Alternative Report to the Second Report of the Japanese Government on the Convention on the Rights of the Child

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Japan Federation of Bar Associations

I. GENERAL MEASURES OF IMPLEMENTATION

1. The reservation to Article 37 (c) and the declaration of Article 9, Paragraph 1 and Article 10, Paragraph 1 should be withdrawn.

2. Additional amendment should be made from the viewpoint of developing and expanding the rights of the child in line with the Convention on the Rights of the Child concerning the Law for Punishing Acts Related to Child Prostitution and Child Pornography, and the Child Abuse Prevention Law, which were enacted after the First Japanese Report was made, and the Child Welfare Law, Juvenile Law and School Education Law, to which amendments were made.

3. The Government should approve that the Convention on the Rights of the Child has legal effect domestically, and ensure that it has priority over domestic legislation, and ensure that concrete measures are taken in order that these will be used effectively in court decisions.

4. A fundamental reform should be made to the system of the Civil Liberties Commissioners for the Rights of the Child such as: securing independence and enforcement capabilities of investigative authorities, financial improvement, etc. or consideration should be made on the establishment of a human rights remedial organ which is independent and has full authority, and takes into account the peculiarities of the rights of the child.

5. A policy coordination organ that implements comprehensive and unified measures concerning the rights of the child should be established.

6. Budget allocation from the perspective of the "best interest of the child" should be made at both central government and local authority level.

7. Education concerning the Convention on the Rights of the Child should be conducted for civil servants, etc. concerning bringing more benefits to children and it should be positively positioned in the Legal Research and Training Institute and the curriculum thereof should be designed so that all can learn it in detail.

Introduction

1. The Japanese Government prepared and submitted the Second Report under Article 44, Paragraph 1 of the United Nations Committee on the Rights of the Child, in November 2001.

Before considering the specific issues in the Second Report we would like to highlight three problems in this report. The first problem is that the concluding observations of the Committee on the Rights of the Child were disregarded. The second problem concerns the way the Report was prepared. The third one involves the insufficient involvement of NGO while the Report was under preparation.

2. Firstly, the ignoring of the concluding observations.

Based on the consideration of Japan's First Report made in May 1998, the Committee on the Rights of the Child adopted its concluding observations in June of the same year (hereafter called the "Concluding Observations"). Attention was kept on those measures the Japanese Government would take to improve and develop the conditions of the rights of the child. The Government was requested to mention in the Second Report how the Concluding Observations were considered, what measures were taken based on them, and what difficulties were met in achieving these measures, and so forth (para. 1, General Guidelines concerning the Periodic Report, 20 November 1996).

However, the Japanese Government completely disregarded these Concluding Observations. Only in six passages of the Report did the Government touch on these observations, and none of these indicated that any positive measures were taken based on the observations or in response to their recommendations. Judging from the fact that the Government did not even refer to the point in which legal amendment was demanded, their attitude toward the observations is obvious.

From the beginning, in terms of the Concluding Observations, the Committee requested that these observations, as well as the Initial Report and the Answers to the Questions from the Committee, be made available to a wide range of people, and that the following requests that were specifically referred to in the guidelines, should be met: "The measures adopted or foreseen to ensure wide dissemination and consideration of the summary records and the Concluding Observations adopted by the Committee in relation to the State party's report, including any parliamentary hearing or media coverage. Please indicate the events undertaken to publicize the Concluding Observations and summary records of the previous report, including the number of meetings (such as parliamentary or governmental conferences, workshops, seminars) held, the number of programmes broadcast on radio or television, the number of publications issued explaining the Concluding Observations and summary records, and the number of non-governmental organizations which participated in such events during the reporting period." However, the only public relations measure taken by the Japanese Government concerning the Concluding Observations was placement on the web pages of the Foreign Ministry (para.42). No other PR activities or events, intended to keep the people fully informed, were implemented.

3. Secondly, Japan's Second Report, was prepared in a way similar to reports from various government ministries and agencies which are merely put together, thus obviously lacking a united viewpoint.

It is said that, in preparing this Report, 14 ministries and agencies participated, including the Foreign Ministry (para.57). The reports were prepared individually by the respective ministries and agencies, and thus did not present a united viewpoint. For example, in the item dealing with measures to counter bullying at school, only those measures taken by the police were mentioned (para.249). The measures taken by the Ministry of Education, Culture, Sports, Science and Technology, were described in the item dealing with School non-attendance and withdrawal etc (para263). Thus, a unified description was not made on this single issue.

However, in fact, this is not only a problem concerning the descriptive manner used in the Report but symbolizes the current state that no policy-coordinating organization exists in the Government and ministries and agencies deal with this issue through a vertical administrative system.

4. Thirdly, NGOs were not sufficiently involved during the Report preparation time.

At the time that Japan's Second Report was being prepared, Japanese NGOs as well as the Japan Federation of Bar Associations (JFBA) made a request to the Government that an exchange of opinion meeting be held as the case demanded, at an early stage, and that the manuscript of the Report be disclosed before completion. However, this meeting was only held twice, once on April 9, the other on May 14, 2001, and the Report was not disclosed before it was completed.

A. Reservation and Declaration

5. In their Concluding Observations, the Committee encourages the Japanese Government to consider reviewing its reservation to Article 37 (c) and its declarations to Paragraph 1 of Article 9 and Paragraph 1 of Article 10 of the Convention with a view to withdrawing them. However, in this Report, the Government stated that they have no plans to withdraw their reservation and declaration based on the Initial Report and "Answer 1" (para.2), indicating that sincere consideration of the issues had not been made at all.

It has been already mentioned in JFBA's report (paras.16 to 20 of the first report) that their reservation and declaration should be withdrawn, particularly with regard to reservations regarding Article 37 (c), we are obliged to say that they intend to deny the important principle of separation of Juveniles deprived of liberty from adults, and avoid the possibility that a problematic detention of juveniles in a "daiyo-kangoku" (substitute prison) may violate the Convention. For these reasons, the reservation should be withdrawn immediately.

B. Enactment of New Laws and Amendments of Existing Legislation

6. 1. As mentioned in Japan's Report, the Child Welfare Law was amended in June 1997, and then in May 1995, the "Law for Punishing Acts Related to Child Prostitution and Child Pornography" (the

Child Prostitution and Child Pornography Prevention Law) was enacted and put into effect in November of the same year, and the "Law Concerning the Prevention of Child Abuse" (the Child Abuse Prevention Law) was enacted in May 2000 and put into force in November of the same year. In addition, the Juvenile Law was amended in December 2000 and put into force in April 2001, and the School Education Law was amended in July 2001.

2. Evaluation of the amendment of the Child Welfare Law

7. At the amendment of the Child Welfare Law, JFBA made a suggestion that the "best interest of the child" should be expressly stated in terms of the Convention on the Rights of the Child, but this was not adopted.

We made an assertion that the "prohibition of corporal punishment by personnel at facilities involved in child welfare" should be legally specified, this was also not adopted. Instead, it was specified in the "Minimum Standards for Child Welfare Facilities" provided by the Government.

We consider it necessary to specify the "best interest of the child" and the prohibition of corporal punishment by personnel at child welfare facilities in the Child Welfare Law.

3. Evaluation of the Child Prostitution and Child Pornography Prevention Law

8. The enactment of the Child Prostitution and Child Pornography Prevention Law was evaluated in the sense that certain measures were specified that informed people of the criminality of child prostitution and child pornography. However, in order to check whether effective control is implemented based in this law, accurate verification will be necessary. There are problems in that provisions are still abstract in terms of considering the child victim during the investigation and at court, the mental and physical care for the child, as well as the fact that concrete measures and systems have not been implemented. Also, international collaboration is provided for in the law but as some point out, it has not necessarily been implemented in an effective way. We consider that concrete measures will be necessary for more effective implementation (for details, refer to VIII B).

4. Evaluation of the Child Abuse Prevention Law

9. The Child Abuse Prevention Law is evaluated in the sense that child abuse was defined and prohibited, responsibilities of the central government and local authorities were provided, obligatory notification of everyone, particularly professionals such as doctors, teachers, public health nurses, attorneys, etc. who are more likely to discover child abuse, was confirmed, all aimed at the relief of the abused child, and visits and communication by the parents were restricted, thus provisions, which virtually restricted the execution of parental rights, were set forth, though only to a certain extent.

However, the increase in the number of Child Guidance Center is not promoted, and only half of all child welfare caseworkers are professionals. Thus, there are many problems in respect of

securing people to implement the Child Abuse Prevention Law, and revision is still needed (for details, refer to VC).

5. Evaluation of the Juvenile Law

10. The "amended" Juvenile Law includes the following six main amendments: (1) The age at which criminal punishment is allowed is lowered from "16 years or older" to "14 years or older"; (2) In principle, a juvenile who has committed intentional crime causing death of a victim is sent to the public prosecutors; (3) The maximum period for protective detention can be extended from "four weeks" to "eight weeks"; (4) The prosecutor's presence in Family Court hearing is accepted if it is necessary for fact finding for grave crimes leading to two years or more in prison. In such cases where there is no private attendant available, an attendant will be assigned by the court); (5) A collegiate court system presided by three judges is introduced, and (6) Certain consideration is given to the victim (e.g. viewing and copying records, hearing victim's opinion, being notified of the court's decision).

11. In their Concluding Observations, the CRC pointed out the necessity of reviewing the judicial system for juveniles in accordance with the principles and provisions of the United Nations standards. However, the contents of the revision are not in line with their recommendations thus it is necessary for us to state that they go against the United Nations standards.

Specifically, "criminalization" and "get-tough policy" (referred to in (1) and (2) above) go against the respect for the juvenile's right of rehabilitation to society emphasized by Article 40, Paragraph 1 of the Convention on the Rights of the Child, and the Ryad Guidelines, as well as against Article 40, Paragraph 3 "the establishment of specifically applicable laws, procedures, authorities and institutions". Also, the extension of protective detention (referred to in (3) above) goes against the provision of Article 37 (b) that stipulates that arrest, detention or imprisonment shall only be used as a measure of last resort and for the shortest appropriate period of time. The involvement of the prosecutor in judicial proceedings (referred to in (4) above) allows for juveniles to be treated even more unfavorably than adults. Because the hearsay rule is excluded from judicial proceeding for juveniles and all the evidence gathered by police and prosecutor are sent to the family court judge before hearing, the judge tends to start the proceedings having impression of the juvenile "guilty." Then if the juvenile denies his charge, the prosecutor tries to prove it guilty thoroughly. This goes against Article 40, Paragraph (b) (iii) of the Convention, which provides for securing the right to a fair hearing by an impartial authority.

Thus, the "revised" Juvenile Law has various points that run counter to United Nations rules. In addition, the "toughening of penalties" against juveniles can be seen being practically applied after the "revised" law was put into effect. For details, refer to VIII A.

C. Status of the Convention in terms of Domestic Laws

12. 1. In their Concluding Observations, the CRC expressed their concern that, in practice, courts in their rulings, do not usually directly apply international human rights treaties in general and the Convention on the Rights of the Child in particular, and have requested detailed information on cases where the Convention on the Rights of the Child and other human rights treaties have been invoked before domestic courts (7, 29).

Only one case was cited in the Government's Report, and indeed, there was no judicial precedent found to date that the Convention on the Rights of the Child has been applied and that judgment declares the violation of this Convention. It is deemed that, from the very first, the Convention is not in the position to have precedence over domestic legislation.

13. 2. The case that can be listed as a judicial precedent, in which the Convention on the Rights of the Child was positively cited during the explanation and used as the reason of the decision, is only one case from Nagoya High Court (June 29, 2000, *Hanrei Jiho*, Vol.1736, Page 35).

This is the case of a juvenile who, accused of murder, etc., filed a claim for damages against a publishing company which used an assumed name for the juvenile in an article in its magazine, alleging that, since the assumed name made it easy to determine the juvenile's real name, this act violated Article 61 of the Juvenile Law which prohibits the publication of such articles, etc that make people presume the juvenile's identity. The court decision in this case accepted this compensation claim against the publishing company on the grounds that, based on the provisions of Articles 3, 5, and 6, Paragraphs 1 and 1(a) of Article 40, and Article 14, Paragraph 4 of the International Covenant on Civil and Political Rights, the Beijing Rules, etc., that while reflecting that the child has the right to honor and privacy derived from Article 13 of the Constitution, it is appropriately interpreted that Article 61 of the Juvenile Law aims to protect the fundamental human rights under which juveniles in the process of their growth and development should be treated with more consideration for sound development, as well as their right to honor and privacy, by way of controlling media reports, and to that extent, the "freedom of expression" of the mass media can be restricted.

14. 3. Although discrimination of a child born out of wedlock was the point intensively argued as violating the Convention, during the first consideration made by the CRC, the purport of the Convention on the Rights of the Child has been understood along quite passive lines in the courts, there are no judgments which decide the discrimination is against the Convention on the Rights of the Child.

(1) Osaka High Court judgment (September 25, 1998, *Hanrei Times*, Vol. 992, Page 103)

15. Article 2, no. 1 of the Nationality Law provides that a child acquires Japanese nationality when

his/her father or mother is a Japanese national "at the time of his/her birth". However, in the case of a child born out of wedlock, if the child is acknowledged after birth, he/she is not granted Japanese nationality on the grounds that the legal father cannot be deemed to be Japanese "at the time of his/her birth." In this situation, a lawsuit was filed to seek confirmation of Japanese citizenship, alleging that such treatment can be regarded as discrimination based on "social position" under Article 14 of the Constitution, and that it also violates Article 24 of the International Covenant on Civil and Political Rights, as well as Articles 2 and 7 of the Convention on the Rights of the Child. The decision in the first instance, which had already been made at Osaka District Court on June 28, 1996, before the consideration of the First Report submitted by the Japanese Government, confirmed discriminative treatment against the child born out of wedlock, regarding that this way of different treatment had reasonable grounds. As for Article 24 of the International Covenant on Civil and Political Rights, and Articles 2 and 7 of the Convention on the Rights of the Child, it only held that "each of these is aimed at getting rid of stateless children, and is not considered as protecting the interest apart from the one specified in Article 14 of the Constitution".

The decision in appellate court, which was made after the consideration of the First Report was completed, made a judgment basically on the same lines as before, and held that the "status" as specified in Article 2, Paragraph 2 of the Convention on the Rights of the Child "should be interpreted as a 'political and social status' such as parents being members of a certain political party, and cannot be interpreted as referring to 'family status' such as parents having a legitimate marital relationship or not", and, as for Article 2, Paragraph 2 of the Convention, it held that, "since it lacks direct and specific wording directed at illegitimate children, its purport and the scope applicable are not necessarily clear". Thus in the light of legislative history, "it cannot be immediately interpreted that Article 2, Paragraph 1 provides for the difference between handling legitimate versus illegitimate children in terms of acquiring nationality", while "Article 7, Paragraphs 1 and 2 can be interpreted as aimed solely at getting rid of stateless children", "therefore, even if based on a combined interpretation of Articles 2 and 7, it cannot be concluded that discriminating an illegitimate child from a legitimate child in terms of acquiring nationality violates the said Convention".

(2) Judgment of the First Petty Bench of the Supreme Court (January 21, 1999, *Hanrei Times*, Vol. 1002, Page 94

16. In the past, a child of married parents was registered as "first son" or "first daughter" etc. in the residents register, while a child born out of wedlock was registered merely as "child". From March 1995, all children are registered as "child". This judgment by the Supreme Court was made following a lawsuit that sought the cancellation of the description and claims for damage, alleging that this kind of description was regarded as discriminatory. The grounds for appeal to the Supreme Court alleged the violation of Article 2, Paragraphs 1 and 2 of the Convention, but the judgment of this was that it is not illegal "even after taking into consideration Article 14 of the Constitution and

the provisions of the cited conventions, etc."

(3) Judgment of the First Petty Bench of the Supreme Court (January 27, 2000, *Hanrei Times*, Vol. 1027, Page 90)

17. A lawsuit was made based on the provision of Article 900, no. 4 of the Civil Code, which stipulates that an inheritance for a child born out of wedlock shall be half that of a child of married parents, alleging that such provision is discriminatory. An argument based on the Convention on the Rights of the Child, etc. was also made, but a majority judgment ruled that it does not violate the Constitution thus not changing the judgment made by the Grand Bench of the Supreme Court on July 5, 1995. However, an opinion that it violates the Constitution was attached as a dissenting opinion.

18. 4. In addition to the above cases, there is a judgment, which if the Convention was applied in connection with the rights of the child, may have led to a different conclusion, however it was made without any consideration of applying the Convention.

To cite one example, there is the so-called "Guernica incident" that occurred at a municipal elementary school in Fukuoka Prefecture. Sixth-grade students, who had prepared a flag in imitation of Picasso's "Guernica", intended for the graduation ceremony, asked the principal to put this flag up at center stage in the graduation ceremony. The principal refused and raised the Hinomaru flag at center stage with the Guernica flag at the back. When it came to singing the national anthem, "Kimigayo", one of the students reacted against this by sitting down and shouting: "I can't sing this!" Moreover, when it came time to "express one's aim for the future", she said, "Our principal does not respect us. I will graduate in anger and humiliation. I never want to be a person like the principal. "The Board of Education imposed a disposition reprimanding the class teacher for conducting "an action inappropriate to a civil servant". The Board regarded this action as being "a display of his will in terms of protest or victory over the guardians, students, school staff, and guests" since he sat down during singing "Kimigayo", "as if to respond to the statement and seating of the student" and "upheld his clenched right fist" when graduates left the hall after the ceremony. This class teacher filed a lawsuit seeking a cancellation of this disposition alleging that this was an abuse of the right of disposition. While the judgment of February 24, 1998 ruled by the Fukuoka District Court affirmed the disposition considering that it did not constitute an abuse of the right of disposition, the manner in which to weigh the expression of the child's opinion became a material issue as the premise on which to form a judgment. With regard to this point, presenting the view that "the child should be recognized as the subject of the right to express opinions, but that said right should not allow expression of opinions without any restriction", it was ruled that the expression of opinion in question was inappropriate. Article 12 of the Convention of the Rights of the Child was not referred to in any part, nor points such as in what process the expression was made, what it meant, nor whether or not the school administrative regarded it seriously, and took any convincing

measures, etc. to counter it. Thus, the importance of the right to express opinions was not understood.

The appeal to the High Court to this judgment was refused using basically the same reason (judgment of November 26, 1999, Fukuoka High Court). The Supreme Court also refused the appeal to the Supreme Court (judgment of September 8, 2000, Fukuoka High Court).

19. 5. It should be expressly accepted that the Convention on the Rights of the Child has precedence over domestic legislation, and that concrete measures should be taken so that this Convention can be effectively applied in court decisions.

D. Remedial Measures to Be Applied When the Rights of the Child Are Infringed

20. 1. In the Concluding Observations, it was pointed out: "the Committee is concerned at the absence of an independent body with a mandate to monitor the implementation of the rights of children. It notes that the monitoring system of the Civil Liberties Commissioners for the Rights of the Child", in its present form, lacks independence from the Government, as well as the necessary authority and power" (para.10), and it was recommended to "take the necessary steps to establish an independent monitoring mechanism, either by improving and expanding the existing system of the "Civil Liberties Commissioners for the Rights of the Child" or by creating an Ombudsperson or a Commissioner for Children's Rights" (para.32).

However, in the Government's Report, these points were not referred to, and an explanation in the same way as the Initial Report was repeated as to Civil Liberties Commissioners for the Rights of the Child (paras.12 to 15), showing that no measures were being taken to strengthen their independence as well as authority and power (In the second report, it is translated as "Volunteers for Children's Rights Protection" while Japanese version uses the same words as the Initial Report). While the number of said Commissioners increased from 568 in 1998 to 688 in 2001, the expense associated with their activities in 2001 remained the same at 14,449,000 yen in 1998 (no more than 21,000 yen per person per year in 2001). This broke down into 12,605,000 yen for travel expenses to attend children's human rights consultation centers, training, etc. and 1,844,000 yen for purchasing reference books. No expenses were assigned to human rights remedial or investigatory activities. This suggests that Commissioners were expected to work unrewarded, as volunteers at all times. Under the circumstances in which authority and power is not expanded and sufficient budgetary steps are not taken, it has to be said that effective activity is not possible.

21. 2. When the initial Government Report was considered in 1998, the Government answered that the Council for the Promotion of Human Rights Protection would discuss the manner in which children's

human rights remedial activities are managed. But, according to their report concerning "the way in which the human rights remedial system is managed" on May 25, 2001, no discussion was had as to the manner in which a remedial system could be run that considered the particularities of children's human rights. The only discussion had was to do with a case of abuse that involved together with an adult as victim. Based on this report, the Government submitted the Bill for Human Rights Protection to the Diet in March 2002, which, made no provision for specifying the manner in which a remedial system could be managed that considered the particularities of children's human rights. This bill, having invited strong criticism about the independence of the Human Rights Commission as a human rights remedial organ since it is under the jurisdiction of the Minister of Justice, and making it fairly likely that control over the freedom of the press would be tightened, was not enacted during the ordinary Diet session of 2002.

22. 3. It is additionally noted that, although it was not mentioned in the Government's Report, some municipalities have already achieved the Ombudsperson system concerning a remedy for children's human rights.

23. (1) In April 1999, Kawanishi City, Hyogo Prefecture, established an Ombudsperson system for children's human rights. This was established as an affiliated organ to the mayor, under which three Ombudsperson are authorized to engage in consultative services, remedial activities in cases involving children's human rights, as well as activities intended to improve the system. An attorney who has been involved in children's human rights cases was appointed as one of the Ombudsperson.

24. (2) In December 2000, Kawasaki City, Kanagawa Prefecture, enacted, as mentioned later, the Ordinance for Children's Rights. Although there is no Ombudsperson system intended solely for children's problems in this city, it had already been enacted in 1990, under the Ordinance for Civil Ombudsperson System, that Civil Ombudsperson are authorized to be involved in such activities as: complaint investigation; complaint handling; expressing their opinions regarding system improvements, and in addition, are engaged in problems concerning children's human rights.

25. (3) In Tokyo, the Committee for the Protection of Children's Rights was started as an experiment with the aim of establishing a third-party organization having a certain authority concerning the protection of children's rights. Under this Committee system, telephone consultation service staff offer advice over the phone, and in case of problems concerning the violation of children's rights, three specialists in the protection of rights including two attorneys, are available to attend a consultative interview in order to find solutions using investigation, coordination, etc. Initially, the Tokyo Metropolitan Government planned to set up a two-year experimental system during which time, it would officially establish a third-party organization securing the independence and the authority to investigate, however, owing to various obstacles including financial difficulties and reactions to children's rights, etc., the enactment of the relevant ordinance and the official

establishment of such organization has not yet been achieved.

26. (4) In March 2002, Saitama Prefecture, enacted an Ordinance on the Protection of Children's Rights, under which the Ombudsperson system is established at a prefectural level as a remedial organization for children's human rights. In August of the same year, the Commission on the Protection of Children's Rights was established. According to the Ordinance, three members of this Commission are appointed by the Governor, and authorized to offer consultation concerning the violation of children's human rights, conduct investigation, make recommendations, and express opinions in response to remedial claims, and engage in promoting educational activities concerning the protection of children's rights. The Commission are also empowered to have a certain degree of authority to investigate. Attention is drawn to what practical results will be amassed in the future as a result.

27. 4. Drastic reform including securing independence, increasing the authority to investigate, improving the financial position, etc. should be made to the Civil Liberty Commissioners for the Rights of the Child system, or to the establishment of a human rights remedial organization which is independent and has sufficient authority and takes into account the particularity of the children's rights.

E. Policy Coordination Organization

28. 1. In the Concluding Observations, the Committee recommends that the Government strengthen coordination between the various governmental mechanisms involved in children's rights, in order to develop a comprehensive policy on children and ensure effective monitoring and evaluation of the implementation of the Convention (para.8, 30).

It can be interpreted that this requests the establishment of a policy coordination organization.

However, in the Government's Report, it expressly states: "they have been implementing measures for children comprehensively and effectively while developing various measures. So far, they have no plans to establish a new system for coordinating these measures within the Government" (para. 19).

The previous Management and Coordination Agency and the Committee for the Promotion of Youth Policy were insufficient to achieve effective coordination, and efforts were required to enhance the mechanism of developing a comprehensive policy on children and ensure effective monitoring and evaluation of the implementation of the Convention. Therefore, the reorganization of Cabinet-level ministries and agencies in early 2001 could be a good chance to re-build this weak implementation mechanism.

With respect to the "gender equality" issue having similar problems, during the government reorganization in 2001, the "Formation and promotion of a gender-equal society" (art.3, para.2 of the

Law for Establishing the Cabinet Office) was taken up as one of the Cabinet Office's duties, and as affairs under its jurisdiction, "Matters concerning fundamental measures for promoting the formation of a gender-equal society (referred to those concerning art.2, para.1 of the Gender Equal Society Basic law; the same applies hereunder)", "Matters concerning the elimination of factors hindering the formation of a gender-equal society as well as other matters concerning fundamental measures for promoting the formation of a gender-equal society" (art.4, para.1, no. 9 and 10 of the Law for Establishing the Cabinet Office) were taken. Concerning the organization, too, a new system was arranged by establishing the Gender Equality Bureau, under which the General Affairs Division and Promotion Division were set up (chap.1, sec.3, clause.4, arts.25 to 27 of the Cabinet Office Ordinance for the Organization). However, regarding matters of children, as part of "securing coordination among the related administrative organs" (art.3, para.2 of the Law for Establishing the Cabinet Office), the Cabinet Office only handles "affairs concerning coordination and adjustment of affairs of the related administrative organs involved in sound fostering of youth, and the promotion of the implementation of the subsequently required affairs" (art.4, para.3, no.27 of the Law for Establishing the Cabinet Office), and as for the organization, too, both the Youth Affairs Administration and Juvenile Problem Council were disbanded, while no special department or division was set up. In that sense, the system was scaled down considerably.

As it may be affected by this scaling-down of the Government, concerning comprehensive policy on children, no unified development based on children's participation and the development of their rights has been made during this time, and the administrative work has been distributed among assigned ministries and agencies, and legislative arrangements have been left to lawmaker-initiated legislation, which is inappropriate for unified participation of children and the development of their rights.

29. The insufficiency and problems of the new legislation and legal revision this time are as described above.

The cause of this is considered to be because a unified, responsible system for promoting implementation of the Convention has not been established in the Government, and that the Child Prostitution and Child Pornography Prevention Law, as well as the Child Abuse Prevention Law, were enacted only through lawmaker-initiated legislation. As a result, the interests of each ministry and agency could not be sufficiently coordinated from the view point of children's participation and rights. It is also considered that because a unified, responsible system for promoting implementation of the Convention has not been established in the Government, the "amendment" to the Juvenile Law and the reform of education go against the direction of the Convention and the recommendations made by the Committee, thus hindering children's participation and the development of their rights. The Ministry of Justice, which exercises jurisdiction over the Juvenile Law, is the competent ministry for the Public Prosecutor's Office which indicts crimes and seeks

punishment, and the Ministry of Education, Culture, Sports, Science and Technology, which promotes educational reforms, has encouraged an excessively competitive educational system, which was pointed out by the Committee in their recommendations. Due to these function, both ministries are difficult to be in a position to promote children's participation and the development of their rights.

A policy coordination organization to monitor children's rights, and comprehensive unified measures should be promptly established.

2. Enactment of ordinances by municipalities

30. Under the circumstances, ordinances such as "Children's Rights Basic Ordinances" have been prepared by some municipalities and the organization is now being developed.

In case of Kawasaki City in Kanagawa Prefecture, in compliance with the mayor's consultation, the "Kawasaki City Children's Rights Ordinance Consideration Liaison Network" was established in September 1998, and through the efforts of the research and study committee including junior and senior high school students, children's committee, and community meeting and children's meeting, a report was submitted to the mayor in June 2000. Then, in December 2000, the "Kawasaki City Ordinance concerning Children's Rights" was enacted.

Under this Ordinance, children's rights are comprehensively guaranteed, and a concrete system and mechanisms are incorporated to effectively guarantee children's rights. Furthermore, a Committee on Children's Rights has been set up to verify that children's rights are being upheld.

On the other hand, as mentioned before, enactment of the Children's Rights Ordinance, which Tokyo Metropolitan Government had intended to establish in February 2002, has been delayed.

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

31. The Government stated in paragraph 32 of their Report: "the general account budget of the Japanese national government for fiscal year 2000 is 63,0218 billion yen (the initially settled budget excluding the expense for government bonds), of which approximately 5.2688 billion yen or 8.4% was allotted for youth policy. They are confident that our budget for youth policy is sufficient for promoting the protection of children's rights in accordance with the provision of the Convention."

However, there are now plans to scale back the budget concerning children, in order to restore fiscal health at both the national and local authority levels, which is a serious problem.

In view of education, although the system by which the National Treasury covers expenses for compulsory education personnel was reviewed, the number of students per teacher (namely, the number of students per class) has not been reduced by the government; rather, it changed its policy to give each municipality discretionary power concerning this. As a result, the important objectives of

promoting equal opportunities in education nationally and maintaining and improving the level of education are being forced into retreat.

Also, in terms of welfare, budgetary cutbacks are currently being made, including reductions in subsidies, consignment to the private sector of the management of public nursery schools, child care institutions, and so forth.

In paragraph 36 of the Report, the Government refers to the child-rearing allowance as economic support to fatherless families, but the Government amended the government ordinance effective from August 1, 2002, and in effect, reduced the amount of allowance.

Thus, we consider that the "best interests of the child" have not been considered as a result of budgetary decisions.

Budget should be allocated both on national and local authority levels in the "best interests of the child".

G. Education for Civil Servants, etc. Involved in Children concerning the Convention

32. In their Report, the Government mentioned that education concerning the Convention on the Rights of the Child is provided for civil servants, etc. involved in children such as teachers, police officers, staff of correctional facilities, etc. but there is doubt as to what concrete fruits have resulted from it. As described in detail in this report, in practice the Convention on the Rights of the Child is not fully understood by these civil servants.

Paragraph 50 in the Government Report particularly mentions: "In principle, any of those who will become a judge, prosecutor or lawyer needs to take judicial training conducted at the Judicial Research and Training Institute to obtain a license of the legal profession. During this judicial training, lectures are given on children's rights, references are made to the implementation of the Convention as well as its contents and aims of the Convention (including the 1994 report issued by the Japanese government, the NGO report issued in 1994, and consideration and recommendations made in 1998 by the UN Committee), and curricula are implemented on precedents of juvenile delinquency cases or cases of disputes over the child's custody. Thus, trainees are given the chance to learn about children's rights, protection and welfare of children."

However, in reality, the Convention is referred only in some lectures of juvenile justice which are given as part of "Criminal defense." In those lectures, only a part of the Convention, namely concerning juvenile justice, is mentioned. Also, in an elective course there is a lecture on the "rights and welfare of the child", which refers to the Convention on the Rights of the Child, but few people attend this lecture and the time allocated is not enough.

Education on the Convention on the Rights of the Child should be given greater importance in the Judicial Research and Training Institute, and a curriculum under which all can learn about it in detail should be implemented.

III GENERAL PRINCIPLES

A. Non-Discrimination

1. Discrimination against children born out of wedlock based on: their inheritance rights; description on the family register and birth registration form; the fact that there is no system enabling joint parental custody; the acquisition of nationality; the taxation system, and the limited action available for claiming recognition (legitimization), should be immediately eliminated through legislative proceedings.

2. Gender-based discrimination with respect to the minimum age for marriage under Article 731 of the Civil Code should be eliminated.

3. The Government should take decisive measures for preventing and controlling acts of violence against Korean child residents in Japan.

4. Legislation should be enacted that prohibits discrimination against persons with disabilities, etc.

1. Discrimination against illegitimate child (hereunder "child born out of wedlock")

33. In its Concluding Observations, the Committee commented: "The Committee is concerned that the legislation does not protect children from discrimination on all grounds defined by the Convention, especially in relation to birth, language and disability. The Committee is particularly concerned about legal provisions that explicitly permit discrimination, such as Article 900(4) of the Civil Code, which states that the right to inheritance of a child born out of wedlock shall be half that of a child born within marriage, and that the child's illegitimacy shall be stated in official documents."(para.14). The Committee recommended: "In particular, legislative measures should be introduced to correct existing discrimination against children born out of wedlock."(para.35). Despite this stance, the Government has taken no such legislative measures, nor have they even been referred to in the Government's Report.

With respect to children born out of wedlock, discrimination, such as that mentioned in the following seven points is provided for under legislation. The number of discriminations resulting from this kind of legal system is beyond measure. Currently, there are some couples who do not report their marriage because they respect each other's family name and choose to use both; couples who choose a virtual marital status not bound by a marriage license; parents who do not live together, have not had their marriage registered but do collaborate as father and mother in the rearing of their child, and women who choose to live as solo parents. It is obvious that the lifestyle involving

children can be diverse. Thus under the current circumstances, in which men and women do not necessarily have to select a legal form of marriage, an increasing number of children are born out of wedlock.

Needless to say, whatever the situation of birth, those children born are beings that should be blessed, not only by parents, but also our society. There is no rational reason for discrimination simply because they are born out of wedlock, and it stands to reason that a legal system that promotes virtual social discrimination against children born out of wedlock, should be amended immediately.

(1) Inheritance

34. The Proviso of Article 900, No.4 of the Civil Code stipulates: "The inheritance of a child born out of wedlock shall be half of that of a legitimate child". This provision succeeded that in the old civil code which discriminated against children born out of wedlock in terms of their inheritance being based on the thinking that legitimate children should be respected as those who inherit the household fortune. The decision of the Grand Bench of the Supreme Court on July 5, 1995 ruled that, since it cannot be judged that the provision is extremely irrational on legal grounds and exceeds the limits of reasonable discretion given to the legislative body, it thus does not violate Article 14, Paragraph 1 of the Constitution.

Later, the judgment made on January 27, 2000 at the First Petty Bench of the Supreme Court, also in a majority ruling, stated that it did not violate the Constitution; an opinion that it violated the Constitution, was attached as a dissenting opinion.

Whether the parents are within a marital relationship at the time when a child is born, or not, is not the responsibility of the child being born, and there is no rational reason for unfavorable treatment concerning inheritance because of this. It is evident that such discriminatory treatment against a child born out of wedlock is unjust treatment in light of the dignity of the individual and equality before the law, which underlies the Constitution.

(2) Birth register

35. Article 49, Paragraph 2, No.1 of the Family Registration Law stipulates that the birth register must describe "whether a child is legitimate or illegitimate", accordingly, those cases where the child is born out of wedlock, the column headed 'illegitimate' must be checked. Article 52, Paragraph 2 stipulates that the child's mother must register the birth of a child born out of wedlock, thus the father cannot do so. It is also not acceptable that the father's family name is written in the column headed 'father'. As a result of these problems, there is a possibility that the birth of children born out of wedlock is not registered. In order to avoid this situation, the column that deals with the distinction between legitimate or illegitimate should be deleted from the birth register and a system enabling the father to register the birth should be established.

(3) Family register

36. In the family register, legitimate children are described as "first son" or "first daughter". This

description is made in the column headed “relationship to parents”. In the case of children born out of wedlock, only the gender, male or female is given. Such discrimination has no rational basis. The descriptive method for the family register should be simplified to just “child” in the same way as in the resident register which was amended on March 1995.

(4) Parental power

37. In the case of children born out of wedlock, there is no system of joint parental custody. Only in Article 819, Paragraph 4 is it stipulated that: “Where custody of a child recognized by its father, only when that father is determined as the person with parental power, shall the father have custody of the child.” A child born out of wedlock is placed under the single parental power of the mother. However, since “parental power” should rather be interpreted as the parents’ responsibility to foster the child, acceptance of joint custody can only benefit the child. As there is no rational reason for eliminating joint custody in the case of children born out of wedlock, a system enabling joint custody by the child’s mother and father should be established.

(5) Nationality

38. Article 2, Paragraph 1 of the Nationality Law provides as a requirement for a child to acquire Japanese nationality that” the child’s father or mother” is a Japanese citizen. In this provision, father or mother means legal parent. So in the case where the father is Japanese and the mother is a foreign citizen, the child cannot acquire Japanese nationality unless the father acknowledges the child. In addition, Article 3 of said law does not approve acknowledgement retrospectively, so even though the father may acknowledge the child after birth, the child cannot acquire Japanese nationality. This means that, in order for the child of a Japanese father and a foreign mother to acquire Japanese nationality, the child needs to be acknowledged by the father before birth.

Article 3 of the Nationality Law stipulates that: “ A child …. under twenty years of age who has acquired the status of a legitimate child by reason of the marriage of its father and mother and their recognition, may acquire Japanese nationality by making notification to the Minister of Justice, if the father or mother who has effected the recognition was, at the time of the child’s birth, a Japanese national and such father or mother is presently a Japanese national or was, at the time of his or her death, a Japanese national.” It is clear that this is an example of unreasonable discriminatory treatment.

In the following case, a child born out of wedlock between a Japanese father and a foreign mother, who was at the time married to another man when the child was born, but divorced two months later, a final judgment was delivered to confirm the lack of a parental relationship between the former husband and the child and the true father acknowledged the child.

The judgment of the First Petty Bench of the Supreme Court on October 17, ruled that the child had acquired Japanese nationality because it was deemed that the true father would have acknowledged the child before birth if the former husband was not assumed to be a father due to the

description of the family register and the lack of a parental relationship between the former husband and the child was finalized without delay after the child was born and the true father registered the acknowledgement of the child soon after it.

However, it is considered primarily that acknowledge an unborn child is rare, therefore it is unreasonable that acquisition of Japanese nationality depends on whether acknowledgement occurs before or after the birth. Moreover, there is a possibility that, depending on the legal system of the mother's home country, the child could lose its national identity. In addition, it is quite irrational that a child born in Japan between a Japanese father and a foreign mother should be treated differently in terms of acquiring Japanese nationality dependent on whether the child is legitimate or not.

(6) Taxation system

39. Allowances for widows under the Income Tax Law do not apply to a fatherless family with a child born out of wedlock. As it applies to a fatherless family with a widow or with a divorced mother, it constitutes unfavorable treatment under the taxation system for those families with a child born out of wedlock.

(7) Limitation of actions

40. The proviso of Article 787 of the Civil Code stipulates that a child born out of wedlock cannot file an appeal for acknowledgement once three years have passed following the death of the father or mother. This is discriminatory behavior when compared with the absence of limitations imposed on legitimate children to file for filiation.

2. Discrimination based on gender

41. In the Concluding Observations, the Committee commented: "It is also concerned at the provision within the Civil Code stipulating a different minimum age of marriage for girls (16 years) from that of boys (18 years)." The Committee recommended that there be "the same minimum age for marriage for boys and girls." However, no amendment has been made to the Civil Code, and no part referred to it in the Government report.

Article 731 of the Civil Code stipulates: "Men and women cannot marry until the former reaches 18 years and the latter 16 years." The reason given for setting this kind of difference between the sexes in terms of the minimum age for marriage, is the difference in maturity between men and women. This has no validity at all. It is virtually assumed that this difference was determined by considering the age appropriate for men to go into the workforce as the provider for family, and the age appropriate at which women should have a baby and be able to rear it. This way of thinking is completely anachronistic and has no reasonable grounding in today's society in which there are many different lifestyles. Therefore, the law should immediately be amended to establish the same minimum age of marriage for both men and women.

3. Discrimination based on ethnic group

42. In 1994, discriminatory view against Korean residents in Japan resulted in violence against students at a Korean school. Cases such as the following occurred where a Korean school student was attacked by a thug and her folk costume (chima-chogori) was slashed. Words of disdain such as "Go home to Korea", and other harsh abuse were flung at the students. On July 7, 1994, the president of the Tokyo Bar Association announced his statement to raise the Japanese people's awareness against these inexcusable acts, and to request that those institutions responsible for assuring the safety of foreign residents living in Japan take necessary measures to prevent such situations occurring. The course and background to this were mentioned in our first report.

However, similar situations took place frequently in 1998. In addition, in 2002, it was reported that, in the wake of the fact that the People's Republic of Korea had abducted some Japanese people, harassment was conducted toward Korean residents in Japan.

After considering this situation, on December 19, 2002, the JFBA issued a presidential statement plus an emergency appeal, expressing that all harassing and threatening behavior toward Korean resident children, who after all are not responsible for the abduction, is totally unacceptable and that the Japanese Government should immediately take measures to prevent these behaviors occurring.

There has been no strict response against this harassment. For example, although 11 offenses were reported during the period January to July 1994 following the slashing of the Korean school student's chima-chogori with a knife, only in one case was the suspect arrested. In order to prevent similar situations from occurring, the Government should take concrete measures and respond harshly toward any violent action based on such discrimination.

4. Discrimination against children with disabilities

43. The Second Report of the Government stated in paragraph 92: "Article 3 of the Disabled Persons Fundamental Law provides that the individual dignity of every handicapped person shall be respected; he/she shall have the right to be treated in a manner appropriate to his/her inherent dignity, and he/she shall be afforded the opportunity to participate in activities in every area." However, there still remain various kinds of discrimination against children with disabilities as explained later in the VIA.

The law prohibiting discrimination against persons with disabilities should be enacted, or "Prohibition of discrimination based on disabilities" should be specifically stipulated in the Disabled Persons Fundamental Law, the School Education Law, the Child Welfare Law, etc. (For details, refer to VIA.)

B. Best Interests of the Child

1. "Aim to have the best interests of the child" clearly stated in the appropriate domestic legislation including the Child Welfare Law, Juvenile Law, and School Education Law.

2. The amendment to the Juvenile Law, which was not in the child's best interest, should be restored to those conditions in place before the amendment. At the same time, a revision based on the Convention on the Rights of the Child and related international standards, should be instated.

3. The amendment to the School Education Law should be reviewed from the viewpoint of what is in the best interests of the child, and an appropriate revision should be made.

4. When proceeding with any budgetary expenditure, taxation systems, or economic revitalization, the Government should review those legal structures that concern the child from a viewpoint that gives priority to the best interest of the child.

5. When modifying the provision of child allowance ordinance, it should be reviewed and improved in terms of giving priority to the best interests of the child.

6. The Tokyo Metropolitan Government should immediately halt the reform based on the "Tokyo Reform of the Heart" and return to a policy based on the viewpoint of the child as based on the Convention on the Rights of the Child. It should not lose sight of giving priority to the best interests of the child.

