choose how to live and learn matched with themselves.

1. Right to education

We have the right to education. We have the right to decide which we go to school or not. Compulsory education means that the government and a guardian must propose all children to access education. It is not compulsory education that children go to school.

2. Right to learn

We have the right to learn in the way fitted for ourselves. Learn is to know something by our will not by compulsory. We learn a lot of things in our life.

3. Right to choose the way we learn and grow up

We have the right to decide where and how we learn and grow up (ex. School, free school, free space, home education). Please don't force the thought that going to school is natural to children.

4. Right to take a rest safely

We have the right to take a rest safely. Please assure to take a rest safely in the place which we can be safe not let us go to school or other places against our will.

5. Right to live as we are

We have inherent personality. Don't let children to compete or compare each other. We decide the pace and the way we live by ourselves.

6. Right not to be discriminated

We are respected without discrimination of any kind, irrespective of school refusal, handicapped, school scores, ability, age, sex, appearance, nationality, family background and etc. For example, please don't restrict the relationship among children caused by the prejudice that my son or daughter may be school refusal if they play with children who are school refusal.

7. Right to be assured by the government expenses

We have the right to be assured by government expenses as same as children who go to school. For example, school refusing children who belonged to free school or free space can use the season ticket for students if the range of age is from elementary school to high school. However, regarding high school age, if he isn't belonged to official high school, he could not apply to this service. We ask all adults to change the system which assures all children to be assured by the government expenses equality.

8. Right to be grown up safely and protected against all forms of abuse.

We have the right to be grown up safely and protected against abuse caused by school refusal. Adults must not any kind of punishment, abuse, admitted to hospital compulsory against children.

9. Right to privacy

Adults must not interfere with our privacy. For example, the followings are interference with our privacy. A) A teacher calls on us without our agreement and phones us repeatedly irrespective of time to persuade us to go to school again. B) Parents talk with our teacher about us without our agreement. First of all, please listen to our views regarding all matters affecting us and respect them.

10. Right to be accepted as an equal personality

Adults must approve us as an equal existence and act together to assure the rights of child in school, society and daily life. We need a relationship and an environment which we can express our view as they are.

11. Right to a way of living of school refusing child

Adults should respect how school refusing children live. At first, please facing each other to understand what is school refusal.

12. Respect other's rights

We respect other's rights and freedom.

13. Right to learn the rights of child

We have the right to learn our rights. Government and adults assure the opportunity to learn the rights of child against children. We judge whether the rights of child are assured or not by ourselves.

23/August/2009

All children & youth participants of Nation-wide conference

Annex 1-2: Letters to the UN Committee from Children who Attend Free School

Kento Kudo (16, Japan)

Dear Members of the Committee on the Rights of the Child,

I am sixteen years old. I attend to free school named Tokyo Shure. When I was five grade, I came to refuse to go to school caused by some troubles with my teacher. Since that time, I have never gone to school again.

I have participated a class of learning the rights of child (RC) with some other children and youths from May, 2008 at my free school. And the declaration on the rights of school refusing children was created by the member who participated to RC class and adopted at a nation-wide conference in 2009. In this report, I will explain why we created the declaration.

At first, we planned to visit UNICEF house in Tokyo and decided to learn about RC before visiting there. At that time, we understood that the CRC is for every child in the world including us! It was a very shocking incident for me. Because most of children in Japan think the CRC is for children living in the developing countries not for in the developed countries. At the same time, when we read each article, we found that a lot of our rights were violated in our daily life. It was also very shocking incident for us. More, when we visited UNICEF house, an incident was happened. That is, one staff of UNICEF explained "You are rich compared to children living in the developing countries. So, most of your rights are guaranteed by adults. As results, you are happier than children living in the developing countries." This comment was very shock for us. Exactly, Japan is one of richest countries in the world. However, I thought that this did not mean that our rights were guaranteed and we were happy. We questioned our selves what the rights of children were. But, we could not answer our question. In this situation, we decided to learn RC in more detail.