7. In terms of managing child prostitution, particularly during the investigation, court proceedings and sentencing, the viewpoint that the juvenile is a victim rather than highlighting any problematic characteristics of the juvenile, should be adhered to so as to prevent the impairment of the juvenile's dignity.

8. With regard to child-rearing, effective measures for those families experiencing economic difficulties, should be considered and implemented. At high schools, measures that counter difficulty in learning at school due to economic reasons should be considered and implemented.

9. Effective measures for preventing infant domestic accidents of infants including those resulting from play equipment should be considered and implemented.

10. Measures aimed at improving and broadening children's school education should be established and implemented. These should be designed to drastically reform the present style of competitive school education. Such measures should be based on the Convention on the Rights of the Child, UN documentation, as well as the concluding observations of the United Nations Committee on the Rights of the Child, particularly those that consider the best interests of the child.

11. School building safety should be overhauled and any other dangerous places remaining improved immediately.

12. A system enabling all graduates wishing to be employed to find employment, should be developed and implemented, as well as a system that will support those who cannot find work.

13. As for problems in our social life, of which children could also be the subject, measures enabling children to respond to such problems should be prepared, and if compelling an item that goes against their intention is unavoidable, it should be implemented after sufficient dialogue with them and after obtaining their approval, and measures to establish practices to consider these points should be examined and implemented.

1. The best interest of the child is not clearly indicated in legislation.

44. In the Initial Report, the Japanese Government took up Article 1, 2 and 3 of the Child Welfare Law, Article 1 of the Juvenile Law, and Article 3 of the Maternal and Child Health Law, and stated that all these laws assume that a child's best interest is to be considered in each individual case (para. 54). However, with regard to this, the Committee pointed out that their general view was that: "the best interests of the child and respect for the views of the child are not being fully integrated into the legislative policies and programs relevant to children," and recommended that: "further efforts must be undertaken to ensure that the best interests of the child are appropriately reflected in any legal revision, judicial and administrative decisions, as well as the development and implementation of all projects and programs which have an impact on children." In particular, the JFBA pointed out that, in view of the Japanese legal structure, there is nothing written in the legislation that clearly states all measures should be taken in accordance with the principle of the best interest of child." Under the revision of the Child Welfare Law, the JFBA requested that, providing all measures shall be implemented under this principle, the Convention on the Rights of the Child phrase, "the best interest of the child", should be taken up as the objective of the law and management, but the Government ignored this and did not adopt it. However, the JFBA reported this to the United Nations Committee concerning their consideration of the Initial Report of Japan and requested certain responses. As a result, the Committee took this up in their consideration and pointed out in a constructive dialogue

that it was important to clearly stipulate it within domestic legislation for implementing it in the country even if it is the same sentence as the Convention. The above-mentioned concluding observation was based on this dialogue. Although the Government Report at this time referred to the enactment of laws such as the Child Prostitution and Child Pornography Prevention Law, the Child Abuse Prevention Law, etc. it did not touch on the background in which "the best interest of the child" could not be incorporated into the wording of the legislation. It was simply pointed out that this was assumed as in the Initial Report, and did not clarify the reasons.

This affected the revision of the Juvenile Law and School Education Laws by setting back the best interests of the child, as mentioned later, however the Report did not even mention it. This attitude meant that it not only ignored the opinions of the JFBA but also failed to provide information on what measures were taken, what advances were made, and what difficulties they were facing as a result of the previous consideration as requested by Guideline 6.

2. Legislation, administration and judicial trials

45. (1) The principle of the best interest of the child and the necessity of giving top priority in all measures concerning children, are not sufficiently understood by "the courts, administrative authorities or legislative organs", and preparation for and pursuit of the realization are not followed sufficiently, and in reality, the situation has slipped backwards.

46. (2) The Juvenile Law, which is a basic legal structure aimed at restoring and rehabilitating delinquent children to society, was revised in December 2000.

47. [1] Successive occurrence of serious juvenile crimes escalated public opinion that it is necessary to punish and make example of such juveniles and giving priority to protective measures is wrong. The amendment was motivated by these opinions.

48. [2] While no argument was promoted concerning ways of prioritizing the best interests of children who have committed delinquent acts, due to the Government responsible for implementing the Convention failing to explain the necessity to provide for the best way for restoring children who have committed delinquent acts and their rehabilitation back into society.

49. [3] The previous juvenile Law which conformed to the best interest principle was amended and the way to send criminal court was opened for juveniles under 16 years of age and the juveniles 16 years of age or older shall be sent to criminal court in principle when he/she committed an intentional crime which lead a victim to death while the former law admitted it only when he:/she was beyond the protective measures.

50. [4] The Government Report evaluated this revision stating: "It is also important to state explicitly the principle that a juvenile who has committed a crime, causing death resulting from an intentional criminal act, such as murder, murder during a robbery, rape resulting in death, may be subjected to a criminal disposition, in light of their serious anti-social, anti-moral nature, in order to develop a

juvenile's sense of normality and encourage his/her sound growth." (Government Report 295 (iv)).

51. [5] This has transformed the juvenile legislative structure which previously gave priority to the best interests of the child in terms of restoring and rehabilitating those juveniles who have become criminals back into society, into one which gives priority to fostering normative consciousness of the average juvenile which has nothing to do with the best interest. This has largely deviated and retreated from the Convention that calls for the best interest of the child to be prioritized.

52. (3) The School Education Law, which provides for the basic school system, was revised in July 2001. This revision was made in line with the direction proposed in the final report of the National Commission on Educational Reform, a private advisory body to the prime minister. Specifically, it was revised according to the final report's conclusion, which suggests that "all children engage in voluntary activities", and that "strictly control children who cause trouble." The revised provisions state that: "Efforts shall be made to improve children's experience-based learning activities, particularly those public service activities that are voluntary, nature-based etc." (Article 18-2). When there is a child who behaves poorly, having repeated one or more acts listed in the following, and is deemed to be disturbing the education of other children, the relevant municipal board of education may order that child's suspension to the guardians of the child,"(Article 26).

In this amendment, the Government prioritized the viewpoint of obligatory volunteer activities (Article 18), and prioritized the expulsion of problem children from the classroom (Article 26-2). Both viewpoints, of compulsory voluntary work and expulsion from the classroom, are incompatible with the right of the child to education, which should be aimed at developing the child's personality, talent and mental and physical abilities to the maximum. Thus the revision was not made based on a view that promotes the child's best interests.

When revising this law the Government failed to explain not only that the child's best interests have precedence and to provide the necessary materials need to be provided, and the revision was forced through without deep discussion. It is obvious that, as in the case of revising the Juvenile Law, it deviated from the obligation to promote the child's best interests, and distorted the previous legal structure.

53. (4) The administration of public schools managed currently by the relevant municipality is supported by government subsidies, and this supports an uninterrupted homogeneous education even within localities where financial establishment is difficult. As a basic policy for expenditure, taxation and economic revitalization, the Government first of all cutbacks subsidies on education and welfare, thus never seeming to promote attitude which consider the child's best interest a top priority.

54. (5) The child-rearing allowance has effectively functioned as an important pillar of support for

fatherless families whose average annual income is 30% that of general households. This income is the result of the undeniable discrimination against women in terms of pay despite their eagerness to work and support their child. However, the Government revised the relevant government ordinance, and from August 1, 2002 the head of each household entitled to receive 42,300 yen per month, the full allowance, was changed from households consisting of two people, mother and child, where annual income does not exceed 2,048,000, to those households where the mothers' annual income does not exceed 1,300,000 yen. The main reason for this was that, owing to the increase in fatherless families, the amount of allowances had swelled and the financial burden was larger. Again in this respect, the Government's attitude of considering the child's best interest as a top priority was absent.

55. (6) Since November 1999, the Tokyo Metropolitan Government has promoted the "Tokyo Revolution of Mind" for the purpose to plant normative consciousness in children in order to foster young people of the next generation, and make it as a social movement. This move includes seven concrete measures that take the form of a one-sided approach from adults to children in the form: "Have children …". It is centered on imposing on children what adults deem to be good. The Tokyo Metropolitan Government claims that the underlying motive is that an extremely serious even critical situation has developed whereby juveniles are committing brutal violent acts and bullying. Their attitude is to impose on children what adults deem to be good and have adults tell them what to do instead of listening to the child's troubles and worries in a sympathetic way, and fostering them while bringing out their abilities. This is a way of prioritizing ways of controlling children without making difficulties when considering the respective child's best interests. Obviously this works against the principle of promoting the child's best interest.

56. (7) With respect to the accusation of indecent assault against a man who paid for sex with a then-11 year old boy in Thailand, in 1996, the Public Prosecutor's Office, Aichi Prefecture made a judgment to waive the indictment in May 2001 just before the statutes of limitation for public action had run, on the grounds that there was a discrepancy in the evidence. The victimized boy was placed under investigation by Thai Police authorities just after the man was arrested, then, in an interview with the defense team for the victims, came to Japan for investigation by Japanese police authorities and the prosecutor. In addition, after a person who mediated solicitation was found guilty of such act, the prosecutor in Thailand placed him under investigation. The statements of the boy were made in each interrogation or interview. During the investigation, the assailant (victimizer), denied the charges, but at civil trial in March 2000 after waiver indictment was decided, he admitted to causing harm, and paid one million yen to the boy in settlement.

The discrepancy between the evidence was a trivial matter. By the fact that the victimizer admitted his guilt during the civil trial and the settlement was concluded, there remains doubt over

whether such a discrepancy could be used as the grounds for waiving an indictment. It was after the re-investigation was made of the boy that the prosecutor's attitude changed from the previous positive one to one of waiving an indictment. The only change that occurred was that the boy deposed that he had had experience of prostitution, and it is considered that the real reason for their policy change was that they thought the boy's damage as a victim was reduced with this statement. Needless to say, punishment for an act of prostitution was a way of recovering the damaged dignity of the victimized boy, and this approach must be understood from the standpoint of providing for the boy's best interests. The record of committing prostitution may increase the damage as victim but cannot reduce it. In spite of this, the Aichi Prefecture prosecutor waived an indictment of the accused in that the record of prostitution could reduce the necessity of recovering the child's dignity. The prosecutor can only be described as lacking an attitude that would promote the recovery of the child's dignity.

3. Within families, schools and communities

57. (1) The reality is that in family life, school life and society, and underlying responses by legislative, administrative and judicial interests, the will to promote the child's best interest is lacking, and the Government lacks the attitude to amend this. For some reason the Government Report provided no information in this regard.

58. (2) The first issue concerns family life. "The family is the fundamental unit in our society and must be strengthened as such. The family has the right to comprehensive protection and support." (Report of United Nations Children's Special Assembly, 2002). In Japan, a country faced with the problem of declining birthrate, child-rearing support has been called for, but the reality is that a system, where government, municipal and social support for families that have fallen into economic difficulties against a backdrop of depressed businesses, has retreated, thus ensuring that families cannot provide for the best interests of their children. The number of public high school students whose families are seeking reduction or exemption from school fee is increasing rapidly. In six prefectures in the Chubu district, the number of such students totals 16,437. This is 4.6% of all students in that district. In private high schools also, the number of students whose families fail to pay fees is increasing, and the number of those who have left or been excluded from such schools, has reached a high level, while considerable numbers of students are unable to participate in school excursions. According to a survey conducted by the National Private School Teachers' Union, out of 230,000 students surveyed, 1,379 students left school for economic reasons, 52 were excluded, and 464 could not join in school excursions due to financial constraints.

Although support for those single-parent families is most needed, there has been no system providing support for father-based single parent families from the beginning. As for support for mother-based single parent families, the conditions for receiving the child-rearing allowance, which

is their most important financial aid, has been reduced as is mentioned before (2(5)).

In Japan, the number of infant deaths due to casual accidents between one and four years of age is 6.6 per 100 thousand. This is a high level when compared with 4.0 in Britain, 3.6 in Sweden, and 4.6 in Italy. According to the survey conducted by the National Institute of Public Health, in light of the rate of implementing domestic safety measures, only 31.3% of all families surveyed made arrangements designed to keep their child from entering the bathroom alone, even though among domestic accidents, death by drowning caused by falling into the bathtub, ranks highest. As for the rest, 32.0% of families put guards on the edges of furniture, 45.8% put a fence at the top of the steps to prevent the child falling down, and 47.5% made arrangements to prevent their child's fingers from being stuck in the video deck tape insertion slot. Thus the attitude of considering the specific safety of children from that of the adult, in other words in terms of the child's best interest, has not been broadcast.

59. (3) The second issue concerns school life. In terms of school life, the Government Report states: "In order for students to enjoy a pressure-free education, the Ministry of Education, Culture, Sports, Science and Technology is making efforts to improve educational content and methods by revising the general curriculum guidelines. These are known as Courses of Study, and involve selecting the educational contents, and emphasizing experience-oriented education (268). In addition, from April 2002, all national, public schools began a five-day week, aimed at reducing pressure within education by not having any classes planned for Saturdays. However, both the schools and the families involved in these changes became confused since they felt that school events, indispensable to a child's development, would be cut back in order to make up for the reduced hours. They also worried about the issue of learning fearing a decline in academic performance, since supplementary classes are taken on Saturdays when classes are not running, as well as during the summer vacation. Attending juku (crammer schools) is also becoming more generally accepted, and those children who cannot respond to these are therefore left behind. Thus, the situation within the educational system, which has been criticized as highly competitive, is becoming increasingly serious.

This management system works counter to the idea raised in the report from the United Nations Children's Assembly that: "higher priority should be given to the view that all children should have good quality compulsory primary education, free of charge". This conflicts with that statement that children's education must aim to "develop a child's personality, talents and mental and physical abilities to the maximum limit". We would have to say that this management is against the best interests of the child.

60. According to the survey on earthquake-proofing of public facilities, conducted by the Cabinet Office in March 31, 2002, the percentage of schools which could not meet the earthquake-proof standards under the Building Standard Law, and the percentage of schools likely to fall down as the result of an earthquake was more than 54.3% of the total. More than half of the schools did not

receive an earthquake-proof diagnosis even after several decades had passed since they had been built, or had not been remodeled following diagnosis that structural work was required. In Tokyo, for example, 84 out of 273 metropolitan schools did not meet the earthquake-proof standards, and 17 among these were special schools for disabled children such as those with visual or hearing disabilities, both groups posing potential evacuation difficulties. The present situation, in which problems concerning the safety of children and students have been left unresolved, is far from the correct attitude to take in terms of promoting the best interests of the child, especially in a quake-prone country such as Japan.

61. (4) The third issue is concerns social life. According to the survey conducted by the Ministry of Health, Labor, and Welfare, the number of high school graduates who left school in March 2002, but could not find job despite their wish to do so, reached 20,000. This figure is the highest on record, in other words the lowest rate of employment since 1977 when the survey was started. The percentage of junior high school graduates who were employed was 64.47%, declined by 8.0% when compared with the preceding year. This is a serious reality awaiting children who are just stepping full of hope into society. Needless to say this is a situation that runs counter to the best interests of the child.

62. There was a case in connection with the World Cup Soccer taking place in Korea and Japan in 2002, which became an issue, whereby an elementary school student tried to receive a ticket, which was applied for under the name of the child himself. The issue of this ticket was refused on the grounds that the student, who did not have a photographic identification card, could not be identified. This problem was temporarily solved when it was agreed to substitute the ID with a student enrollment certificate that included the child's photo and school seal. But the ticket-winning child had his feelings hurt for a while. We have to say that the method of ticket distribution did not allow for the issuing of tickets to children and thus was lacking consideration of children. In another case, on Tsuna-cho, Awaji Island where the England team had its camp, elementary school students who had attended a social gathering with the team had their shikishi papers signed, later the teacher leading them took the papers away. This action caused a lot of complaints. After this, the papers with the team members' signatures were returned to the children, but the children were said to be distrustful of adults as a result. The teacher's intention was to make these autographs available to all the children including those who could not attend, but the manner in which these were taken from the children without any advance explanation or approval indicates a lack of consideration for the children. The teacher's sense that what is not acceptable for adults may be an acceptable way to behave toward children was an example of forgetting the principle of providing for the children's best interest. These two cases happened just around the time of the World Cup, however in our daily life, such responses that may damage children's minds through ignorance of the children's condition, or taking the view that approval is not necessary since it involves a child, is common and there are too many similar cases to mention.

C. Right to Life, Survival and Development

1. In order to prevent a child dying from some unforeseen disaster or suicide, standards are required in terms of the structure and utilization of school buildings, facilities, toys, etc. Such standards should be considered, promptly established and promoted.

2. All possible measures required for establishing a medical care system for children, under which pediatricians may work actively and willingly and function fully, should be considered and promoted.

3. Measures to secure the necessary number of child psychiatrists and clinical psychotherapists, and assign them facilities and premises, should be considered and promoted.

4. As for school accident, a system that clarifies the cause of the accident objectively in order that lessons can be learnt from the accident, and the same incident prevented from re-occurring, should be considered, established and promoted, as well as the early realization of a system of liability without fault.

5. Establishing a system that breaks away from the excessive dependence on police involvement in difficulties to do with children's lives such as survival and development, should be considered and realized.

1. Present situation

(1) Death by suicide and unforeseen accidents

63. According to the statistics of the Ministry of Health, Labor and Welfare in 2000, the ranking of the major causes of death by age bracket (published top five places) and the number of deaths by sex are as follows. Within each age bracket apart from infants less than one year of age, death by accident and death by suicide rank high as the cause of death. There were 18,804 cases of victims of abuse within the same age bracket reported to the children's consultation center, and the death of 106 children was reported (in 2000). Since death by accident ranks high as a cause of infant death, death by accident within the family, apart from abuse, is assumed to be considerable. In addition, at alternative custody facilities, there are innumerable cases of corporal punishment, and cases of death have even been reported. As for accidents which have occurred while children are at school, according to Japan Physical Education and Health Center figures, in 2000, 686,344 school accidents took place and 134 students died. On June 8, 2001, a serious accident occurred at the elementary

school attached to Osaka Kyoiku University, in which a man holding a kitchen knife broke into the school and slashed at teachers and children. This resulted in eight children dying and 21 children and teachers injured. Thus the current situation in Japan is that cases of death by accident within families and while at school should be considered in order of safety, and the number of deaths by suicide is not small.

Death by suicide and unforeseen accidents

Year 2000

Age bracket (in years)	Cause	Men		Women	
		Rank	No. of deaths	Rank	No. of deaths
0	Accident	4	138	4	79
	Suicide				
1 to 4	Accident	1	211	2	97
	Suicide				
5 to 9	Accident	1	158	1	84
	Suicide				
10 to 14	Accident	1	128	2	38
	Suicide	3	58	4	16
15 to 19	Accident	1	855	1	197
	Suicide	2	335	2	138

Source: Statistics of the Ministry of Health, Labor and Welfare

64. (2) The conditions under which a child's survival and development is threatened is not limited to those leading to death, but it is rather seen as the tip of the iceberg, and underneath it are many cases that may hinder the child's survival and development. Under these circumstances children are not only damaged physically but mentally as well. To counter child abuse, the Child Abuse Prevention Law was put into force, but strategies for responding to the rapidly increasing number of cases have not been developed. Because of this, it continues to be difficult for abused children to recover (refer to VC). Many of children accommodated in these facilities are put into an insufficient environment where corporal punishment is an everyday affair and privacy cannot be maintained (refer to VB). It is said that, with the start of five-day weeks at public schools and the reform of teaching guidelines, the children's learning burden is reduced, but the reality is that the response required from children is cut back, such as by reduced numbers of school events, etc., and the competitive atmosphere is even greater. That effect has resulted in an increase in the number of non-attendance at school and dropouts. Under these inhuman conditions, the violation of human rights by violence such as corporal punishment, bullying, etc. remains both unresolved and serious (refer to VII B&C).

2. Creating an environment in which the right of the child to life is guaranteed, and the survival and development of the child is ensured

(1) Pediatric care system

65. The Government Report states that the Government is improving the health maintenance of small children by providing perinatal and pediatric medical systems (based on the Child Welfare and the

Maternity and Child Health Laws, etc.) (116). Thus claiming that the environment in which the child's right to life is assured, and the survival and development of the child is secured, has been established. However, the Japanese pediatric care system is suffering under the following conditions: the problem of declining birth rate follows on from the issue of financial deficit; the number of pediatric candidates is decreasing, and the percentage of pediatricians as a percentage of all medical physicians has declined from 26% in 1976 to 15% in 1998. It has been a long time since this critical state was first pointed out. According to one newspaper report, the number of hospitals with pediatric departments capable of responding to emergency medical care has reduced by 200 over two years, 1998 and 1999, and the number of areas where an emergency medical services system that caters for nighttime and holiday emergencies have been developed in only 65 out of 360 medical care zones across the country. This situation is likely to become worse and an environment in which children's safety is secured is in an extremely precarious position.

(2) Securing and assigning psychiatrists and clinical psychotherapists for children.

66. In its Concluding Observations, the Committee stated that it was concerned about "the high number of suicides among children and the insufficient measures available to prevent this phenomenon" (para. 21), and that "children are exposed to developmental disorders due to the stresses imposed by a highly competitive educational system and the consequent lack of time for leisure, physical activities and rest" (22). The Committee made recommendations for each of these issues (42, 43). In addition, it pointed out that: "the increase in child abuse and ill-treatment (19); the frequency and level of violence in schools (24); the lack of a comprehensive action plan with which to prevent and combat child prostitution (25), and the insufficient measures undertaken to address the issues of drug and alcohol abuse (26)", as well as the system of moral support for the restoration and social rehabilitation of children trapped in these conditions, was sought. In order to detect these mental abnormalities at an early stage and respond appropriately to them, it is essential that specialists such as child psychiatrists and clinical psychotherapists be assigned. However, in this respect, there is a shortfall in the total number of medical physicians and clinical psychotherapists engaged in the medical treatment and clinical care of children and there are insufficient numbers of these specialists assigned to public facilities. When compared with the ratio of one child psychiatrist per 1,000 children in Europe and the U.S., Japan's present level can be as low as one per 130,000 children, and there is no intentional response to resolve the situation. Also, in terms of assignment to public facilities, although there is an increase in numbers of child psychiatrists and new assignments in child consultation centers, for example, against the background of the enforcement of the Child Abuse Prevention Law in November 2000, the increase is insufficient and generally centers on part time service. In order to respond to children's mental abnormalities, a drastic increase in the number of medical physicians providing full time services as well as psychological assessments is necessary.

(3) Arranging the environment to protect children from accidents at school

67. According to the figures gathered by the National Stadium and School Health Center of Japan, 1,671,920 school accidents occurred and 119 children died during the year 2001. The system for protecting the life and safety of children from these accidents is insufficient. Firstly, effective measures for preventing accidents from reoccurring by clarifying the cause of accident are insufficient. The National Stadium and School Health Center of Japan, which provides mutual benefits for accidents under school administration, pointed out that: "While checking the conditions under which accidents causing death or injury under school administration occur, similar cases were found every year. It was also found that quite a number of accident cases could have been prevented if a little more consideration had been given to safety education and safety care. This information is available from "Death and Injury under School Administration" (1989 edition). The accident cases compiled within this book are distributed to schools and boards of education every year, in the hope that they will use the cases listed in it as a basis, thereby contributing to the prevention of accidents. However, in the lawsuits in which similar serious cases were filed, it was found that almost all of the teachers and supervisors did not know about the similar cases that were included in this publication. This indicates that they are not being used to prevent the re-occurrence of accidents. In addition, although every year families of school accident victims present their requests to the Ministry of Education, Culture, Sports, Science and Technology to call attention to school sites by organizing the frequency of cases, issues and countermeasures to be taken and publishing the Ministry notices, etc. based on them, very few cases have been reflected in actual notices, and similar accidents have occurred. Also, no efforts have been made to receive appeals from children and their guardians, make improvements based on them, nor look at ways of encouraging children and their guardians to proactively participate in attempts to reduce risks and thus prevent these accidents. A system of prevention, which includes the participation of children and their guardians, is not sufficient.

3. Government Report hindering the creation of an appropriate environment

(1) Government Report biased toward control by police activity

68. The Government Report at first takes up the program of juvenile guidance on the streets and juvenile advisory activities by the police, as their efforts for preventing and monitoring child suicide(117), and the listing of a Program of Measures for Protecting Women and Children established by the National Police Agency, as well as a policy titled "Crime Prevention through Town Planning" promoted by the police in cooperation with the respective municipalities as activities to protect children from crime. In this way, the Government Report on their efforts concerning Article 6 of the Convention is characterized by their bias toward police activities.

When, on June 8, 2001, a man holding a kitchen knife broke into the elementary school attached to Osaka Kyoiku University and slashed at teachers and children, leaving eight children dead and 21

children and teachers injured, securing the safety of children and students became an issue and drew public attention. What was pointed out was that blocking the intrusion of suspicious individuals by the police was not enough. Instead, it was pointed out that closing a school hindered watching by many people and caused more damage to safety, as well as the importance of promoting the openness of schools. Today it is reported that this has been implemented and is producing results. The description of the Government Report is biased in terms of police activities, and obscured the real problems, that of a great fear of hindering the effective development of the environment.

(2) The Government Report does not concern itself with school accidents

69. The Government Report ignored and consequently did not concern itself with the problems of building an environment that protected children from school accidents. We pointed out that measures were insufficient to prevent a recurrence of similar accidents taking into consideration those that had already occurred, however the problem is greater than that.

In Japan, when any accident occurs at school, investigation of cause is primarily left in the hands of school-based parties such as the relevant school, supervisor, party who established the entity, etc. Only when the school is found negligent, they take any responsibility. In other words the school is apt to try to reduce their responsibility from the early stages of the investigation by concealing the matter for which they are charged, or making excessive evaluations of the victim's carelessness, etc.

In such cases, the attitude of children who are curious and challenging new ventures may itself become the subject of carelessness. Thus the responsibility of the school, which must face the children based on this premise, is likely to disappear. These conditions are the same with court proceedings, and even when the court decides that the school is responsible, it is common to decide that student is also negligent in order to offset the fault (i.e. comparative fault).

Currently, there is no suitable mechanism that investigates the causes of school accidents and is matched to the children's growth and development. Such a mechanism must be developed immediately.

D. Children's Right to Express Their Views

1. An amendment should be made to provide notification and give opportunities to be heard when suspension from school is applied under the School Education Law. Also, during disciplinary procedures, notification and an opportunity to be heard should be given to the relevant child to ensure him/her of the right to express his/her views. 2 In terms of school management, opportunities to express their views and participate in school events should be granted to children, and the Government should take appropriate measures to

promote such school management.

1. Revision of Article 26 of the School Education Law

70. In their Report, the Government states that: "considering that suspension, which is a system that guarantees the right of other students to an education, is a measure that directly involves the rights and duties of students, it is important to follow the proper procedures when giving a suspension. Therefore, the Government has instructed, through notifications that it is desirable to have occasions at which to listen to the accounts of the student in question and his/her guardians and it is appropriate to do this by issuing a notice to the student and his/her guardians at the time of being notified of the suspension". The Report continues: "the Ministry of Education, Culture, Sports, Science and Technology has filed amendments to the School Education Law that include clarification of the requirements and procedures in terms of the suspension system."(122)

Before amendment, Article 26 of the School Education Law stipulated: "When there is a child who is ill-behaved and deemed to disturb the education of other children, the relevant municipal board of education may order suspension of that child to the guardians of the child." However, Paragraph 1 of the said Article under the revised law amended this provision to the following: "When there is a child who is ill-behaved, having repeated one or more acts listed in the following, and is deemed to disturb the education of other children, the relevant municipal board of education may order suspension of said child to the guardians of that child." The example acts are as follows: (1) Any act that inflicts injury, mental or physical pain, or causes property damage to other children; (2) Any act that inflicts injury, mental or physical pain to school personnel; (3) Any act that causes damage to school facilities or equipment, and (4) Any act that hinders the implementation of class or other educational activities. There are additional provisions in Paragraph 2 of the said Article: "In case suspension is given, the views of the guardians must be heard in advance and a document stating the reason and period of suspension must be issued." Paragraph 3: "Necessary items concerning procedures for the ordering of suspension shall be provided in the board of education rules." Paragraph 4: "Educational support and other required measures for learning shall be provided for the relevant child during the period of suspension."

71. However, the following problems can be discerned within these amendments:

(1) There is no provision for any other alternative means regarding resolution of the situation.

(2) The requirements are overly broad. According to the notice issued by the Ministry of Education in 1983, "the situation in which the normal implementation of class or other educational activity is disturbed" was provided as a requirement, but this requirement has been expanded under the revised law from the preceding one in that suspension may be ordered even in cases where the implementation of class or other educational activity is not necessarily disturbed.

(3) There is no provision for a period of suspension.

(4) It lacks the guarantee of due process of law.

On July 26, 1983, the Ministry of Education issued a notice instructing that, in the case where a suspension is ordered, the aim of suspension should be fully explained to the child in question and his/her guardians, and their views should be heard in advance from the guardians, etc., however the revised law states: "views shall be heard from the guardians in advance," and the part in the notice "the aim of suspension should be fully explained to the child in question and his/her guardians" has been removed.

More importantly, notification of the child in question and an opportunity of being heard are not ensured. From the viewpoint of assuring the child's right to express his/her views, this is problematic.

Therefore, an amendment should be made to the law to make provision for a notification and an opportunity for the child in question to be heard when a suspension is ordered.

It is important to note that there is also a problem that the child's right to express his/her views is not assured in situations concerning disciplinary procedures at school, as described later (VII E). During disciplinary procedures at school, notification to the child in question and an opportunity to be heard should be given and the school management must ensure the child's right to express his/her views.

2. Expression of views and participation at school

(1) Infringement of the child's right to participate in entrance and graduation ceremonies

72. In the Concluding Observations, the Committee was particularly concerned about the difficulties encountered by children in general in exercising their right to participate (art. 12) in all parts of society, especially in the school system (para.13), and recommended that: "further efforts must be undertaken to ensure that the general principles of the Convention, in particular the general principles of non-discrimination (art. 2), the best interests of the child (art. 3) and respect for the views of the child (art. 12), not only guide policy discussions and decision-making, but are also appropriately reflected in any legal revision, judicial or administrative decisions, and in the development and implementation of all projects and programs which have an impact on children," (para.35).

However, there are several cases in which applications for remedial measures by JFBA and regional bar associations were made because the children's rights to express their views and participate were infringed at some high schools, and the infringement of the children's rights was recognized. Thus the Concluding Observations were not employed within the field of education.

[1] Saitama Prefectural Tokorozawa High School Case

73. Traditionally, at Saitama Prefectural Tokorozawa High School, students and the students' board participated in the decision-making process concerning school events, and their views were respected.

Under their event management rules, the principle of co-determination by students and school personnel concerning sports meets, school excursions and graduation-related events, was stipulated. Also, under the consultative meeting rules concerning student council activities, it was stipulated that, in case the teachers' meeting refused the decision of the student council, a consultative meeting should be held to discuss the matter, and, in all school events, students' views had been fully reflected. In addition, since 1989, the student council adopted the "Resolution Concerning Hinomaru and Kimigayo", which objected to the compulsive inclusion of Hinomaru and Kimigayo in school events, and since this resolution was respected, Hinomaru and Kimigayo had not been introduced in entrance and graduation ceremonies. However, in April 1997, a newly assigned principal introduced Hinomaru and Kimigayo into the opening ceremony, which was held immediately after he had assumed office. The students objected strongly yet were not given any opportunity to express their views. The students then called for a discussion to be held, but the principal refused this stating that: "Students and teachers differ in their status. Discussion cannot therefore be made on an equal basis. If there is to be a discussion, I can't join in." While commenting that an explanatory meeting would be acceptable, he held a one-sided meeting, where he stated: "The implementation of Hinomaru and Kimigayo is not a matter for discussion. It has been determined by the consultative meeting, but from now, the principal will make the final decisions." He then denied the students an opportunity to speak. Consequently he did not respond to the students' expression of views in good faith. With regards to the graduation ceremony held in March 1998, the student council adopted the resolution concerning Hinomaru and Kimigayo, and proposed implementing a gathering to celebrate graduation at which Hinomaru and Kimigayo would not be implemented, but the principal would not listen to the students' view at all and forced the graduation ceremony where Hinomaru and Kimigayo was introduced to go ahead. Likewise, the opening ceremony held in April 1998 proceeded in the same way. As a result, the students petitioned the Japan Federation of Bar Associations to request a remedy in terms of human rights, on the grounds of violation of Article 12 of the Convention on the Rights of the Child. Following investigation, the Federation recognized that the act of the said principal was in violation of the students' rights to express their views and participate, and issued a request to the principal and the Saitama Prefecture Board of Education on January 26, 2001 not to repeat any similar human rights violation.

[2] Sapporo Minami High School Case

74. At Sapporo Minami High School in Hokkaido, Kimigayo was not included in any of the previous entrance ceremonies. It was not introduced in either of the entrance or graduation ceremonies in 2000 because the then principal had heard many negative views about it from students, etc. The new principal, assigned in 2001, expressed his intention of implementing Kimigayo at the entrance ceremony, but, because of strong dissenting opinion from the school personnel, it was not implemented. Again in June 2001, the principal expresses his intention to implement Kimigayo

during the graduation ceremony to be held in March 2002, and, after accepting the opinion of the school personnel that the views of the students should be heard, held a meeting for the exchange of opinions with students on December 5 and 10. During the meeting, a large number of students expressed their views that questioned the compliance with the Convention on the Rights of the Child, and freedom of thought and conscience and asked to reconsider. But in the second meeting, the principal stated that he would no longer hold that kind of meeting for exchange of views, and cut the next meeting. He then decided, unilaterally, to implement Kimigayo on the 12th of the same month. With respect to this, an application to request a remedy for human rights was filed with the Sapporo Bar Association, and on February 14, 2002, the Association recognized the principal act as violating Article 12 of the Convention on the Rights of the Child, and recommended that, with regard to the graduation ceremony management, maximum efforts should be continued to convince the students, while including them in the decision-making process as important members, and giving sufficient explanation to and having discussions with them.

[3] Case of complaint brought to Hiroshima Bar Association to request a remedy for human rights

75. In August 1999, Hinomaru and Kimigayo were legislated as the national flag and anthem, but in the Diet during the process of legislation, it was affirmed that they were not to be compulsory for students and children. In spite of this, at a graduation ceremony held in March 2000, at junior and senior high schools in Hiroshima Prefecture, some students remained seated and as a protest, did not join the majority in standing and singing the national anthem. An investigation by the board of education and the principal was conducted with the said students to find out the reason for their behavior. The Hiroshima Bar Association, which received a complaint to request a remedy for human rights, claiming that this was violating the students' freedom of conscience and thought and the right to express their views, recognized this and in October 2000 issued a warning that it was a violation of their human rights.

[4] Kunitachi City Second Elementary School

76. From March to April 2000, in Kunitachi City Second Elementary School, children graduating from the school formed the executive committee and prepared for the ceremony, but on the very day of the graduation ceremony, the Hinomaru flag was raised on the top of the school building without any advance explanation. When after the ceremony the children went to the principal to seek an explanation, the principal lowered the flag but did not give the children a convincing explanation. The report of the principal to the board of education concerning these communications was leaked to the press, and one newspaper took it up under the title "30 children demand principal to lower flag and prostrate himself on the ground" then, one political organization broke into the school and threatened the class which frightened the children. In this situation, a relief was applied to the Tokyo Bar Association, appealing that the children's right to express their opinions was infringed.

77. In 2001, there was another case of infringement. The board of education issued a notice in the

form of an official order to call for the complete implementation of Hinomaru and Kimigayo on the occasion of school events such as graduation and entrance ceremonies, etc. As a result, at one high school in which the graduation ceremony had up until then been held based on the students' own planning and management, the tradition that students produced their own graduation ceremony, was unilaterally abolished. There is a report that, at this high school in Chiba Prefecture, the students presented their complaint to the board of education requesting that these matters not be made compulsory.

Thus, the situation in which students' rights to express their views and participate in school events are infringed is happening in many different places.

78. (2) Children's expression of opinions and participation should be positively accepted in school management centered on school events, and respected according to the children's age and maturity. The Government should take appropriate measures for promoting such school management.

IV CIVIL RIGHTS AND FREEDOMS

A. Rights to Be Registered and Acquire a Nationality (Article 7)

1. In order to encourage the registration of a child's birth, the exception should be accepted to Article 62, Paragraph 2 of the Immigration Control and Refugee Recognition Act which stipulates the obligation to notify the Immigration Office of those foreigners of illegal immigration status and the family registration officials should cease the notification.

2. The refusal to issue birth certificates at hospitals should cease, and measures for ensuring that Article 19, Paragraph 2 of the Medical Practitioners Law, and Article 39, Paragraph 2 of the law concerning public health nurses, midwives and other nurses, should be observed.

3. Arrangements for applying the appropriate related nationality laws, both at home and abroad, should be developed in order to recognize accurately the child's nationality at the time of registering the birth.

4. When a mother is missing, without having her registered her child, regardless of whether the hospital at which the child is born is known or not, the child should be treated as abandoned, as specified in Article 57 of the Family Registration Law, and the child should be registered immediately.

5. The Japanese government should make public the statistical information showing the number of cases to which Article 2, Paragraph 3 of the Nationality Law were applied in those cases not falling under Article 57 of the Family Registration Law.

6. If asserting that acquisition of Japanese nationality by naturalization can substitute that acquired by birth, the Japanese government should make public the number of stateless persons who were naturalized while underage.

7. The requirement of marriage between parents, as specified in Article 3 of the Nationality Law, should be deleted. In those cases where a child is acknowledged by his/her Japanese father, so long as the child is underage, his/her acquisition of Japanese nationality based on this report, should be approved.

1. Introduction

79. The number of registered foreign residents in our country (long-term foreigners staying for six months or longer) exceeded one million in 1990, and 1,600,000 in 2000. The breakdown is as follows: 635,000 residents from North and South Korea; 335,000 from China; 254,000 from Brazil, and 144,000 from the Philippines, etc. The number of foreigners who overstay their visas, which peaked at 298,000 in 1993, has been gradually declining since then, however it has been estimated that more than 200,000 foreigners are in the country illegally. The breakdown of this figure is as follows: 55,000 from South Korea; 29,000 from the Philippines, and 27,000 from China, etc.

80. Registration of birth and children's acquisition of nationality in our country presents a difficult problem particularly when parents are foreign illegal overstayers. In the case of those from South American countries, since there are many people of Japanese ancestry, they are in a position to obtain resident status comparatively easily under the Immigration Control and Refugee Recognition Act. However, because their home countries adopt the place of birth principle (jus soli), the acquisition of the child's nationality remains problematic.

81. For example, from the end of 2000 until February 2001, the International Social Service Japan conducted a questionnaire survey across 174 child consultation centers nationwide concerning children's birth registration and nationality, etc. According to its results, approximately 80 of the 241 children had not yet had their birth registered in Japan and more than 100 children had not had their birth registered in the home country of their parents. Also, of the 90 children whose father or mother was Japanese, only 13 of them obtained Japanese nationality and were entered into the Japanese parent's family register. Moreover, there were 17 children who were stateless because both their parents were South American citizens (Yasuhiro Okuda, "Nationality and Visa of the Child: Statistical Analysis", Akashi Shoten, 2002).

82. It is assumed that this situation also occurs with children outside of the child consultation centers, however, the Government Report only cited the related provisions i.e. the Family Registration Law and the Nationality Law in Paragraphs 134 to 139, and were not aware that these provisions did not work in reality. Therefore, JFBA recommends the amendment of laws in response to the actual status of foreign residents and family relationships with Japanese, as well as improvements to the relevant management systems.

2. Birth registration

83. Article 7 of the Convention states that: "The child shall be registered immediately after birth." To implement this provision, it would be necessary to remove all obstacles associated with the registration of birth. Also, although birth registration must be accurate in its content, under the present conditions, recognition of nationality, particularly for children, is not being accurately recorded.

(1) Obstacles to the submission of birth notifications

84. In Paragraph 135 of the Report, the Government describes the obligation of submitting the birth notification concerning a child born in Japan regardless of whether the child is a Japanese national or foreign national. However, since Article 62, Paragraph 2 of the Immigration Control and Refugee Recognition Act stipulates the obligation of public servants who discover an illegally resident foreigner to report him/her to the immigration authorities, notice is given from the registration office in cases of illegal residents to the immigration authority at the time the child's birth is registered. Therefore, illegal residents tend to refrain from notifying the birth for fear of deportation from the country. The reality is that notifying the child's birth is hampered by control over the parent's illegal stay, thus an exemption should be set up to do with such obligatory notification. Controlling illegal stay can be effectively implemented by some other means.

85. Moreover, when an illegally resident foreigner has a baby born in hospital, the hospital will sometimes refuse to issue a birth certificate on the grounds of unpaid delivery expenses. Since birth certificates issued by hospitals are specified as documents to be attached to the birth notification (Article 49, Paragraph 2 of the Family Register Law), this means that if the foreign parent is refused a birth certificate for his/her child, they cannot register their child's birth. It is true that prohibiting the refusal of a birth certificate is specified in Article 19, Paragraph 2 of the Medical Practitioners Law, and Article 39, Paragraph 2 of the law concerning public health nurses, midwives and other nurses, however there are no penal provisions for those who have contravened these laws. Therefore, countermeasures to refusing the issuing of birth certificates should be considered including whether penal provisions should be established.

(2) Recognition of nationality at the time of birth registration

86. In Paragraph 136 of the Government Report, the Government stated that training and on-the-spot guidance are provided for local public service personnel engaged in each municipalities' registration work. But the training for local public service personnel engaged in municipal registration work is totally insufficient. According to the abovementioned questionnaire, there were 16 children who were regarded as stateless after having completed the foreign resident registration process. Many of their mothers were missing and could not be identified, and their father was completely unknown. Thus, under Article 2, No. 3 of the Family Register Law, they should have acquired Japanese nationality as a child whose father and mother were both unknown. Also, as mentioned earlier, 17 of the children were stateless because both parents were South American nationals, but at the time of their foreign resident registration, they were registered in error as had acquired the nationality of their parents. Procedures should be developed to recognize the nationality while at the same time improving the inadequate training conditions and applying the nationality laws accurately both at home and abroad.

3. Preventing non-nationality

(1) Support for birth notification

87. In Article 7, Paragraph 1, the Convention assures the right of the child to acquire a nationality. It is true that under the present circumstances the nationality laws worldwide are divided into those based on the principle of descent (jus sanguinis) and those based on the principle of birthplace (jus soli), it is impossible to prevent non-nationality. Therefore, in case the birthplace principle is adopted in the parents' native country, it is seemingly inevitable that a child born in Japan will become stateless.

88. In fact, among the South American countries where this principle of decent is adopted, there are some countries such as Peru, Bolivia, etc. where the acquisition of nationality based on the principle of decent is accepted by way of birth registration at the consular office, etc. in Japan. However, as mentioned in number 2 above, there are children who have been stateless because the parents could not submit the notification of birth to the parents' native country since the Japanese hospital would not issue a birth certificate. The Japanese Government should take the appropriate measures for preventing this refusal to issue birth certificates, which can also prevent the status of non-nationality.

(2) Application of Article 2, No.3 of the Nationality Law

89. In Article 7, No. 3, the Convention calls for achieving the right to acquire a nationality in accordance with their national law, in particular where the child would otherwise be stateless. As such the domestic law of our country, Article 2, No. 3 of the Nationality Law prevents non-nationality with respect to a child who is born in Japan, and whose parents are unknown, by granting Japanese nationality. In connection with this Article 2, No3 of the Nationality Law, there is the Supreme Court judgment made on January 27, 1995 (Andere Case).

90. It seems that, after this case, in the area of dealing with nationality, if a foreign mother has gone missing after delivering a child, the child's nationality is recognized by the following method. First, Ministry of Justice personnel gather information such as the mother's name, birth date, etc., from the related persons' testimony, hospital documents, etc., and searches among foreigner immigration control cards at the Immigration Control Office. If one of these identifies a foreigner who can be identified as the child's mother, the child will be recognized as having acquired the nationality of the mother's country. However, if no foreigner can be identified, the child's acquisition of Japanese nationality is recognized according to Article 2, Paragraph 3 of the Nationality Law (Masao Ono, "Acquisition of Japanese nationality based on birthplace according to the provision of Article 2, Paragraph 3 of the Nationality Law", "Minji Geppo" Vol. 57 No. 1). However, applying Article 2, Paragraph 3 of the Nationality Law in this way is questionable.

91. Firstly, even if there is a foreigner identified as the mother through the search among the foreigners' immigration control cards, there is no way of knowing whether she is the real mother until

she is verified as such in person. Also, since she is only the mother on the document, it is unlikely that the government of the relevant country will approve the Japanese government's recognition of nationality. The Thai and Philippine consular offices, etc., have expressed the opinion that, since the mother is not actually present, they cannot recognize the child's nationality. Therefore, the child becomes virtually stateless. Thus, the application of Article 2, Paragraph 3 of the Nationality Law in this way violates the aim and purpose of the law to prevent non-nationality.

92. Secondly, on one hand, if a hospital where a child is born is unknown, the child is regarded as an abandoned child under Article 57 of the Family Registration Law, and if the mother is not identified within 24 hours, according to Article 2, Paragraph 3 of the Nationality Law, the child's family register is made in terms of the child acquiring Japanese nationality. On the other hand, however, if a hospital where the child is born is known, the director of the hospital, etc. assumes the obligation of submitting the birth notification, and if the name, nationality, etc. of the mother is unknown, it may take several months to search among the foreigner immigration control cards. However, in this case, since the hospital director, etc. is not obliged to check the mother's name, nationality, etc., the position of the director, etc. is almost the same as someone who just takes care of the baby after the birth. There are no grounds to discriminate the former from the latter.

93. Thirdly, Paragraph 140 of the Government Report only cited part of the clause in Article 2, Item 3 of the Nationality Law, and did not include information as to how many children had, under this provision, been dealt with under similar circumstances to the Andere Case. Only one case was cited in the paper mentioned above written by Ono, a staff member of the Ministry of Justice. The number of children the provision has been applied to since the Supreme Court judgment should be clarified statistically. Instead, according to survey questionnaire mentioned above, there are 17 children under similar circumstances to the Andere Case who were not covered under Article 2, Item 3 of the Nationality Law.

94. Thus, as mentioned above, although Article 2, Paragraph 3 of the Nationality Law stipulates the prevention of non-nationality provision, the Japanese government's application of this provision violates the provision of Article 7, Paragraph 2 concerning the government's obligation under national legislation to prevent children from being stateless.

(3) Acquisition of nationality by naturalization

95. In Paragraph 140 of the Government Report, the Government asserts: citing Article 8, Paragraph 4 of the Nationality Law "a child who was born in Japan, and been domiciled in Japan for three or more years consecutively since his/her birth" can readily acquire Japanese nationality by naturalization because the conditions for naturalization for them is more favorable than that for other foreigners.

96. However, under our country's present legal structure, the conditions for naturalization are minimum requirement under which the Minister of Justice permits naturalization. This does not

mean that foreigners will have the right to claim naturalization even if they fill these conditions for naturalization. In reality when a foreigner filed a revocation suit against the disposition of disallowance of naturalization, the Japanese government made an assertion to that effect, and the court accepted that assertion, for example: Hiroshima High Court judgment on August 29, 1983, Hiroshima District Court judgment on September 21, 1982. In short, on the one hand, when a foreigner filed a revocation suit against the disposition of disallowance of naturalization, the Japanese government asserted that there is no guarantee that naturalization is a certainty, and on the other hand, when requested to confirm the acquisition of nationality based on birth, the government asserted that Japanese nationality could be acquired through naturalization, for example: Osaka High Court judgment on September 25, 1998, Osaka District Court judgment on June 28, 1996. These assertions conflict.

97. In addition, there is an inconvenience because the case that the Japanese government deems stateless does not correspond to the case of non-nationality in fact. As in the case mentioned above, 2 (2), a child, who is left stateless because both parents are South American citizens, is recognized as having acquired the parents' nationality when registering as a foreign resident, so the child cannot be covered by Article 6 Paragraph 2 of the Nationality Law and cannot apply for naturalization until he/she comes of age. (Article 6, Paragraph 2 of the Nationality Law, covers the child but with only the condition of domicile relaxed and the other conditions such as capacity required.) Also, as mentioned in 3 (2) above, if a child whose acquisition of nationality should be recognized according to Article 2 Paragraph 3 of the Nationality Law, is registered as stateless, an application for naturalization requiring complicated procedures is virtually impossible until the child comes of age. The Japanese government, asserting that it is easy for stateless children to be naturalized, should make public the number of stateless persons who have actually been naturalized before they come of age.

4. Acquisition of nationality of children born out of wedlock.

98. Article 2, Paragraph 1 of the Convention stipulates that: "The state's parties shall respect and ensure the rights of each child set forth in the present Convention within their jurisdiction and without discrimination of any kind." Therefore, with respect to the child's right to acquire nationality under Article 7, Paragraph 1 of the Convention, discrimination is prohibited. This is dependent on the principle each country adopts, the jus sanguinis principle or the jus soli principle. Once the former is adopted, any act to unlawfully restrict the acquisition of nationality based on descent infringes the right to acquire a nationality. However, in spite of this, since Article 2, Paragraph 1 of the Nationality Law sets the condition that a child's father or mother is a Japanese citizen when the child is born as a requirement for the acquisition of Japanese nationality, an a child born out of wedlock between a Japanese father and a foreign mother cannot acquire Japanese nationality unless his/her

father recognizes the child before birth, in other words is recognition of the fetus by the father is required. The acquisition of nationality is not accepted if the recognition is made after birth.

99. In response to a question of the Committee on the Rights of the Child concerning the Initial Report of Japan, the Japanese government answered that, if the acquisition of nationality based on post-birth recognition is accepted, then the nationality changes without the will of the father and the child, and this goes against the dignity of the individual. Also, as the reason for not accepting the acquisition of nationality based on post-birth recognition, it cited the conditions that, when Japanese father recognizes the child and marries the foreign mother, and after the child's legitimization is thus established, the notification for acquisition of Japanese nationality is submitted to the Minister of Justice, the child will acquire Japanese nationality (Article 3 of the Nationality Law). It is also cited that Recognition of the child by the Japanese father can relax the conditions for naturalization as the child of a Japanese (Article 8, Paragraph 1 of the Nationality Law).

(1) Dignity of the individual

100. In general, recognition of a child is made after birth with an entry notification in the family register, or by court decision (Articles 781 and 787 of the Civil Code). However, in terms of rerum natura, the recognition of the fetus cannot be claimed by the child to the court. Therefore, for a child born between a Japanese father and a foreign mother to acquire Japanese nationality, it is necessary that the following conditions are met: firstly that the Japanese father understands the necessity of recognizing the fetus, and secondly, that he has the intention of recognizing the fetus.

101. However, according to the abovementioned survey, although there were 60 children born out of wedlock with a Japanese father and a foreign mother, representing about one fourth of the total surveyed, none of these children were recognized at the fetus stage. Among the reasons "Did not know it" was the most commonly given, followed by "Accompanying document not prepared", "Notification not accepted by the office", "Mother was married to another man".

102. Recognition itself can be made after the child's birth. Few people actually know that recognizing the fetus is a necessary prerequisite of children acquiring Japanese nationality. Also, as part of the accompanying document, the mother's identification is required. Since the mother is an illegal resident, and does not have any identification such as passport, etc., it follows that notification cannot be readily submitted or the local government office will not accept it. In fact, identification documentation of the mother can be sent from her home country, and the local government office is not allowed to refuse the acceptance of notification. In many cases not only the general public but also the officials in charge of family registration are unaware of this. In addition, even fewer people know that, when a mother is married to another man, notification of recognizing the fetus will be refused, but when a suit is filed later on to seek confirmation of the absence of the parent-child relationship, then, the disposition of refusal is withdrawn, thereby making the recognition of the fetus

effective.

103. As mentioned above, the acquisition of nationality of children born out of wedlock depends solely on the father's knowledge and intention as well as the response of the local government office. Therefore, the present provision of the Nationality Law, which stipulates that Japanese nationality cannot be acquired without recognition of the fetus, violates the dignity of the child.

(2) Acquisition of nationality after legitimation of the child

104. The notification for acquiring Japanese nationality after the legitimation of the child, as specified in Article 3 of the Nationality Law, requires not only recognition of the child but also marriage between the father and the mother as well as notification sent to the Minister of Justice. However, the child cannot force the marriage of his/her parents. In addition, in cases where the mother is an illegally resident foreigner, the marriage is often virtually impossible because required accompanying documentation has not been arranged, or the office has refused notification.

105. The Supreme Court judgment on November 22, 2002, is worth noting. In this case, a suit was filed to seek confirmation of Japanese nationality, alleging that the application of the Nationality Law, which did not accept the acquisition of Japanese nationality for a child born out of wedlock between a Japanese father and a Filipino mother was unconstitutional. The child alleged that she had acquired Japanese nationality retroactively as the child was recognized about two years and nine months after birth. However, the Supreme Court did not accept the plaintiff's claim on the grounds that, since it is desirable to determine definitively the acquisition of nationality at the time of the child's birth, it was reasonable that retroactive effect is not given to the recognition after birth. However, three out of five judges stated in the concurring opinions that there was doubt about the rationality of Article 3 of the Nationality Law, which requires marriage of the father and mother, thus the article was against Article 14 of the Constitution, which provides for equality under the law.

106. According to this concurring opinion, the Government should at least revise Article 3 of the Nationality Law by deleting the requirement of marriage between the child's father and mother, and accept the acquisition of Japanese nationality if a child is recognized by its Japanese father before he/she comes of age.

(3) Acquisition of nationality by naturalization

107. As mentioned in 3 (3) above, there is no guarantee of a child being naturalized even if the conditions for naturalization are relaxed. Also, children staying in child consultation centers have to apply for naturalization by themselves after coming of age since the parents have not brought them up. Moreover, as there is no system whereby the government helps the child look for his/her father, the child has to find his/her father and file a suit seeking recognition by themselves.

108. Another condition that obstructs the application for naturalization is the condition of domicile. According to the abovementioned survey, for about 80 children, representing one-third of the total, notification of birth was not submitted in Japan. There were also about 50 children who were not

qualified as Japanese residents even though the birth notification was submitted and foreign resident registration was completed for them. A further 60 children fell into the category of those whose resident status was not entered or unknown. This means that the number of children staying illegally is at least 50, and can be assumed to be more than 150. However, application for naturalization requires the applicant to be domiciled in Japan. Since the domicile in this case requires a lawful stay in terms of acquiring resident status, a child staying illegally cannot apply for naturalization.

(4) Precedent case

109. Article 50, Paragraph 9 of the British law on nationality stipulates that a child born out of wedlock does not acquire the nationality of his/her father's country. In the Concluding Observations of the Committee on the Rights of the Child, its violation of Articles 7 and 8 of the Convention has been recognized twice (CRC/C/15/Add. 34, par. 12, 29; CTC/C/15/Add. 188, par. 23). Also, Article 24, Paragraph 1 of the International Covenant on Civil and Political Rights prohibits discrimination against children. Article 3 of the said Covenant stipulates the child's right to acquire a nationality. In the Concluding Observations concerning the fourth periodic report on Japan, the Human Rights Committee expressed their concern about discrimination against children born out of wedlock under the Nationality Law (CCPR/C/79/Add. 102 par. 12). From these facts too, it is evident that the provision of a nationality law, which does not accept the acquisition of Japanese nationality by recognition after birth, violates the Convention.

B. Right to Preserve His or Her Identity (Article 8)

1. The nationality retention system under Article 12 of the Nationality Law should be abolished, or if it is to be maintained, Article 104 of the Family Registration Law should be amended to extend the period for notification until the child comes of age, or for some further fixed term after the child comes of age.

2. The nationality selecting system under Article 14 of the Nationality Law should be abolished.

3. Article 11 of the Nationality Law should be abolished, or if it is to be maintained, amendments should be made to it so that Japanese nationality will not be lost should a child acquire or choose foreign nationality, the Japanese government confirms the child's or his/her guardians' will, and if there is no intention of renouncing Japanese nationality.

1. Introduction

110. Article 8 of the Convention assures the right of the child to preserve his or her identity, including

nationality, etc. and prohibits the unlawful deprivation of this. However, the nationality retention and nationality selecting systems are established under Japan's Nationality Law. Under these systems, nationality acquired based on descent will be lost if required notification is not submitted, and in cases where foreign nationality is acquired or chosen, Japanese nationality will be automatically lost. These series of provisions violate Article 8 of the Convention.

2. Retention of nationality

111. In Japan, a person with dual nationality born abroad loses his/her Japanese nationality unless the person submits a notification of nationality retention within a three-month period after birth (Article 12 of the Nationality Law, Article 14 of the Family Registration Law). In that case, a person, who has lost Japanese nationality because nationality retention is not submitted will not be able to re-acquire Japanese nationality unless he/she is domiciled in Japan before coming of age, and a notification of nationality acquisition is submitted to the Minister of Justice (Article 17, Paragraph 1).

This nationality retention system has three problems, as follows:

112. Firstly, the period for submitting notification of nationality retention is stipulated as three months from birth. This short period of time can lead to the child losing his/her Japanese nationality because his/her parents fail to submit the notification in time, rather than because the child does not submit it. It means, similar to cases of illegitimate children born out of wedlock that the nationality retention system tramples on the child's individual dignity on the grounds that the child's nationality depends only on the knowledge and intention of his/her parents. Also, having lost his/her nationality, a source of the child's fundamental human rights, on the grounds that birth notification was not submitted within a period of a mere three months, lacks balance. Therefore, the nationality retention system should be abolished or if it is to be retained, the period for notification should be extended until the child comes of age, or some fixed term after the child comes of age.

113. Secondly, having being domiciled in Japan is a requirement for re-acquiring Japanese nationality. However, there are many cases where a Japanese man marries a woman based in Southeast Asia, then leaves his wife and child returning to Japan alone after their child is born. In this case, since the abandoned wife does not know about the nationality retention system, the child loses Japanese nationality, and, in order to enter Japan, the child will need a visa to enter and stay as a foreigner. In order to obtain such a visa, it is necessary for the child to find his/her father in order to have him as a guarantor. It is quite easy to imagine how difficult it is for the child to discover its father. If the child finds his/her father at all, it is hard to imagine that the Japanese father who has abandoned the wife and child will be willing to become the child's guarantor. This means that it is virtually impossible for the child to be domiciled in Japan. Naturally, in cases of unlawful entry, the child cannot be recognized as having a domicile, as specified in Article 17 of the Nationality Law.

114. Thirdly, in order to re-acquire Japanese nationality, it is necessary to submit a notification to the

Ministry of Justice. However, if Japanese nationality is acquired based on this notification, it is highly likely that the child will lose any foreign nationality they might have. More specifically, in many other countries, as with Article 11, Paragraph 1 of Japan's Nationality Law, it is stipulated that, in cases where foreign nationality has been obtained based on one's own wishes, such individuals will lose their previous nationality of the relevant country. A typical case of re-acquisition of nationality is naturalization, and the notification for re-acquisition of nationality under Article 17 of the Nationality Law corresponds to this.

115. Therefore, it is preferable that the nationality retention system be abolished, or amendments made to the Nationality Law and Family Registration Law to extend a notification period so that the child who has acquired Japanese nationality on the grounds of birth will not lose it against his/her will.

3. Choosing nationality

116. In either one of the cases where nationality is retained or a child is born in Japan, a child with dual nationalities must choose either one of the nationalities before he/she reaches 22 years of age (Article 14, Paragraph 1 of the Nationality Law). According to the provision within the Family Registration Law, choosing Japanese nationality can be made by submitting a notice to select Japanese nationality and renouncing the foreign nationality (Article 14, Paragraph 2 of the Nationality Law), but a person who has not submitted this notification until reaching 22 years of age will be sent a notice by the Minister of Justice (Article 15, Paragraph 1, of the Nationality Law). If the person does not submit the selection notification within one month from when the notice was sent, then they will automatically lose their Japanese nationality (Article 15, Paragraph 3 of the Nationality Law).

117. According to one journalist's report, one of the persons in charge at the Ministry of Justice stated that he had never sent out this notice of nationality selection since the nationality selection system was set up in 1985 (Shigeo Yanagihara, "Acceptance of 'Dual nationality' will change the country", Gendai, July 2001). Moreover, since notification of nationality selection is only to be submitted to local municipalities within Japan, the person concerned will not lose his/her foreign nationality unless a similar provision to the one provided in Article 11, Paragraph 2 of Japan's Nationality Law is stipulated in the other native country (to be mentioned in 4 below).

118. Despite this, it is generally misunderstood more often than not that the people concerned must renounce either their Japanese or foreign nationality before reaching 22 years of age. Even though a child born from an international marriage may in fact retain the nationalities of both the father's and mother's native countries, the child will lose either one of the nationalities because the Japanese government has established such an ambiguous provision. The Japanese government may, at any time, give notice for nationality selection. Consequently, children with dual nationality are always exposed to the risk of losing their nationality. This type of nationality selection system is unjustified, intentional deprivation of nationality.

4. Acquisition or selection of foreign nationality

119. Moreover, according to Japan's Nationality Law, if a foreign nationality is acquired through an individual's wishes, or if it is obtained based on the law of the relevant country, Japanese nationality will automatically be lost (Article 1, Paragraph 1 of the Nationality Law). People who have thus acquired or chosen a foreign nationality are considered to intend renouncing their Japanese nationality (Refer to Tadamasa Kuroki & Kiyoshi Hosokawa, "Foreign Affairs Laws, Nationality Law", Ministry of Justice, Gyosei, 1988). In reality, there is a great danger that Japanese nationality will be lost against the child's will. Two examples are cited below.

120. Firstly, there are many South Korean residents in Japan, but children born between Japanese husbands and Korean wives did not acquire Korean nationality until 1997. Then, at the end of 1997, the Nationality Law in South Korea was revised, and as a result, it was stipulated that if either one of their parents were Korean, children born on or after the day the revised law was enforced (June 14, 1998), automatically acquired Korean nationality. In addition, according to the transitional provisions, if their mother is Korean, and notification was submitted to the Minister of Justice within three years from the day of the law's enforcement, children born before 10 years of this law's enforcement also acquired Korean nationality. Since this notification means the acquisition of foreign nationality based on the individual's wishes, the person who had acquired Korean nationality automatically lost their Japanese nationality. But there were some cases involving Korean mothers resident in Japan, who not knowing this, submitted the notification for acquisition of Korean nationality for the sake of the child.

121. Secondly, while many Brazilian people live in Japan, children born in Japan between a Japanese and a Brazilian do not automatically acquire Brazilian nationality. Such children must reside in Brazil and take procedure for acquiring Brazilian nationality through the courts. It is interpreted that, as this type of selection procedure falls under Article 11, Paragraph 2 of the Nationality Law of Japan in terms of the selection of foreign nationality, the child will automatically lose their Japanese nationality (Kuroki, Hosokawa, ibid. However, according to Article 12, Paragraph 1-c of the Brazilian Constitution, this selection procedure is a requirement for native Brazilians (brasileiros natos), and the aim is quite different from the nationality selection system under Article 14 of Japan's Nationality Law. Therefore, when the child adopts a particular procedure for choosing their nationality, it is not necessarily clear whether it corresponds to the choosing the Brazilian nationality as specified in Article 11, Paragraph 2, and the child loses Japanese nationality. In spite of this, there are children who cannot choose the Brazilian nationality for fear of automatically losing their Japanese nationality.

122. As stated above, Article 11 of the Nationality Law should be abolished, or if it is to be retained, amendments should be made to it so that a child's Japanese nationality will not be lost in cases where

the Japanese government confirms the child's or his/her guardians' intentions after a child acquires or chooses a foreign nationality and if he/she has no intention to renounce Japanese nationality,

C. Freedom of Expression (Article 13)

1. The idea that all children have the inherent right to freedom of expression (including the right to know) shall be recognized in all regions, both at school and at home. Any measures such as school regulations under the name of education and protection of children, that prohibit the children's freedom of expression, should be stopped. Instead, the government as well as all municipalities should develop an action plan that will achieve this objective.

2. Places and opportunities to encourage such freedom of expression desired by children should be affirmatively considered, and facilities, both in human and material terms, should be improved.

123. 1. In their Report, the Government stated that the children's right to freedom of expression was respected in our country. They directly cited the Initial Report: "In Japan, freedom of expression is guaranteed to all people, including children, under the provisions of Article 21 of the Constitution, and is paid the greatest respect as an essential right in terms of maintaining democracy." (para. 142). However, as pointed out by the JFBA in the 1997 Report, the children's right to freedom of expression, which includes freedom to seek and receive information as well as the way of thinking, is restricted in general on the ground of protection of children, and this restriction itself is taken for granted. Thus, it has been never improved under the present circumstances.

124. A direct example of this is the system of screening school textbooks used at elementary, junior and senior high schools. The Ministry of Education, Culture, Sports, Science and Technology still does not allow the use at schools of textbooks other than those authorized by the Ministry. Their recommendation follows a detailed review of these books in terms of the books mode of expression and contents. Therefore, any items that are likely to conflict with the Ministry's standards on textbook screening are likely to be avoided right from the start by the self restriction of publishing companies or authors. As a result, the situation, in which children are provided with diverse forms of information, continues to be infringed.

125. These general restrictions are widely spread across the activities of the children and student councils that were originally places intended for children's autonomous (independent) school activities. In December 1995, at a prefectural high school in Gunma Prefecture, a teacher acting as an advisor to the student council asked permission to include a travel writing in Malaysia in the student council journal. The principal refused. The reason given was that the teacher pointed out

in the writing that any of the Japanese textbooks does not cover the fact dumping of radioactive waste by a Japanese joint venture in Malaysia, causing damage to local residents or cruel acts committed there by the Japanese army during World War II. In March 1996, the teacher filed a suit against the Gunma Prefecture government as a defendant to request a remedy regarding the refusal to publish his travel writing. To counter this, the Gunma Prefecture government made assertions along the following lines: [1] Student council activities in public high schools are subject to the authority of the principal because they are part of the school education curriculum; [2] Thus, the principal has the authority to refuse the publishing of travel writings in the student council journal and, [3] Since high school students are in general inferior to adults in their ability to evaluate written content, special consideration is required to ensure that the contents are accurate and fair. In October 2001, the court in the first instance dismissed the teacher's claim, accepting the assertion of Gunma Prefecture, thus refusing the remedy for the teacher. This case includes not only the problem of the teacher's freedom of expression but also the problem of children's freedom of expression, particularly the infringement of the child's right to know. This is symbolic of the current widely prevailing situation under which even the journal of a student council for whom under normal circumstances free activities should be ensured, is subject to censorship under the name of education and children cannot access diverse information.

126. 2. In addition, also as pointed out in the JFBA's 1997 Report, those acts that manage, control and restrict the expression or provision of information such as books, movies, music, etc. are widely conducted and generalized without any rational underlying reason. In the above report, the following cases were pointed out: a board of education without exception put restrictions on the admission of junior high school students to rock concerts; in another case the performance of a junior high school students' play, to be held on the following day, was stopped by the intervention of the district forest office and police; at a private junior high school, a student was compelled by the school to leave the school on the grounds that a trivial statement to a director was defamatory; books on the rights of the child, which were sent to the students council, were returned by the school or taken away and held by the school, thus narrowing the children's right to accessing that information. Fundamentally, however, these situations have remained unchanged. Another case was reported that, at a junior high school in Shimane Prefecture, children about to graduate from the school, independently planned a live concert and requested the school to use a school auditorium, but the school refused this request giving no significant reason.

127. 3. The attitude toward school regulations etc. is also highly regimented. The Government Report indicated a possible way of improving the situation by stating: "it is important to review them constantly based on the condition of the students and the views of the students' guardians" (para. 143).

However, most school regulations lack the viewpoint that children have the fundamental right to freedom of expression. The Government Report, too, is based on the viewpoint that restrictions can be put if it is deemed educationally appropriate, and does not at all stand on the viewpoint that children have the fundamental right to freedom of expression. Regulations that prohibit hair dyed brown, pierced earrings, permanently waved hair, are more common. The situation in which children are not even given the right to choose their own hairstyle is common, and can be seen in the cases where the children's attendance at school was refused on the grounds of the style of their hair, or the cases where hairstyles have been forcibly changed with scissors. Reviews should be made from the viewpoint that children have the right to freedom of expression.

128. School uniforms are an example. On the one hand, an increasing number of schools have abolished it for the reason that it infringes the right to express, however on the other hand, there are some schools that are going against the tide of current opinion, like Kyoto Prefecture's Katsura High School that introduced a new uniform against the wishes of the children. Most schools are also adopting a negative attitude about the children's freedom of expression in view of their clothes, etc. and what they are allowed to wear on the school campus. Even at schools where there are no clothing regulations e.g. uniform, it can be generalized that a uniform is recommended as so-called "standard clothes" and that the freedom of dress is not fully understood. Thus, the children are deprived of their freedom of clothing choice. It is also likely that students not wearing uniform will be persecuted and become the subject of bullying.

129. Under these circumstances, there are innumerable cases in which a complaint to request a remedy on human rights grounds is applied for to a bar association. The relevant bar association will then issue a recommendation or request to the relevant school and board of education. In 1998, those students who came to school not wearing the standard clothes were instructed at the school gate to leave and virtually refused entry. The Fukuoka Bar Association lodged a request to ensure that the children had the right to learn, asserting that the school's repeatedly refusing the students' attendance, thereby providing no education, was an unacceptable violation of those children's human rights. In March 1999, a request that the instruction to wear a uniform should not be forciable was made by the Oita Bar Association to a junior high school in Beppu City. This was also made by the Osaka Bar Association to another junior high school and Osaka board of education in October 1999.

130. In addition, with issues other than school uniform, regulations considered a problem in terms of ensuring freedom of expression, have been extensively implemented. In the case that, at a prefectural high school in Aichi Prefecture, students who violated the school rule stipulating helmet wearing for bicycle commuters (Traffic safety rules) were compelled to submit an essay dependent on the number of times they had violated this rule and suspended from using the bicycle for a certain period of time. In March 1998, the Nagoya Bar Association recommended that there be an amendment in that such acts violate the students' right to self-determination and personal respect.

Also, in October 2001, the Kyoto Bar Association recommended to as junior high school in Kyoto City that they amend that part of their school rules that prohibited and regulated the wearing an over coat for commuting in winter. The school administration asserted that allowing the wearing of such over coats would lead to gaudy clothing, etc. The good sense involved in wearing a helmet and being protected from the cold when commuting is an issue concerning the children's freedom of clothing expression. However, in our country, the trend that school rules determine and control children's lives in minute detail, continues. Fundamental improvements are required.

131. 4. Facilities and systems designed to ensure children's freedom of expression are needed. Children express themselves in a diverse range of ways, such as: live concert, skate board etc. and support in-line with these needs will be required. As an effort to ensure children's expression, facilities which are independently managed by children, such as: "Yu-Suginami" at the Suginami City Child and Youth Center in Tokyo; "Ba-an" at the Machida City Center, and "Skebo Hiroba" (Square) in Kotsu City, Shimane Prefecture, are being built in cooperation with the administration in order to provide children with a place that will satisfy their varied need to express themselves. But such endeavors are still limited and, as yet, insufficient to meet children's needs.

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

1. Opinions are clearly divided among our people regarding the establishment of the National Flag and National Anthem Law, Hinomaru and Kimigayo, respectively. These are enforced at school events, thus infringing the freedom of the children's inner mind. Concrete measures that prevent such infringements should be taken.

2. Investigations should be made of any surveys based on questionnaires that are conducted on children at school. Particularly those that question the children's thoughts and religious beliefs. If any are found that infringe on the child's freedom of thought, they should be ceased.

3. Any school curriculum that forces children to participate in religious ceremonies, or where some children cannot participate on religious grounds, should have those activities replaced by alternate programs, etc., thus ensuring their freedom of religion.

132. 1. In its 1997 Report, the JFBA recommended that enforcing Hinomaru and Kimigayo in school events should be ceased. They pointed out that, a strong objection persists among our people against adopting Hinomaru as the national flag and Kimigayo as the national anthem because of their strong

connection with the militarism before World War II. Although their opinions are clearly divided, the Government has demanded, within the Courses of Study that Hinomaru be raised as the national flag and Kimigayo as the national anthem during school events. Since 1989 students and children have been forced to participate in school events where the Hinomaru is raised and Kimigayo sung, regardless of their beliefs or religion, thus infringing their beliefs and conscience. However, the situation is being aggravated.

133. 2. The Government asserts that while Hinomaru and Kimigayo cannot be forced on children participating in school events since it infringes their freedom of thought (Observations of Murayama Cabinet), teachers have an obligation to implement the flag raising and singing of the national anthem based on the Courses of Study, and instruct children about them. It is self-evident that teachers and children are not in an equal position, and that guiding the flag raising and singing of the national anthem means virtually nothing more than enforcement. The Government's general attitude is one of respecting freedom of thought amongst teachers and children but this is a contradictory position given that the Government infringes that right under particular circumstances.

134. Under these circumstances, on February 28, 1999, a tragic case took place when a Hiroshima prefecture high school principal committed suicide as a result of the problem concerning the implementation of Hinomaru and Kimigayo during the school's graduation ceremony. An extraordinary administrative directive in line with the Education Ministry's guidelines issued by the Hiroshima Prefecture Board of Education, ordered each school principal to implement Hinomaru and Kimigayo during their graduation ceremonies. At this particular school, it resulted in an ongoing argument between the principal and the teachers who objected to it. This situation continued day after day and resulted in the principal's suicide.

135. The Government high-handedly connected this case to a tragedy taking place as a result of the lack of legislation concerning Hinomaru and Kimigayo, and hurriedly enacted national flag and national anthem legislation on August 9 in the same year.

During the legislative process, the Government expressly stated that this legislation was not intended to coerce individuals by influencing individual's beliefs, but as a result, Hinomaru and Kimigayo were adopted as the national flag and national anthem, and they have been thoroughly imposed nationwide. To cite an example, on March 11, 2000, during the graduation ceremony at a municipal junior high school in Hiroshima Prefecture, two students sat down after declaring that: "We don't want to sing Kimigayo. We want to protest." This was followed by the majority of the other students following suit. The school administration saw this as a problem and questioned a section of the graduates. The following morning, they summoned all the students and admonished them, saying: "It is no good to sit down in place of others". This obviously resulted in a direct interference with the students' freedom of thought. A complaint to request a remedy for these students' infringed human rights was made to the Hiroshima Bar Association, and in October 2000, said bar association issued a

warning against the school stating that these acts infringed the students' freedom of thought and conscience as well as their right to express their views.

136. 3. Humble resistance by teachers and children against enforcing Hinomaru and Kimigayo is taking place across the country. As for bar associations, a complaint requesting a remedy for human rights infringements was submitted to the bar association in Fukuoka Prefecture, Saitama Prefecture, Hokkaido and Hiroshima as mentioned above. Each bar association issued a request or warning concerning the infringement of human rights. This grave situation continues.

137. In 1996, teachers in Kitakyushu City, who refused to sing Hinomaru in unison received reprimands and salary reductions from Kitakyushu City Board of Education. Subsequently, they filed a suit to contest the illegality of these dispositions. This trial could be called a "trial of heart", where, whether the teachers' actions objecting to the forcing of children as well as teachers to the extreme instructions promoted by Kitakyushu City were admissible or not. These instructions are as follows: [1] The national flag shall be raised in the center of the stage; [2] The singing of the national anthem shall be included within the order of the ceremony; [3] The national anthem shall be sung in unison whole-heartedly accompanied by a piano played by a teacher while all present stand, and [4] All teachers shall attend. These strictures and whether they were allowable or not, formed the central issue. However, court judgments, including that at the Supreme Court, dismissed the teachers' claim and denied the solution. In June 2000, Fukuoka Bar Association issued a warning against this alleging it to be a violation of human rights. The assertion made by the school administration was that teachers must provide an example that is in line with the Courses of Study. Imposing upon teachers such obligations in terms of restrictions on freedom of thought and conscience is becoming a means of hindering teachers' actions protecting children from enforcement of Hinomaru and Kimigayo.

138. The following case occurred at Saitama Prefectural Tokorozawa High School in 1998. Many students and their guardians planned to refuse attendance at the entrance ceremony organized by the school on the grounds of their views concerning Hinomaru and Kimigayo. Then, a document was delivered by the school principal and the superintendent of Saitama Prefecture Board of Education to the students and their guardians. This document was likely to cause misunderstanding along the lines that the students would not be allowed entry to the school unless they had attended the opening ceremony. In this connection, in January 2001, the JFBA issued a request for improvement alleging that this was a violation of the students' freedom of thought and conscience.

139. 4. In the 1997 JFBA Report, it was pointed out that it is not uncommon to have a questionnaire-based survey concerning thought and creed administered at schools. In reality, the survey on the actual state conducted on students by some boards of education includes a questionnaire on beliefs and religion, and a complaint to seek a remedy to this was applied to some bar associations alleging that

this was an invasion of privacy. In the Second Report, the Government did not mention how this issue was investigated, considered or improved on. The actual status should be investigated and, if any survey based on the questionnaire on thought and creed is implemented at any school, necessary measures should be taken to stop it.

140. 5. In the 1997 Report, the JFBA called for concrete measures to be taken to ensure the children's freedom of religion. They highlighted the concrete cases as: [1] There happen forced participation in religious events and management events lacking religious consideration on a daily basis; [2] According to the investigation conducted by the JFBA in 1985 concerning school life and children's human rights, a school which set up regulations which prohibit religious activities, both inside and outside the school, was reported; [3] On the occasion of Emperor Showa's funeral in 1989, students and children were compelled, under instruction from the Ministry of Education, to offer a silent prayer; [4] Students who did not attend a parental visit class because they were attending a morning church service held at the same time, were treated as absentees (Sunday lawsuit case), and [5] A student, who did not attend Kendo practice class, a compulsory subject, because of his religious belief that prohibits combat sports, was kept in the class and expelled from the school prohibits. (Combat sports refusal lawsuit).

141. However, the Government Report only stated that Article 9 of the Fundamental Law of Education assures the freedom of religion. What matters most is whether the freedom of religion is assured in reality. In this respect, the Government should conduct an actual detailed condition survey concerning the freedom of religion. This survey would need to clarify the issues and show the process for improvement.

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

1. The government notice to ban the political activities of high school students should be annulled.
2. School rules, which call for the permission of school administration in general concerning assembly and association, should be abolished.

142. 1. Japan's Second Report only refers to the restriction on freedom under the Subversive Activities Prevention Law, and is not in the form of a report. Their reluctance to face this problem is becoming clearly apparent. What is required is an investigation into the actual state of whether freedom of association and peaceful assembly is assured for children. Where there is insufficient proof of such assurance a program for improvement should be instituted. The reason why the Government does

not reply squarely to this problem is because they take the regulation of association and assembly for granted more than that of regulation of freedom of thought and conscience, or freedom of expression. They also tend to consider that these issues cannot be left to the children's freedom of choice.

To cite an example, the Ministry of Education published a notice prohibiting the political activities of high school students in general in October 1969. This was based on the assertion that, if students who are in the process of developing both mind and body, engage in political activities, they will be affected by one specific political standpoint, thus making it difficult for them to make judgments in the future based on a wide viewpoint. This remains the case today.

143. 2. In the 1997 Report, the JFBA cited a case of a school which established the following school regulations: [1] Students who wish to participate in assemblies, events, trips and day trips in and out of school or who wish to organize and /or participate in assemblies and associations must get prior permission from the principal through the teachers in charge and vice principal;, and [2] Students are prohibited from joining political organizations or equivalents or getting involved with political activities regardless of whether such participation and involvement is in a group or as an individual. An example is the case of the public junior high school which prohibited students from participating in a symposium called to object to the school regulation forcing cropped hair. If the Government were careful in terms of assuring children's freedom of association and assembly, they would refer to the present status of such rights as a matter of course. The Government's adoption of an attitude to the contrary is representative of our country's problematic situation concerning this right.

F. Protection of Private Life (Article 16)

1. An investigation should be carried out concerning the invasion of a child's privacy at home, school and other facilities, and concrete steps should be taken to protect this right including legislative measures.

2. Concrete steps should be taken to eliminate situations such as the privacy of a child alleged to have committed a crime or a child victimized by crime whose privacy has been invaded by the mass media.

3. In order to protect students' privacy from activities of the school-police liaison council, guidelines should be established that minimize the invasion of privacy along the lines of: "In principle, identifying aspects such as the full name, etc., must not be disclosed." "The full name is disclosed only when there is a concrete danger that serious delinquency will result danger that it will result."

144. 1. In the 1997 Report, the JFBA stated that countless complaints have been raised about the infringement of children's privacy at schools and facilities, such as children's letters being opened, phones being tapped, diaries read furtively, conversations being eavesdropped upon and children being followed to check on their behavior. In fact, there are cases where a public high school has installed a video camera at a nearby train station to check on smoking students and where a public junior high school has installed an infrared sensor between a boys' dormitory and a girls' dormitory to prevent visits to each other's dormitory. The fact such incidents occur shows that children are not respected as individuals and it is necessary for the public to become more aware about children's rights and to act accordingly.

The Committee on the Rights of the Child expressed their concern about these situations in their Concluding Observations in the following manner: "The measures taken by the State Party are not sufficient." The Committee recommended that additional measures, including legislative action, be introduced.

145. 2. However, in its Second Report, the Government outlined only the treatment regulations at a juvenile classification center, juvenile reformatory and other rehabilitation facilities, and did not actually touch on the nature of the problems that took place, and what additional measures were taken concerning the protection of privacy at these facilities, let alone the present situation at home, school, or in child welfare facilities, etc. The Committee on the Rights of the Child is currently seeking additional measures to improve these situations.

146. 3. In the 1997 Report, the JFBA pointed out that, with regard to the state of privacy at schools, there were innumerable cases for which a complaint was applied to bar associations to request a remedy for privacy invasion. Actual cases were cited including the unnecessary collection of individual information (belongings) following a body search; individual diagnostic testing, etc. conducted under unavoidable circumstances, and the results made public; a case at a private girls' high school where an inspection of the girls' underwear was conducted by flicking the skirt up in front of the other students. If underwear other than that allowed was found, the girl was labeled a prostitute; another case involving swimming lesson, in which an easily identifiable mark was attached to the swimming cap of children with a condition such as epilepsy; a public high school at which the students' bodies were inspected by a teacher; a teacher's disdainful remark toward a student; corporal punishment; a children's welfare facility that was violent toward the children staying there, and inspecting personal letters, desks and lockers without notice. The Government's Report did not respond to these points at all. Investigations should have been carried out concerning children's privacy at school and actual measures taken to solve these problems.

147. 4. Moreover, in the 1997 Report, the JFBA pointed out that in terms of protecting privacy at child welfare facilities, etc., the conditions and environment under which children are placed more often than not lack privacy. One common problem pointed out at the time is that of a telephone intentionally installed in a place where the housemaster can hear any conversations. However, these situations have not improved. For example, although the minimum standard for child welfare facilities has been established, it only specifies the capacity in one room shall be less than15 children, a space of 3.3m2 per child. There is no standard for the protection of privacy. As a result, since it is allowable to accommodate many children at a child welfare facility in a small room, the lack of mutual privacy between children continues.

The Government should investigate and accept the reality that children's privacy is constantly being invaded in this manner, and undertake remedial action immediately.

148. 5. In the 1997 Report, the JFBA pointed out that there were situations in which private matters such as abuse, exploitation, medical history, victim of crime, delinquency, educational background, etc. are deliberately covered by the mass media and widely publicized. Also, it was pointed out that, although the publication of a juvenile delinquent's name, etc. is prohibited under the Juvenile Law (Article 61) which, after all, is intended for the protection and education of the juvenile, as being a serious contravention of the spirit of that Law, there have been recurring cases for which a warning was issued due to the invasion of privacy by publishing the child's real name, photograph, etc. Despite this, the situation continues today.

149. In cases such as the murder of four family members in Ichikawa City, Chiba Prefecture; the confinement and deadly assault of a female high school student in Ayase, Tokyo; the serial murder and stabbing of children in Kobe, the real names and photographs of the juvenile criminals were published by the mass media. Also, in July 1997, a certain weekly magazine ran an article, which hinted at the identity of the juvenile criminal responsible for the Nagaragawa lynching murder case taking place in Aichi Prefecture. Then, in February 1998, a certain monthly magazine published the real name and full-face photo of the juvenile criminal of the assailant murder case in Sakai City, Osaka. In these cases, the juveniles whose identity was alluded to in the media coverage or whose real name and full-face photo were published, triggered a civil lawsuit against the relevant mass media in a court of appeal. If it is, then other similar phrases would need to be changed as well. However, in the assailant murder case in Sakai City, Osaka, the court refused a judicial remedy.