As learning the RC, I came to consider my situation (Futoko- refusing to go to school) in terms of RC. And, I found that a lot of rights were violated caused by Futoko. At last, we want to appeal our situation to wider society and ask more and more people to know the RC. That's why, we decided to create our declaration.

Satomi Akiyama (16, Japan)

Dear Members of the Committee on the Rights of the Child,

I am sixteen years old. Now I refuse to go to school and attend to free school named Tokyo Shure a few days in a week. Mainly, I participate to a cooking class, a sign language class, and Convention on the Rights of Child (CRC) class there. Otherwise, I read books, cook some snacks and talk with my friend.

I can spend time like what I want to do. However, I could not be like that when I went to school. Originally, I did not fit a kindergarten and a school with some reasons. For instance, I must attend there every day (I can not decide which I go to school or not by myself because my parents think that going to school is compulsory.) And, there are a lot of things to do what I must do

irrespective of my will. More, it is very difficult for me to maintenance personal relationship with high stress. That's why, I could not afford to go back home and play with my friend after school at that time. More, there was no place to take a rest for me. Through this process, I became "Futoko" (refusing to go to school).

My parents became under high stress as I refused to go to school. Once, they took me to school against my will. Other time, they said me that they would buy TV-game soft to me if I go to school again. More, when I quarreled with them, they drove me out of house. We could not talk with each other calmly. And there was no equal relationship between us. Now, I can suppose that the presence of school was very powerful for them. Of course, my situation was also very serious. One day, they asked me "You can go to school if you are absent from school more a few months, can't you?" I answered "Yes, I can" at once. However, now, I think that a rest with a period is very strange. I consider that a rest should not be given by other people but decided by oneself. Other people can not decide the period of rest.

I came to think about various things since I had refused to go to school. And, I found that how my rights had been violated as learning CRC at my free school. My violated rights may be not influenced my life but influenced my heart very much. I want more and more people to know CRC.

Annex 2: Policy Proposals from Free Schools

Specified Non-Profit Corporation National Free School Network

Proposals for New Legislation Concerning Free Schools and Other Forms of Alternative Education

We have heard the slogans, “We have to change schools” or “We have to change education” all the time, which has led to various efforts to change the organization and management of schools, among others, under the name of education reform. Nevertheless, the percentage of children who do not attend school actually continues to be on the rise, which means that the number of children who cannot fit into the traditional organization of schools is increasing at a rate that cannot be neglected. It is the responsibility of the public administration and society to create the means of learning and development that are really sought for by children.

While the Constitution of Japan and the Fundamental Law on Education provide for the obligation “to have all boys and girls under their protection receive ordinary education” (the obligation to provide education), they do not restrict “ordinary education” to school education. The Universal Declaration of Human Rights stipulates, on the other hand, “Parents have a prior right to choose the kind of education that shall be given to their children”. The existing legal system for education only has the School Education Law for the realization of the obligation to provide education, however, excluding forms of ordinary education other than school education. The prior right of the parents to choose education for their children can be exercised only within the framework of school education. The present system is incapable of dealing with the fact that there are a number of children who do not attend school universally and that many children learn at free schools or through home-based education. In order to change this reality, the following measures are proposed:

- (1) The enactment of a new law concerning free schools and other forms of alternative education (tentatively called “Law on Alternative Education”);
- (2) The establishment of a working group for the enactment of the new law;
- (3) The establishment of centers for alternative education;
- (4) The creation of public subsidies for alternative education; and,
- (5) The fostering of the environment to enable civil society to establish educational institutions.