150. Also, the situation, in which the privacy of the victimized child is covered by the mass media and his/her portrait is published, remains unimproved. In the 1997 Report, the JFBA pointed out that, in the case of the girl raped by an American soldier in Okinawa Prefecture, prying media coverage continued and a report, which enabled identification of the victim, was made. A similar problem occurred with victims and their family in the case of the serial murder and the children stabbed in

Kobe, indicating that the situation has hardly improved.

151. In areas other than criminal cases, there is extensive invasion of the child's privacy. In the 1997 Report, the JFBA highlighted a case in which a report was made concerning the hospital life of a child who was being treated for gene therapy. This report ignored the wishes of the child or its family. Another case was one in which the real name of a 3rd grade junior high school student who committed suicide by jumping in front of a train, was revealed by a certain newspaper. No improvement has been made in this area either.

152. 6. Concerns regarding the provision of information about children by school to police and vice versa

The school-police liaison council (Gakukeiren) is a provider of information. However, since it is organized by only a few persons in schools and the police, the actual activities involved are unknown. However, in the "Notice concerning drug abuse prevention education"(National Police Agency Notice No. 88, December 4, 1997), it was stipulated that: "In order to enhance cooperation between the police and schools, etc., it is necessary that police headquarters and education boards (prefectural departments for private schools) in each prefecture work together closely in developing a system in which both parties can exchange of information. Consideration should be made to promote the appropriate measures based on independent initiatives carried out by the respective parties." The Notice continued: "In order to enhance cooperation between the police and schools, it is desirable that each police station, through the organizations like school-police liaison council, protection and guidance of youth liaison council, etc. (Gakukeiren, etc.), established within each municipality or district, promotes an exchange of information on delinquency prevention with schools, discuss measures to be addressed jointly, and implement them according to the plan. Consideration should be made to improve and activate the Gakukeiren, etc. in line with the actual conditions of each prefecture. With reference to concrete measures, "links between the continued protection and guidance of juvenile delinquents, etc. conducted by the police, as well as student counseling and guidance conducted by the school" can also be given. From this, a conference with police is held concerning ways of guiding the majority of juvenile delinquents at the school on a regular or irregular basis (JFBA Rights of the Child Manual, Page 267).

153. It must be pointed out that, if this exchange of information within the Gakukeiren, etc.. includes actual disclosure of student and children's names in question, it is most likely to lead to the serious invasion of privacy.

The following cases are problematic: facial photographs, etc. of all students were provided for their protection and guidance, and criminal investigation; the Ayase murder case in Tokyo where information concerning students non-attendance to school was provided to police, which led to the arrest of an innocent child; a case at a public high school in Ibaraki Prefecture where a student who was on a leave of absence had his/her application to be reinstated refused by the school administration

who unilaterally believed the information provided by the police.

G. Appropriate Access to Information (Article 17)

1. In terms of protecting children from harmful information, careful consideration should be made to regulate the media while at the same time assuring a constitutionally guaranteed freedom of expression and a soft legal regulation should be made. Regulation by the police should be absolutely avoided, and independent regulation by the media alongside the fostering of children's ability to judge, should be promoted more. 2. A full-scale study on the effects on children by new media, including TV broadcasting, should be promoted.

1. The Concluding Observations of the United Nations Committee on the Rights of the Child

154. (1) The Committee expressed their concern in the following statement: "In light of Article 17 of the Convention, the Committee is concerned at the insufficient measures introduced to protect children from the harmful effects of the printed, electronic and audio-visual media, in particular violence and pornography"(para. 16).

155. (2) It is true that there is some information provided by the mass media such as TV, newspapers, magazines, etc. particularly in connection with sex, violence, etc. which raise fears of the potentially serious harmful effects on the growth and development of juveniles.

On the other hand, intervention by the administration into the media requires careful consideration from the viewpoint of constitutionally guaranteed freedom of expression (Article 21, Constitution of Japan). There is, depending on the situation, a potential crisis with the direct intervention of the administrative organ into the mass media, as well as a danger of censorship.

156. (3) Therefore, efforts should be made in terms of promoting independent practices based on self-control and self-restraint by those business circles concerned, as indicated in Paragraph 157 of the Government's Second Report.

157. (4) In addition it is noted that in reality the protection of children from harmful information in Japan is not based on residents' activity but by police power, and this situation has not improved. Regulating harmful information by the police has the dangerous potential of invading freedom of expression, as pointed out in Paragraphs 177 and 178 of the 1997 JFBA Report.

2. Problems under the proposed Basic Law on a Social Environment for Young People

158. (1) The ruling party, Liberal Democratic Party (LDP), has drafted a Basic Law on a Social Environment for Young People, and plans to submit it to the Diet. (This has yet to be proposed.)

159. (2) Statement of the President of the Japan Federation of Bar Associations (February 21, 2001)

With respect to the said bill, on February 21, 2001, Mr. Kazumasa Kuboi, President of the Japan Federation of Bar Associations published the following presidential statement, appealing that: "The bill should not be submitted."

A draft of the Basic Law on a Social Environment for Young People, organized by the LDP members of the House of Councilors, stipulates that, in order to eliminate the social environment, which stimulates the sexual feelings of youth and induces violent deviancy or other delinquent acts, power of recommendation to service providers (enterprises) which do not comply with it be given to the Prime Minister or relevant governor. The name of such service providers shall be published, as well as the obligation to conclude independent regulatory agreements and bylaws are imposed on service providers including the mass media, as well as the obligation to report such agreements and bylaws to the Prime Minister or the relevant governor, while at the same time authority to provide guidance and recommendations is given to the Prime Minister or the relevant governor. We hear that the LDP is considering submitting a bill that includes these contents.

160. It is true that there is some information provided by the mass media such as TV, newspapers, magazines, etc. particularly in connection with sex, violence, etc. which raise fears of serious harmful effects on juvenile growth and development, Last April the broadcasting media established: [1] a third party organ known as the "Committee concerned with Broadcasting and Youth", and [2] each service provider has decided to broadcast a "program that contributes juveniles to the increase in knowledge and capacity to understand and cultivate spiritual and moral sensibilities" for at least three hours every week. They are also prepared to set up a time zone between 5 p.m. and 9 p.m. for programs that takes into account the views of children and youth. This is evidence of a concerted independent effort. While broadcasting media should continue these efforts, such independent efforts are also definitely required in the fields of newspaper, magazine, etc. publishing.

161. On the other hand, intervention by the administration into the media requires careful consideration particularly from the freedom of expression viewpoint, which is constitutionally guaranteed. According to what we hear, the bill in question is lacking in this respect. This suggests a sense of crisis in terms of direct intervention by the administration in the mass media, as well as a danger of censorship, depending on the particular case. Regulations without careful consideration based on the establishment of legislation may open a way for the administration to restrain the press. Therefore, such a bill should not be submitted.

3. Appropriate access to information

162. (1) With respect to the measures adopted to "ensure that the child has access to information and material from a diverse range of national and international sources, especially those aimed at the promotion of his/her social, spiritual and moral well-being and physical and mental health," the

Convention (guideline) encourages firstly that "State Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diverse range of national and international sources, especially those aimed at the promotion of his/ her social, spiritual and moral well-being and physical and mental health," and then, indicates the protection of the child from information and material injurious to his/her well-being.

163. (2) However, with regard to this encouragement, Japan's Second Report adopted the following paragraphs only: "Enrichment of school libraries"(para. 151), "Recommendation of cultural assets for children" (para. 152), and "International cooperation" (para. 152). These issues should be considered as one along with participation in cultural life and the arts under Article 31 of the Convention. The following will be important to that end:

[1] Enriching children's libraries and museums;

[2] Assigning librarians and museum attendants who have specialized in children at libraries and museums;

[3] While hearing children's views, positively position children's participation in the management (operation) of child-related facilities such as libraries. Operate these facilities by involving the participation of parents and citizens from the local community, and

[4] Continue improving and expanding facilities so as to avoid discrimination based on differences in disabilities, culture, and language.

4. Necessity for study on the effects of broadcasting on children

(1) Pokemon Case

164. On December 16, 1997, children watching Pokemon, a popular animation program broadcast by Tokyo Television Network-related stations and producing an average viewing rate of more than 15%, started to complain simultaneously about health problems across Japan; some lost consciousness, others fell into convulsions. About 700 received treatment at hospital, 200 were hospitalized at the time, but as time went by, the scope of the damage expanded, as did the numbers of children who claimed discomfort of some kind. In the final result more than 10,000 children were affected across the country.

165. The Ministry of Posts and Telecommunications Commission concerning Broadcasting and Visual and Auditory Functions, which had investigated recurrence prevention measures, organized the final report published on June 26, 1998. The final report recommended that: "While the fusion of communications and broadcasting is in progress, attention must be given to the effect of projected image displaying methods on human visual and auditory functions. This should not only be in the field of broadcasting but also across the whole area dealing with projected images." The report also called for improvements to be made to the guidelines. In addition, as "an issue for future consideration," it stated: [1] Since insufficient research results have been accumulated in the field of

medicine, etc. to date, it will be necessary to further reinforce research on the effects of new image display methods including 3D-scenography on human visual and auditory functions, as well as increasing scientific study on desirable audiovisual environment, research into the mechanisms with which images and sounds affect the human body; [2] With respect to the effects of new image display methods on human visual and auditory functions, the concerned organizations will need to continue their research based on quantitative evaluation experiments so as to precisely and objectively understand the psychological effects from their respective standpoints; [3] It will be necessary to pay more attention in the future to the effects of the audiovisual environment on human visual and auditory functions, and independently develop and review realistic guidelines supported by scientific evidence; [4] Research on the mechanisms with which images and sound affect human body is still not well-advanced. It will be necessary to amass the relevant scientific research results, and [5] It will be necessary to reinforce the research necessary to reduce the possibility of an audience's health being damaged by broadcasting. Sufficient measures, including preventive measures, should be taken. Also, it will be necessary to secure a system that enables academic, business, and government circles to meet and respond, in order that prompt responses can be made once any new facts are found."

166. (2) Cases involving Japanese children as the result of cutting edge media, is a serious issue in view of the connection between children and information, and full-scale research on any ill-effects on development of the child's body and mind are to be continually sought in the future

H. Right Not to Be Tortured or Suffer Any Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 37 (a))

1. The law should clearly prohibit the use of corporal punishment at child welfare facilities. 2. In order to root out corporal punishment at child welfare facilities and schools, the Government should implement comprehensive programs including those that enlighten and educate the people. There should also be strict punishment for those personnel who have carried out corporal punishment, establishment of an organization that will respond promptly to appeals from victims of corporal punishment.

167. 1. In its Concluding Observations, the Committee expressed their concern at the frequency and level of violence in schools, especially the widespread use of corporal punishment and the existence of numerous cases of bullying among students. While legislation prohibiting corporal punishment and such measures as hotlines for the victims of bullying do exist, the Committee noted with concern

that current measures have not prevented school violence (24). Also, in light of, inter alia, Articles 3, 19 and 28.2 of the Convention, the Committee recommended: "a comprehensive program be devised and its implementation closely monitored in order to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying." In addition, it recommended that: "corporal punishment be prohibited by law within the family, in child-care and other institutions." The Committee also recommended that: "awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention (45).

168. On the other hand, in the Government Report, the Government reported on corporal punishment in child welfare facilities that the Minimum Standards for Child Welfare Facilities were revised (para. 162), but corporal punishment cases, as mentioned below, still exist. Also, as with corporal punishment in schools, although the Government reported that, through training programs, conferences, etc. it is promoting awareness concerning the provision of corporal punishment among persons involved in education (para. 163), the number of incidents involving corporal punishment in schools has not yet decreased. Moreover, the Report states: "There are no court rulings in which a child is acknowledged to have been a victim of torture, etc." (para. 164). In fact there are not a few rulings in which corporal punishment itself was recognized.

2. Corporal punishment and other inappropriate treatments at child welfare facilities

169. The following are examples of corporal punishment and other inappropriate treatments reported as occurring at child care institution. The first case occurred in March 1993 at one child care institution. According to what the child claimed, the eighth grade junior high school boy was playing soccer in the facility garden. He was instructed not to do so, but did not obey. He was taken to a storehouse by a facility staff member, who was a Shorinji Kempo dan holder, where he conducted violence toward the boy, kicking him in the belly, hitting him in the face with his fist, etc. His actions resulted in the boy suffering a serious injury requiring 4 weeks to heel. The child sought compensation against the facility and staff member for the injury. On September 7, 1998, the Tokyo District Court made a judgment, which found that the boy had been struck in the face several time as corporal punishment, and ordered a payment for pain and suffering to the amount of 100,000 yen. As a grounds for ruling that the corporal punishment was unlawful, this ruling only cited the fact that "punishment was prohibited" was one of the policies at the facility. It was problematic in that the ruling did not judge that corporal punishment in general was illegal, and that it largely reduced the amount of payment for pain and suffering after taking into consideration that the boy did not obey the breach of rule warning but took a rebellious and challenging attitude. In the event, the ruling took a very lenient stand against corporal punishment.

170. In addition, in the first JFBA report, a case, which occurred in April 1996 at a child care institution

in Chiba Prefecture, was reported. The case was that the director of the home inflicted corporal punishment on a daily basis such as: using a knife for scolding a child, lighting a piece of tissue paper held in a child's hand, etc. Thirteen children, from elementary school students to high school students had run away from the home. However, even after this, Chiba Prefecture did not take any effective countermeasures, and his abuse continued. In order improve this situation, a lawsuit to claim reimbursement of expenses to the institution was filed against the governor of Chiba Prefecture. On January 27, 2000, the claim per se was refused, but it was held in the judgment that it was illegal for the Prefecture not to recommend any areas of improvement including dismissal of the director. In addition to this, the former director of this facility was convicted of inflicting injuries, and the instructor, the director's second son, was convicted of indecent assault and rape on a child living in the facility. Moreover, children, etc. have filed a lawsuit to claim compensation against the facility and Chiba Prefecture.

171. The existence of corporal punishment at a child care institute in Kanagawa Prefecture was disclosed in the report submitted by the Kanagawa Children's Human Rights Review Committee to the Kanagawa Prefecture Child Welfare Council. According to the report, a staff member behaved violently towards children, "kicking, pinching, slapping the face, pulling the ears, etc." and inflicted corporal punishment even against infants. If they cried, they were hit even more, resulting in bruises and scarring. In September 1999, Kanagawa Prefecture made recommendations for improvement.

172. Furthermore, a complaint to request a remedy for human rights was applied to the Tokyo Bar Association concerning abuse by personnel at a child care institute in Ibaraki Prefecture. With regard to this issue, the said bar association recognized that personnel at this facility repeatedly conducted physical and psychological abuses against children living there for up to ten years, and that the director-general had neglected this issue. A warning was issued calling for an apology for the children and the recovery of damages against the social welfare corporation, which was managing the facility. The bar association also made recommendations against the Tokyo Metropolitan Government, which allowed children to be enrolled in this facility, and Ibaraki Prefecture, which supervises this facility, for changes to be made to the supervisory system.

3. Corporal punishment and other inappropriate treatment at schools

173. Corporal punishment at school is not declining and there several relevant court rulings, explained in detail, in VII B.

174. The examples are: [1] A second grade municipal junior high school student received a unjustified discriminative treatment at school from the class teacher, and additionally, during a home visit, the teacher was violent towards the student. As a result, the student became non-attendance to school (judgment at Osaka District Court on March 28, 1997).

175. [2] On the grounds that at grade student assembly, she was looking away while listening, a private

high school student was attacked by the class teacher with blows to the head and face, resulting in injuries (judgment at Chiba District Court on March 25, 1998).

176. [3] A sixth grade elementary school student was beaten by the class teacher. This treatment acted as a trigger with the student committing suicide on the same day by hanging (judgment at Kobe District Court, Himeji Branch, on January 31, 2000).

177. There have also been several cases (see below) in which a teacher has inflicted sexual abuse or sexual harassment:

178. [4] A Osaka Prefectural high school teacher sexually harassed students, touching their bodies at every chance, saying: "I shall hold you" and forcibly kissing them. The Osaka Bar Association warned the teacher, finding that these acts were an invasion of human rights, and made recommendations to the Osaka Prefecture Board of Education on May 11, 1999.

179. [5] A student attending a in-hospital class during a long stay in hospital experienced sexual harassment from a teacher who, during the class, rubbed her shoulders, put his hand on her chest. The Hyogo Prefecture Bar Association warned the relevant teacher, finding that these acts constituted sexual harassment, and made recommendations to the principal and Hyogo Prefecture Board of Education, the student's supervisory organization on March 29, 2001.

180. There are many cases of violence and inappropriate handling similar to these examples. Drastic measures for rooting out these acts are required.

4. Corporal punishment and other inappropriate treatment of children with disabilities

181. As detailed in VI A "Children with disabilities", corporal punishment and other inappropriate treatment of children with disabilities still continues even after Japan's Initial Report has been considered.

Even after the Initial Report was submitted, there was a lawsuit filed by a girl attending S. school in Tokyo. The girl and her mother were seeking compensation of two million yen in total from four defendants including the school's personnel alleging that she suffered mental distress by their violent behavior. The judgment ruled on November 26, 1996 at the Tokyo District Court recognized the actions such as slapping, etc. and ordered the personnel and the social welfare council of the city to pay a sum of 30,000 yen in compensation.

In the case of children with disabilities, the problem is not only that they are in general apt to be victims of corporal punishment, but also, that, in the event they suffer damage, their testimony is not recognized as fact due to the low reliability of the testimony. Even in cases where the fact is recognized, the amount of damages allowed is very low. We would have to say that these conditions are conducive to allowing violence against these children.

182. 5. Article 37 (a) of the Convention on the Rights of the Child stipulates that: "State Parties shall

ensure that: No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."

183. In the Ichikawa Family Murder case the accused, who was 19 years and one month in age when the crime was committed, killed four people, the judgment in the first instance pronounced a death sentence. On December 3, 2001, the Supreme Court dismissed a final appeal, and the death sentence was finalized.

In Japan, under the Juvenile Law, a person under 20 years is treated as a juvenile, and the same applies under the Civil Code. In addition, in view of the actual conditions of our society, people are, in general, recognized as adult when they reach 20 years. In light of the aim and spirit of the Convention on the Rights of the Child, capital punishment in our country should not be applied to those older than 18 years and under 20. Beyond that, both at home and abroad, abolition of capital punishment is under discussion, and on November 4, 1993, the International Human Rights Committee recommended that the Japanese government to take steps to abolish capital punishment as a general measure. In light of these conditions, too, the death sentence should be avoided. Consequently the death sentence ruling, as mentioned above, is a problem.

V FAMILY ENVIRONMENT AND ALTERNATIVE CHILD CARE

A. Parental Direction and Guidance (Article 5) and Parental Responsibilities (Articles 1, 2 and 18)

1. The terms employed in the provisions concerning 'parental power' of the current Civil Code of Japan allow an interpretation that parents may exercise comprehensive control over their child. Such provisions should be revised.

2. While the principle that the child is a full subject of right is confirmed, the parents' primary responsibility, for the upbringing of their children, with appropriate assistance from the government, should be clearly stated. In connection, it should also be stipulated that a child's best interests should be the primary consideration when direction and guidance are provided by the parents.

1. Educational activities by the Government for parents

184. Articles 5 and 18 of the Convention confirm the primary responsibilities of parents or their legal guardians in exercising the child's rights recognized in the present Convention, and stipulate that the government shall respect such exercise, and render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities. However, the Government's explanation in the Parental Guidance and Parental Responsibilities sections of the Second Report seems to attach a high degree of importance to educational activities by the government for parents rather than respecting parental guidance for the child.

The educational activities by the Government is limited to publicity based on document distribution such as leaflets and educational materials prepared by the human rights organs of the Ministry of Justice, as shown in Paragraph 167 of the Second Report.

Also, in the field of education at school, it is remarkable that the Government is making light of the primary responsibilities of parents in terms of guidance and direction concerning the rights of the child. Parents' positive involvement in an ideal school education and its content, as well as criticizing and making demands concerning the curriculum are strongly rejected by both school and board of education.

2. Provision of parental authority

185. Parents have "the responsibilities, rights and duties to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance" to the child (Article 5). However, direction and guidance, in this case, are based on the rights of the child and aimed at making the child's exercising its rights appropriate, and do not imply a comprehensive control over the child.

However, under the current situation in Japan, it is often wrongly considered that parents can exercise comprehensive control over their children.

In Japan, there is a deep-rooted notion that parents may exercise comprehensive control over their children. This notion seems to be related to the provisions in the current Civil Code. The code stipulates that parents, "who have the parental authority" have the right and duty to care for and educate their children," (para. 820). Even though the wording is expressed as "duties", these provisions refer exclusively to the rights of parents over the child. These rights include the right to: discipline the child; determine the child's whereabouts; give permission in terms of the child's vocation, as well as the right to agree to their marriage. Moreover, children's rights are not fully recognized by the provisions of the Civil Code since the Code further provides that the child be subjected to parental power. This misunderstanding of the phrase, parental authority, as stated above, often leads to situations in which parents determine the rules of daily life or educational plans for their children while at the same time ignoring or disrespecting the children's will, or even abusing their children leading to death through excessive discipline or punishment (see V-G on child abuse).

3. Amendment to the Civil Code

186. In response to such situations, calls to review the content of parental power have recently been gradually growing louder and some critics also claim that the term itself should be changed as has been the case in Germany and some other countries. The phrase could be amended to the following expression: "the child has the right to education without experiencing violence".

In the Government Report, this point was completely ignored and the expression "the child is subject to parental power" was repeated. In their domestic measures too, no efforts have been made to correct the misunderstanding about parental authority. All that was done was to stipulate abstract and ineffective provisions in the Law concerning the Prevention of Child Abuse, etc. enacted in 2000, such as: "Persons who execute parental authority shall consider its appropriate execution when conducting discipline" and "Persons who execute parental authority shall not be acquitted from charges for crimes of violence, inflicting injury, and other crimes concerning child abuse on the grounds that they are the persons who execute parental authority for the child" (Article 14).

187. The Government should revise the Civil Code by abolishing the expression that leads to misunderstandings such as comprehensive control over the child is allowable, and making provisions to ensure that the parents' primary responsibility (and right) is based on the rights of the child. The JFBA is considering concrete recommendations in terms of such an amendment.

Specifically, it will be necessary to expressly specify the best interests of the child, the child's right to express his/her views and participate in the Civil Code.

B. Child Deprived of His or Her Family Environment (Article 20)

1. Where a child has been deprived of his or her family environment, the child's right to receive mental care and aftercare after leaving the protective institution, etc. should be stipulated by law.

2. It should be expressly provided by law that corporal punishment against children at child welfare facilities is prohibited. At the same time, persons engaged in protection such as protective institution staff should be provided with effective training in order to prevent corporal punishment.

3. Children should be assured of opportunities for participating in the operation of child welfare facilities and an independent third-party organization should be created for the periodic monitoring of conditions for the children and to hear any claims made by the children.

4. Considering the current extremely low standards for facilities, number of staff, etc. applicable in child welfare terms, the so-called "Minimum Standards for Child Welfare Facilities, these standards should be reviewed and amended.

188. In its Concluding Observations, the Committee expressed its concern "at the number of institutionalized children and the insufficient structure established to provide alternatives to a family environment for children in need of special support, care and protection,"(para. 18) and recommended that: "the state party take measures to strengthen the structures established to provide alternatives to a family environment for children in need of special support, care and protection,"(para. 39).

1. Foster parent system

189. In the Second Report of Japan, the Government reported that it promoted the spread of a foster-family system and that the Ministry of Health, Labor and Welfare provided financial aid to relevant projects such as training provided by prefectures and exchange events between foster parents (without foster children in their care) and children held by the National Foster Parent Association, and that from fiscal 1999, it had provided financial aid to projects that provided support and advice services for foster parents at children's homes. In addition, it stated that in August 1999, a new procedure was announced in light of social changes, including the increased number of double income families, that families where both spouses work become foster parents by using day care centers.

From the viewpoint of the best interests of the child, since it enables families where both spouses work to become foster parents, and the collection of expenses at day care centers was exempted, it

can be evaluated as a way of promoting the foster-parent system. Establishing a system of specialized foster parents who undertake the upbringing of a child with difficult problems such as those who have been abused, can be evaluated. However, although it is necessary to establish an effective system for training foster parents as well as specialized parents with expertise, as well as a system to support foster parents who deal with difficult situations, the Government Report did not touch on how these matters might be secured.

On the other hand, according to the report of the (former) Ministry of Health and Welfare, the number of registered foster parents and commissioned foster parents, and the number of children allocated were on the decline when comparing the 1989 to 1999 figures. Over these ten years, the structure under which measures centered on the institutionalization as alternative family care has not changed at all.

In order to increase the range of the foster-parent system, it is necessary to clarify that the foster-parent system and child adoption are socially different, and that measures taken to respond to the self-support of institutionalized children such as enabling various methods be applied according to need, such as: establishing a temporary foster-parent system during long vacation, as well as short-stay foster-parents, nursing foster-parents, etc, as supplementary measures.

2. Children living in institutions

(1) The present state in Japan

190. In Japan, most of children who have been deprived of a family environment are placed in protective institutions (this term was changed in 1997 to “children’s institution” according to the Child Welfare Law, however, “protective institutions” will be used in this document), and infant homes. The term “institutions” will be used to refer to these children’s institutions and infant homes.

While most of these institutions are private, the State and local government are entitled to supervise the operation of both public and private institutions since they provide subsidies within the scope of the “standards” discussed later.

The Convention on the Rights of the Child guarantees the following rights of children who are placed in protective institutions:

1. Right to special protection and assistance, and continuity of upbringing (Article 20)
2. Right to provision of adequate number of suitable staff and facilities (Article. 3)
3. Right to protection from abuse, etc. by staff (Article. 19)
4. Right to an environment that fosters the child’s self-respect and dignity thus enabling the child’s recovery from neglect or abuse by the parents (Article 39)
5. Right to freedom including protection of privacy and the right to express opinions (Articles 12 to 16)
6. Right to periodic review by an authorized treatment agency provided to them (Article 25)

(2) The Government Report

191. The Second Report of Japan was referred to in the following sections:

Para. 162 (Article 19 related): Corporal punishment at protective institutions

Para. 104 (Article 3 related): Minimum Standards for personnel and facilities

Para. 173 (Article 18 related): Regional small-scale Children's Homes, foster parent program, room area per child as per the Minimum Standards

Para. 191 (Articles 25 related): Regional small-scale Children's Homes, foster parent program

Para. 197 Article 25 related): Inspection by administrative agencies to maintain the facilities at the Minimum Standards for Child Welfare Facilities

Para. 206 (Articles 19 and 39 related): Social programs to provide necessary support for children abused and neglected by their parents

192. In the Second Report, the Government stated: "Corporal punishment at a child welfare facility is a serious violation of children's rights at that facility, and must not be allowed to happen." The report explained that, for this reason and with the following measures, the Ministry of Health, Labor and Welfare (1) revised the Minimum Standards for Child Welfare Facilities to include the provision that prohibited the heads of facilities from abusing their authority in terms of discipline; (2) the Social Welfare Law stipulated that a committee for proper management within the Social Welfare Council be set up and provide a mechanism to address the concerns of users with complaints and to mediate solutions for complainants; (3) As for child welfare facilities, the Minimum Standards for Child Welfare Facilities should be revised to require the facilities to take necessary measures such as establishing a section that would respond speedily and properly to complaints from children placed at the facility, and (4) Facilities that committed acts of corporal punishment or who violated the right of the child at the facility, would be recommended to improve their management of the facility (para. 162).

193. However, corporal punishment, etc. in institutions continues to occur even after the Initial Report of Japan has been considered. For example, the institution in Chiba Prefecture, reported by the JFBA in its first report, where children escaped from the institution, attracted public attention in April 1996, but despite an opinion in writing and a proposal addressed to the governor, the situation was not improved. A complaint for audit and lawsuit against the government was filed by the citizens. In 1999, children who had experienced institutionalization, appeared in court to testify. The judgment was ruled on in January 27, 2000. The presiding judge recognized the facts concerning corporal punishment and abuse by the director and based his decision on these details. He ruled that the prefecture should have recommended the following improvements including the dismissal of the director, however, the claim was refused on the grounds that there was no obligation to reduce the subsidies. Finally, five years after the problem was revealed to the public, the governor's

recommendation for improvements was issued, and the director left office. Even though the director was also found guilty at a criminal trial, he continued to deny the allegations of corporal punishment.

194. Measures as specified in (2) and (3) above are extremely inadequate, as mentioned later, and also as for (1) above, instead of the regulations provided by the Ministry of Health, Labor and Welfare (Minimum Standards for Child Welfare Facilities), those recommended by the Concluding Observations should be legally specified.

195. The organization that handles complaints must be a third-party organization. While having established third-party organizations in various forms, there are no organizations that have the authority to investigate that are also independent from the administration. No matter how many *pro forma* organizations are established, they cannot function as remedial organizations in terms of the rights of the child.

196. The Second Report when compared with the Initial Report is, on the whole, more in-depth but in light of the present situation in Japan, it is still far from adequate, and did not match the Concluding Observations of the United Nations Committee on the Rights of the Child.

197. Basic points of view are summarized below and supplement the JFBA's first report.

(3) Necessity of care for children

198. Every child has "right to care" equally. Children in institutions bear traumatic mental wounds as a result of being forcefully separated from their parents. Many of them may further deepen the effect of such pain by believing that they were sent to an institution because they were no good, whereas, in truth, they are not in the least responsible for such placement. Institutions must offer those children a place to recover from such trauma as well as an environment that fosters self-respect and dignity. In this regard, the "right to care" should be extensively guaranteed for children in institutions (Article 20, Paragraph 1)

However, in Japan, it has for a long time been taken for granted that children in institutions should be given treatment inferior to that extended to children living in normal surroundings. This has been due to welfare, in particular the welfare of children, being regarded as a favor rather than a right.

Also, since Japanese institutions were originally intended to feed, clothe and shelter orphans resulting from World War II, many were designed to accommodate large numbers of children (from several tens to 100). Since these institutions also depended on governmental or municipal funding to cover their operational expenses, they often lacked adequate numbers of personnel, etc. As a result, emphasis was placed on the control and management of a large number of children.

As a result, in many institutions, the child is not treated as an individual and corporal punishment, as well as other abuses is frequently conducted.

199. In light of the provision of the Convention on the Rights of the Child, a child in an institution can be placed in the following manner:

In terms of expressing his/her views, it is not sufficient to merely give the right to receive care

determined by adults, but the children's independent selection and determination of the content of care must be respected.

At the same time, a system enabling the children themselves to lay a complaint should be established in terms of checking their treatment at the institution instead of merely relying on the goodwill of each staff member and the institution itself. At this time, a contact person for receiving complaints from institutionalized children is set within the Minimum Standards for Child Welfare Facilities, but since some staff members become the contact person, children may find it difficult to lay a complaint.

It is not until the child has developed beyond infancy and is accepted by adults as an entire and equal partner that his/her personality is respected and his/her independent involvement in social life is assured. It is only at this stage that the child will be able to choose for him/herself and decide on his/her status, way of life, etc. (The United Nations Guidelines for the Prevention of Juvenile Delinquency = Ryad Guidelines.) Attention must be given to these guidelines in particular since they are concerned with the relationship between personnel in the institutions and institutionalized children.

(4) Existence of corporal punishment

200. Corporal punishment, inappropriate actions, sexual abuse, psychological abuse, etc. against children by personnel in institutions were reported in the first report of the JFBA, and highlighted in the Concluding Observations of the United Nations Committee on the Rights of the Child.

(5) Management as a breeding ground for corporal punishment

201. Many institutions set out detailed rules that greatly restrict children's lives. Cases are reported in which: a school curfew is set at 6:00 p.m., applying even to senior high school students, thus preventing them from participating in extracurricular activities; possession of private property is strictly limited; a set rising time is enforced for school children, even on public holidays; children must report to a specific destination whenever they leave the home, or too many daily tasks and events are scheduled thus leaving little free time in which the children can play. Violation of these rules may invite punishment, e.g. no television for failing to tidy up a room or missing a meal for neglecting daily tasks. There is a great risk that excessive regulation of conduct by the institution's rules may lead to violation of those rights of the child guaranteed under the convention in areas such as freedom of expression (Article 13), freedom of thought and conscience (Article 14), freedom of association (Article 15) and protection of privacy (Article 16). Therefore the legitimacy of the rules should be examined from the viewpoint of guaranteeing those rights to the child. The strong reminder in the Concluding Observations should be borne in mind, particularly that the provisions of the Convention attach no restrictions on protection of privacy (Article 16) and ensure complete respect for the right to protection of privacy.

(6) Problems with the "Minimum Standards for Child Welfare Facilities"

202. Personal and physical conditions in institutions are provided under the “Minimum Standards for Child Welfare Facilities” (“Minimum Standards”) determined by the Government. The actual contents were the same as those introduced in the JFBA’s first report. These Standards were originally developed in 1948 to accompany the enforcement of the Child Welfare Law, as a response to the living standards prevalent at that time of serious devastation and deprivation during the period following the end of World War II. Although the Standards were to be revised in accordance with the improvement in national life and economic development, they have remained almost unchanged to this day.

203. As mentioned below, the Minimum Standards still remain at an inadequate level, and, in order to establish guaranteed human rights for children in the institutions, drastic review must be made on the Minimum Standard. This review must be provided by law instead of under the regulations of the Ministry of Health, Labor and Welfare. In addition, an opportunity to periodically review these standards in the future must be provided.

[1] Inadequate personal conditions

204. According to the Minimum Standards, the standard for staff allocation in the institution is set at one staff member per six children six years or older (6 to 1 standard). Based on this standard 10 staff members are allocated for a maximum of 60 children. But children need to be cared for around the clock, and if labor hours, under the Labor Standards Law are observed, and calculations based on that carried out, only six members, in reality, can be allocated. The current situation is that these six staff members work on a two to three shift basis caring for 60 children.

In order to respond to the recent increase in numbers of abused children, professional s taff needed to provide psychotherapy are placing an additional demand on the institution (para. 206, Government Report), this demand has yet to be met. Nationwide organizations of private institutions request that the ratio be one member of staff for every two children. This is as the result of a basic review of staff allocation, which also has public support.

[2] Inadequate physical conditions

205. After the recommendation made by the United Nations Committee on the Rights of the Child concerning the Initial Report, the Minimum Standards were revised to increase the per capita room area of a children's home from 2.47 m^2 to 3.3m^2. In addition, the Government Report referred to the increase in the government subsidy standard area, the standard area for allocating government subsidies to facility construction or improvement by local municipalities and social welfare juridicial individuals. However, there is doubt about the figures cited.

Although there was a small increase in the per capita room area, a living environment such as this makes it difficult to protect children’s privacy. Although institutions are supposed to offer a child an

environment in which to develop an independent attitude as well as helping to heal previous traumas, a child living at an institution cannot even secure a place where he/she can find some degree of solitude.

In addition, the Standards only designate the number of lavatories and require institutions accommodating 30 or more children to designate a medical room and a lounge. Neither study nor recreation rooms are allocated. While more than 90% of junior high school graduates enter senior high school in Japan, the rate drops to about 50% for children living in institutions. This is related to the inadequate physical environment provided for learning in the institutions, as well as the incompetence of the institutions in helping children to make plans for the future or to motivate them to learn.

In the meantime, in 2000, the Government established a number of regional small-scale children's homes (paras. 173 and 191).

These are intended to care for an occupant capacity of six children to approximately three staff members, and to guarantee a favorable relationship with local communities by raising children in a homely environment. However, not only is the number of facilities established limited, but they have only been approved as offshoots of larger-scale facilities.

(7) Importance of a remedial system to cater for the human rights of children in institutions

206. In many cases, children in protective institutions cannot expect their parents to represent their rights. Moreover, children, whose human rights have been denied by abuse or neglect prior to admission to these institutions, have difficulty in identifying any violation of their human rights within these institutions. Given the regulation-oriented and closed nature of the institutions, it is also difficult for children to communicate with those at other institutions or to report cases of human right violations to an outside third party.

Considering the closed and managing nature peculiar to Japanese institutions, a system for assuring the human rights of children in institutions should be established separately from that serving children living with families. This system is essential for fully ensuring the human rights of children living within child protection institutions.

The Government Report referred to a committees for proper management (to be established in each prefecture) as well as a complaint response system for the children to be established in each institution (para 162). However, since this system is to be established within each institution and the actual establishment measures are entrusted to the manager of each institution, there is concern about the system's effectiveness. Although a committee for proper management has been established within each prefecture's Social Welfare Council (organized by persons concerned with welfare), separate from each institution and with independent members, they do not have sufficient authority to investigate, or the relevant institution does not assume any obligation to respect the results of such

investigation. A recent case illustrates this point. One of the personnel at an institution in a certain prefecture made a claim to the committee about a treatment policy affecting children. When the committee tried to interview the children, the institution virtually refused them the opportunity by proposing that a condition of the visit was the presence of the institution's own attorney. The committee gave up any further investigation.

In order to have a third-party organization with the function of protecting the rights of the child, it is necessary to virtually guarantee the child's right to present a claim (notify). In the case of institutionalized children, this requires many ingenious measures. Such measures might include a person from an institution shall be a member of a third-party organization; periodically visiting the institution to listen to all the children; retaining an attorney as an advocate for the children; distributing a "handbook of rights" including information of consultative organizations, etc. available to children; distributing telephone cards, etc.

The actions of conscientious personnel within institutions play an important role in remedying child's rights within an institution. In the Chiba Prefecture case mentioned in (2) above, one of the personnel notified the prefecture of the issue, but it was done in an obscure fashion. Finally, the children themselves appealed to the public thus making the situation known to the public. There is also the case where a certain institution was unfavorably disposed toward the personnel who criticized the institution's policy concerning the treatment of children and informed outsiders of such criticism. In the general recommendations of the United Nations Committee on the Rights of the child, it was requested that those persons attempting to protect the rights of institutionalized children should not be treated unfavorably. It is difficult to state whether such activities are sufficiently protected in our country.

(8) Inadequate care after leaving the institution

207. Under the Child Welfare Law, children aged 18 or less are eligible to live in institutions. In the past, children were discharged from institutions when they graduated from junior high schools at age 15. It was then considered that since senior high schools were not part of the compulsory education system that children should start working immediately after leaving junior high school and that welfare assistance would not be necessary for them. As the ratio of children entering senior high schools rose in Japan, senior high school education expenses began being paid for children in institutions. Those who do not enter senior high school and begin working after leaving junior high school, can continue staying at the institution up to one year after graduation. Is this correct?

Considering the current conditions of Japanese society, it is too cruel to send children of 15 or 16 years of age out into society on their own. They should be guaranteed residence at the institution until they are at least 18 years of age, as with those who went on to senior high school. Children who have left the institution (including those older than 18) require various types of aftercare. Because child

care, as mentioned above, focuses on administration, many of children leave the institution without acquiring the ability to make independent judgments or behave independently, and there are a great many cases where such children fail in real social life and human relationships.

It is the independent homes that take charge of such care. In this system, specialized staff stay overnight with a child, renting a standard private house or similar to help the child acquire the ability to support him/herself and live alone in an apartment. Another function may be to go along with the child to help in finding work. These used to depend on completely on volunteer activity, but gradually they received small subsidies from the municipality, and with the revision of the Child Welfare Law in 1997, this function was recognized as legal welfare work. However, owing to the small amount of finance available, far below that provided to child care institutions, there are only 23 locations where such institutions have been established.

In the revision of the Child Welfare Law carried out in 1997, assistance toward independence for children after leaving the institution was incorporated into the role of child care institutions, but not enough is being done in this area.

C. Abuse of Children

1. Additional amendments to the Child Abuse Prevention Law and the Child Welfare Laws are requested.

2. A child guidance center, an institution specializing in child abuse, should be developed and improved in terms of both personal and physical systems.

3. The current standard child welfare caseworkers, currently set at about one caseworker per 100,000, should be increased and their expertise ensured.

4. The procedure for rescuing abused children involving judicial processes should be developed and reinforced centered on the family court. Ensuring that on-site inspections are forcibly implemented may protect a child's life.

5. Concrete measures that support the rearing of children should be implemented throughout the country in order to prevent child abuse.

6. In order to motivate the reeducation of guardians, a system to urge parents to reeducate, involving the family court, should be institutionalized (i.e. suspending parental authority, recommending or

ordering parents to attend counseling, etc.)

208. In the Concluding Observations based on the consideration of the Initial Report of Japan, the United Nations Committee on the Rights of the Child noted with concern that: "Insufficient measures have been taken to ensure that all cases of abuse and ill-treatment of children are properly investigated, sanctions applied to perpetrators and publicity given to decisions taken, and the insufficient measures have been taken to ensure the early identification, protection and rehabilitation of abused children,"(para. 19) and recommended that: "the State party collect detailed information and data regarding cases of child abuse and ill-treatment, including sexual abuse, within the family, and that cases of abuse and ill-treatment of children be properly investigated, sanctions applied to perpetrators and publicity given to decisions taken in order to enhance understanding of this phenomenon," and "in order to achieve this, an easily accessible and child-friendly complaints procedure be established," (para. 40).

1. Enactment of the Law concerning the Prevention of Child Abuse, etc. and future issues

209. In May 2000, the Law concerning the Prevention of Child Abuse ("Child Abuse Prevention Law") concerned with the early detection and prevention of child abuse, was enacted and put into force in November of the same year.

The Child Abuse Prevention Law defines child abuse by classifying it into the following four types: physical abuse by a guardian; sexual abuse; neglect, and psychological abuse (Article 2). According to the lawmakers, prohibiting the child from attending school is also considered abuse (neglect).

Several areas of said law basically reconfirm the provisions of previous child welfare legislation, but there are several other points to be evaluated such as: child abuse is legally defined for the first time; the law clarifies responsibilities assumed by the government and local authorities concerning child abuse; obligation to notify is further reinforced, for example by obligating persons in a position easy to discover child abuse, such as school personnel, personnel at child welfare facilities, doctors, hygienists, attorneys, etc., to address the early detection of child abuse, and guardian's visits and communication with a child can be restricted under certain conditions after the child has been protected.

However, the system for flexible restriction of parental authority was not introduced, and little concrete measures to care relation ship between parents and abused children were provided. There are many issues to be solved. Additional amendment to the Civil Code which stipulates parent-child relationship, as well as the Child Welfare Law which stipulates administration of child welfare, is needed.

2. Efforts made to date

210. There are many parts of the Government's Report that refer to police activities concerning child abuse. However, in our country, several NGOs have focused attention on the problem of child abuse ahead of the Government, and have continued their efforts in educational activities and various consultation services as well as constructing a network aimed at rescuing abused children, etc. From the 1970's, little by little, specialists have become interested in this problem, and in the 1990's, the Child Abuse Prevention Association in Osaka, and the Child Abuse Prevention Center in Tokyo, were established. The latter was later approved by the Tokyo Metropolitan Government as a social welfare corporation. Thus, a network of NGOs has gradually expanded.

Over these years, social interest in this problem has not necessarily been high, but when mass media began to cover painful stories such as the one in 1998 in which child abuse claimed the life of a child, child abuse has gradually been acknowledged socially.

In 1996, when the Convention came into effect in Japan, the Japanese Society for the Prevention of Child Abuse and Neglect (JASPCAN) was inaugurated. Since then a nationwide conference including working-level administrative personnel has been held roughly once a year to discuss the prevention of child abuse in both the public and private sectors.

3. Investigation of actual conditions associated with child abuse

211. The number of consultation cases handled by nationwide child guidance centers has increased at an accelerated pace. There were 1,101 cases in 1990. These rose to 11,631 in 1999, an increase of more than 10-fold (based a Ministry of Health, Labor and Welfare survey, although this does not show the real figures of child abuse cases). In 2001, after the Child Abuse Prevention Law took effect, the number of such cases is expected to exceed 20,000. According to the National Organization of the Directors of Child Guidance Centers, the number of consultations received by the nationwide child guidance centers during 2001 reached 24,792).

There is no end to the number of fatal cases. One hundred and six children died from child abuse in 2000. In 2001, although the number had declined slightly, there were still 61 children who died due to abuse from their parents, from whom they should, under normal circumstances, have expected affection.

Although there is data such as the number of consultations received by organizations including child guidance centers, no survey has been conducted showing the actual figure, namely, how many cases of child abuse have been taking place.

Based on the subsidy granted by the Ministry of Health, Labor and Welfare, the first nationwide survey to investigate the actual state of affairs concerning child abuse in Japan was conducted, and the results published in March 2002. According to the results presented in "A study looking at the actual conditions of child abuse and countermeasures" (Chief researcher, Noboru Kobayashi), the

number of child abuse cases occurring in 2000 requiring social intervention was roughly estimated at 35,000. In 80% of these cases, children were supposed to need some treatment or care. In reality, only 20% of the children were protected in the institutions, etc. and many remain unattended without any appropriate care.

Efforts to prevent child abuse are still in their infancy.

4. Child Guidance Centers

212. The child guidance center is an administrative agency playing a central role in child welfare, which, under Article 15 of the Child Welfare Law, each prefecture and government-designated city is obliged to establish. The main activities of the child guidance center involve: consulting with families, etc. about all kinds of child abuse related matters; conducting surveys about the child and his/her family; providing medical, psychological, educational, social, and mental health assessments; giving necessary guidance based on such assessments; taking measures such commissioning foster-parents; institutionalization, etc. for a child requiring custody, and temporary custody of a child is in need of emergency protection. It is a core organization in Japan and takes charge of protecting and caring for abused children.

It is surprising, however, in the Government Report (para. 199) that the report from the Ministry of Health, Labor and Welfare, which exercises jurisdiction over child guidance centers, was barely presented.

Instead, it merely reported that, from the viewpoint of preventing the problematic actions of children, the police, who had placed child abuse prevention as one of the most important issues associated with juvenile protection measures, were reinforcing their efforts. It is true that, since the Child Abuse Prevention Law stipulates that child guidance centers may seek assistance from police officers, the police are becoming more frequently involved in child abuse problems. However, it is not the police but the child guidance center that must play a role as a core organ to deal with child abuse problems. It is beyond belief that the Government Report omits to mention the report concerning child guidance centers.

5. Expansion of the child guidance center organization

213. Although the Child Abuse Prevention Law has been enacted, it is hard to say that the personal and physical measures required to enable the early detection of abused children, their protection and rehabilitation, are being adequately considered in our country.

Particularly in terms of child guidance centers, which are core organizations with which to deal with child abuse problems, although the guidelines for the management of child guidance centers, developed by the Ministry of Health, Labor and Welfare, stipulates that it is necessary to set up at least one child guidance center per 500,000 citizens, even this standard has not be achieved. As of

May 2001, only 175 child guidance centers have been set up at locations across the country. As our country's population is approximately 120 million, a rough estimate of one child guidance center per 680,000 inhabitants should be established, not including any branches. In most prefectures, the few child guidance centers have to cover a wide area. We would have to say that these centers are chronically short-staffed.

Child welfare caseworkers, social workers specializing in child welfare who work in the front line, even though Article 7-3 of the Child Welfare Law Enforcement Order merely stipulates the standard of allocating one child welfare caseworker per 100,000 to 130,000 people. Following the enactment of the Child Abuse Prevention Law, the number of caseworkers actually allocated nationwide, is 1,627, as of May 1, 2002 (based on the survey of the Ministry of Health, Labor and Welfare). When calculated on the results of the 2000 national census, a diverse range of results emerge such as for Aomori Prefecture where the ratio is one caseworker per 25,888 citizens, whilst in prefectures such as Iwate, Toyama, Nagano, Gifu, Saga and Kagoshima, the proportion is less than one per 100,000. The national average is one per 78,008, which is remarkably low compared with other developed countries.

When the number of accepted consultation cases (24,792) is divided by the number of child welfare caseworkers, it is found that the average caseworker receives 15.2 consultation cases per year. Of course, they cannot concentrate on the problems of abuse only. They will also become involved in the problems of the welfare of disabled children, delinquency, family affairs, etc. Abuse is just one of the issues. As many as 92.8% of child welfare caseworkers feel that they have difficulty carrying on their activities with the current size of their caseload (Shigehiro Takahashi et al, "Study concerning the awareness of child welfare caseworkers who respond to child abuse", Japan Child and Family Research Institute, Bulletin Vol. 36, 1999).

It is therefore necessary to review and largely amend the standards for establishing child guidance centers and deployment of child welfare caseworkers. Increased numbers of not only child welfare caseworkers, but also psychological diagnosticians and staff of temporary protection facilities attached to child guidance centers are necessary, as well as improvements made to their levels of expertise.

6. Revision of the Child Abuse Prevention Law

214. The supplementary provisions of the Child Abuse Prevention Law stipulates that reviewing said law shall be made when the first three target years have passed after the law has been enforced. 2003 is the review year.

Currently, in various places, discussions are being held over the items to be reviewed. The following points are expected to be amended:

215. (1) Under the existing law, the right to make on-site inspections, by child guidance centers, has no

compelling power apart from imposing a fine. It is also interpreted that, when guardians refuse to allow entry to their house for inspection, the inspection cannot be conducted except in those cases where emergency evacuation is required (there are a small number of different views). However, this may preclude an inspection even when it is necessary to check on the safety of a child, etc.

It should therefore be amended, by such measures as establishing a system of on-site inspection subject to a court warrant, so that on-site inspection can be conducted even if the guardians refuse.

216. (2) Under the present system, a single child welfare caseworker determines the treatment of an abused child while responding to consultation with his/her parents. However, adverse effects can result if that child welfare caseworker alone takes charge of the assailant and victim in this way, since it can become difficult to earn trust both of the child and its guardians. In some cases, an adequate treatment cannot be determined for the child because the caseworker has been overly influenced by the guardians' point of view.

A separate organization, therefore, should be established with a system that enables guardians to receive support from it.

217. (3) The Child Abuse Prevention Law stipulates guidance for guardians, but we have to question its practicability. It is considered that, if it can be practicable and be brought to the level of the so-called counseling attendance order, treatment order, etc., it could lead to the care of guardians, and furthermore, to the opening up of a path to a family reunion.

218. (4) For those professions who are obliged to detect early signs of child abuse, such as teachers and staff members at schools, child welfare facility personnel, doctors, hygienists, attorneys at law, etc., a clause stipulating exemption from legal responsibilities for incorrect notification, and the notification by which abuse cannot be proved, should be instated so that they may notify their suspicions with impunity.

219. (5) Under the existing law there is only one system of judgment concerning parental power forfeiture, which deprives the parent of all their power. There is no system that pronounces a temporary or partial suspension of parental power. In order to rescue abused children in a more flexible way, it is necessary to amend the law so that parental power can be suspended temporarily and/or partially.

The limits placed parents to do with visiting and communicating with the child, under Article 12 of the Child Abuse Prevention Law, is applied only when the child is institutionalized without consent of parents under Article 28 of the child welfare law. Practically, there are only a few times when they need to be limited in the cases for example where a child is institutionalized with consent of parents, or is under temporary protection. It should be expressly stated that visiting and communication can be limited in these cases.

220. (6) The Child Abuse Prevention Law stipulates reinforcing the links between the related agencies (established by the government and local authorities) and NGOs. However, the provision associated with cases where the obligation regarding confidentiality is waived in order to enable such linkages,

as well as the provision of considering the protection of personal information, should be established.

7. Psychological care for abused children

221. Many abused children are also hurt psychologically. However, the system for providing special care for psychological damage is inadequate. It is necessary that pediatricians, child and adolescent psychiatrists, clinical psychotherapists, as well as those concerned with child care, etc. collaborate in attending to the needs of abused children. In this respect, para. 199 of the Government Report reported that the police would provide support for children's mental recovery. However, originally this type of care was not the type of duty engaged in by the police but conducted by the professionals listed above.

For children who have particularly serious psychological problems, child and adolescent psychiatrists should play an important role. Currently in Japan, there are less than 100 doctors qualified by the Japanese Society for Child and Adolescent Psychiatry. This low level is considered to be related to the present situation where child and adolescent psychiatry has not yet been authorized by the government as an official subject of medical treatment. The Ministry of Education, Culture, Sports, Science and Technology is also negative about the establishment of a course on child and adolescent psychiatry within either a university faculty of medicine or medical college.

The government should authorize child and adolescent psychiatry as an official subject of medical treatment, establish a course within the university faculty of medicine as well as the medical college. These steps will ensure that specialists in child and adolescent psychiatry will play a more active role, and should also provide support in improving their levels of expertise.

On the other hand, there are also low numbers of psychological diagnosticians and psychological specialists in child guidance centers. The expansion in numbers of psychological specialists, those who are first to treat abused children, is no less important than that of child and adolescent psychiatrists.

8. Problems from a judicial viewpoint

222. The number of cases brought to the family courts concerning child abuse is on the rise.

According to the Supreme Court, in 2000, 142 applications for approval judgment (judgment to approve the separation of a child from its parents by placing the child in some institution against the will of those with parental power) under Article 28 of the child welfare law were heard. This figure had increased 10 times compared with the 14 cases in 1989.

Even in cases where child guidance centers are not directly involved, such as divorce, application for changing person with parental power, custody of child, etc., child abuse has often emerged as an issue.

223. In the field of criminal trial, child abuse is drawing more attention. From around the time when the

Child Abuse Prevention Law was put into force, the involvement of police and prosecutors was heightened, and cases of guardians indicted for child abuse, convicted guilty, and receiving prison sentences, were often taken up by the news media. However, there are some opinions about imposing criminal punishment on parents in child abuse cases in light of the child abuse mechanism and the present conditions of the corrections system, etc.

224. On the other hand, the number of civil cases is very small. Supposedly, this is because the present civil lawsuit system, where minors cannot file a civil lawsuit without the support of persons with parental power, hinders child abuse cases from being brought to civil trial.

225. In family court, criminal or civil cases, the most difficult matter is proof of child abuse. Since child abuse is conducted behind the closed door of the family, eyewitness accounts are rarely obtained, and more often than not, the parents will strongly deny the accusation. A testimony from the victim cannot be obtained due to the age of the child victim, or in some cases, the child will deny the fact because of his/her relationship to the parents. This makes proof very difficult. This tendency is particularly noticeable in cases of sexual abuse where major traces of the act are absent.

In child abuse cases, questioning of the child victim is important. In our country, however, specialist knowledge is not usually introduced except limited cases such as interviews being carried out by a female investigator. In Europe and the United States, a method called Forensic Interview has been established and introduced in practice. In this method, an interview with the child victim is held by a specialist interviewer, and the parties concerned i.e. police officer, prosecutor, social worker watch this process and make an evaluation from many different perspectives. The questioning is carried out with the objective of obtaining the child's testimony for the judicial proceeding. Another aim of this procedure is to reduce the child's trauma as much as possible. The questioning approach adopts a way of confirming the child's memory without using leading questions thus avoiding false memories. Japan should consider introducing this method.

D. Inter-Country Adoption (Article 21)

1. Legislation that prevents children being sent overseas to live and promotes the search for adoptive parents within the country should be developed.

2. Legislation that requires special permission when a child travels abroad for inter-country adoption.

3. Legislation that involves requesting a report on a child's living conditions once taken abroad after adoption or for the purposes of adoption.

4. An approval system should be adopted for adoption placements, and legal controls should be imposed on those who provide such services without first obtaining approval.

5. Effective controls should be implemented to counter improper financial gain including revoking approvals and enforcing an appropriate punishment.

6. The Japanese government should ratify the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption.

1. Introduction

226. Traditionally, in Japan, adopting a child tends to be done for the sake of the parents. It is therefore difficult to find parents within Japan willing to adopt children born out of wedlock, those with disabilities, etc. According to statistics issued by the United States Immigration & Naturalization Service (INS), Japanese children go to the United States to be adopted every year. For example: 57 in 1990; 87 in 1991; 68 in 1992; 64 in 1993; 49 in 1994; 63 in 1995; 33 in 1996; 55 in 1997; 46 in 1998; 42 in 1999, and 40 in 2000. (http://travel.state.gov/orphan_numbers.html), (http://travel.state.gov/adoption_japan.html). Even though these figures are unusually large when compared with western developed countries, the Japanese government has taken no measures to prevent our children going abroad to live as adopted children.

The Committee on the Rights of the Child's Concluding Observations (para. 38) concerning Japan's Initial Report recommended that: "the State party takes the necessary steps to ensure that the rights of the child are fully protected in cases of inter-country adoptions and to consider ratifying the 1993 Hague Convention on the Protection of Children and Cooperation with Respect to Inter-country Adoption." However, the Government completely ignored this in their report (paras. 194 and 195), thus it appears Japanese Law contravened Article 21 of the Convention.

2. Principle of prioritizing domestic adoption

227. In Article 21 (b), the Convention recognizes that inter-country adoption may be considered as an alternative means of childcare, for example, if the child cannot be placed in a foster or an adoptive family or cannot be cared for in a suitable manner in the child's country of origin.

On the other hand, the Government Report states that, for Japanese children adopted by foreign nationals, the laws of the adoptive parents' country apply (para.194). However, in terms of requirements for the protection of the adopted child (e.g. approval/consent of the adopted child or a third party, permission from public authorities, and other procedures), Japanese legislation will apply (Article 20, para. 1, legislation concerning the Application of Laws in General). The Family Court facilitates the welfare of a child by considering the childcare situation in Japan in terms of granting

permission for adoptions. This is the case for both ordinary and special adoptions. The child is granted protection equivalent to that granted if it were an internal adoption. The Government appears to have ignored the following problems.

228. Firstly, the Government has a passive attitude toward adoption applications. Their response appears to be simply to consider it, followed by no attempt to find adoptive parents for the child within the country. In Korea, for example, the law associated with special provisions for adoption was enacted in 1976 (revised in 1995 and the name changed to the Law on Special Provisions concerning the Promotion and Procedure of Adoption). This was based on continual efforts that have been made to find adoptive parents in the country. The effects are gradually becoming apparent and, according to the statistics provided by the Ministry of Health and Social Welfare Department, the number of inter-country adopted children, 8,000 in 1986, declined to less than 3,000 in 1990.

229. Secondly, the Japanese government does not control children going abroad to be adopted or as adopted children. For example, according to Korea's special provision law mentioned above and the international inter-country adoption law enacted in the Philippines in 1995, when a foreign national takes a child abroad for adoption, special permission from the competent organ is required. In addition, in countries such as India, Nepal, Thailand, Chile, etc., special permission is a requirement for leaving the country (Yasuhiro Okuda, "Cross-border movement and family register of children", Fujiko Sakakibara (ed.) "Family register system and children" (*Akashi Shoten,* 1998)). On the other hand, when a foreign national takes a Japanese child abroad, carrying his/her own passport is enough (Article 60, Immigration Control and Refugee Recognition Act). As a result there are virtually no controls on children leaving Japan to live overseas.

230. Thirdly, the Japanese government does not try to check how the adoption proceeds nor the conditions experienced by the children sent abroad after being adopted or for the purposes of adoption. In the past it has been pointed out that inter-country adoption can be used as a cover for child prostitution, pornography, internal organ trafficking, etc. In order to prevent these risks, in such countries as Indonesia, Mauritius, Sri Lanka, Costa Rica, Honduras, Nicaragua, Peru, etc., a child is not allowed to leave the country until after adoption has been concluded within the country. In countries such as Ecuador, Ethiopia, etc., yearly reporting is mandatory after the child leaves the country (Okuda, op cit).

231. As mentioned above, in many countries to which adopted children are "exported", more severe requirements are imposed in terms of inter-country adoption when compared with domestic adoption. However, the Japanese government considers that inter-country adoption requires the same level of concern as domestic adoption. It is obvious that they do not understand the aim of Article 21 (b) of the Convention.

3. Prohibiting improper financial gain

232. The Government Report cites Article 34, No. 8 of the Child Welfare Law as the law that prohibits the intermediary acts of adoption for financial gain (para 195). Any person who violates the provisions is subject to a maximum punishment of up to a year in prison, or a fine of up to 300,000 yen (Article 60, Paragraph 2). Also, when intermediary acts involving children is conducted as a business, it is subject to mandatory notification to the relevant governor (Article 2, Paragraph 3, No. 2; Article 69 of the Social Welfare Law; notice of the Children and Families Bureau Director, Ministry of Health and Welfare, October 31, 1987). However, punishment for violation is not provided. Moreover, persons who traffics a child for child prostitution or child pornography, will be punished by imprisonment with labor for 1 to 10 years (Article 8, Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children).

On the contrary, according to the Philippines legislation enacted in 1995, an agency which mediates inter-country adoption must be authorized by the Inter-country Adoption Committee, and any person who violates this may be punished with imprisonment with labor for six to 12 years and/or a fine of 50,000 to 200,000 peso. In addition, in the case of trafficking in adopted children, the relevant person is punished with life imprisonment.

Thus, when compared with Filipino law, it is clear that trafficking in adopted children is something that is not taken seriously under Japanese law. According to one particular survey, when a Japanese mediation organization facilitates the adoption of a Japanese child by foreign parents, it collects 1,250,000 yen in the form of donations as well as actual costs incurred ("Babies crossing the Ocean" survey, City News Department, Osaka, Asahi Shimbun Publishing Co., 1995). The Japanese government, which does not effectively control such improper financial gain, is violating Article 21(d) of the Convention.

4. Conclusion of Convention

233. As already mentioned, the Committee recommended that the Japanese government ratify the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption, but the Government Report completely ignored this. It is true that Article 21, e of the Convention merely imposes a non-binding obligation, and that the conclusion of the Convention is left to each country's discretion. However, considering that Japan, is an exceptional export country of adopted children which is rare in western developed countries, and that the legislation for effectively controlling inter-country adoption is insufficient, it is evident that the Japanese government should ratify the 1993 Hague Convention. It may be said that a State party that does not ratify the Convention violates Article 21 (e) of the Convention on the Rights of the Child. The Japanese government should immediately ratify the 1993 Hague Convention.

E. Recovery of Maintenance from Abroad (Article 27, Paragraph 4)

1. Domestic laws should be developed so as to assist in securing the recovery of maintenance for any child living overseas from the parents or other persons living in Japan having a financial responsibility for the child, as well as for a child living in Japan away from its parents or other persons living overseas.

2. In order to achieve the objective as specified in 1. above, the Government should accede to the 1956 UN Convention on the recovery of maintenance from abroad.

3. Legislation for the recovery of maintenance should be enacted, and, through a mutual guarantee declaration with the United States, etc., a system for mutual recovery of maintenance should be established.

1. Introduction

234. From the 1990s onward, problems have occurred in countries such as the Philippines, Thailand, etc., where, after having had a child with a local woman, a Japanese man came back to Japan without paying any subsequent maintenance. According to a certain news report, there are currently more than 10,000 half-Japanese half-Filipino children (or "Japinos") whose father's location cannot be identified (Mainichi Newspapers, Tokyo version, morning edition, April 16, 1997). In places where the U.S. military bases are located such as Okinawa, a similar situation still continues, where a U.S. military man or civilian returns home leaving his child with a Japanese woman and without paying any subsequent maintenance.

In the meantime, it is rare to find among the judicial precedents in Japan a trial dealing with a suit from a child living abroad seeking recovery of maintenance. There are two cases where a suit was filed in a Japanese court by a child living in the U.S. seeking an enforcement of maintenance judgments won in the U.S. But in both cases, all persons concerned, including the mothers, were Japanese, and it was assumed that they could have the assistance of their relatives in Japan (judgment at Tokyo High Court, September 18, 1997; judgment at Tokyo High Court, February 26, 1998). Likewise, it seems virtually impossible that a child living in Japan would be able to recover maintenance from his/her parents, living overseas. This situation occurs because the Japanese government does not provide any form of assistance.

In this respect, the Government cited paras. 136 and 137 from the Initial Report in para. 190 of their report. This referred to a case in which a child's parents or other persons having financial responsibility for the child live in a different country and the child is to recover maintenance in Japan. However, these paragraphs in the Initial Report simply stated that the Family Court in the domicile of

the defendant has jurisdiction over maintenance case. If the property of the defendant is in Japan, the property may be subject to levy of execution pursuant to the judgment or decision for the child. Japan ratified the 1956 and 1973 Hague Conventions with regard to governing law over the obligation to provide maintenance.

In other words, the Japanese government is not in the least aware of the fact that it is very difficult for a child living overseas to find his/her father living in Japan, as well as to file suit in Japan. The Government Report also did not refer to the problem envisaged when a child living in Japan would try to recover maintenance from abroad.

2. Measures regarding domestic laws

235. The Government Report stated that a suit can be filed in the domicile of the defendant (para.136). However, for a child living overseas, it is very difficult to find the defendant, namely the Japanese father, and it is virtually impossible for a child in financial difficulties to produce the legal expenses required in Japan (in this respect, refer to B, 2 mentioned earlier). The legal aid association has established a system for paying legal expenses, but only those who are prepared to stay in Japan until the advance money is repaid can use this system. Under the current Japanese immigration control system, foreign children who are disregarded by Japanese parents are virtually not allowed to acquire resident status (refer to IV, B, 2). Moreover, in the case of a child living overseas who files a suit in his/her country, and won a judgment in his/her favor (if obtained), it is necessary to file a suit for enforcement of the judgment again in Japan (Article 22, No. 6, Law of Civil Execution), the same problem will arise.

On the other hand, in the case of a child living in Japan seeking recovery of maintenance from parents, etc. living overseas, it is necessary for him/her to find a person obliged to support him/her by himself/herself, and file a suit in that country. In this case, there is not a system that the Japanese government supports such maintenance recovery in cooperation with foreign governments.

Certainly, where a child and the person obliged to support them live in the same country, it is relatively easy for the child or his/her representative (in many cases, the mother) to file a suit against that person. On the contrary, to file a suit in a foreign country is difficult even for business firms. Therefore, it is impossible for a child who was abandoned by the parents (in many cases, the father) to file a suit without the government's support. When considering the difficulty in recovering maintenance from abroad, the first sentence of Article 27, Paragraph 4 of the Convention stipulates the obligatory measures involved in securing it. It is evident that the Japanese government, which has not taken any such measures, is in violation of the Convention.

3. Conclusion of international agreements

236. Naturally, recovering maintenance from abroad cannot be made by a single country's government,

and cooperation from other countries is necessary. Therefore, the second sentence of Article 27, Paragraph 4 of the Convention stipulates promoting accession to international agreements or the concluding of such agreements. But Japan has not concluded agreements with any country concerning the recovery of maintenance from abroad; the Government also did not refer to this point in its Report.

To cite an example, the United Nations Convention on the Recovery of Maintenance from Abroad was established in 1956, and more than 50 nations are affiliated to this Convention. Under this Convention, if a child makes an application in the country where he/she resides, the application will be sent to the country where his/her parents, etc. live, and that country's government will take all necessary measures to recover maintenance including legal procedures. Also, countries such as the United States, Canada, South Africa, India, Singapore, etc. have established a different system. When recovering maintenance each country must enact a substantially similar reciprocal law and declare which other states satisfy reciprocity; in doing so, as the case with the Convention, the same effects are obtained. Moreover, countries such as Germany, France, the United Kingdom, Sweden, Norway, Poland, Hungary, Australia, New Zealand, and Mexico etc. are participating in an independent system adopted by the United States, etc. while affiliated to the 1956 Convention
(Yasuhiro Okuda, "Construction of a System for Maintenance Recovery Abroad", Hokudai Hogaku Ronshu, Vol. 53, No. 5).

However, Japan has not participated in any of these systems, which makes it extremely difficult to recover maintenance in this country. Just as in the case above (D4), Japan has not acceded to the Convention even though it must do so. Japan is therefore violating the second sentence of Article 27, Paragraph 4 of the Convention. Japan should immediately accede to the 1956 United Nations Convention, and at the same time, enact laws concerning maintenance recovery and establish a system for recovery with the United States, etc.

F. Cross-Border Child Abduction (Articles 11, 35)

In order to retrieve a child brought to Japan, or a child sent overseas as a result of arguments between the child's father and mother, the Japanese government should accede to the 1980 Hague Convention on Civil Aspects of International Child Abduction.

237. According to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, if a child is sent overseas by one of his/her parents who are separated or divorced, the child can be retrieved. Specifically, if the parent who has been deprived of his/her child files a complaint in the country that they are resident in, the complaint can be transferred to the country in which the child

lives, and then the government of such country will take all necessary measures. There are more than 50 state parties affiliated to this Convention.

However, since Japan is not affiliated to this Convention, it is among those countries where it is extremely difficult to retrieve a child brought to Japan, or a child sent overseas. In reality, only one case has been made public, where a foreign spouse could successfully retrieve a child from a Japanese spouse (judgment at the Supreme Court, June 29, 1978). On the contrary, failed examples include the judgments ruled by the Supreme Court on February 26, 1985; Tokyo High Court on November 15, 1993, etc. One of the grounds for these judgments is that a long time had passed since the child was brought to Japan. However, this was due to the time it took for the parents deprived of their child to find the child by themselves and file a suit.

In order to avoid this inconvenience, the 1980 Hague Convention was established, however Japan is not yet a state party. The responsibility for not retrieving a child is solely with the Japanese government. According to one mass media report, American parents who cannot retrieve their children sent out to Japan are considering taking class actions against the Japanese government. (http://www.asahi.com/english/weekend/K2002012700081.html).

238. There is also a precedent where, in order to retrieve a child who was sent overseas as an adopted child, the birth parents filed a suit to seek habeas corpus in Japan. The case was refused on the grounds that a suit cannot be filed on a child residing overseas (judgment by the Osaka District Court, June 16, 1980). As a result the birth parents must bring this case to a foreign court, however, there is no system in place to enable the Japanese government to provide support.

239. These trial proceedings are only a small part of cases where parents, etc. retrieve a child. It is assumed that, in reality, there are many parents who give up trying to retrieve their child because even the whereabouts of their child is unknown. The Japanese government should therefore immediately accede to the 1980 Hague Convention in order to remove the difficulty of retrieving the child. Unless it does so the government will be in violation of Articles 11 and 35 of the Convention. These articles stipulate the obligation to conclude bilateral or multilateral agreements or accession to existing agreements in order to prevent the illicit transfer and abduction of children overseas.

240. It is also noted that, in para. 188, the Government referred to Article 8, Paragraph 2 of the Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children, and stated: “Japanese nationals transferring a child to a foreign country who has been kidnapped, abducted and traded out of that country shall be punished.” However, this provision is applied only in cases such as those involving child prostitution and child pornography. It does not deal with civil matters such as those cases involving the returning of a child to the country they previously resided in. This means that the government has not fulfilled its obligations under Article 11 of the Convention.

VI BASIC HEALTH AND WELFARE

A. Children with Disabilities

1. Act for Prohibition of Discrimination against Disabled People should be established or provisions of “Prohibition of discrimination due to disability”, under Article 2 of the Convention, should be stipulated in the basic legislation applied to disabled people, Disabled Persons Fundamental Law, the School Education Law or Child Welfare Law, etc. The "basic concepts and principles for dealing with disabled children", which are provided for in Article 23 of the Convention, “the principle of inclusive education as stated in the Salamanca Statement”, and “the principle of integrated education within the Standard Rules”, should expressly be stated in such legislation. These laws should also include provisions that stipulate the right to education for children with disabilities who have special educational needs as well as the rights of parents to achieve such education.

2. The Committee of Guidance and Examination on School Entrance established in the board of education, which, through its decision-making process virtually forces as to their judgment about which school the disabled child will enter, should be reorganized into an organization where its guidance and assistance for school entrance will achieve inclusive education, as well as the right of the disabled child to education and the right of his/her parents to be provided with all necessary information, thus guaranteeing them the right of the child and his/her parents to choose as well as an opportunity to express their opinions. An amendment should be made to the School Education Law and the School Education Law Enforcement Ordinance so that objections against decisions may be filed if the parents are not satisfied with the decisions.

3. In order to recognize the spirit of inclusive education and the Standard Rules and attaining further integrated education, research should be carried out on the present situation as it affects disabled children attending regular classes. This might include assembling their requests, information about the curriculum, learning and teaching methods. Suitable ways of assisting those disabled children attending regular classes should also be reexamined, and according to need, school attendants, extra teachers and school materials should be provided at no charge. Adequate conditions should also be arranged for the development, remodeling, and reduction of barriers faced by teachers in regular classrooms, educational materials, facilities, equipment, etc. needed to meet the special needs of disabled children. It is also the case that disabled children should not be refused from participation in school events including swimming lessons, sports meetings, school excursions, etc., nor should there be barriers to them participating by making it a condition of that participation that they should be accompanied and assisted by their parent(s) the whole time.

4. Schools for disabled children should be located within the local neighborhood, near where such children reside. Those schools which disabled children attend should be decided upon in such a way that disabled children are not separated from their parents against their will. If children with disabilities can only attend school if they are separated from their families, then a proper judicial review and the parents' express of views should be a mandatory requirement.

5. The Government should consolidate conditions, including the appointment of specialists at schools which disabled children attend, in addition to teachers, such as physical therapists, speech therapists, doctors and nurses at schools with disabled children in order to meet the diverse needs of disabled children properly.

6. The upper secondary education system should be reformed so that children with disabilities are able to take the entrance examinations to regular high schools and pass them with adjusted acceptance criteria. It is strongly recommended that there be special high schools for disabled students too.

7. The Government should secure job opportunities for disabled children after their graduation from school while at the same time instructing companies within the private sector as well as national and local government bodies to fill the legislated employment ratio for disabled persons.

8. The Government should ensure that disabled children are not inflicted with any form of corporal punishment, cruel treatment or violence while at institutions, schools, homes and other places to which they belong. The Government should also prohibit the imposition of compulsory independence training against the will of disabled children.

9. Japanese schools should implement a variety of school reforms in order that it can achieve an inclusive education that meets the special needs of children with disabilities. Such education that is focused on the welfare of children, as proposed by the Committee on the Rights of the Child, may be achieved by pledging efforts to eliminate excessive competition and remove discriminatory aspects in entrance examination and screening test systems.

Part 1: The Concluding Observations of the United Nations Committee on the Rights of the Child and the JFBA Report

241. 1. The United Nations Committee on the Rights of the Child concludes in its Concluding Observations that "20. With regard to children with disabilities, the Committee notes with concern the insufficient measures taken by the State party, notwithstanding the principles laid down in the

Fundamental Law for People with Disabilities, 1993, to ensure effective access of these children to education and to facilitate their full inclusion in society." It also recommended that "41. In light of the Standard Rules for the Equalization of Opportunity for Persons with Disabilities (General Assembly resolution 48/96), the Committee recommends that the State party make further efforts to ensure practical implementation of the existing legislation, take alternative measures to institutionalization of children with disabilities, and envisage awareness-raising campaigns to reduce discrimination against children with disabilities and encourage their inclusion into society."

242. 2. The JFBA submitted the report that endorsed the recommendation made by the United Nations Committee on the Rights of the Child and included several proposals. The proposals presented by the report were:

243. (1) "Prohibition of discrimination because of disability" and "the basic concepts and principles for dealing with disabled children" which are provided for respectively in Articles 2 and 23 of the Convention should be expressly stated in the School Education Law, the Child Welfare Law, etc., moreover such laws shall provide for the rights of disabled children and their parents.

244. (2) In its decision-making process concerning which school the disabled child will enter, the School Entrance Guidance and Examination Committee should guarantee the child in question and his/her parents an opportunity to express their opinions as well as an opportunity to file an objection against a decision if they are not satisfied with it.

245. (3) In order to attain further integrated education, the curriculum, learning and teaching methods, as well as a suitable form of assistance for disabled children attending regular classes should be reexamined. The disabled children should not be refused from participating in school events including swimming lessons, sports meetings, school excursions, etc., nor hindered from participation by making it a condition of participation that they should be accompanied and assisted by parent(s) the whole time.

246. (4) Schools for disabled children should be located within the neighborhood in which the children reside, and the schools which disabled children attend should be decided upon in such a way that disabled children are not separated from their parents against their will. In cases where it is decided that they have to be separated, competent judicial authorities should review the decision and parents should be given an opportunity to express their views, before any official decision is reached. The Government should consolidate conditions including the appointment of specialists in addition to teachers, such as physical therapists, speech therapists, doctors and nurses at schools with disabled children so as to meet diverse needs of disabled children properly.

247. (5) In order to guarantee disabled children access to upper secondary education, the Government should take measures such as improving methods of entrance examinations and increasing the capacity for high schools to cater for disabled children. The free compulsory nine-year education

system should be reformed so that all children with disabilities could attend high school for three years if they wished.

248. (6) The Government should secure job opportunities for disabled children, while at the same time instructing companies in the private sector as well as national and local government bodies to fulfill the legislated employment ratio for disabled persons.

249. (7) The Government should ensure that disabled children are not inflicted with any form of corporal punishment, cruel treatment or violence at institutions, schools, homes or other places that they attend. It should also prohibit the imposition of compulsory independence training that is against the will of disabled children.

250. 3. However, the Japanese government has not taken any measures based on the UN recommendation and has not enacted any legislation to ensure the rights of children with disabilities in Japan. As a result, there is still some discrimination against children with disabilities and there has not been any remarkable improvement toward implementing a fully integrated education system nor the provision of proper special education for children with disabilities. The Japanese government has been negligent in enacting legislation, drafting or implementing policies for the welfare of disabled children that were recommended by the UN Committee on the Rights of the Child.

Part 2: Problems found in the Government Report

251. 1. The Government Report does not specifically mention what the government has done or discussed concerning the promotion of the welfare of children with disabilities after Japan became a State Party to the Convention on the Rights of the Child, and the UN Committee on the Rights of the Child announced its recommendation. The report lists only those facilities available for children with disabilities accompanied by brief explanations on such facilities and statistical data on schools etc. The statistical data reported is also inappropriate; the number of home-helpers shown in the report includes those who serve not only children with disabilities but also adults with mental disabilities. The list does not include an accurate number of those helpers working with children with disabilities. The report also includes a table titled "Facilities Available for Children with Disabilities". This table includes facilities for adults. The information on schools merely presents the numbers of children of school age etc. The Japanese Government Report does not mention what measures have been taken nor what discussion have been carried out by the Japanese Government to ensure the Rights of the Children endorsed by the Convention in accordance with the proposal made by the Committee.

252. 2. Under "Basic Principle Article 2 Non-Discrimination" (para. 92), the Government Report refers

to "Article 3 of the Disabled Persons Fundamental Law provides that the individual dignity of every handicapped person shall be respected; he/she shall have the right to be treated in a manner appropriate for his/her inherent dignity; and he she shall be afforded the opportunity to participate in activities of every field.." The Disabled Persons Fundamental Law, although it was revised based on the Basic Law for Promoting the Welfare of Persons with Disabilities, and improved in terms of providing the statement regarding "the dignity of all disabled persons", only establishes the fundamental principles regarding the rights of disabled persons, and does not include any provision for prohibiting discrimination against children with disabilities nor giving civil rights protection to individuals with disabilities. Therefore, the Government Report is not entirely trustworthy. Further revision of the Disabled Persons Fundamental Law is indispensable if the Government considers the current situation of children with disabilities in Japan to be serious.

253. 3. In Article 23, Children with Disabilities, the Government Report does not refer to the legal or political reforms related to the issues of children with disabilities that should have been underway. It is as if it endorses the current separate and special education system that screens children according to the types of disabilities. It does not mention the necessity for implementing integrated and inclusive education in accordance with Article 23 of the Convention on the Rights of the Child nor the proposal made by the Committee on the Rights of the Child. The report continues to stipulate that only those students with mild or moderate disabilities can be admitted to regular classes in elementary and junior high schools. It mentions some of the following new initiatives. In 2000, schools for children with visual or hearing impairment or other disabilities began to have home visits from high school teachers trained to support children in their homes. Parents who let their children attend schools for children with visual or hearing impairment or other disabilities became entitled to subsidies for special education encouragement. The Collaborators Council on Special Education launched an initiative to implement integrated education and worldwide standardized rules on education for children with disabilities. The report of the Council also presents proposals to make more efforts to recognize individual needs and improve overall support systems, schooling guidance, teaching methods for children with learning disabilities, and a teacher education system that includes experts. Even though we could give positive reviews on these aspects of the Report, the Report still does not recognize the need for a radical shift from a separate special education system to one that is integrated and inclusive. Rather it reveals that Japan's Ministry of Education is now undertaking the reform of School Education Law based on the proposals emerging from the Collaborators Council. It also appears that reform might be far from practical and appropriate to the implementation of inclusive education, and would possibly make the existing separate and special educations unalterable. The Report unintentionally shows that the Ministry of Education has no idea that it is taking measures that undermine the objectives of the Convention on the Rights of the Child and the proposals for social

inclusion and standard rules made by the Committee on the Rights of the Child.

254. Japan's Ministry of Education revised the Enforcement Ordinance of the School Education Law based on the proposals made by the said Collaborators Council. The Cabinet approved the revised ordinance on April 19, 2002. The revision changed the acceptance criteria to schools and registration procedure.

The most important aspect of this revision is that the acceptance criteria to schools were reviewed and updated in accordance with historical and technological progress. The revised ordinance allows children with visual or hearing impairment or other disabilities to join regular elementary and junior high school classes "under special consideration".

Previously, some children with disabilities could join regular classes as special, exceptional cases. The revision of the ordinance changed some of these cases into "legally prescribed cases". However, there are still children with disabilities who cannot be admitted to regular schools and have no choice other than to attend schools for disabled students. The revised ordinance states that such children include those who need assistance, have severe and/or multiple disabilities, require medical care, or have difficulty with interpersonal relations. Since we see some cases in which those who strongly want to attend regular schools are admitted regardless of their type or degree of disability, the revision of the law might prohibit enrolling such children in regular schools. Eventually the revised law might cause the situation to deteriorate.

Due to the revision of the ordinance, the acceptance criteria to schools have been changed. On the other hand, the government has taken no measures to review and reform existing separate and special education and endorse the approach of inclusive and integrated schooling to ensure the rights of children with disabilities who must have access to regular schools, based on the UN standard rules on the equalization of opportunities for persons with disabilities. As a rule, separate measures are still being adopted for students with disabilities in Japan, in which those students can, according to the type or degree of disability, be referred to self-contained special classes of schools for children with visual or hearing impairment or other disabilities.

The government agencies, such as the Ministry of Education, Culture, Sports, Science and Technology and the Boards of Education, had interpreted Article 2-3 of the former School Education Law's Enforcement Ordinance in a way that some children with disabilities "need to attend schools for children with visual or hearing impairment or other disabilities". On the other hand, the revised Enforcement Ordinance defines "children with disabilities who should attend schools for the blind, deaf and other disabilities".

255. The former School Education Law does not mandate that children with disabilities "should attend" special schools according to their type and/or degree of disability. If it did, it would infringe the rights of the child endorsed by Article 26 of the Japanese Constitution, and contradict the basic principle of the School Education Law. The Enforcement Ordinance was formed based on Article

71-2 of the School Education Law, which states that education systems should be designed to take into account the wide diversity of needs of children with disabilities. When revising the Enforcement Ordinance Article 22-3, the Ministry of Education, Culture, Sports, Science and Technology could have taken a new approach by including a statement so that the Article includes a statement that refers to children with disabilities as "those who have the right to education". However, the revised Enforcement Ordinance includes a list of various types of disabilities that are more severe than those listed in the former Enforcement Ordinance, and states that children with such disabilities could only be admitted to regular schools "under special considerations". Thus, the Ministry seems to still adhere to the traditional interpretation of the School Education Law. This seemingly flexible approach might apply to define "those who should attend special schools" as the ones who have more severe disabilities than those listed in the former Enforcement Ordinance and not subject to the "special considerations". On the other hand, the revised Enforcement Ordinance might lead to the removal of children with disabilities from regular schools if they meet the conditions written in the revised Enforcement Ordinance; the revised Enforcement Ordinance states that children with disabilities who need assistance, have severe and/or multiple disabilities, require medical care, or have difficulty with interpersonal relations cannot be admitted to regular schools. Alternatively this might restrict the students who attend special schools to those who meet the above conditions written into the revised Enforcement Ordinance. It is clear that the underlying purpose of this approach is the idea of separate education for children with disabilities. Even though the acceptance criteria to schools was changed, the revision of the Enforcement Ordinance of the School Education Law might be retrogressive in terms of the promotion of inclusive education and the right to education of children with disabilities.

256. The revised Enforcement Ordinance states that the Committee of Guidance and Examination on School Entrance should provide an opportunity to hear the opinion of experts who specialize in education, medicine, psychology or schooling of children with disabilities, when it changes the school where those children with disabilities should learn. It also notes that there should be an opportunity for parents of children with disabilities to be able to express themselves on where their children should be placed.