Nine Proposals That Should Be Realized Immediately (main issues)

[Proposal 1] Creation of a supportive environment for free schools and other forms of alternative education, followed by public support to secure stable management of such institutions

- (1) Expansion of the application of commutation tickets at a student fare
- (2) Application of a student discount for admission into museums, art galleries and other cultural institutions
- (3) Support in the form of the provision of public facilities, equipments and supplies
- (4) Public subsidies for free schools and other forms of alternative education
- (5) Human support for free schools and other forms of alternative education

(6) Encouragement of renting of public spaces that remain unused, such as schools that had been closed

(7) Measures to lighten the burden imposed on guardians

[Proposal 2] Promotion of systematic collaboration between education authorities and other relevant bodies and free schools and other forms of alternative education

(1) Improved recognition of free schools and other forms of alternative education and arrangements for systematic collaboration

(2) Provision of information on free schools and other forms of alternative education through educational counseling

(3) Consideration of attending and learning at free schools and other forms of alternative education

[Proposal 3] Promotion of the establishment of schools of a free school nature

(1) Relaxing the criteria for the establishment of schools and other relevant regulations

(2) Allowing specified non-profit corporations to establish schools

[Proposal 4] Review of the present policy focusing on getting children back to school

(1) Establishment of a working group to consider a new policy on non-attendance at school

(2) Dissemination of the new policy

(3) Training of teachers, other teaching staff and professionals on the basis of the new policy

[Proposal 5] Improvement of field responses by education authorities and schools

(1) Stop the establishment of numerical targets

(2) Stop the practice of “early detection and early response”, which brings about pressures to go to school

(3) Make careful considerations when visiting pupils/students’ home

(4) Do not make it a condition to attend school for promotion and graduation

(5) Send the message, “You may be absent from school”

(6) Do not force children to go to education counseling or to meet school counselors

(7) Make use of school social workers in the best interests of the child

[Proposal 6] Provision of public support for children staying at home

(1) Institutionalization of educational support for children staying at home

(2) Deployment of supporters for education at home

(3) Dissemination and implementation of the notice of the Ministry of Education on “Counting the days of attendance at school through information technology”

(4) Application of a student discount for admission into museums, art galleries and other cultural institutions

(5) Measures to lighten the burden imposed on guardians

[Proposal 7] Creation of a supportive environment for children who need counseling and advice

(1) Consolidation of arrangements for providing counseling and advice at school

(2) Reinforcement of the environment for communication with guardians

(3) Establishment of a administrative focal point

- (4) Collection and provision of information on counseling services
- (5) Reinforcement of outreach services for counseling and support
- (6) Consolidation of and support to child helpline services
- (7) Support to telephone counseling services for guardians in the field of child-rearing support and education counseling

[Proposal 8] Transforming the medical practices into user-oriented ones

- (1) Rigid application of the principle of informed consent
- (2) Creation of a system of medical ombudspersons
- (3) Improvement of human rights curricula in training of doctors
- (4) Reviewing how medical practices should be with regard to children

[Proposal 9] Other challenges that should be dealt with by central and local governments

- (1) Adoption of “local ordinances on children’s rights”
- (2) Promotion of children’s expression of their views and social participation
- (3) Establishment of ombudspersons for children
- (4) Establishment of refuges and shelters for children
- (5) Reform of schools and education administration through children’s participation

Annex 3: Reports from the Field of Juvenile Justice

From the field (1)

Carillon Children's Home (hereafter referred to as "the Home"), run by Social Welfare Corporation Carillon Children Center, is a private shelter for children, where children can seek for emergency refuge when they have no home or other places to go. Children come to the Home for a variety of reasons, such as being subjected to violence at home, having no place to live securely, having been released from juvenile training schools without homes to go back or having been placed under tentative probation or private guidance. The period of placement varies from two weeks to some two months, depending on when they can find next place to go. Since the establishment of the Home in 2006, some 150 children have stayed here so far.

Some children come to the Home as "(pre-)delinquent", having been identified as such after roaming around the street at night, not being able to talk to anyone about their problems that are too serious to do so. All of them have been subjected to some forms of violence or neglect at home or in the community, and many of them do not know appropriate ways to express their feelings and energies, such as sufferings, sorrow, pain or anger that cannot be relieved. While they may orient the energies to themselves or to the outside world, it looks like self-injurious behaviour in any case. They look like crying babies; it may be more natural that their problems come out as delinquent behaviour.