However, these opportunities would only be given when the Boards of Education advise children with disabilities to enter schools for children with visual or hearing impairment or other disabilities. Therefore, in some cases, the opportunity to hear the opinion of experts might never been provided in terms of the placement of children with disabilities. In some cases, the Board of Education may determine that "children can be admitted to regular schools under special circumstances", even though they have disabilities that meet the conditions listed in the revised Enforcement Ordinance. In other cases, children with disabilities that do not meet the conditions listed in the revised Enforcement Ordinance but needed to consider special care such as special class for disabled children

are simply admitted to regular schools without hearing the opinion of experts. The revised Enforcement Ordinance does not prescribe that the Committee of Guidance and Examination on School Entrance is mandatory as a place to hear expert opinion, nor does it prescribe that Committee members should include those with disabilities. Thus, the revised Enforcement Ordinance is retrogressive compared with the proposals made by the Collaborators Council. Moreover, we consider that the Enforcement Ordinance, an administrative legislation, is not suitable to mandate the schooling for children with disabilities. We think that the placement and schooling of children with disabilities should be recognized as a legal issue that has an important relationship with Article 26 (Rights and Obligations of Education) of the Japanese Constitution, as well as a social issue that would greatly affect child-parent relationships. It should be the School Education Law, not its Enforcement Ordinance that deals with the schooling of children with disabilities. We consider that this revised Enforcement Ordinance, may violate Article 11 of the Cabinet Law and result in being null and void, since it may seriously infringe the right to education of children with disabilities and their parents by actually forcing the children to attend particular types of schools. The School Education Law does not include any provisions to mandate the placement or schooling of children with disabilities.

257. Thus, in our opinion the Japanese government has been negligent in enacting legislation and making policies that would require a radical shift from separate and special education to the integrated and inclusive education proposed by the Salamanca Statement and the report submitted by the JFBA. It has also failed to implement policies to ensure the rights of children with disabilities endorsed by Article 23 of the UN Convention on the Rights of the Child and the UN Standard Rules pertaining to the Equalization of Opportunities for Persons with Disabilities.

Part 3: Rights of Disabled Children in Japan

1. Current situation regarding students with disabilities in regular schools

258. (1) In Japan, the children with disabilities who attend regular classes tend not to be well accepted by other classmates and teachers. There are several reasons for this. One of the reasons may be that, although such children have special educational needs and require extra consideration, most schools lack the supportive devices and equipment required to meet their needs. Another reason may be that some teachers have a limited awareness of the rights of children and are biased against students with disabilities, having a false stereotype that they should be segregated into special schools.

Sometimes, even the parents of students with disabilities are not happy with their son or daughter because the parents are often asked to accompany them to school. It should particularly be noted that students with disabilities could receive government subsidies and benefits under the provision of the Law for the Encouragement of School Attendance at Special Schools for Children with Visual, Hearing Impairment, and Other Disabilities when they go to special schools for disabilities. They

would not receive such subsidies if they were enrolled at a regular school. This means that their parents would bear a greater cost if their child attended a regular school. This is unfair and contradicts the principle of universal and free compulsory education. Moreover, some parents are asked to bear the delivery cost of a writer for visually disabled students, or have to accompany their children when they commute to and from school and at lunchtime. It has been reported that some students have been asked to transfer to special schools for disabled students when their parents have refused to accompany their child to school.

Other parents say that their children are asked not to participate in major school events such as athletic festivals, field trips or swimming classes because students with disabilities may upset other non-disabled students. In other cases the parents may be asked to accompany their child if they want to join in such field trips or excursions.

259. (2) When children with disabilities attend regular classes, they should be provided with the special services and kindness they need in a proper environment. If the schools and teachers are negligent in giving such service and environment, it would mean that they might fail to ensure those children's right to education.

It is important that teachers understand the importance of normalization and the rights of the children with disabilities. Since students with disabilities have a variety of special needs according to the type/degree of disability and their age, these needs must be met by taking such measures as the increase in number of teachers, reduction in number of students in a class, and provision of specialists such as therapists, doctors and counselors. Teachers should also be given enough time to teach such children or receive training.

2. The current situation and problems found in special classes and schools for children with visual, hearing impairment, and other disabilities

260. (1) In Japan, the schools and classes for children with disabilities include: special schools for children with visual, hearing impairment and other disabilities; self-contained special classes, and mixed-age classes. Students with disabilities represent 1.3% of all students at a compulsory education level. The percentage was 1.2% in 1999; it increased to 1.3%. While the total number of students at a compulsory education level has decreased, the number of students who attend special schools and classes increased by more than 5000. This might mean that in Japan, regular schools and classes are not yet ready to accept children with disabilities, but also that disabled children and their parents prefer receiving special education that would meet a wide diversity of their needs. Although more and more students with disabilities want to receive the special education that they need, only a limited number of them can receive the appropriate education. Currently, the Japanese government puts less emphasis on welfare policies, implementing deregulation and structural reform.

School overcrowding is another issue. When schools for disabled students started to provide free,

compulsory schooling, new schools were built, one after another, for several years. But now most prefectural governments have stopped building new schools, which has made many schools overcrowded with students.

Today, most schools and classes for disabled students are overcrowded. The number of classes for disabled students varies depending on prefectural government policies. Usually two or three schools out of ten have one special class for disabled students. Still there is an insufficient number of special classes and most existing special classes are facing the problems of overcrowding and a shortage of classrooms and teachers. It has been reported that it takes 50 minutes for a disabled student to commute to school on foot because a school bus was not available. Some measures should be taken to relieve the overcrowding in classrooms and schools and provide the children with good, safe environments.

261. (2) Most schools for disabled students cover a much wider school district than regular schools. We sometimes see cases in which the time taken for students to travel to school is from one to two hours. The longer they have to travel, the more burden is put on the shoulders of the students and their parents because parents are sometimes forced to accompany their children to school everyday, otherwise their child might not be admitted to the school. Moreover, since schools for disabled students are usually far away from their home, it is difficult for them to have a sense of belonging to the community they live in and make friends with other children of a similar age in the neighborhood.

For example, in Saitama Prefecture, a report stated that the average time taken for a disabled child to commute to his school is two hours and twelve minutes; the longest time is three hours and half. One question is why should students who have difficulties in moving at all have to commute such long hours. If the student is unable to move him/herself, s/he has to be bound to a chair with swaddling bands when commuting. If the child should take a school bus, the driver and a part-time attendant are the only people on whom the student can rely in an emergency. A long commute may endanger the child's health. For example, one accident happened on a school bus in which a disabled student died of suffocation when he could not cough up a mass of phlegm.

The maximum number of students in one special class in a regular school is designated as eight. This puts more burden on the shoulders of special class teachers than those teaching in special schools for disabled students. Moreover, 30% of such special classes include different ages of student with different types and degrees of disability.

It is extremely difficult for a teacher to teach students with different types and degrees of disability in one classroom because they display completely different levels of progress. However, there is only one teacher who is in charge of the special class, and usually teachers transfer from one school to another once every few years. It would be almost impossible to keep providing a certain level of education in special classes. A more integrated system that could meet the special educational needs of the individual student should be developed by providing more than one teacher

to a class, establishing closer relations with teachers working in special schools for disabled students and working with experts and specialists in group-teaching situations.

3. Resource Room for Students with Disabilities

262. Resource rooms for students with disabilities were first introduced in April 1993 to provide special education for students with mild disabilities (apart from those who are intellectually disabled) who usually attend regular classes in regular schools. The students visit the resource room and take classes for about one to two hours per week. The classes provided by the resource rooms should help the students improve their abilities and overcome difficulties, as well as receive speech and language services outside the regular classroom. Special education resource teachers serve these students in resource rooms. There are three types of resource room those that are set up: in the school the students attend; outside the students' school, and in different places.

As of May 1, 1999, 84.7% of the classes provided in resource rooms are for students with hearing and speech disabilities. The remainder is for students with emotional disabilities, weak sight, hard of hearing, orthopedic disabilities, or who are constitutionally weak.

The number of students using resource rooms dramatically increased from 18,000 in 1993 to 28,000 in 2000. Since not every public elementary and junior high school has a special education resource room, most students visit other schools in order to take classes in resource rooms. Currently, about two thirds of the students have to travel a long way to resource rooms in other schools.

The disparity of the ratio of number of students to number of teachers in one resource room is large, from 1:4.8 to 1:10.4. The teachers are not provided with enough training opportunities in expert knowledge and skills. Some resource rooms are suffering from the shortage of teaching materials. It is urgently necessary to narrow the disparity between resource rooms. Moreover, the two-way communication between the class teachers of regular schools and the teachers of resource rooms should be fostered to help students receive services that meet their special educational needs.

4. Home Visiting Teachers

263. Home visiting teachers provide general support and guidance in response to the particular needs of children with disabilities and their families. They visit children regularly at home, hospitals and facilities that cannot commute to school due to severe disabilities or weakness so as to encourage them to develop as fully as possible. In 1996, 2,936 students received this service.

In Japan, the home visiting teacher program started in 1979, when education at public elementary and junior high schools for disabled students became compulsory. Formerly, some children with severe disabilities had been released from the need to be enrolled to schools even when they were at school age. The home visiting teachers allow such children to be enrolled in schools for disabled

students while staying at home and receiving educational services from home visiting teachers. In 2000, teachers started to visit high-school age students at home. Currently each local government operates its own home visiting teacher program separately, and we find that there are large differences between them. Moreover, there are several problems that need to be addressed.

For example, the maximum number of teaching hours provided by home visiting teachers designated by the Ministry of Education, is six hours in three days per week. This amount is less than 1/7 of the standard schooling hours at regular schools. About 85% of the teaching hours are used to provide special education on Braille, sign language or physical exercises and only 15% are used for ordinary schoolwork.

5. Schooling Guidance and Its Problems

264. Each government education agency has a responsibility to provide information that would help children with disabilities and their parents decide which school to attend, and thus ensure the right to education for those children. Children with disabilities and their parents should be the ones who make the decisions regarding going to school. However, the schooling and placement guidance provided by Boards of Education tends to ignore the children's wishes and forces them to go to the school the Board chooses. The Boards of Education simply select schools for children with disabilities based on their IQ or hearing loss levels, using criteria set out in a notice produced in 1978 by the Ministry of Education. The criteria says that children with a hearing loss of 90 decibels should go to schools for children with hearing impairment, children with an IQ of less than 50 should go to schools for the disabled, children with an IQ between 50 and 75 should join special classes in regular schools, and those with an IQ of than 75 could join regular classes.

However, the above criteria became invalid when the status of schooling guidance work changed in April 2000 from tasks delegated by national government to those from local governments. Even so some of the Boards of Education continue using those old criteria when placing children with disabilities into schools. Some parents complain of their coercive guidance. Such complaints include: "We wanted our son to go to a regular school, but the Board of Education forced him to attend a school for disabled students, claiming that his IQ was too low." "They chose the school for our daughter, using the answers we wrote in a questionnaire sent from the Committee of Guidance and Examination on School Entrance, without our knowledge." "They said to us that they don't want other students to make sacrifices in order to let our son attend a regular school." "They said to us that if we wanted our daughter to join a regular class, a parent would have to accompany her to school at all times. Otherwise, she would be put in a special class, so I quit my job to accompany her." Or in some cases, the Board of Education refused to have further contact after the parents finally managed to have their children attend regular schools.

There are other cases in which the results of physical examinations taken whilst at pre-school are

used to select schools for children with disabilities, or schools are automatically selected based solely on the children's IQ levels, without taking into account the wishes of the children and their parents or the time taken to commute from their home to the schools. Unfortunately, it is true that the right to education of children with disabilities and their parents is not strongly ensured when Japanese government agencies provide placement and schooling guidance.

6. Problems Related to the Education and Training of Teachers and Transfer of Teachers

265. Teachers who deal with children with disabilities are required to have expert knowledge on various types and degrees of disability as well as the ability to provide curricula that meet the special needs of such students. They should be well versed in human rights education and the principle of non-discrimination. They have to be familiar with general teaching methodologies as well as have an expert level of knowledge on children's disabilities and development, plus a deep understanding about the rights of children with disabilities and the international treaties and standards that endorse such rights. The more experienced they are, the better teachers they will be. The percentage of teachers who hold an additional license in special education currently in charge of special schools are: 21% in schools for children with visual impairment; 31% in schools for children with hearing disabilities, and 52% in schools for the disabled. The ratio varies depending on the policies taken by each local government. It is not mandatory to hold a special license in order to teach at special schools for disabled students. Some special classes do not even have qualified teachers holding special licenses.

About 80% of the teachers in special education transfer between schools for children with visual, hearing impairment and disabled children only. The remainder may transfer to regular schools. Recently an increasing number of teachers want to transfer from regular schools to the schools for disabled students. Some of those teachers may tend to regard schools for disabled students as refuges from problems such as school violence that they are having to face at regular schools.

On the other hand, we see some cases in which redundant teachers are transferred to special classes for disabled students even though they do not have special education experience and knowledge. In other cases teachers who have obtained expert knowledge on education and teaching of students with hearing disabilities are transferred from a school for the deaf to another school where she is unable to make effective use of her expert teaching knowledge. Since teachers are transferred once every few years, it is difficult for them to establish their own fields. Actually, the teachers in charge of special classes for disabled students are in short supply, therefore, newly hired inexperienced teachers, part-time teachers or older teachers close to retirement are often placed in charge of such classes only to experience a rough time with them.

Under such circumstances, several reports say that there were cases in which teachers actually infringed the human rights of children with disabilities. Some teachers reportedly said to parents,

"Your daughter joins our class at the cost of other students." "Your son shouts in the classroom and causes problems. It's very annoying for me and other parents." Another teacher reportedly hit a disabled student and let him stand outside the classroom after he walked around the classroom during the class hour and tapped his desk. More cases are reported in which when a disabled student was late for class, her teacher told her that she should not come to school but should study at home. A teacher did not give a school record to a disabled student saying it was far below the level to give grade. Another teacher told a disabled student and his classmates in the classroom, "I wish he had been born an ordinary child." Some parents were told by school teachers that, "Teachers think that schools are places for ordinary students, not for disabled students. We don't want to accept them."

It is essential to provide appropriate training and education for teachers by giving them opportunities before employment, on the job, or during follow-up training periods, to study the principle and spirit of the Salamanca Statement, the UN Standard Rules on Equal Opportunities for Persons with Disabilities and the UN Convention on the Rights of the Child. Such training would enable the teacher to recognize and fully understand that the cases mentioned above were infringements of human rights.

7. Upper Secondary Education

266. In Japan, there are special high schools for students with intellectual disabilities or high schools annexed to schools for disabled students as well as general high schools. In 1998, about 90% of the students who graduated from special junior high schools for disabled students go to those high schools. In 1999 more than 80% of the students who attended the special classes in general junior high schools went on to high school. However, the ratio is less than that of non-disabled students who go on to high school; i.e. 96.9%.

Due to the recent economic slowdown in Japan, it has been extremely difficult for youngsters to get jobs immediately after graduating from junior high schools. Since more students want to go to high schools, there is an urgent need to establish a new admission system at upper secondary education in which disabled students can go on to high school if they wish. However, unfortunately, it has been reported that some disabled students have been rejected by high schools due to their disabilities, even after they had passed entrance examination. For example, one disabled student was asked not to take the entrance examination by the high school. In another case some students with disabilities and their parents were not given an opportunity to talk with teachers about their future career plans. In yet another case a high school refused to accept a disabled student who passed the entrance examination giving the reason that they did not have the facilities and equipment appropriate. A student with a hearing disability was told he could go to high school if he promised not to ask the school to provide services such as sign language interpretation. Another student was refused the opportunity to take an entrance examination because they had used illegible handwriting

when filling in the application form.

On the other hand, a few high schools allow students with disabilities to take the entrance examination using Braille or being helped by someone who writes the answers to the examination paper for them. We continue to say that the obstacles for children with disabilities to upper secondary education are not insurmountable.

The School Education Law prescribes that high schools could have special classes for students with disabilities. Currently there exists only one special class for students with disabilities and that is open for students with autism at a high school attached to the Nishinihon College. Most disabled students go to special high schools for students with disabilities after they graduate from junior high school. The problem here is that special high schools are not usually located near their home, so they have to commute a long way or live in dormitories. Another problem is that most special high schools are extremely large and overcrowded.

8. Nursery School

267. An increasing number of children with disabilities go to nursery schools at earlier ages. In 2000, 9,443 children went to nursery schools, receiving benefits from the national government. However, there were also cases in which children with disabilities were rejected by nursery schools, daycare centers or kindergartens because they have disabilities. Actually in most cases, children with severe disabilities are not accepted. If a nursery school decides to accept a child/children with disabilities, most local governments usually increase the number of nursery nurses who work there by two or three. But there was a case in which a single nursery nurse took care of five disabled children at a time. A visiting expert program may be helpful in providing technical support for nursery schools that have no specialist staff for children with disabilities. However, currently there is no such program being provided officially in Japan. Where unofficial programs are implemented by a few local governments, they are infrequent, running only two or three times a year. There were other cases in which some children with disabilities were rejected by nursery schools even when they met the conditions of acceptance. The purpose of providing children's welfare services should be to support families in promoting the satisfactory development of all children including disabled children. Introducing home visiting teacher/expert programs and not confining children with disabilities to special facilities would help them enrich their social and academic experiences and may promote an integrated education.

9. After-school Program

268. Amid Japan’s long economic slowdown, the need for good after-school programs for all children is rising. This is the result of more parents working outside the home and more schools having a five-day school week system. An appropriate after-school program would enrich not only the

children's lives but also their parents' by providing a good place where children could stay and do a variety of activities after school with good staff.

The number of children with disabilities who join after-school programs has increased 1.8 times over five years from the number recorded in 1993 (Source: National Association of After-school Program Services). In 2001, a new system started to provide subsidies for after-school program services that accepted children with disabilities.

However, a number of children with disabilities are refused entry to after-school programs because they have disabilities and cannot join in as the other children do. One parent asked the staff of an after-school program to accept his son and provide an additional caretaker for the after-school session at his expense. The after-school program staff relied: "Why don't you let her take care of your son at your home? We would prefer not to accept your son." Another parent was reportedly told by staff of a publicly-managed after-school program, "We don't have space for your son to lie down and take a nap." If accepted, most after-schools will only accept one child and do not have enough in their budget to hire additional staff even after the new subsidy program started. In order for more children with disabilities to join after-school programs, it is necessary to provide transportation services from school and increase the number of staff.

10. Employment

269. Children with disabilities usually face difficulties when they try to get jobs after they graduate from school. In Saitama Prefecture, only 24.4% get jobs or enter higher-level education, and about 70% go to facilities for disabled persons. On July 1, 1998, the mandatory employment quota for persons with disabilities was changed to 1.8% for private companies, 2.1% for public corporations, and 2.1% for national and local government agencies. At that time, the number of employers with intellectual disabilities was to be included when calculating the employment quota. However, the revised quota was still low, and the Ministry of Labor announced on June 1, 1999 that the actual employment rates of disabled employees were 1.49% on average, and 1.52% among companies with more than 1000 employees. Some persons with disabilities who failed to get jobs are facing serious problems because they are forced to stay home thus being subjected to various stresses, or confined to special facilities for disabled persons.

Moreover, there are many cases in which those who could get jobs are not so happy with their working environments. Some are forced to accept favors from their employers that have strings attached and agree to lower wages than other employees. Some could only be employed as part-time or temporary workers ineligible for wage rises or severance payment. When disabled employees asked their employers to provide sight interpreters or equipment aids, to modernize buildings in order that they are barrier-free with the help of standard ramps and railings, accessible facilities and elevators, they were simply refused or sometimes experienced discriminatory

harassment. It is clear that disabled employees are not provided with career opportunities on a fair and moral basis.

One report said that a worker with an intellectual disability who worked at a corrugated cardboard manufacturer in Mito City, had been the recipient of violence and sexual harassment from his employer for years. Another case, that of a shoulder pad manufacturer in Shiga Prefecture, has gone to trial in both civil and criminal proceedings, accused of: misappropriating a part of the disability benefit of employees with disabilities; not paying wages to them; forcing them to work long hours under harsh conditions, and being violent toward them in the factories and dormitories.

Recently more employees with disabilities are being forced to quit their jobs due to slow business performance. Some people who became disabled after employment are also being forced to quit simply because they cannot do the same job as before. If such employees do not agree to quit, they tend to be laid off or fired.

270. 11. Article 23 of the School Education Law stipulates that the parents of children who have difficulty attending school due to their weakness or child hypoplasia or other inevitable reasons, are provided with immunity or grace from the obligation to provide education for children. In 1999, 616 children were given permission not to go to school and 1,095 children were proposed as possible suspensions, whereas in 1994, the numbers were 379 and 1,077, respectively. Not all of the children who were allowed not to attend school have disabilities, and the reasons are not disclosed. However, it is clear that some of them may have been able to go to school if the schools had provided the staff, facilities and equipment required for them, and their parents did not truly want their children to be absent from school during their compulsory schooling years.

12. Corporal punishment/ill-treatment

271. Cases in which children with disabilities have suffered corporal punishment at school, corporal punishment, ill-treatment, sexual harassment, indecent conduct, etc. within the family, at the workplace, or in the community, were pointed out in the previous JFBA report. The Committee also considered them and made recommendations, and the Government promised to put measures in place to prevent them. Despite this, corporal punishment, ill-treatment, sexual abuse, etc. against children with disabilities, still continue.

272. The following cases were reported by the mass media. On June 21, 1999, the Kawasaki Branch of the Yokohama District Court sentenced the defendant to a year and a half's imprisonment with labor in the case of a teacher in charge of a special class at a junior high school taking his intellectually disabled student to the toilet, etc. and committed an act of obscenity on the student after school hours on July 8 and 9. In Gifu on June 14 of the same year, a junior high school teacher was arrested on a charge of coerced indecency on the grounds that he took a former student with

disabilities, who had graduated from school that spring, to his house and committed an act of obscenity i.e. touching her body. On May 13, 1998, a staff member at a Gifu municipal institution for those with intellectual disabilities, was arrested on a charge of coerced indecency for touching the body of an institutionalized woman.

273. It was also reported that from September 2000, at a school for disabled children in Hiroshima, a male teacher ill-treated two first-grade secondary course students and two autistic students repeatedly by committing violent acts such as forcing them to eat school lunch. In one student's case, her underwear was covered with blood as a result of her lower body being washed by force. Another case concerns a student who having suffered a particularly large mental shock, wetted her pants frequently, and who panicked, even at home.

274. In 1997, a male teacher at a school for disabled children in Kitakyushu, made a girl student take off not only her lower body underwear, but also her upper body clothes, on the grounds that she had wet her pants. He was found peering at the girl's naked body from above. Also, in 1999, while a second-grade girl student at secondary level was changing her clothes after wetting her pants, the same teacher was found watching her body after making her take off all her clothes. He used violent language like: "You are smelly. Go home." A female teacher, who found his behavior abnormal, protested but he did not listen. It was also reported that he regularly spoke harshly to the student making statements such as: "After all, you are a fool."

275. In addition, the court and police responses to these cases need to be considered. Although the burden of proof can be such that evidence can be insufficient since corporal punishment and ill-treatment occurring at schools and institutions tend to happen behind closed doors. Courts and police tend to take the side of school personnel rather the children with the institution believing that its teachers and personnel are devoted, or are having to handle difficult children. As a result, a disabled child's testimony is believed to be unreliable. Even if an accusation has been filed in the courts or with the police, in many cases, the party for a child with disabilities is lost at trial, or the police did not receive the accusation, or even if it is received, an indictment is waived. Or, even if the judgment is ruled on, the amount of compensation recognized is extremely low when compared with a non-disabled child. It is clear that a discriminative situation remains.

276. In the case where a girl attending S School in Tokyo and her parents filed a lawsuit on November 26, 1996, to seek compensation of two million yen against four parties, including the assailant staff member on the grounds that the child had suffered mental distress as a result of the staff member's violent acts, the Tokyo District Court judged in favor of the girl recognizing that there was a violent act – slashing. The court ordered the staff member and the municipal social welfare council to pay 30,000 yen.

277. At a Nagoya municipal high school for disabled children, a child with medium-level intellectual disabilities received corporal punishment from a staff member when his right eye was strongly

pushed in by the staff member's finger. The second trial defended and emphasized the position of the staff member rather than the human rights of the child with disabilities, alleging that "since, once adopted, a statement during trial may prove to ruin other person's rights (human rights)..." Also, although it is natural that the statement of a person with intellectual disabilities will have some inconsistencies due to the child's disabilities, it was deemed that the statement was contradictory from the viewpoint of a non-disabled person, and as a result was not accepted. Moreover, the assistance of the child's mother and attorney were interpreted in a negative light as leading to the statement of corporal punishment. As a result, the original judgment was annulled.

278. In the abuse case at a certain business firm in Mito where children suffered many sexual abuses, the filed lawsuit was dropped (refer to the aforementioned "10 Employment").

279. 13. Each regional bar association comprising the JFBA is receiving an increasing number of complaints requesting the rectifying of human rights violations on the grounds of discrimination and violation of human rights concerning children with disabilities. As a consequence the following recommendations or demands have been made:

280. In September 1996 in Kyoto, a blank report card was delivered to a child with intellectual disabilities. No evaluation was made regarding learning results or school life. Handouts which were distributed to other children, were also not delivered to this child. In swimming class, children, whom the child asked to attend, were removed. The relevant bar association determined these discriminative treatments as facts, and recommended that treatment differing from the one for non-disabled children must not occur in cases where the relevant ordinary class had accepted a child with disabilities.

281. In Hiroshima, in October 1997 the relevant bar association made a request that measures be taken to ensure the daily attendance of a child with hearing disabilities at a child care institution.

282. The next case concerns a 29-year-old female applicant in Shiga Prefecture, who had graduated from a school for disabled children at the second level in 1985. She was currently hospitalized in a certain medical college attached to a hospital. At that time, Shiga Prefecture decided to implement visiting education from March 1998, however, the recipients of this visiting education were limited to those who were to graduate from junior high school at the end of March 1998. The applicant, since she had already graduated, was not included. The applicant's complaint rested on a request to rectify the human rights violation on the grounds of violation of equality under the law. The relevant bar association judged that there had been alleged violations of equality under the law, equal educational opportunities, etc., and requested that such education be implemented for those who had already graduated as well.

283. The following complaint was applied in December 1998 in Osaka. At that time, Osaka Prefecture announced its intention to abolish Osaka Prefecture Senboku School for Disabled Children,

and guide their transfer over to the ordinary school, etc. of children within the prefecture designated as "sickly". The complaint laid was to request rectification of a human rights violation alleging that such a policy violated the right to education of children undergoing medical treatment. The relevant bar association made a request to halt this reorganization slated for April 1999, unless they could reach the conclusion that children are not termed "sickly" defined in Article 22-3 of School Education Law Enforcement Ordinance either now or in the future after careful examination of long-absent students and children considering the views of doctors and child welfare facility personnel, as well as educational staff.

284. In January 1999, again in Osaka, this complaint was applied. School lunch legislation appeared to have been violated at a certain Osaka Prefecture school for disabled children whose meals were prepared at a prefectural institution at which a large proportion of the students and children lived because the school was established within the institution. The complaint was applied to request rectification of the human rights violation against the children on the grounds that there were no licensed nutritionists or school nutrition staff assigned to the task in violation of the school lunch law. The relevant bar association made a request that one of the school nutrition staff be assigned to the school, as well as efforts be made to prepare menus according to the school lunch implementation standards, and that meals could be prepared within the school.

285. The next complaint was applied in Yokohama in March 1999. At a certain institution in Yokohama, bathing of children with serious disabilities was carried out twice a week for medical reasons, and in order to improve upbringing in the institution and the actual labor conditions of the personnel. The relevant bar association made a request that, considering the effects of bathing on the health and psychology of a child and from the viewpoint of respect for the right to self-decision and the need for individualized treatment according to individual differences, the idea that giving a bath twice a week for all children had no rational reason and it was suspected that this violated the child's human rights. It was also decided that, when a child's diaper was changed while he/she was in the dayroom during the day, that child should be moved to another room in order to respect their privacy.

286. 14. History and social studies textbooks compiled by the 'Japanese Society for History Textbook Reform' and published by Fusosha, were adopted by some schools for disabled children. There are two schools for children with poor health and the Umegaoka Class of Seicho Disabled Children School, among the 45 schools under the jurisdiction of the Tokyo Metropolitan Board of Education. Two Ehime Prefectural schools for disabled children and two schools for children with hearing disabilities are under the Ehime Prefecture Board of Education.

These textbooks are very difficult and too complex for children learning at a school for disabled children for whom easy-to-understand textbooks and materials are required.

In light of the present situation of Japan where children with disabilities are discriminated against and their rights violated, prohibiting discrimination and understanding their rights must be taught, however neither is described in the textbooks, and the obligation is emphasized rather than the rights. Moreover, the prewar conditions under which disabled people were discriminated are affirmed. Understandably these textbooks are arousing considerable criticism, both at home and abroad. The decision at these two boards of education to use them was made as a result of their political position to support the Society while completely ignoring the field of education and the feelings of disabled children and their parents. This is a problematic decision based on a non-educational judgment, that infringes the right of disabled children to receive ordinary education without being discriminated against as well as an education based on their special educational needs. Thus it violates the convention and the international standards concerning disabled children as well as Article 26 of Japan's constitution. Teachers and staff of special schools for disabled children as well as ordinary schools, their parents and citizens' organizations criticized it harshly.

Part 4: Revision of laws and systems, and alteration of policy

287. Considering the recommendations made in the Concluding Observations by CRC, the JFBA Report, and the conditions of the human rights of children with disabilities, as mentioned above, the Japanese Government must revise its laws and systems, and change its policies as follows:

288. 1. It is obvious that the existing legislation pointed out by the Committee in paragraph 41 of the Concluding Observations referred to the Disabled Persons Fundamental Law and the School Education Law and the Child Welfare Law as far as children with disabilities are concerned. In order to ensure practical implementation of the existing legislation (para. 41), it is necessary to proceed with the revision of laws and systems based on the prohibition of discrimination in all legal areas, normalization and inclusion with reference to each provision of the United Nations Standard Rules and the Salamanca Statement, adopted in June 1994, including the improvement and elimination of legal provisions which are not consistent with their concept.

Since the existing legislation does not sufficiently reflect the related international standards, the Government and Diet should immediately start to consider the revision of laws including the amendment to parts concerning children with disabilities of the Disabled Persons Fundamental Law, the School Education Law and the Child Welfare Law, as well as establishing the Act for Prohibition of Discrimination against Disabled People. Advanced legislative efforts from other countries should also be drawn upon, such as: Italy's Basic Law Concerning Assistance for Disabled Persons, their Social Integration and Other Rights; the Americans with Disabilities Act (ADA) in the United States, and with education in mind the "Special Educational Needs and Disability Act 2001" enacted in the United Kingdom on May 11, 2001.

289. 2. Over the last decade, in more than 43 countries worldwide, partly because of the influence of the ADA, an antidiscrimination clause was introduced into their laws or constitution in one way or another. At the end of last August, the United Nations Committee on Economic, Social and Cultural Rights recommended that the Japanese government establish an anti-discrimination law for the disabled, and, during the 44th JFBA Human Rights Protection Convention held in Nara, the resolution to seek the enactment of anti-discrimination legislation for people with disabilities was adopted. Since prohibiting discrimination against children based on disabilities is advocated in Article 3 of the Convention on the Rights of the Child, amendments to laws must be made immediately, including anti-discrimination legislation for children with disabilities, and in particular the establishment of anti-discrimination legislation for people with all kinds of disabilities including those in the educational area, and the inclusion of an anti-discrimination clause in the Disabled Persons Fundamental Law, the introduction of an anti-discrimination clause in the clause of disabled children in the School Education Law and the Child Welfare Law, etc.

290. 3 (1) The Salamanca Statement proclaims that:

[1] Every child has a fundamental right to education, and must be given the opportunity to achieve and maintain an acceptable level of learning,

[2] Every child has unique characteristics, interests, abilities and learning needs, educational systems should be designed and educational programs implemented to take into account the wide diversity of these characteristics and needs,

[3] Those with special educational needs must have access to regular schools, which should accommodate them within a child-centered pedagogy capable of meeting these needs,

[4] Regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system. Also, in Paragraphs 8 and 9 of the Statement, assignment of children to special schools – or special classes or sections within a school on a permanent basis – is given as an exception.

The United Nations Standard Rules declares: “General educational authorities are responsible for the education of persons with disabilities in an integrated setting,” (6-1) and stipulates: “where education is compulsory it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe.” (6-4). The Standard Rule 6-8 also sets forth the provision of special education, but it stipulates: “It should be aimed at preparing students for education in the general school system.” and “…should aim for the gradual integration of special education services into mainstream education.”

For that purpose too, in line with the provisions and clause concerning equal opportunities for people with disabilities in the United Nations Standard Rules, Salamanca Statement, and Article 23 of the Convention, the Japanese government should amend the existing principle of separation in the treatment of children and persons with disabilities, that has been adopted in the fields of education and welfare, and change the basic policy to adopt inclusive education for the principle of education for children with disabilities and review the policies, and stipulate the United Nations Standard Rules, the inclusion of the Salamanca Statement and the basic concept and principles of treatment for the disabled specified in Article 23 of the Convention as their basic concept and rules, and revise the existing laws so as to specify the right to education of the child with disabilities and the parents' right to select this education in the School Education Law, Child Welfare Law, etc. and develop the infrastructure of systems for that purpose.

291. (2) It is particularly necessary to amend the existing provisions of education-related laws and regulations such as the School Education Law, which assign children with disabilities to special educations according to their level of disability, and revise them based on the inclusive education which is implemented according to special needs of children with disabilities, namely, the integration into ordinary schools, and reform the existing special school and special class as a resource center. It is necessary to set forth the United Nations Standard Rules, the inclusion of the Salamanca Statement and the basic concept and principle of Article 23 of the Convention in the first part of the clause on disabled children in the School Education Law, and revise Chapter 6 of the School Education Law, as well as the enforcement ordinance and regulations of the School Education Law in line with this.

Article 71 of the School Education Law provides the aims of schools for children with visual or hearing impairment or other disabilities. Article 71-2 stipulates that "the level of disabilities shall be provided by cabinet order". In response, Article 22-3 of the School Education Enforcement Ordinance sets forth the table "Level of disabilities". However, the School Education Law has no provision stipulating that a child having disabilities as specified in the table shall attend a school for children with visual or hearing impairment or other disabilities.

The child's right to education is part of the fundamental human rights, as specified by Article 26 of Japan's constitution, and the guardian's choice of what education the child should receive belongs to the parents' right to education, which is part of the parents' fundamental human rights, as specified by Article 13 of Japan's constitution. It cannot be uniformly regulated unless there are rational reasons, and in addition, the relevant legal provisions.

However the Government frequently tries to interpret Article 5, Paragraph 1 and Article 14, Paragraph 1 of School Education Law Enforcement Ordinance as giving the authority to put a child in a special school to the relevant board of education, and based on the said cabinet order, they then try to determine the school to attend, and the revising the School Education Law based on

recommendation by the Collaborators Council cited above is the same. This situation must be amended. If they aim to achieve an inclusive, integrated education under the Standards Rules and Article 23 of the Convention, these amendments will be unavoidable. For that purpose, the School Education Law should be amended to stipulate that, in principle, all children shall be admitted to ordinary classes, except those children for whom their guardians apply for exemption to attend special classes or special schools. Also, if the anti-discrimination law was enacted, the provision with this aim should be included in its education clause. Currently, screening of children into ordinary or special schools, and forcing them into special schools are virtually implemented based on the guidance of the Guidance and Examination on School Entrance Committee. However, this committee does not have any legal standing but was merely established based on a government notice. The committee should be abolished and instead, as aforementioned, an inclusive education promotion committee consisting of guardians, persons with disabilities, school personnel, government personnel, etc. should be organized. This committee would consider ways of providing support and developing conditions for all children with disabilities learning in ordinary schools, based on the new definition of "disability" by the World Health Organization, which was previously referred to. This committee would respond to the educational needs of the children. As for "responding to the educational needs" in this case, just as the United Nations stated in its Program of Action for the International Year of Disabled Persons (1980): "the disabled persons should not be considered as a special group with different social needs but a group of normal citizens with special difficulties to satisfy ordinary human needs". Children with disabilities primarily have the same universal educational needs as all other children, but in some cases they have partial or entire difficulties in terms of satisfying such needs within an ordinary environment. Therefore special educational needs arise. It is necessary to understand the structure of these educational needs. For this purpose, these should be stipulated in the School Education Law or the educational clause of the anti-discrimination law. On the other hand, Article 5 of the School Health Law, which gives grounds for implementing screening of schools based on health examinations, must be abolished.

However, although these amendments can be made, from the administrative applications implemented up to today, there is a fear that force will be virtually applied. In order to deal with this, the right of choice and the right to raise an objection must be specified.

The existing class capacity and the assignment of school personnel are not sufficient to incorporate these methods. Basically, a capacity (set number) of one class should be kept small and if a child with special educational needs is admitted, the number of children in this class should be further deceased. In addition, the development of conditions such as a system of two or more teachers in charge of one class, assignment of care personnel, cooperation of educational volunteers, etc. should be sought. All facilities and equipment must be re-examined to assess whether they are barrier-free.

(3) Legislation revision to respect the opinions of children and their parents in determining special educational measures

292. During the previous consideration by the United Nations Committee, the Japanese government delegate explained that, when determining the educational measures for children with disabilities, they give children, etc. an opportunity to reflect on their opinion and the board of education decisions are then determined after considering the interests of the majority of children. However, as already mentioned, the Guidance and Examination on School Entrance Committee, which was established within the board of education to take charge of such roles, does not give sufficient guidance concerning school entrance, and in many cases children and their guardians feel unfavorably toward them because they try to screen children for special schools or ordinary schools according to the type of disability, or persuade children and their parents to give up on the possibility of attending regular classes. In light of the principle that the child's views be given due weight under the Convention (art. 12), it is necessary to review this situation. In the recommendations adopted by the General Discussion, it was emphasized that: "Disabled children should be consulted, involved in decision-making and given greater control over their lives." (l). In view of the above points, for those measures used to determine educational measures, health examination conducted upon entering school should not be forced on children and their parents but left to their choice. When educational measures are determined, in order to respect the children's right to express their views and their right of choice as well as their parents' direction and guidance, procedures to guarantee them an opportunity of being notified and receiving a hearing, access to the related records, and raising an objection, are required. These should also be specified in the School Education Law and enforcement ordinance, and a new organ established to examine such claims. The establishment of such an organ was also recommended in the JFBA's 44th Human Rights Protection Convention.

293. (4) "Standard Regulations Concerning the Equalization of Opportunities for Disabled People" lay down, as a fundamental principle, the provision of equal educational opportunities for disabled people within "integrated settings" throughout the course of education from elementary to secondary and higher education. By "integrated", the Regulations do not mean the mere integration of place of education, but they give a clear-cut vision of an integrated education supported by "proper assistance services" such as the preparation of proper curriculum, high quality teaching materials, on-going teacher training, provision of substitute teachers, etc. Therefore, as for disabled children who attend regular classes, the situation of human rights in regular classes needs to be considered in order to virtually guarantee the right to cultural and spiritual development under Article 23, Paragraph:3 of the Convention, and the right to education under Article 28. This means that instead of leaving them in regular classes by merely guaranteeing registration as a matter of form, it will be required that a full-time assistant and additional teacher will be assigned free of charge whenever necessary, as well as provision of the necessary educational materials. Also, in order to meet the child's "special

needs", it will be necessary to develop the teaching staff at ordinary schools and materials, remodel facilities and equipment, and promote a barrier-free environment. For that purpose, the Ministry of Education, Culture, Sports, Science and Technology must immediately make a statistical survey on the demands of children who attend regular classes and make concrete considerations and develop conditions, and amend any education-related laws and regulations, such as the School Education Law, to that effect.

However, in light of the principle of preserving the child's identity under Article 8 of the Convention, in many cases, for those children with visual and hearing disabilities, it is necessary to continue education within a group of children with the same disabilities by using sign language, Braille, etc. Therefore, for these children, it will be necessary to respect their need for special schools and other special educational needs.

(5) Promotion of inclusion in higher education

294. Upper secondary education should be guaranteed for all children by applying the following measures: amending the present period of compulsory education for disabled children, currently set at nine years, the same for non-disabled children, to be able to extend it by three years when a child and his/her parents wish; increase the number and capacity of senior high schools for disabled children; review the qualifications for entrance examinations and acceptance, and develop educational conditions in order that disabled children can share the course at ordinary high schools if there is enough appropriate support. In the future it will be important to guarantee entrance to colleges and universities.

295. (6) In light of the aforementioned human right conditions at special schools and classes, and to guarantee the educational needs at schools and classes for disabled children, it is necessary to take the following measures and reforms to consolidate conditions, including the posting of specialists to those schools such as physical therapists, speech therapists, doctors and nurses, so that each child can receive the proper individual care with due concern for their disability. This is important since the disabilities of pupils and students being educated at schools for disabled children have recently become diversified and as a result the extent of their disabilities, more serious. Schools need to be found for disabled children and other schools with special classes in the areas where these children live. The number of teachers and staff members will need to match the number required by law. The number of teachers and staff members should be assigned as the trend shows that the number of seriously disabled children is increasing. Employment devices for teachers and staff should be developed that will guarantee them training that will increase their expertise as educational professionals. The present situation needs to be improved particularly in terms of the assigning of technical staff according to the type of disability, and placing them so as to promote their expertise, as well as consolidating any conditions necessary for such improvement.

In addition, it is necessary that the exchange education, visiting class guidance and visiting

education systems be improved.

296. 5. It was recommended that in order to develop a program of promoting alternative means to replacing institutionalization measures, as well as a strategy to liberate children from institutions, educational training and rehabilitation for disabled children should be conducted based on the community in which disabled children live with their families. To enable the disabled child to participate at a community level, the government and local municipalities should carry out a comprehensive review and amend the welfare services for disabled children in light of international standards, including the United Nations Standard Rules, so that disabled children may live with their family as much as possible. Measures such as: (a) improving in-home support services; (b) expanding child care service and after school program for disabled children, and (c) life support, budgetary measures, increased personnel, consolidating conditions, etc. so that children with serious or multiple disabilities may receive educational, vocational guidance and training service, are required. By such means, expanding group homes on a community basis as well as activities to protect the welfare rights and support living in a community, as well as support and education for parents can be taken up. Especially under this long-lasting business slump, the disabled children's parents are being backed into a corner both mentally and economically. In view of this, educational support for both disabled children and their parents is important. In principle, listening to disabled children and their parents should be a legal obligation under the Convention, and management using this should employ it as often as possible in terms of the placement of disabled children as well as the end of this practice. In order to guarantee improved welfare services across the board, it is necessary to increase the capacity of personnel, eliminate community differences in terms of childcare facilities, welfare service content, and improve them.

6. Employment

297. Under the item titled "Employment Promotion, Vocational Training", the Government Report stated that various institutions conduct vocational guidance, placement and vocational training, to all those (including children) with disabilities who want to work.

However, it is the teachers at each school that in reality work tirelessly in the area of preparatory vocational education. They are the ones who find jobs for those children who are going to enter the world of work.

Due to the business depression, the graduate student employment rate is declining year by year. This is greatly influenced in particular by the actual condition that small companies, which have played an important role as employers of disabled children, are now unable to do so. Both the Ministry of Education, Culture, Sports, Science and Technology, and the Ministry of Health, Labor and Welfare have not provided any support in this area. Far from it, they even try to reduce the

opportunity for social participation by setting a time limit on those workplaces that can be used under the welfare program. Those people employed under this program must leave that workplace after three years. For this reason, too, it is necessary to make drastic policy changes in terms of the employment of the disabled in line with the international standards for the disabled persons' right to work. Changes might include having a legal employment rate for the disabled in order to establish the rights of the disabled in a particular field of work.

298. 7. The Committee on the Rights of the Child recommended that the Japanese government take measures to prohibit and prevent violent acts such as corporal punishment and bullying. However, as previously mentioned, they remain unsolved. When the Committee considered the Report, some Committee members questioned the Japanese government about corporal punishment and ill-treatment against children with disabilities, of which there are many examples given in the JFBA's Report. Concrete systems and regulations, such as abuse prevention legislation, a system of notification and the obligation to complete an accident report, should be immediately established. At the same time enforced self-support training in the name of adjustment to society for the independence of disabled children should be prohibited, as should corporal punishment, ill-treatment and violence within institutions, schools and families. For this purpose, institutions and schools should be integrated and made more open and charged with the task of protecting the child's rights.

299. 8. "Awareness-raising campaigns to reduce discrimination against children with disabilities and encourage their inclusion into society" were recommended in the Concluding Observation (para. 41). In this respect, detailed provisions are established in Section 1 of the Standard Rules and Paragraphs 40 to 47 and 68 of Salamanca Statement. The Government should make an effort to keep the public fully informed of the basic concepts clearly stated by the Disabled Persons Fundamental Law and related international standards, in particular the Standard Rules, such as: normalization, complete participation and equality, integration, and inclusion. In 1993, when the Standard Rules were adopted at the United Nations, the Japanese government strongly stressed the need for separate education. This was against the views asserting the principle of integrated education, and as a consequence, the exceptional rule that there is a case where special education is deemed the most suitable form of education for a child with disabilities was added. Against this background, as well as what has been reported in this document, it is clear that the Japanese government does not take seriously the implementation of the Standard Rules and the Convention nor the shift toward inclusion. As has already been mentioned, they continue to implement, in principle, and maintain in practice a separation policy that is focused on separate special education and institutionalization. From these conditions, the publicity of basic concepts is insufficient, and it is more likely that they intentionally do not publicize them. Therefore, the basic concepts must be fully publicized, and the interim

evaluation of the basic policies concerning disabled children should be conducted in light of the related international standards. Issues should be found and countermeasures developed. They should also take note of the importance of human rights education for the disabled children themselves and the raising of their awareness. Also, in the Committee's General Discussion it was recommended that: "States should actively challenge attitudes and practices which discriminate against disabled children and deny them equal opportunities to the rights guaranteed by the Convention, including infanticide, traditional practices prejudicial to health and development, superstition, perception of disability as a tragedy." (e). In this connection, a campaign to overcome a sense of discrimination against the disabled in society and to raise awareness of the importance of respecting disabled persons including children as the subject of human rights instead of the object of kind treatment and guidance, should be developed. In addition, it is necessary to conduct education with this aim within both ordinary and special schools. It should also be incorporated into their textbooks and curricula. Education and training for welfare and educational institution personnel should also embrace this.

300. 9. Conclusion

Inclusive education concerns not only education for children with disabilities but also education for all children and the whole concept of school. It is based on the idea that not only must education meet the independent needs of each child, but that such school reform as is needed to change the education system based on ability streaming and making each child the central character. Therefore, in light of the recommendation made by the Committee, which pointed out that children are exposed to developmental disorders due to the stress of a highly competitive educational system, the system must be changed into one that guarantees the educational needs of each child, and the special educational needs for those children for whom this is difficult. As recommended in the JFBA's last report, the Convention assures children of all kinds of rights covering all aspects. As a matter of course, children with disabilities are also assured of their rights covering all rights. It demands that children with disabilities should be considered even more than non-disabled children because of their handicaps. The Government must guarantee children as being the subjects in the exercise of their rights, the rights to education, medical treatment, welfare, etc. and must consolidate conditions to such an extent that those rights can be exercised.

B. Services Provided for Social Security and Child-Rearing

Part 1: Child-rearing allowance

1. In terms of the child-rearing allowance, efforts should be made to improve the amount, relax the income limitation, and improve the system for confirming actual income.
2. The provision, which stipulates that the allowance for a child born out of wedlock should be terminated once he/she is recognized, should be amended so that the child may receive it after such recognition.
3. The provision, which stipulates that the child-rearing allowance is not provided for a child whose parents are divorced if the father's annual income exceeds a certain amount, should be abolished.
4. Motherless families who do not receive a child-rearing allowance under the existing law, should be made eligible for receiving it.
5. The provision, which stipulates that the child-rearing allowance will not be provided unless it is claimed within five years from when the requirements for payment are fulfilled, has no rational grounds and should be abolished.

301. 1. The JFBA's report concerning the Initial Report on Japan recommended the following concerning the child-rearing allowance:

(1) The regulation to terminate the allowance for a child born out of wedlock when he/she is recognized should be amended so that the child may receive it following recognition.

(2) The provision, which stipulates that a child-rearing allowance is not provided for a child whose parents are divorced if the annual income of the father exceeds a certain amount, should be abolished.

(3) A motherless family for which child-rearing allowance is not provided for under the existing law should be included amongst those eligible to receive it.

(4) The provision, which stipulates that a child-rearing allowance will not be provided unless it is claimed within five years from when the requirements for the payment are fulfilled, has no rational grounds and should be abolished.

302. 2. With reference to the child-rearing allowance, the Government stated in Japan's Second Report (para. 36) that: "The Child-Rearing Allowance scheme aims to enhance the economic stability and independence of fatherless families due to divorce or separation of the parents. The allowance is provided for those children that qualify under the policy in order to facilitate their welfare," and explained the eligibility for receiving the allowance. The mother or legal guardian of a child, whose father is alive but lives in a separate household and is thus not responsible for supporting the child, is eligible for this allowance until the first day of March following the child's 18th birthday. In the case of handicapped children, the allowance is valid until the child's 20th birthday. From April 1999 a mother or legal guardian of a single child is eligible for a monthly allowance of 42,370 yen (full allowance), 28,350 yen (partial allowance). Those with two children will have an additional 5,000 yen. A family with three children will have an extra 3,000 yen added per child.

303. 3. With respect to the recommendations mentioned above, apart from some of the municipalities, which have decided to provide the child-rearing allowance to motherless families, nothing has improved.

On the contrary, the following modifications, which have on the whole reduced the standards, were made from August 2002. Specifically, the requirement regarding annual household income, which used to be less than 3,000,000 yen was modified to less than 3,650,000 yen, and the requirement regarding the minimum household income eligible for a full allowance, which used to be less than 2,048,000 yen, was modified to less than 1,300,000 yen.

In the case of a partial allowance, as the annual income increases by each 10,000 yen, approximately 170 yen will be deducted from the full monthly allowance. In the case of a fatherless household consisting of a mother and a child with an annual income of two million yen, the present full amount is 42,370 yen. In reality, however, according to this modification, 19,000 yen has been deducted.

Judging from the fact that the average annual income of fatherless households is about 2,350,000 yen, when considered with this modification, the amount of the child-rearing allowance has been reduced for many such households.

Moreover, according to this modification, when the benefit period exceeds five years, the allowance will be reduced to almost half. This measure will apply from next year.

304. 4. As mentioned in the JFBA Report concerning Japan's Initial Report (para. 335), "in order to solve this problem fundamentally, the woman's labor issue in Japan must be considered and rectified. For the moment, however, since the Child-rearing Allowance Scheme plays an important role in the economic independence of fatherless families following divorce, improvements such as higher allowances, loosening of the income level requirement, and revision of the system to conform with actual income, must be sought."

Part 2 Day-care centers

1. The admission requirements, as specified in Article 24 of the Child Welfare Law, "In case sufficient child care cannot be provided," should be reviewed to cover all children.
2. To improve the present situation in which many children applying for admission to day-care centers cannot gain admission because of a shortage of day-care centers, the number of day-care centers should be increased.
3. Provision of nursery care services for newborns under the age of one and extended-hour nursery service programs by local government should be promoted in order to improve the situation in which "Baby Hotels" and other facilities, which are not under adequate administrative supervision, are

being widely used.

305. 1. The JFBA's Report concerning Japan's Initial Report made the following recommendations concerning day-care centers:

(1) Children who are admitted to day-care centers should not be limited to those children who have both parents working during the day. The availability of day-care centers should be extended to children that fall into other categories, e.g. children whose mothers are suffering from mental stress due to the pressure of child-rearing and are unable to take care of them.

(2) In order to improve the present situation in which many children applying for admission to day-care centers cannot gain admission because of a shortage of day-care centers, the number of day-care centers should be increased.

(3) Provision of nursery care service for newborns under the age of one and extended-hour nursery service programs by local government should be promoted in order to improve the situation in which "Baby Hotels" and other facilities, which are not under adequate administrative supervision, are being widely used.

(4) The ratio of subsidy borne by the government for nursery care services for newborn babies less than one year old and extended-hour nursery service programs, should be returned to their former 80% from the current 50%. In addition, the standards of employing personnel that are the basis of calculating subsidies should be reexamined to match actual needs.

(5) The nursing fee borne by parents should be limited to material costs for meals and nursery care.

306. 2. In the Second Report, the Government made the following comment only (para. 244): "If it is recognized that both parents cannot take care of their child(ren) since, for instance, both of them have regular daytime work, and relatives living with them or other individuals cannot take care of the child(ren) either, municipalities are required to place and take care of the child(ren) in a day-care center. As at April 2000, Japan had 22,200 day-care centers. Nationwide, 1,788,302 children have used these centers. The cost of day-care centers is borne half by the State, and one quarter each by the prefectures and municipalities (Day-care Center Management Costs Shared)." No report has been written concerning the problem that no improvement had been made until then.

307. 3. During these years, the number of day-care centers was on the decline, as seen in the following figures: 22,899 in 1985, 22,703 in 1990, and 22,195 in 2000.

The number of "children on the waiting list" was: 40,523 in 1997, 39,545 in 1998, 33,641 in 1999, 34,153 in 2000, and 35,144 in 2001. The last two years show a successive increase. (However, in 2001, the Government changed their definition of children on the waiting list to exclude the number of children using unauthorized centers, etc., and it said, according to this new definition, that the

number of such children was 21,031 in 2001. The above figures are based on the traditional definition.) One of the Ministry of Economy, Trade and Industry study groups projects that the number of children on the waiting list will increase to 840,000 by 2010.

308. 4. Because of this lack of day-care centers, the number of unauthorized baby centers, which are not subject to public supervision, is increasing, as well as the number of children admitted. When a baby-hotel opens, no special permissions or owner qualifications are required. According to the "…condition of non-registered day-care facilities in 2001" published by the Ministry of Health, Labor and Welfare, it was proved by on-the-spot investigation that 77.9% of such facilities do not satisfy the government guidelines set by the Ministry of Health, Labor and Welfare. Under these circumstances, there have been cases of death resulting from corporal punishment or lack of nursing care.

It is clear that the day care centers are lacking and need to be increased urgently.

309. 5. From April 2000, business corporations (joint stock) and specified nonprofit organizations have been allowed to engage in the management of day-care centers, which before then had been limited to local authorities and social welfare corporation.

Also, with the revision of the Child Welfare Law in November 2001, local municipalities which have an increasing demand for child care may establish and manage a day-care center using the capabilities of a social welfare corporation and other diverse service providers by positively taking necessary measures such as offering public property as loans, etc., thereby increasing the child care supply efficiently, according to the 2001 White Paper on National Life (p.162).

However it is strongly suspected that engagement of day care center by the private sector including profit making company will lead to low quality of day care service due to cost saving for profit.

310. 6. 40.3% of all day-care centers provide overtime childcare, and in this case, 64.7% of privately operated centers implement this, while only 22.0% of public centers do. This low rate of overtime childcare is partly contributing to the increasing use of baby-hotels, as mentioned above. Therefore, it is necessary to increase the rate of implementing overtime childcare.

VII EDUCATION, LEISURE AND CULTURAL ACTIVITIES (Articles 28, 29, 31)

A. The Present State of Japan's Education and its Educational System

1. Envisioning and designing policies concerning children, like planning and legislating educational procedure, should take into consideration the Convention on the Rights of the Child. In particular, its General Principles of non-discrimination, the best interests of children and respect for the views of children should be positioned as a guiding principle.

2. When advancing educational reform, children who have behavioral problems or face difficulties such as declining academic performance should not suffer discrimination and disregard. Rather, measures and policies based on the viewpoint of building partnerships with these children and assuring their learning require promotion.

1. Suggestions and recommendations in the Concluding Observations of the Committee on the Initial Report of Japan

311. In the Concluding Observations on the Initial Report of Japan, the Committee expressed special concern in several areas. Paragraph 13 stated, "The general principles of non-discrimination (Article 2), the best interests of the child (Article 3) and respect for the views of the child (Article 12) are not being fully integrated into the legislative policies and programs relevant to children." The Report expressed particular concern about "the difficulties encountered by children in general when exercising their right to participate (Article 12) in all parts of society, especially in the school system."

Moreover, in paragraph 22, "While noting the importance given to education by the State, as shown by a very high literacy rate," the Committee declared "anxiety that children are subject to developmental disorders owing to stress in a highly competitive educational system and resultant lack of time for leisure, physical activities and rest, in view of the principles and provisions of the Convention, especially its Articles 3, 6, 12, 29 and 31." The Committee further indicated its "apprehension about the significant number of cases of school phobia (developmental distortion stemming from the competitive educational system, lack of leisure and play, frequent avoidance of school)." Paragraph 23 states, "The Committee is disquieted about the inadequate measures taken by the State to systematically introduce human rights education into school curricula in line with Article 29 of the Convention (insufficient human rights education)." Paragraph 24 reads, "The Committee is deeply concerned about the frequency and extent of violence in schools, especially the widespread use of corporal punishment and excessive bullying among students. While legislation

prohibiting corporal punishment and such measures as hot lines for victims of bullying do exist, the Committee notes with concern that current measures to preclude school violence have been insufficient (the current state where violence, corporal punishment, bullying frequently occur)."

Regarding these areas of concern, the Committee offered the following suggestions and recommendations for pressing issues requiring resolve:

Specifically, Paragraph 43 reads, "In view of the State's highly competitive educational system and its negative effects on children's physical and mental health," the Committee recommends that "the State take appropriate steps to prevent and combat excessive stress and school phobia in light of Articles 3, 6, 12, 29 and 31 of the Convention (overcome the acutely competitive school system)." In paragraph 44, the Committee recommends "the State take appropriate measures to systematically include human rights education in the school curricula in accordance with Article 29 of the Convention (systematic introduction of human rights to school curricula)." In paragraph 45 it states, "In light of, inter alia, Articles 3, 19 and 28.2 of the Convention, a comprehensive program should be devised, with its implementation closely monitored, to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying." It also recommends, "corporal punishment be banned by law within the family, in child-care and other institutions" and that "awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in keeping with the Convention (measures to preclude corporal punishment at school and home). Accordingly, responses to these issues were sought.

As the Committee indicated in paragraph 35 of "suggestions and recommendations," "Further efforts must be taken to ensure that the general principles of the Convention, in particular as pertaining to non-discrimination (Article 2), the best interests of the child (Article 3) and respect for the views of the child (Article 12), not only guide policy discussions and decision-making, but are properly reflected in any legal revision, judicial and/or administrative decision, and the development and implementation of all projects and programs that have an impact on children." To realize the Convention on the Rights of the Child and United Nations-related documents from this standpoint, establishing a school system and educational relations rooted in partnership with children should become the goal. Based on this, instituting a system that guarantees children's right to growth and development, and "learning" to support this right, is earnestly sought.

2. Problems with the final report and ensuing trends of educational "reform"

312. In March 2000, the National Commission on Educational Reform was established as a private advisory group to Japan's prime minister, and in December 2000 the Commission submitted its final report. With the objective of promoting educational reform based on this, the Ministry of Education, Culture, Sports, Science and Technology developed a "21st Century Education New Formation Plan." As part of this, on June 29, 2001, the" revised" education law, etc. was enacted, one that incorporates

the suspension system, the imposing of voluntary service on children, etc. In November 2001, based on the proposal of the final report to "review and amend the Fundamental Law of Education to suit the new age", the Minister of Education, Culture, Sports, Science and Technology consulted the Central Council for Education with respect to a review and amendment of the Law.

313. These discussions on educational reform, that began with the National Commission on Educational Reform's report, are unfolding under a movement to amend the Juvenile Law as countermeasures for juvenile delinquency. However, no inclination to respond to the subjects of concern, and the suggestions and recommendations indicated during the consideration of the Initial Report of Japan as mentioned above, is discernible in them. Worse, they aim at child correction by control, discipline and rote, regarding them as mere objects, rather than undertaking educational reform that pursues child-centered orientation whereby children have a voluntary and active role and become socialized, while building a partnership with them under severe conditions, as suggested by the Ryad Guidelines (United Nations Guidelines for the Prevention of Juvenile Delinquency).

(1) Viewpoint of educational "reform" in common with "amendment" of the Juvenile Law

314. Specifically, the "revised" Juvenile Law enacted on November 28, 2000, was proposed and discussions proceeded against a background of the "increasingly heinous nature" of juvenile crime and "weakened normative consciousness", the two rating special emphasis. During the talks, the Minister of Justice stated, "Juvenile crime will not be eliminated merely by the Juvenile Law.

"It is important to review and amend the whole concept of our society, including a review and amendment of our Constitution, the Fundamental Law of Education, etc., and to pursue the normative consciousness of society as a whole to take moral responsibility, responsibility and obligation, the relationship between individuals and society, as the future way Japan in the new century." (October 10, 2000, Meeting of the Committee on Judicial Affairs in the Lower House).

315. This has a purport similar to that of the Juvenile Problem Council report: "The main cause of increased problematic juvenile behavior is, while the viewpoint of protecting juvenile freedom and rights is stressed and adults cannot deny the excessive degree with confidence, they become tolerant of children and fail to take a firm attitude to avoid conflict and friction. Thus, opportunities to correct children's behavior are lost.

316. The final report of the National Commission on Educational Reform stated, "Bullying, non-attendance at school, in-school violence, class disruption, and the frequency of vicious crimes makes the present conditions surrounding education serious… Behind this is the fact that, while people enjoy the benefits of material wealth under a shroud of enduring peace, children have become frail and incapable of controlling their desire." It defined "how education should be in the present age of affluence." However, the "problematic behavior" of children as mentioned above is not because they cannot control their desire under more affluent living conditions. Today's children are

abused from infancy by bullying, corporal punishment, etc. at school, which mars their dignity; they suffer violation of their human rights and in extreme cases it results in death. In the examination war that starts at elementary school, they are imbued with a sense of being among the winners or the washouts and find themselves exposed to daily stress compounded by anxiety, with prospects, even hope for the future stifled. They are deprived of a chance to respect each other's personality, and learn and develop according to their person character.

317. "Problematic behavior" is the SOS cry of children whose human dignity and human rights are violated, which calls for support for their growth and development according to individual personality. Their conduct betrays their lack of this guarantee and the dire shortage of teaching with respect to their rights as human beings instead of "being taught too much".

318. Instead of seeking a basic solution, against a backdrop of people's "anxiety" that the cause lies in emasculated education, countermeasures for child problems so controversial in Japan today, like more and more bullying, classroom disruption, violence, high school dropouts, absenteeism, etc. and juvenile felonies, have emerged as a movement to "toughen" the Juvenile Law to include heavier penalties and educational "reform" to produce a similar effect.

The result is the 2001 "revision" of the School Education Law.

319. [1] In the wake of the recommendation in the final report of National Commission on Educational Reform that "all shall engage in certain voluntary service," the wording "Efforts shall be made to improve social voluntary service activity, etc. and nature-based experience" was added to Article 18-2 of the School Education Law. In the process of considering legislation, the wording was revised to "social voluntary service experience activity" and "volunteer service, etc." was added as above, but this virtually obligates students to engage in voluntary activity. It advocates that implanting the concept of "service" helps imbue Japanese people with a rich sense of humanity, but in reality it imposes an obligation on children already crying for support.

320. [2] Adopting the recommendation in the final report of the use of "suspension" on the ground that" educating problematic children not be obscured", the provision specifying the suspension requirement was added to Article 26 of the School Education Law. However, the provision's requirement exceeds the existing one from the aspect of practice based on the notification of the Ministry of Education in 1983, but it fails to make the requirement a "last resort" for restricting the "students' right to learn" and stipulate the "minimum period of suspension". Moreover, it does not guarantee the opportunity of students to be noticed and heard, and the content of support for learning during the suspension period is unclear. Thus, it is based on the standpoint of the final report of the National Commission on Educational Reform, which virtually would omit "problematic children" from the realm of education.

(2) Problem in the other viewpoint supporting the educational "reform"

321. In the background of educational reform lies a feeling of frustration stemming from current conditions wherein Japan's international competitiveness, which brought about the nation's fast-growing economy, has started to weaken, and brains, technologies and human resources having international negotiating ability and that support the country's industry have not been well fostered, resulting in a shortage of social leaders. While the globalization of Japan and its economy progresses, the rearing of creative human resources and leaders who can respond to the new age is being recognized as the theme of educational reform, and a movement aiming to realize this while promoting deregulation and the introduction of market principles in education, is emerging.

322. In 1995, the Association of Corporate Executives announced "From *gakkou* (school) to *gakkou* (combined classes)," by which they proposed a combination of three classes: [1] "Basic class" to foster linguistic ability, the capacity to think logically and assure one's identity as Japanese, [2] "Free class" for developing knowledge of science and cultivating aesthetic appreciation (freedom to choose a school without a grade), and [3] "Experience- based class" to build a network.

323. In 1996, the Japan Federation of Economic Organizations announced "Educational reform and corporate behavior - Toward creative human resource development." In it, they advocated flexible curriculum design, expanded range of choice among public schools, implementation and expansion of grade-skipping for creative human resource development, early detection of excellent natural aptitude and talent and education for fostering them, and creation of an educational support network by private enterprise.

324. Responding to economic circle requests, the Central Council for Education in 1996 submitted a report titled "Zest for Living and Latitude to Children" and recommended a form of education wherein children learn and think by themselves, with emphasis on fostering their way of learning and problem-solving ability while drawing out their personality, and featuring experience-based learning in context with actual life plus problem-solving without haste but with latitude. The Ministry of Education in their "Educational Reform Program" declared their intention to address educational reform issues such as the double-track school system, expansion of opportunity of choice, a system to integrate junior and senior high schools, flexible school attendance and the fostering of creativity. The National Commission on Educational Reform also advocates promoting these issues to foster creative human resources and leaders, and some are now being implemented.

(3) The Central Council for Education review of Japan's Fundamental Education Law

325. On November 26, 2001, the Minister of Education, Culture, Sports, Science and Technology consulted the Central Council for Education with respect to drafting a "Basic Promotional Plan for Education" and" how the Fundamental Education Law suitable for the new age should be". The Minister called for a report in about a year, including a review and amendment of the existing Fundamental Education Law. Accordingly, discussions concerning the matter are progressing

within the Council.

Consultation concerning a "review" of the Fundamental Education Law has raised questions from the viewpoints of [1] education to respond to the changes of the times and society, [2] developing each child's ability and talent and building creativity, and [3] fostering the qualifications needed for persons who form the nation and society, such as respect for tradition and culture, etc.

326. However, the Fundamental Education Law primarily "occupies a central position among statutes that aim at basic educational reform, which was positioned among the most vital issues in various reforms sought by political, social and cultural domains in postwar Japan (Supreme Court judgment in the Asahikawa Achievement Test Case, May 21, 1976)." The Fundamental Education Law, enacted on March 25, 1947, was passed to eliminate Japan's prewar militaristic and ultranationalistic brand of education. Grounded on the principles of Japan's new Constitution, popular sovereignty, respect for basic human rights, and pacifism, the 1947 Law has an educational declaration-like significance to replace the prewar Imperial Rescript on Education (Kyouiku Chokugo). It was enacted based on the concept that realizing the principles of the Constitution hinges on the power of education as the root (first sentence of the Preamble of the Fundamental Education Law)," with the objective of "spreading and thoroughly implementing education in the specific shape of the ideals of the Constitution, such as dignity of the individual (second paragraph of the Preamble of the Fundamental Education Law)" and forming "the basis of new Japanese education in line with the spirit of the Constitution." Accordingly, it has quasi-constitutional significance or an educational constitution-like implication.

327. Postwar Japanese education proceeds in the spirit of the Fundamental Education Law, but for various reasons the idea has not necessarily been realized. In the field of school education a "problematic situation" exists wherein children are reluctant to learn, cases of bullying, school violence, classroom disruption, etc, tend to mount and the numbers of students who don't attend schools and become high school dropouts are on the rise. The task of review continues on the assumption that this "problematic state" has resulted from the Fundamental Education Law.

328. Judging from the process of establishing the Fundamental Education Law and the aspect of its quasi-constitutional significance, or educational constitution-like implication, the following basic questions have been raised by various circles including the Japan Federation of Bar Associations regarding the Central Council for Education's argument.

329. [1] Just as it lacked the substance to show the link between the Constitution and the Fundamental Education Law during the formulation process as a premise of debate, the Council's discussion in the "review" of the Fundamental Education Law has largely ignored the link between the two. Primarily, to promote realization of the basic principles of the Constitution, such as popular sovereignty, respect for basic human rights and permanent pacifism, the provisions, which by nature the Constitution should stipulate, appear in the Fundamental Education Law. This demands strict screening to check

if the "revision" of the Fundamental Education Law violates the Constitution, or virtually modifies it. However, considering the Law's relation with the Constitution, the Central Council's" review and amendment should be effected within the framework of the existing Constitution" and will suffice so long as it does not violate the Constitution. Thus, talks are proceeding toward amending the Fundamental Education Law to the effect that degenerate education for realizing the goals of the Constitution is in progress. The discussion evidently aims to "review and amend" the preamble to the Fundamental Education Law, even its deletion. This preamble expresses the essence of the Fundamental Education Law that was enacted to realize the ideals of the Constitution and to embody the Constitution. Changing this may threaten the link between the Fundamental Education Law and the Constitution and lead to the collapse of democratic education the Law has worked to uphold.

330. [2] During the formative process of the present law, intervention by educational administrative officials and politicians in the educational contents figured prominently in issues of reform and seen as opposed to independence. However, the present discussion, which combines settlement of the Basic Promotional Plan for Education, aims at total intervention in educational contents. In view of Japan's prewar and postwar educational systems, fear prevails that the independence of schooling, which is the basis of the Fundamental Education Law, will fall by the wayside.

331. [3] Emphasis on tradition and culture, nurturing empathy for religion, voluntary service activities, etc, are under consideration, but as these policies allow the nation to tread into the inner value of the individual, they will conflict with the right of mental freedom guaranteed by the Constitution. The attitude of positively promoting these policies by amending the Fundamental Education Law may cause infringement on freedom of mind in the realm of education. Serious questions have been raised concerning the amendment in this direction.

332. [4] Discussions centering on fostering elite individuals and a society to support them are unfolding in talks on the Basic Promotional Plan for Education. However, with this as the focal point, fear prevails that it may erode equal opportunity for education, as guaranteed by the Constitution, and produce individuals who govern, on one hand, and those governed, on the other, thus degrading democracy. This contains problems that cannot be overlooked.

Unfortunately, no signs exist to show that these questions, concerns and anxieties were taken into account when preparing the interim report. As if an established policy, in response to issues raised by the National Commission on Educational Reform, based on the viewpoint of fostering "tough Japanese" who love their country and support national interests in the global community now entering an age of megacompetition, a report is being prepared to urge reform that will allow competitive education.

3. Evaluation of recent educational reform as seen in the Second Report

333. (1) The Government Report stated, as for "Promotion of the development of secondary education",

to promote further diversification of secondary education and realize more individual-oriented education, an integrated course (lower and upper secondary schooling) was introduced in 1999, enabling students and their guardians to choose opportunities to learn under a six-year integrated curricula and learning environment (Paragraph 258)." It also stated, "The integrated secondary education school introduced in 1999 generally should be established within commuting range of a district. Approximately 500 schools will be set up nationwide (Paragraph 259)." However, apparently no consideration was made for the spread of competitive education in the integrated secondary school system.

The Government also stated, "At lower secondary schools, or the lower division of secondary education, electives have been expanded under the newly revised Course of Study. Upper secondary schools, or the upper division of secondary education, may offer various courses to respond to individual ability, aptitude, interests and future plans and maximize individuality growth, such as through general education, specialized education (e.g., agriculture, industry, commerce and fisheries) and comprehensive courses enabling students to choose from both general and special courses. Under the new Course of Study, selection-oriented curricula have been formulated (Paragraph 258)." However, while adopting "selection" and "self-responsibility", no allowance is seen for the trend to drop out, as the tendency is toward elite selection and the situation whereby the opportunity for learning will no longer be open for students who quit school owing to mismatching of courses which is actually decided by grade point not by their will.

334. (2) Under "Securing a Sufficient Number of Teachers," the Government Report states:

"A quorum of teachers is ensured under the quorum improvement plan as repetitively carried out. For five years from April 2001 to March 2006, the 7th quorum improvement plan of teachers and staff at public compulsory education schools will be implemented to increase the quorum for better academic achievement of pupils and students and, careful guidance, so that subjects in which students tend to show diverse achievement levels are taught to small classes of about twenty students (para. 252)." Thus, it treated "small-group lessons" as incorporated in the education-related law enacted last year.

However, on one hand, pursuant to the demands of children, guardians and general people, certain local authorities are beginning to offer classes with fewer students at a higher level than the standard quorum of teachers set by the government, but on the other, the Government aims to implement no more than small-group lessons for streamlined classes, possibly aware of elite education, while maintaining the existing standard. Thus, fear exists that it may generate a gap among children's educational conditions depending on local financial capability.

335. (3) It has been pointed out that this reform in various aspects, based on the viewpoint of fostering

leaders while drawing out the personality of each child, leads to the escape from learning by children with lower achievement levels against the principle of assuring equal opportunity for improving academic performance, which is incompatible with the Fundamental Education Law. At the same time, the reform promotes a competitive atmosphere among children who aspire to leadership. Thus a situation that runs counter to the suggestions and recommendations in the Concluding Observation mentioned above is being ushered in. The Government Report totally ignored this.

4. Freedom to choose forms of education, establish and direct educational institutions

336. In its last report, JFBA suggested, "Places of education should not be limited to schools; rather, alternative forms of education such as Home Based Education i.e. learning at home should be approved." However, in this respect, to date there have been no changes in Japan's educational system.

Article 29 Paragraph 2 of the Convention on the Rights of the Child stipulates, "No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always the observance of the principle set forth in Paragraph 1 of the present Article and to the requirement that education given in such institutions shall conform to such minimum standards as may be laid down by the State." It is interpreted that this guarantees the freedom to establish educational institutions under certain fixed requirements.

However, in Japan, places of general education are limited to schools as provided under Article 1 of the School Education Law, and that "all school education must be conducted according to the Courses of Study officially announced by the Ministry of Education and use textbooks passed screening by the Ministry." This, then, limits the freedom of establishing schools and that of children and parents to choose forms of education.

In consideration of the Government Report, the Committee on the Rights of the Child expressed various concerns about Japan's education, such as developmental disorders due to the stress brought on by an acutely competitive educational system, lack of time for leisure, physical activities and rest, and a significant number of school phobia cases. In Japan alternative forms of education are recently being tried, such as setting places for learning to virtually guarantee children's right to an education (particularly children who stay away from home), setting places for home-based education, or creation of schools not based on the law as places parents deem appropriate for their child's education.

Henceforth, consideration should be made in terms of freedom to establish alternative types of education under certain requirements, recognizing these efforts and transcending the framework of the present school education law.

5. Instances of human rights violation

337. While an educational reform, introducing marketing principles to education, progresses contrary to the concept of assuring the right of children to learn, the Japan Federation of Bar Associations and its regional bar association members have received requests to remedy a number of incidents of human rights violation. Examples appear below, and in each one the violation of human rights was in fact confirmed.

(1) The AUM Shinrikyo – a case of attempted segregation

338. A problem arose concerning school nonattendance by a child of a member of the AUM Shinrikyo religious cult (now called AREFU), wherein a notice to matriculate at a local public grade school was not issued even though the child had reached school age and the customary medical examination was not conducted. Subsequently, the Japan Federation of Bar Associations received a complaint of infringement on human rights. The Federation recommended conducting of the pre-school medical exam, matriculating the child, and providing education the same as for other pupils. It recognized that the discriminatory situation violated the right to equal opportunity for education, etc., the prohibition of discrimination based on creed, family origin, etc. under Articles 14 and 26 of the Constitution, and Article 2 and 3 of the Fundamental Education Law (JFBA No. 65, March 17, 2000). In this particular case, the board of education had considered giving guidance out of classrooms on the ground that parents in the school district were strongly opposed to matriculating the offspring of a member of Aum who would sit in a classroom with normal pupils. It was thought that admitting the child would result in picketing the school and parents transferring their children to other schools, thus disrupting the educational scene. However, no special need to segregate the child from the rest of the students was found.

(2) The Izumi-Kita School for Disabled Children

339. Plans called for reorganizing the Izumi-Kita School for Disabled Children, the only one sickly children could attend while not hospitalized, into a school for retarded children in April 1999. The Osaka Bar Association submitted to the Governor of Osaka and the Osaka Prefecture Board of Education a request to suspend the reorganization and conduct a survey, asserting that the plan ran counter to their legal obligation. The case considered the fact that in Osaka Prefecture, 239 grade school students and 395 of junior high school age failed to attend classes more than a hundred days a year on ground of illness, among whom, 176 primary and 327 junior high school students mainly stayed at home. Thus, evidently an inordinate number of children came under the category of "sickly." Nevertheless, without conducting a survey to confirm the current situation and the future of children, they would reorganize and discard the functions of the school for disabled children, ignoring Article 74 of the school education law that compelled each prefecture to maintain such schools and open them to sickly children irrespective of hospitalization (December 24, 1998).

(3) Six Osaka night schools faulted

340. In 1996, a half-dozen prefectural night high schools in Osaka stopped accepting students. This represented a violation of the right to education, since the move deprived those who for one reason or another could not attend day school the opportunity to receive an education. Accordingly, a complaint was filed. In the wake of it, the Osaka Bar Association recognized that, generally the move would not appreciably interfere with commuting to school because new classes at a high school located comparatively near the existing schools had been established, and evening classes at Osaka Prefectural public high schools adopt the all-prefecture school district system. But problems existed: Discontinuing night classes put individuals at a disadvantage, the standards for naming the schools that stopped their evening classes were ambiguous, the time span between announcement of the plan and its implementation was unduly short and not enough to fully inform applicants and related people. Nor was it long enough to allow a public hearing from people concerned and the community at large. Consequently, the Osaka Bar Association issued a request to the Osaka Prefecture Board of Education that in cases of similar cessation, integration or abolition of evening classes in the future, the standards should be clarified, hearings be held for current students, applicants, people concerned, local residents, et al. and adequate time for publication prior to performing the disservice be allowed (January 26, 1999).

(4) The case of nine Tokyo part-time high schools

341. Starting in 1993, based on a "three-year plan," nine Tokyo part-time high schools as well as ten classes at nine schools were abolished, resulting in the call for matriculations ending. About this, the Tokyo Bar Association presented its views that the abolishment stemmed from the Metropolitan Government's adoption of a single-class school policy wherein one grade has only one class as the standard of abolishment. However, the adverse effects of single-class schools (called that since their diminutive faculty does not allow diverse class development, leaving fewer chances for students to develop through friendly competition and virtually no opportunity for extracurricular school activities) can be overcome by the efforts of teachers and students. In defiance of this, minus a single hearing of opinions from students and their parents, teachers and staff aimed at preventing the single-class system, the Government steamrollered through its abolition of part-time high schools solely on the ground of single-class schools. This unilateral act, which makes commuting very difficult for a broad range of students, such as those who dropped out in order to work or left regular high school students who once refused to attend junior high school but now want to continue their education, those suffering from mental or physical disorder, violates the right to an education of not only future applicants owing to excessive commuting time, but also of existing students since it degrades their educational conditions as the outgrowth of fewer students and teachers. Based on this, the Tokyo Bar Association urged the Governor and local authorities to reconsider the measure to stop soliciting matriculations owing to the abolishment of schools and classes, and hear the opinions

of students, parents, teachers and staff to assure attendance at part-time high schools by setting a commuting time of not more than 30 minutes from home, etc., and to return the standard for abolishment to the former one.

(5) The Yokohama high school case

342. Based on the "Yokohama Municipal High School Reorganization and Development Plan" settled in March 2000, the City of Yokohama ruled to discontinue soliciting new students at five part-time high schools and one vocational high school by stages starting in 2002 and combine them into a new full-time comprehensive high school and a similar part-time three-shift high school. On the heels of it, a complaint was filed demanding rectification of human rights violation, alleging that it trampled the right to an education for the existing students and part-time high school aspirants. In response, the Yokohama Bar Association which accepted the complaint, expressed its views: In today's Japan, part-time high schools play a vital role to provide education to students who didn't attend junior high school or dropped out of regular high school that newly established schools cannot satisfy. Moreover, the advancement rate in high school has reached 97%, which means that guaranteeing the right to a high school education should be respected the same as with compulsory education. From these standpoints, it was felt that the system modification [1] violates not only the right to education guaranteed in Article 26, Paragraph 1 of the Constitution but also the equal opportunity for education guaranteed by Article 3, Paragraph 1 of the Fundamental Education Law. It also [2] violates the provision of Article 28, Paragraph 1 of the Convention on the Rights of the Child, which stipulates that the State shall encourage the development of different forms of secondary education, make them available to every child, and take measures to encourage regular school attendance and reduce the drop-out rates. It furthermore [3] violates Article 3, Paragraph 2 of the Fundamental Education Law, which stipulates the scholarship system be used by the government and local authority for students who find it hard to attend school owing to financial straits in spite of their good ability. And [4] it violates Article 10, Paragraph 2 of the same law, which specifies that educational administration must be effected with the aim of developing conditions needed to pursue the objectives of education. Based on these, the Yokohama Bar Association submitted its recommendations to the mayor of Yokohama to reconsider its discontinuance of calling for students and hear the views of a wide range of individuals concerned, such as students, parents, teachers and staff, and opinions from the perspective of possible suspension and restarting the call for students, etc. (November 20, 2002)

(6) Lunch at an Osaka school for retarded children

343. A certain Osaka Prefectural school for disabled children, an educational facility for the mental upgrading of retarded children, normally served lunches supplied by a prefectural institution where most of the students lived. But with the number of children living in the institution declining, providing lunches was outsourced to a concessionaire and prepared in the institution's kitchen according to a menu based on the standard of nutriments required for adult workers, which was

excessive for the children. A nutritionist at the institution decided what went into the lunches. The Osaka Bar Association saw that notification of school lunches based on Article 3, Paragraph 2 of the School Lunch Law was not submitted. Moreover, assignment of the school nutritionist was not made according to law and the menu was not prepared based on the school lunch standard. Accordingly, the Association submitted requests to Osaka Prefecture and the Osaka Prefecture Board of Education, seeking to improve the above faulty conditions.

(7) The Shiga case

344. In 1999, Shiga Prefecture launched visiting education in the upper secondary course of a school for the disabled based on "The First Report of the Conference of Research and Study Collaborators for the Improvement and Reinforcement of Special Education" issued by the Ministry of Education on February 14, 1997. Because the report included such descriptions as "persons currently receiving visiting education at junior high school and continuously need this form of tutelage," the intention was to limit such education to new graduates, hence the prefecture excluded a request from a lower secondary course graduate while conducting this form of education. Consequently, the Shiga Bar Association, which recognized that the measure violated the equality provided for under Article 14 of the Constitution, and by equal educational opportunity, etc., as stipulated in Article 3 of the Fundamental Education Law, on October 14, 1998, requested the Shiga Prefecture Board Education to effect improvement.

345. The cases of human rights violation taken up with bar associations as described above, clearly reveal the present situation wherein the children's right to an education is not only insufficiently guaranteed but even likely to be disregarded. This reflects the general trend of Japan's educational reform as well as its educational policies and measures.

B. Corporal Punishment

1. To rectify the present situation in which the use of corporal punishment in schools does not describe a tendency to ebb, teachers, parents and communities must be trained in how to educate without resorting to corporal punishment, with the practice enforced among school faculty and personnel.

2. In cases of corporal punishment already imposed, a public system enabling the victims to report the fact and seek correction should be established, one in which the victims may request information regarding the corporal punishment and demand correction of inaccurate information.

3. Specific measures should be devised to impose harsh disciplinary measures on those culpable for

inflicting corporal punishment and to initiate criminal proceedings against them, as well as to fix the civil responsibility with punition imposed commensurate with the act.

1. The status of corporal punishment unimproved

(1) Corporal punishment at school

346. Paragraph 163 of the Japanese Government Report states, "Corporal punishment at schools is strictly prohibited under Article 11 of the School Education Law. The Government has instructed educators to steadfastly abide by this provision, including during training courses and conferences… The National Center for Teacher Development, an independent institution responsible for unified and comprehensive training programs for teachers at the national level, provides lectures on education-related laws and ordinances… and at an annual conference of student guidance teachers the Government promotes their awareness of this matter."