While the Home has several rules on living together in the same place, children are not bound by the rules, living in a family-like environment. Children who have lived in support facilities for development of self-sustaining capacity or juvenile training schools for an extended period, however, feel confused at life in the Home or social life, because they have put emphasis on conformity with daily routines and rules and on evaluation from others. When they get accustomed to life in the Home and start to feel that they are safe and secure there, their suppressed desires explode, leading to regression or harsh behaviour to see if other can be relied upon. Apparently many of them have not been able to achieve appropriate development; they seem to have grown up without care and respect from the people around them, not being able to go through age-appropriate stages of development. It is necessary for those children, in my opinion, to have places where they are able to feel safe, stable and secure, to recover their childhood and to have mental room for development.

Although there are residential child care facilities for children who have no home to go back, they are so crowded that there is little capacity to receive those children, who have to leave the facilities anyway when they stop going to high school. It is difficult for them to be received into homes for supporting transition to independent living or facilities for rehabilitation and protection, which do not have much vacancy. And one of the conditions for reception into such facilities is "employment". It is extremely difficult for those children, who have been subjected to violence for a long time, who have survived without confidence in themselves and others and who cannot feel that they are worth living in the world, to go into society and work. Most of them do not have basic

capacity appropriate for their age, making it necessary to experience the lifecycle from early childhood again. Even if they are employed, they find it hard to continue working.

I feel that, at the heart of these problems, there are issues concerning not only systems and policies but also the Juvenile Law. Through the process of amending the Juvenile Law, prejudice against “delinquents” has gotten tougher, isn’t it? Biased reporting as well as thoughts, education and prejudice influenced by such reporting has made it more and more difficult for children to be reintegrated into society. What is important is to listen to children’s “voices” and to understand “why” they have acted as such. Tougher sanctions would not lead to the reduction of juvenile crime. It is necessary, rather, to promote awareness-raising of the problems behind delinquency and to provide warm support for juveniles to enable them to be reintegrated into society securely.

I feel that the present systems and policies, including legislation, do not match the reality. While the above-mentioned kind of support has been primarily provided by private organizations, the management of the facilities is in very difficult conditions, always lacking financial resources, which must be collected through bazaars or contributions. It is also difficult to keep the staff because of low salaries and hard working conditions. Sufficient working conditions cannot be secured to employ appropriate personnel with expertise or experience. Necessary things are not delivered to places that require them. It is important to hear adequately from children and those working in the field.

From the field (2)

Our project started for abused/neglected children based on the idea that children who find difficulty in building a fundamental human-relationship with parent(s) can recover only within context of a stable human-relationship. Children we see live with their family because the risk of maltreatment is considered relatively lower; and our mission is simply visiting children aged from 6 to 15 their home and playing, studying, and talking with them twice a month – building trust.

Gaining trust from such children is not easy. Their behaviors show their difficulty in living when what a child needs to grow up is missing. They obstinately keep on asking questions, ‘Can I really trust you?’ ‘Will you never give up on me?’, which could even bother and challenge us. It was, therefore, one of my important roles is to show consistency by keeping promises with them because they had never experienced their promises to be kept.

In our activities, it sometimes becomes obvious that the balance between their physical and mental development is surprisingly unstable, and we believe that this is also a sign that they had not been guaranteed to ‘be a child.’ For example, a 12 year-old girl suddenly got furious to me when she got her knee injured during a walk. She seemed to be uncomfortable to be worried, and then shouted ‘I say it’s no pain!!’ Screaming ‘Leave me alone!!!’ she started walking with her knee still bleeding so badly. This made me realize that she must have had nobody before who was there for her to take care of her pain and that it might be her skill which she had acquired, in order to survive and to protect herself by feeling no pain.

Despite such time/energy consuming project, we are encouraged by the fact that children do change eventually. They gradually learn how to be themselves with us. They suddenly start telling us their stories: 'I hate mommy hit my brother' ... 'My father is a devil'. We do not know when they open up; but the moment comes when they become ready. And what they all have in common seems to be strong anger and distrust against adults. These emotions could sometimes turn into anti-social behaviors. That is why, we insist that it is essential for them to be given enough time and to learn about their own feelings and how they deal with such impulsive emotions.

Nowadays, however, as soon as their delinquent behaviors become visible, police comes into the scene, and tries to 'control' them. They are considered children in need only while they stay 'good' abused children. The problem here is that the approaches by police are mostly about controlling. They need to be trusted but never to be controlled. Taking different approaches between police and social workers like our project would really confuse these children who are trying to recover by building trust in new human-relationships.

My biggest concern now is that these children lose again human-relationships by recent 'regulating' atmosphere surrounding them. They make mistakes now when they get older; but this is because they were not allowed to make such mistakes when they were smaller children. This way, there are always reasons behind to be understood which society needs to pay attention to. Social support based on understanding their life stories is crucial. Therefore, I strongly request the Japanese government to confirm that ALL children are entitled to attain healthy development; and to send messages to ALL children in Japan 'our society waits for you and guarantees that you are supported and protected as an important member of society.'

From the field (3)

"Home of Comfort", a home for supporting transition to independent living, is a private facility that receive children who cannot go home after having come out from residential child care facilities or juvenile training centers or who are sent by child guidance centers and family courts. It is not a shelter, receiving children only for the necessary period to assist them to be independent sufficiently to go into society. All of them have been forced to live on their own, not having "home" that they can rely upon. Most of them have experienced abuse and neglect, and have such problems as low mental age, extremely undeveloped self-esteem, inadequate socialization or lack of emotional control.

Those children's voices reveal that adults have always been involved in excessive behaviour, infringing upon their agency. They have lived in fear every day, struggling to see how they are seen by the adults around them. I feel anxious about their future, wondering whether they can lead responsible life, on the basis of their own choice about employment and human relationships, when they become adult and go out into society.

These children must go out into society, however. It is difficult to them to be employed after interviews because they avoid their eyes when they talk to someone or because they stammer, which

can be considered aftereffects of abuse and neglect. Even if they manage to be employed, they often find the work so hard, use offensive language against superiors or get into trouble with colleagues, making it difficult to secure stable employment. Not a few children, however, change after meeting good employers even if they had been evaluated as unfit for employment. Children cannot change without contact with a diversity of people, which cannot be ensured only by parents, the authorities or institutions. I think that they change through social contact.

There are many elements in society that bring about difficulties for children in life. I hope, among others, the restoration and expansion of the system of “*shoku-oya*” (employer-parent; those who receive young people with difficulties and provide occupational guidance). The central government recently started the system of “cooperative employers”. I don’t know how it is different from the previous “*shoku-oya*” system, but anyway, they are few in number and not universally available. Since they have to care about the management of their companies, they may be unwilling to employ those who are not ready to become immediate workforce; it is understandable that they want to fire those who are slow to learn work. That is why I hope for a system to provide employers with economic and psychological support so that they can have long-term perspectives about those children. If arrangements are made in society to receive a diversity of children, and if they can build relationships with others as individuals who are struggling in life, social prejudice against delinquents or awareness about abuse and neglect may change little by little.

Although children sometimes change suddenly, it is difficult for children to go through dramatic changes in one or two years, especially when they have been injured severely and withdrawn into themselves. For those children, who have not been able to grow up in an adequate environment, the priority issue should be recovering gaps in their development. Society demands them, however, to become independent. Although they need more time than others to become “adult”, they are forced to become independent earlier than other children. It is necessary, then, to create arrangements to support them in preventing isolation after failures in society and making try again.

In many cases, children face tougher obstacles after they have left the Home of Comfort, rather than during the period of their stay in the Home. Therefore the Home of Comfort attempts to create relationships to enable them to come and talk when they have difficulties, even if they are over 18 or 30 years of age. This applies to children who have achieved independence and started to live in apartments, who wander around from someone’s house to another or who are placed in juvenile classification centers or juvenile training schools. It is important for them to be able to remember, from time to time, that they are cared by someone even if they are away from them.