Nevertheless, in defiance of these efforts, surveys and analyses of the actual situation aimed to determine the amount of corporal punishment being imposed, the nature of the problem, why it was administered and by whom, etc., were not mentioned in the Report. Nor were there any comments on whether a method of education and guidance minus corporal punishment was even developed.

(2) Annual Ministerial report on corporal punishment

347. Every year the Ministry of Education, Culture, Sports, Science and Technology issues a report titled "The Present Status of Various Problems Related to Student Guidance and Measures Taken by the Ministry." The document recounts the number of cases investigated to elicit facts regarding corporal punishment inflicted at public primary, junior and senior high schools, based on complaints, reports, etc. submitted by students, their parents, et al. According to this, from 1995 to 2000, annual investigations for corporal punishment numbered from about 950 to 1,000 cases at some 800 to 850 schools, revealing that more than 1,500 students were victimized. While this figure is viewed as no more than the tip of an iceberg, the problem remains that it describes no tendency to decline, although according to the Government Report, efforts were being made to realize the principle of banning such punishment.

As for disciplinary action taken against public school teachers and staff, such as dismissal, suspension, pay cuts, rebuking or enforced resignation, the number of cases resulting in such dispositions hovered at the level of around 400 after reaching 300 cases in 1995. In part, efforts are afoot to realize the prohibition of corporal punishment by stemming it through disciplinary action taken against faculty and other school personnel, although instances of corporal punishment itself refuse to decline.

2. Specific cases of corporal punishment violating human rights

348. (1) When human rights guidance, etc. are given at each local bar association, many cases remain

wherein advice is sought for corporal punishment. The following are some of the incidents of filing complaints regarding the violation of human rights, with corporal punishment recognized by the relevant bar association.

349. [1] Brutality in Oita Prefecture

At a municipal junior high school in Oita Prefecture, while instructing students during training for an athletic meet, the teacher discovered two boys each holding soda pop in a paper cup. Enraged, the teacher beat them both ten times. When one rebelled, the man knocked him down, mounted a cockhorse, walloped the boy with his fist and banged the back of his head on the floor several times while clutching his collar, inflicting painful injuries. Judging such brutality as the kind of corporal punishment specifically prohibited by the school education law, that even criminal charges might be brought against the teacher, and that it occurred in full view of many students and teachers, the Oita Bar Association gave considerable mental encouragement to the victims. The Association on July 9, 1997, rebuked the school as maintaining an atmosphere condoning such punishment, asked that the teacher be forbidden to inflict corporal punishment again, and requested the school and the local board of education to tell him in no uncertain terms the meaning of respect for basic human rights and the rights of children.

350. [2] Smoking in Kyoto

At a prefectural high school in Kyoto, a student found to possess cigarettes was punished by hanging upside down from the third floor window of the school building. The Kyoto Bar Association, recognizing it as an extremely dangerous form of corporal punishment, which could have resulted in fatality, on February 13, 1999 admonished the culpable instructor, the school principal and the prefecture board of education for failing to take appropriate action in light of the inordinately severe punishment and strongly requested appropriate measures to prevent further corporal punishment.

351. [3] Slapping in a junior high

At a town junior high school in Kyoto Prefecture, students were slapped on the face several times when a teacher criticized them. However, other teachers who happened to observe neither stopped nor aired it during school personnel, faculty or grade teachers' meetings, and no information regarding the incident was given to the students' parents. Viewing this kind of punishment as a blatant violation of human rights, the Kyoto Bar Association on September 21, 2000 demanded that the school take measures to preclude corporal punishment, establish a system enabling mutual control among teachers by reporting punishment at faculty meetings, warn school personnel not to use corporal punishment and notify parents of the nature of student guidance.

352. [4] Wrong attitude during chorus practice

While instructing Osaka Prefectural junior high school students in how to do their best in an upcoming chorus contest, the theme digressed to student smoking. When a boy rebelled, the

instructor walloped him with his fist, causing bodily harm. In response, on March 26, 2001, the Osaka Bar Association submitted a demand to the school and the municipal board of education to impose thoroughgoing measures to prevent recurrences of such corporal punishment by telling teachers and school personnel clearly what they can and cannot do and by responding severely to cases that already occurred.

353. (2) The illegality of serious corporal punishment as recognized in judicial precedents

354. [1] Corporal Punishment caused non-attendance to school

One case centered on a second-year municipal junior high school boy who suffered unjustified discriminative treatment by the class teacher. Not only that, when visiting the boy's home, the teacher was violent toward the student. Consequently, the boy filed a suit seeking compensation from the teacher and the city on the ground that, as the result he became a truant and his academic record declined, denying him admission to the high school of his choice. The judgment of Osaka District Court on March 28, 1997 explained the basis of the decision as, "Tangible force in the form of disciplinary action should be made carefully only after considering various contingencies, such as the degree of action, physical and mental developmental status of the student, his character and daily behavior, how the action affected the student, etc. Disciplinary action beyond the limit required in the realm of education is illegal. Moreover, action that causes physical injury is regarded as illegal corporal punishment, and constitutes an act of tort." It ruled the action, which caused the student a cervical sprain, was unlawful in lacking the educational need.

355. [2] High school girl attacked by her teacher

A high school girl was attacked by her class teacher, with blows to the head and face, merely because she was looking elsewhere while supposedly listening to instruction during a school assembly, with the result the girl sustained injuries. A suit was filed against the teacher and the school to seek compensation. The judgment of Chiba District Court on March 25, 1998 recognized the liability for compensation on the ground the teacher's brutal act was unwarranted hence illegal, and the school, as the employer, had to share the responsibility.

356. [3] Sixth-grader hangs self

A sixth grade boy who was beaten by the class teacher committed suicide on the same day by hanging himself on a mountain behind his house. The parents filed a suit against the municipality to seek compensation on the ground the boy hanged himself as the corollary of his teacher's violent act. The Kobe District Court, Himeji Branch, on January 31, 2000 explained as its premise for judgment that the teacher's violence, recognized as caused by finding an emotional outlet after becoming furious at the child's behavior, could not be regarded as the right to discipline the child in the guise of educational guidance, but as a mere act of violence. Inasmuch as the child did not misbehave to the extent of requiring harsh disciplinary action, the court recognized that the act had given the boy a mental shock, prompting him to hang himself. Presumably, feeling he was dealt an unreasonable

blow by his teacher plunged him into a mental strait in which he believed this lone recourse was suicide. Thus, the court recognized the causal relationship between the violent act of the teacher and the boy's suicide, as well as the liability to render compensation.

357. (3) Corporal punishment not only limited to schools

Considering the many incidents of human rights violation filed with bar associations and of courtroom cases, it becomes clear that corporal punishment is not peculiar to limited areas or schools but lingers as a general trend. The climate allowing corporal punishment that prevails among teachers and relevant personnel, school administrators like principals and boards of education, as well as among parents, guardians and local residents, who are supposed to help hinder corporal punishment, must be eradicated.

The Government is required to apply thoroughgoing efforts, such as in educational activities and rigorous responses to culpable teachers who inflict corporal punishment, to eliminate the trend of allowing corporal punishment, instead of merely chanting the outlawing of corporal punishment as a hoary slogan.

C. Bullying

1. To impress upon children that bullying is taboo and human rights must be respected, instruction in such facts should be given at a very early age.

2. As the premise for educating children with respect to human rights, training for teachers and related personnel on the subject children's rights demand improvement, with skill in human rights education developed through a respect for the rights of children.

3. To assure that measures from the viewpoint of remedies and care for bullied children are effective, steps to rectify the problem of bullying children should be taken by establishing a support system based on a cooperative plan without the discarding of bullying children.

1. Circumstances surrounding bullying

(1) The Government's attitude

358. As for measures to prevent bullying, the Government reported, "The police protect victims, with the intention of disciplining the bullies, making efforts to promptly identify bullying by improving child consultation services and asking for community cooperation. Specifically, it provides support to victims who have suffered serious psychological and physical damage through ongoing counseling services by juvenile specialists and guidance officials, and by seeking the help of parents and/or

guardians (Paragraph 249)." But these statements were made only from the standpoint of police activity.

Regarding efforts at schools, it stated: "Schools have dealt with this problem by imbuing students with the recognition that we, as human beings, must not allow bullying and by promoting cooperation between families and the local community, with the basic understanding that the bullying can happen in any school, any class and to any child… The Ministry of Education, Culture, Sports, Science and Technology has been working on ways to promote education in humanity and respect for human rights and the upgrading of *kokoro no kyouiku* (education of the heart). Possible methods include reinforcing the children's sense of normalcy, improving the education/counseling system by assigning school counselors to classrooms to ease children's minds, teaching instructors how to deal with bullies, and effecting cooperation among schools, families and the community (Paragraph 263)."

However, no specific reference was made to measures to correct bullies or care for their victims and the status of progress, if any. Nor was there mention of whether or not instruction based on the concept that education to respect human rights is being given or even feasible through each child's experience and that his/her rights are respected. That anything in this vein is being done remains indeed questionable, considering the child human rights violation cases at schools as cited in this report.

(2) The annual Ministerial Report

359. Every year Japan's Ministry of Education, Culture, Sports, Science and Technology publishes a document titled "The Present Status of Problems Related to Student Guidance and Measures Taken by the Ministry." According to its survey from 1994 to 2000, the number of bullying incidents at public elementary, junior and senior high schools, and schools for special education in 1995 peaked at 60,096 cases, after which the number declined for five consecutive years to 30,918 in 2000. The number of schools where bullying occurred ebbed, as did the number of cases per school, remaining at the level approximately between 3.76 cases and 3.31cases. But doubt prevails whether the decline actually describes the status of bullying.

2. Specific cases of bullying violating human rights

(1) Survey results show bullying cases as on the wane

360. The Ministry of Education, Culture, Sports, Science and Technology's survey showed the number of bullying cases as declining. Nevertheless, the number of cases seeking correction of bullying filed with each regional bar association remains high.

The number of telephone requests for counseling received by "Hot line for Children's Rights" forwarded to the Tokyo Bar Association totaled 2,808 over a five year period April 1, 1997 through March 31, 2002, of which 494 concerned bullying, representing 17.6% of the total and accounting for the largest among various problems.

361. (2) Complaints of bullying recognized by bar associations as human rights violations

362. [1] Hazing drives boy to suicide in Kanagawa

In 1998, during club activity that called for hazing at a Kanagawa prefectural high school and flouted consideration for others and respect for human rights as taught in school and practiced under normal conditions, one boy who was mentally hurt by the misbehavior of others subsequently refused to attend class and fell into psychogenic depression. His parents took up the matter with the school, but when its management did nothing to rectify the matter, their son committed suicide. In the wake of it, since the school simply ignored the situation, other members, also hurt by bullying, left the club or attempted suicide. On January 12, 2000, the Yokohama Bar Association issued a stern warning to the school to view club activity as part of education and school activities, reconsider the club's hazing practice and the school's shoddy response, and henceforth pay heed to each student's daily requirements. The Association also demanded that the school take seriously the appeals of students and parents, keep close liaisons among the faculty and other school personnel, including those associated with matters concerning student rights, and have the entire school cooperate in taking remedial measures, thereby never repeating such a life-threatening incident (YBA Case 1028).

363. [2] Bullied high school girl kills self

In 1996, according to a note containing her last words, a student attending a Hyogo prefectural high school killed herself because of bullying. The Hyogo Prefecture Bar Association claimed that the school while obliged to probe the cause of the girl's death and inform her family of the result, neglected to do so in defiance of repeated requests by the parents. Recognizing that the school's lack of response violated the parents' right to know the cause of their daughter's death, the Association on March 8, 2001, issued a warning to the school demanding an investigation and that it report the findings to the unfortunate girl's parents in good faith (HBA Case 383; KoBA Case.26 of1996).

364. (3) Judicial Precedent

In the cases where a suit was filed by parents who lost their child, inordinate bullying was recognized as fact, and violation of the obligation to maintain security by the school was clearly identified.

365. [1] Blackmailed fifteen-year-old kills self

In January 1996 the parents of a third-year junior high school boy who committed suicide pursuant to being bullied sued the school for compensation on ground the school violated its obligation of security and to investigate and report the facts of the matter. On December 18, 2001, the Fukuoka District Court recognized (a) the fact-based cause-and- effect relation between bullying and suicide on ground the violence of the perpetrators and their efforts to blackmail the student was mere bullying, judging from the fact that he underwent harassment in the form of scorn, sneers, etc., which persisted thus leading to the boy's suicide. The court also recognized (b) the school's

violation of its obligation of security, since the teacher, who heard complaints about harassment from the victimized student three times, should have acknowledged the bullying, and if having taken appropriate action, subsequent bullying might have been prevented. Too, if the teacher had built a relationship of trust with the student, the whole picture could been grasped even if the bullying continued. Moreover, if the information concerning the victimized student had been exchanged, with reports from other teachers shared, the teachers could get to know the student was bullied not only by students in the same grade but by their juniors. If information from the victimized boy's friend, who served as a confidant more than five times had been assembled, and information gathered from communication with the student and his parents had been compiled, the third-grade students' extortion of money would have surfaced.

366. [2] Bullied fourteen-year-old takes own life

The parents of a third year junior high school boy who committed suicide in September 1996, because of bullying filed a lawsuit against the five perpetrators and the school to seek compensation. The judgment of the Kagoshima District Court on January 28, 2002 stated: (a) The court recognized the cause-and-effect relation between bullying and suicide on the ground the boy killed himself because of repeated, persistent violence, etc. by the defendant classmates. The court also recognized (b) the reasonable and probable cause-and-effect relationship between bullying and suicide as the defendant classmates repeatedly committing violent acts over an extended period of time and threatening the victim's safety and very life, thus forcing the boy into a helpless situation mentally and physically at approximately the start of the second term of his third year. Furthermore, the defendant classmates could predict the student's suicide resulting from further violent acts, taking it into account that they knew the media had reported the case of a junior high school boy who suffered repeated, continuous violent hazing being driven to suicide. Consequently, the court recognized the liability of the perpetrating students for the resultant death. As for the school, the court recognized its violation of the obligation of security on ground of ignoring signs that the boy was subjected to violence, etc. by the culpable students, with its administration neglecting their duty to protect the victim from bodily harm and ultimate death.

367. [3] Margarine leads to suicide

The parents of a fourteen-year-old second-grade public junior high school boy who committed suicide in July 1994 filed a lawsuit against ten perpetrators of bullying and the school to seek compensation. The judgment at Tokyo High Court on January 31, 2002, recognized (a) repeated acts of bullying – on the day he killed himself, when coming to school he found margarine spread on his desk and textbooks, water and chalk dust scattered on it, and thumbtacks on his chair – constituted unlawful acts, with a fact-based cause-and-effect relationship between bullying and suicide. On the other hand, (b) the bullying in question was not perpetrated by the same students and consisted mainly of harassment, rather than physical attacks on the victim's person, as in the case of

margarine-smearing just before the suicide, and the violence inflicted was not sufficient to cause extensive physical pain but merely a few bruises. Thus, the perpetrators could not foresee that the boy would commit suicide. As one reason the perpetrators could not foresee the suicide, the court also pointed out insufficient guidance and education on the part of the school. As for the school, the court recognized that (c) its authorities should be able to predict that if hazing, bullying, etc. continue to affect a student, the mental and physical burden on the student will accumulate and intensify, may result in injury or lead to his/her staying away from school or, worse, suicide, which in this case the school should have known. Also, (d) in defiance of the ongoing bullying, the school saw only the personal, accidental and mutual aspects, and fantasized that the matter could be taken care of with an apology or a handshake, and that they had fulfilled their obligation to provide student guidance. The court also recognized that the school's failure to inform the boy's parents about the margarine incident just before the suicide constituted a violation of the obligation of security.

368. It is understood that courts are giving strong warning to schools for their inconsistent response and insufficient organizational system under circumstances where suicides as the sequel to bullying seems unending, and as such cases are covered by the printed and broadcast media, bullied students who kill themselves rate wide-ranging coverage.

369. When a child takes his/her own life because of an incident occurring in school such as bullying, the bereaved family is placed in a position where they can know the truth only when reported by the school, which typically covets the information. Generally, schools in such cases are loath to provide information, thus the bereaved family can only guess as to why their child chose to die, which often ends in a lawsuit to garner the truth. In recent judicial precedents, school obligation to investigate and report the facts to bereaved families has come under fire. The wont of school to hide the evidence after a case like this demands immediate improvement.

D. School Non-Attendance and Withdrawal

1. Developing conditions that enable all children to enjoy their right to an education regardless of personal or family circumstances is essential.

2. Measures that contribute to aggravation of the examination war should stop in order to eliminate stress caused by the competitive school atmosphere.

3. To prevent school dropouts owing to financial straits, the public scholarship system requires improvement.

1. Increasing school non-attendance and withdrawal

(1) The Governmental stance toward problematic student behavior

370. Paragraph 263 treating school non-attendance and withdrawal of the Government's Report states, "Although the causes and background of problematic student behavior differ individually, it evidently arises from intricately interwoven factors such as home discipline, the state of schools and an ever-weakening sense of community solidarity… Every school has been advised to apply the concerted efforts of teachers and other staff members in cooperation with parents and the community, under the leadership of the school principal." It goes on to cite "school non-attendance," "withdrawal from high school" and "bullying" as examples of problematic student behavior.

Thus, school non-attendance, withdrawal from high school and bullying were lumped together as the subject for guidance. No desire to rectify the situation by establishing a partnership with children who face difficulties under such circumstances appears. This betrays the inadequacy of Government policies and measures.

(2) Discrepancy between Governmental statements and the state of affairs

371. In Paragraph 263, the Government admitted that incidents of school non-attendance are mounting year by year, and stated, "To resolve this problem, the Ministry of Education, Culture, Sports, Science and Technology has been taking measures, for instance, by (a) creating more cheerful schools by helping students feel a sense of achievement through easy-to-understand classes, (b) upgrading the education counseling system by adding more school counselors, (c) improving adaptation assistance classes to help students absent from school for extended periods resume attendance through of out-of-school means, and (d) expanding the junior high school equivalency test and university entrance qualification examinations and make a special allowance for students absent from school for long periods in high school entrance examinations." Paragraph 268, "Prevention of stress and non-attendance at school," states, "To help prevent stress at school and non-attendance, the Government has taken a number of measures to reduce absences and improve school admission… In 1999, the extent of students in Japan who did not or could not attend school for more than 30 days was 0.1% for grade school students and 2.5% for those in junior high. The number absent from school for more than 30 days a year has been growing." It went on to say that, to resolve this problem, the Ministry has taken various measures in consideration of the foregoing facts. As for the matriculation system, it stated, "With respect to high school admissions, the Government is working to improve the current system that places undue emphasis on achievement tests by introducing such means as interviews or matriculations based on school principal recommendations, which enable schools to assess students, their ability and aptitude from several perspectives."

The actual number of absences from school in 1999 exceeding 30 days a year stood at 26,047 for grade schools and 104,180 for junior high school students, for a total of 130,227. For the year 2000,

absences of 30 days or more reached 26,373 for grade school and 107,913 for junior high school students, yielding an aggregate of 134,286. While the total number of schoolchildren in general is declining, the number of the absences increased. It works out to one in 279 grade school students and one in 38 junior high school students culpable for excessive school absences. Accordingly, the figures do not show the effects of the Government plan to alleviate school stress and prevent non-attendance at school as performing sufficiently.

While the Government Report referred to diversification of school admission systems, such as allowing matriculation on the recommendation of school principals, it also mentions negative effects in that it causes concern about the unpredictable standards of the system, makes students feel depressed, and prolongs the time needed to prepare for the examination.

Paragraph 268 (2) also states, "For students to enjoy a pressure-free education, the Ministry of Education, Culture, Sports, Science and Technology is also working to improve the contents and methods of education by revising general curriculum guidelines, called 'Courses of Study,' by carefully choosing the contents of education and stressing that it be experience-oriented." Nevertheless, certain views have it that education free of stress is being lost owing to reduced school hours, with disparity in the academic ability of students widening. Thus, "learning" cannot be guaranteed.

Paragraph 268 (2) also states, "Intensification of high school entrance examination competition became a social problem as the ratio of students proceeding to high school increased. Still, competition in high school admission has slowed owing to decreased population of children below 15 years of age." Every year adjustments are made for the number of students who enroll in public and private high schools. In Tokyo, for example, the capacity for students accepted is 96% for third-year (ninth grade) junior high school students as the target value, while the advancement rate at the national level is 97%. Consequently, certain high schools fall short of the quota, with the matriculation rate as low as 91%. Thus, the Report does not reflect the actual state wherein competition in the entrance examination system has not relaxed in the least.

(3) Mounting dropout ratio and insufficient financial aid

372. Paragraph 263 (2), "Withdrawal from high school," states that to rectify the problem, "The Ministry of Education, Culture, Sports, Science and Technology has been taking the following measures: improvement of junior high school guidance and counseling and of the school admission system, establishment of schools offering students multiple options such as integrated schools and comprehensive courses, promoting diversified and flexible high school curricula, personalized guidance, reentry to high school and ensured chances attend college through the university entrance qualification examination." However, in 2000 the number of students who dropped out reached 109,146. The ratio of withdrawals against the total enrollments at the beginning of the year was

2.6% (73,253, for a withdrawal rate of 2.5% for public high schools, and 35,893, or 2.9%, for private high schools). This percentage rose in the order of full-time students in regular courses, those in full-time comprehensive courses, those in full-time technical courses, and those in part-time studies. This shows that multiple options among schools and diversified curricula are promoting the grading of high schools under a competitive atmosphere, and merely causing mismatch of students and the school they chose.

Furthermore, in a section titled "Consideration and support for the burden on families relevant to education of children" (pare.250), it referred to compulsory education offered by national and public schools free of charge, a gratis supply of textbooks for compulsory education, and school expense aids to children who cannot attend school for financial reasons. It also referred to loans from the Japan Scholarship Foundation; scholarships offered by the Foundation, local governments and public corporations, etc. and a reduction of or exemption from tuition for national, public and private universities, depending on student financial needs or other factors. Paragraph 260 specifies, "Free secondary school education, financial assistance, etc." and states, "Japan provides financial assistance for those who are unable to attend high school for economic reasons through the Japan Scholarship Foundation, etc. when necessary. Japan is taking measures to ensure equal opportunity for high school education. Consequently, about 97% of eligible students started high school in 1999." However, owing to strained employment conditions and infrastructure under Japan's recent economic recession, students have had to give up higher education or school attendance in the face of worsening family finances. For the same reason, the number of high school students in arrears paying their tuition is growing, together with the number of dropouts. Nevertheless, financial aid to secure high school education is insufficient. The Government Report makes no reference to these facts.

(4) Ministerial views on non-attendance

373. In September 2002, the Ministry of Education, Culture, Sports, Science and Technology reorganized the Researchers Conference for the first time in a decade to address the problem of school non-attendance involving more than 130,000 students. Reportedly, it was decided to develop measures enabling students to return to school and their self-support in dealing with this problem. However, in the previous Conference, the Ministry clarified its stance by stating, "School non-attendance is not a problem for specific children but could happen to any child, and the attitude of giving guidance from the standpoint of the child is more important than forcing them back to school." But we hear that during the Conference, that changed these views, consideration is in progress based on such ideas as "the tendency to overlook school non-attendance is excessive," "could happen to any child" being misunderstood as "it can't be helped," and "If merely waiting until the child decides to act, the timing of a return to school will be missed,"

There is growing concern about renewed adoption of policies and measures based on the viewpoint that school non-attendance is problematic behavior and intended to force the urge to return to school, rather than seeking a solution to the underlying cause of non-attendance and taking measures that will not result in disadvantage or anxiety with respect to progressing to higher education, etc. as the precipitate of non-attendance.

E. Disciplinary Measures at School

1. Clear and specific rules that define disciplinary measures commensurate with student misbehavior and the due process of imposing the measures must be confirmed. 2. Specific measures are needed to eliminate de facto disciplinary measures that fail to comply with the regulations as proposed above and/or deny children's dignity as human beings, best interest of children or right to express their views.

1. Disciplining that violates human rights

(1) Repeated Government instructions

374. In Paragraph 265 of its Report, the Government stated, "In taking disciplinary action against students, (the Government) has repeatedly instructed boards of education and other educational institutions to take into full consideration the circumstances surrounding each student by listening to his/her explanation and opinions and ensure that discipline has educational effects instead of merely serving as punishment."

However, as mentioned, with the revision of the school education law, the new aim is to promote the use of school suspension. However, even here, a procedure for hearing the views of the child has not been systemized.

With respect to school discipline, JBFA and its regional associations have confirmed the following cases of human rights violation.

(2) Specific incidents of human rights violation

375. [1] Coed virtually expelled for choosing the wrong college

A student at a high school attached to a university wanted to attend a different university, but was disqualified by the school and she was not allowed further attendance, even graduation. As a result, she had to quit school. Regarding this, on July 17, 1998, JFBA issued a warning to the school not to disqualify the girl on ground it violated her right to an education. Disqualification was tantamount to expulsion, but neither the law nor school regulations included a provision concerning this, and the meaning, criteria and procedure were ambiguous. Moreover, adequate notice was not given to the

students or their parents (JFBA Case 24).

Such examples of unilateral discipline not covered by the school regulations are not isolated. Such discipline lacking ground or procedural guarantee often occurs.

376. [2] Boy expelled for going out at night

At a Shimane prefectural high school, discipline in the form of a "recommendation for independent expulsion" was imposed on ground of such behavior as going out late at night, driving without license, etc., which occurred a half-year earlier. Subsequently, the Shimane Prefecture Bar Association made the following recommendations to the school and the Shimane Prefecture Board of Education:

(a) Consideration should be given to enable the student to return to school, since the action taken was tantamount to expulsion, especially since his conduct posed no threat to school life, and the school failed to recognize there was room for self-improvement and reform. Moreover, very few chances were given to the student and his parents to express their views until after the school judged that expulsion was the best remedy. In short, the school's judgment was wrong.

(b) School responses to problematic student conduct should take into consideration the student's best interest and when expulsion is recommended, questioning should be allowed in the presence of the student's parents or representative, taking into account his/her receptivity to education and respecting his/her personality. Reasonable standards to define the relation between problematic behavior and punishment should be prepared and published. In hearings regarding discipline, the student's right to be notified, to an explanation and to express his/her views should be guaranteed, with the contents respected and due process secured, such as for filing an objection to the discipline and a possible review of its appropriateness. Too, educational measures should be taken while implementing the disciplinary procedure (March 14 and July 30, 2002).

F. School Regulations

1. When establishing school regulations, special measures should be taken to ensure that they are limited solely to matters of necessity.

2. A system should be established to allow students and parents to participate in the compilation, revision and abolishment of school regulations.

3. Punishment or other disciplinary measures imposed on students who disobey school rules that fail to meet the above two requirements should be prohibited.

1. Treatment in the Government Report

377. In its Report, the Government merely stated in "School Regulations," Paragraphs 264 and 143, "It is important to review school regulations continually based on the status of students and their parents. From this point of view, the Ministry of Education, Culture, Sports, Science and Technology has provided guidance for boards of education." In this, however, no reference was made to such issues as child rights violation caused by school regulations being applied to not only their academic but also their family life, and respect for student self-rule and the thoughts of children when setting school regulations. Nor does it refer to adequate procedures for hearing the views of children, etc. when applying the regulations or responding to their violation, and securing sufficient educational measures for establishing the partnership as indicated in the Ryad Guidelines, etc.

2. Specific cases of human rights violation

378. That the obligation of schools to respect the views of students based on the activities of the student council in the process of forming school regulations lacks due observation is pointed out in the section "Children's right to express their views" of the Report. This becomes evident from the case where the views of children were not respected while the national anthem and national flag were forcefully used during a school event.

In the following cases, regional bar associations recognized human rights violation:

379. [1] Boy forced to change schools for not wearing his uniform

At a municipal junior high school in Osaka Prefecture, which required students to wear "standard clothes", with details of colors, caps, outerwear, trousers, skirts, shoes, socks and school bags specified separately for boys and girls in the school rule, one student disagreed and dressed as he pleased. This provoked a statement by the principal that the wearing of the "standard clothes" should not be compulsory and that the choice of attire was guaranteed based on respect for human rights, and the faculty and staff understood that attending school in ordinary clothes would not be detrimental to education. Nevertheless, classmates bullied the student and repeatedly asked why he came to school looking like that, regarding the boy as a dissident, which ultimately forced him to change schools owing to the psychological burden. On October 19, 1999, the Osaka Bar Association issued a request that the school and the board of education inform the students and their parents that, in spite of the regulations, the choice of wearing the uniform or ordinary clothes in school was optional. It also blamed the school for not having done and ignoring the reaction of the other students and their parents who regarded the student as a dissident instead of giving proper guidance, resulting in forcing the boy change schools for not wearing the uniform.

380. [2] Students denied entry to school for not wearing their uniform

At a municipal junior high school in Fukuoka Prefecture, a student who came to school not wearing the regulation uniform was stopped at the school gate and refused entry unless he went home

and came back wearing it. On June 18, 1998, the Fukuoka Prefecture Bar Association informed the school that the children had the right to learn, asserting that denying them entry was a violation of human rights, which is unacceptable in the field of public education.

381. [3] School admonished for insisting students wear a uniform

At a municipal junior high school in Oita Prefecture, where, according to school regulations, details of the school uniform were prescribed, even to collar height, type and spacing of buttons, pocket design, etc., students were enjoined to dress accordingly. If they dressed otherwise, guidance should be given. Students who wished to attend school wearing ordinary attire but did not disrupt school life because of it, were asked to submit a report stating so, but the reports were refused and returned. On March 29, 1999, the Oita Prefecture Bar Association, recognized that the school's action might violate freedom of attire and personal right on ground that the views of students and their parents were not taken into account when prescribing the school uniform. Since the wearing of the uniform was unilaterally enforced, the Association requested the school to fully reflect the views of students and parents when determining the uniform, and make consideration for students who object to it by listening to and respecting their views instead of merely continuing to insist on its wearing.

382. Thus, the situation whereby school regulations are used as minimal requirements but their violation leads to the school's violation of students' right to education, is frequently reported, and in general it is rare that the participation of children and their parents in setting up or abolishing the regulations is guaranteed. The above human rights cases are not special but reflect many similar instances.

G. Content of School Education, etc.

1. The Government and boards of education should stop unjust control over the contents of education, for example by intervention in lesson plans prepared based on instructors' study and experience, and guarantee teachers' freedom of educational practice.

2. Consideration should be made so that social voluntary service activities based on the Revised School Education Law will not force volunteer activities that should be based on children's own volition.

3. "*Kokoro-no-noto* (Notebook of the heart)" distributed by the Ministry of Education, Culture, Sports, Science and Technology as supplementary material for moral education was unilaterally prepared by the Ministry and whose authors and editors are unknown, with the intention of applying

it by force. Thus the Government is unfairly meddling in education, and as the book teaches moral sense, patriotism, etc. based on certain fixed values, it has the danger of violating the freedom of thought and conscience of children. Its use must immediately cease.

1. Illegal governmental intervention in education

383. Article 10, Paragraph 1 of the Fundamental Law of Education states that, "Education shall not be submitted to undue control but responsibly conducted for the benefit of all people of Japan." Thus, unnecessary intervention of administrative authority in the content of education is regarded as unlawful. On the other hand, general curriculum guidelines, called "Courses of Study," have been set by the Ministry of Education, Culture, Sports, Science and Technology to outline standards for public education and for educational materials via the textbook screening system based on the Courses. In this, a problematic situation repeatedly arises, wherein administrative guidance or orders given to teachers when making their lesson plan based on independent research and choosing materials for it, becomes controversial as undue control over education as prohibited by Article 10, Paragraph 1 of the Fundamental Law of Education, thus rendering such control unlawful and invalid.

In a case concerning the use of educational materials, where the Miyagi Prefecture Board of Education issued a directive to drop the use of a "Grade school modern and contemporary history lesson plan" as teaching materials drafted by an independent teachers' research group, the Miyagi Prefecture Bar Association received a complaint to rectify a violation of human rights. Subsequently, on February 22, 1999, the Association told the board of education to provide administrative guidance that fully respects teachers' rights to freedom of study and education and children's right to education in light of the aims of the Constitution, the Convention on the Rights of the Child, and the Fundamental Law of Education. This was on the ground that the board's directive stunted the teachers' free educational activity, their freedom of study and education, came under the undue control clause of Article 10, Paragraph 1 of the Fundamental Law of Education, and violated the children's right to education as provided under the Constitution and the Convention on the Rights of the Child.

2. Forced voluntary service

384. As mentioned earlier, in response to the recommendation given in the final report of National Commission on Education Reform that "all shall take part in voluntary activity," the Ministry of Education, Culture, Sports, Science and Technology revised the School Education Law in 2001 and decided to implement "social voluntary service activity" in school education. The Central Education Council, consulted on how to implement and promote this, and on July 29, 2002 submitted a report "Policies and measures for promoting juvenile voluntary service and experience-oriented activities."

The contents of the report that aims to bring about a society based on a fulfilled life for each individual and stimulating new public interests through voluntary service and the experience oriented activities of young people, includes measures to encourage and support the individual voluntary service and experiences of primary and secondary school children, juveniles 18 years or older, and workers. It also focuses on how the social mechanism should be, ways to foster social motivation and promote voluntary service and experiences throughout society. However, the definition of "voluntary service" is just that hence requires personal initiative, but its category is wider than volunteer activities and includes those not necessarily voluntary as in the catalyst stage. Thus, the report was made under the recognition that in school education it is important to give some trigger to a child to engage in "voluntary service" even if it entails a certain obligation or element of compulsion.

385. Also, as specific measures to promote voluntary service both in and out of school in elementary and secondary education curricula, it proposed [a] measures to support self-action, like establishing contact between activity coordination and a school support committee (tentative name) consisting of parents and people concerned in the community. It also called for [b] a screening method for high school entrance examinations to evaluate volunteer activity experience, etc. with an improvement category in student reports for describing such activities, etc., submitting the reports for admission under a system of recommendation, and issuing a "Young Volunteer Passport (tentative name)" recording and certifying activity achievement to use toward high school credits and for evaluation on the occasion of university and employment examinations. In the case of measures specified in [b], however, concern exists that, instead of fostering a child's initiative for volunteer activities, they produce a sense of obligation or burden, and an assessment and certifying system like the Young Volunteer Passport will drive children into "good boy, good girl" competition. Thus, education to foster a spirit of voluntary activity is being encouraged in a way wherein children learn to accept voluntary service that in some ways is actually compulsory.

3. *"Kokoro-no-noto"* (Notebook of the heart)

(1) A moral bridge between student and family

386. In April 2002, the Ministry of Education, Culture, Sports, Science and Technology distributed "*Kokoro-no-noto* (Notebook of the heart) to all primary and junior high school students across the country, including those at private schools, as supplementary material for moral education, and the Ministry intends to continue doing so.

The way the Ministry describes it, "Kokoro-no-noto" is a book for children to show in an easy-to-understand way the morals students should acquire, and gives a chance for them to individually consider moral values as a means to deepen understanding. It can be used for not only classes in moral training but for other classes. It is also designed as a daily life notebook and a

bridge between the student and his/her family (2001 White book on education, culture, sports, science and technology).

(2) Problems

[1] Forced use

387. The Ministry of Education, Culture, Sports, Science and Technology explained that using this notebook is left to the judgment of each board of education or school principal (August 29, 2002, the House of Councilors Audit Committee deliberation). However, in July 2002 the Ministry had each board of education around the country investigate the distribution status, and additionally noted it would check the state of its use. In other words, using the thing virtually was compulsory.

[2] Cryptic authorship

388. The Ministry says "*Kokoro-no-note*" is neither a textbook nor supplementary reader but supplementary material. In reality, however, it is a government-designated textbook.

Reflecting on Japan's prewar education based on government-designated textbooks, our country's textbooks have the system of adoption by each regional board of education. Moreover, the use of supplementary readers, etc. is subject to report to or approval by the board of education. But "*Kokoro-no-note*" is virtually a government-designated textbook distributed by the Ministry of Education, Culture, Sports, Science and Technology, in defiance of the system (as mentioned earlier, its virtually forced application). This is entirely irresponsible, as the author is not specified but described as "issued by the Ministry of Education, Culture, Sports, Science and Technology." Under Article 21 of the School Education Law, textbooks used in Japan are limited to those that have passed screening by the Minister of Education, Culture, Sports, Science and Technology, or those whose name right is owned by the Ministry.

[3] The illegality of "*Koroko-no-noto*"

389. While explaining various ways of thinking, "*Kokoro-no-noto*" includes a teaching to show certain fixed ways of living and values (senses of good, justice, morals, patriotism, etc. should be developed), and a mechanism to answer accordingly. In other words, it is an educational distribution in violation of Article 10 of the Constitution which stipulates governmental nonintervention in educational contents.

It is necessary to conduct education in issues of the mind, such as morals, justice, patriotism, etc. but it varies individually, and they are not the sort of matters that school education, much less the government, should uniformly teach based on certain fixed values.

[4] In violation of the Constitution

390. "*Kokorono-no-noto*," which shows and teaches certain fixed ways of living and values and seeks answers in conformity with them, has a mechanism for children who read it write their impressions. This has the danger of violating fundamental human rights as guaranteed by the Constitution (freedom of thought, conscience, expression, learning, religion, etc.). "Under the Constitution

which recognizes the fundamental freedom of the individual and respects the independence of the individual in view of national politics, it is interpreted that government intervention that hinders development of a child as a free and independent personality, for example, the forcing of education that implants mistaken knowledge or unilateral concepts in children, must not be allowed also under the provisions of Articles 13 and 26 of the Constitution" (1976 Supreme Court Judgment in Asahikawa Academic Test Case). Moreover, it violates Articles 13 and 16 of the Convention on the Rights of the Child.

[5] A breeding of misunderstanding

391. Looking at the contents of *"Kokoto-no-note,"* the book stands on the concept of "First, rules." Instead of trying to have its readers fully understand the meaning of fundamental human rights, precepts like freedom and obligation are described in a way that "Right requires obligation," which breeds a misconception of the meaning of fundamental human rights, and leads to negative understanding of such rights. The viewpoints of rules drawn by participation, of the right of the minority (including multi-culture) and the right of criticism, are absent.

[6] Patriotism as a category for report card grading

392. Starting in April 2002, "Patriotism" became a subject for evaluation at a substantial number of public grade schools in Fukuoka City. Under the heading observation of social studies on the report card of sixth-graders, the wording "Efforts to acquire self-awareness as Japanese in the world who wish global peace while having a mind to cherish the history and tradition of our country and to love it" appears. According to achievement, it is rated in three levels, A, B and C. This is based on the proposed model prepared by the official report card committee within the Fukuoka City Principals Council, and 69 of 144 primary schools (about half) in the city adopted it. There is an additional note that, although the schools which did not adopt it must pay the printing cost of report cards, the cost of printing for the schools that adopted it is borne by the Fukuoka City Board of Education. Certain NGOs organizations that questioned this filed complaints for human rights remedy to Fukuoka Prefecture Bar Association. As a matter of caution, many non- Japanese children attend these grade schools. They have no viewpoint of respect for each other's cultural identity, values, etc. under Article 29, Paragraph 1 (c), (d) of the Convention on the Rights of the Child.

H. Educating Non-Japanese Students

1. According to Article 29, Paragraph 1 of the Convention on the Rights of the Child, opportunities to study one's mother tongue and the culture of one's homeland in addition to receiving a proper Japanese language education must be guaranteed to non-Japanese children.

2. Multicultural education, featuring internationalized curricula enabling non-Japanese and Japanese children learn each other's culture, should be offered.

3. To rectify the status of many non-Japanese children not going school, an environment allowing them to attend should be provided by eradicating bullying and discrimination against them.

4. To improve the present situation of low ratio among non-Japanese children who progress to high school, measures to improve the entrance examination system, establish a student guidance system after starting high school, and guarantee the use of their mother tongue and homeland culture must be taken.

5. The right to an education under the language and culture of their parents should be guaranteed for children born of military men or civilians of U.S. forces based in Okinawa, and Asian women (including Japanese). Measures should be taken so that they may not be at a disadvantage in advancing to upper schooling or gaining qualifications in social activities.

1. The Government Report fails to tell the whole story

393. Paragraph 255 of the Government Report states, "In Japan, non-Japanese students who study at schools specified by the School Education Law basically are taught in the same manner as Japanese children. When accepting non-Japanese students at Japanese schools, each school is making efforts to help them adapt in deference to their homeland tongue and customs. Special lessons are provided individually to non-Japanese students outside their routine classes in accordance with their aptitude and ability, and at ordinary schools "team-teaching" has been conducted in cooperation with more than one instructor. The Government has prepared and distributed teaching aids for Japanese language learning and guidance materials for non-Japanese students, trained teachers in how to educate them, assigned instructors familiar with the students' native languages as school associates, and posted extra teachers to schools that admit them. The Government has also designated certain local administrations as "pilot local governments" to promote the study of ways to accept non-Japanese children. In extracurricular activities, no restrictions have been imposed on offering non-Japanese students opportunities to learn their own language and culture. Such opportunities are available in several local autonomies."

However, this report does not tell the actual status of non-Japanese students.

394. 2. Ministry or Education, Culture, Sports, Science and Technology FY 2001 "Survey on the status of accepting non-Japanese students who need Japanese language instruction"

395. The number of non-Japanese students registered in Japan's public primary, junior and senior high

schools and schools for children with visual or hearing impairment or other disabilities requiring Japanese language instruction totaled 19,250 in 2001, compared with 18,432 in 2000 (hereafter figures in parentheses are for 2000). This represents a 4.4% increase from the earlier survey and recorded the highest number since initiating the annual survey (Diagram 1).

396. According to school type, 12,468 at primary (12,240), 5,694 at junior high (5,203) and 1,024 at senior high (917), 64 at schools for children with visual or hearing impairment or other disabilities (72).

397. Based on the number of schools enrolling such children, the aggregate reached 5,296 (5,235), for an increase of 1.2% over the preceding year, marking the largest since the first survey as did the total number of children in this category (Diagram 2).

398. According to the same survey, the percentage of students receiving Japanese language lessons stood at 85.6% for those in grade school, 83.7% for junior high, 73.8% for senior high and 32.8% for children at schools for children with visual or hearing impairment or other disabilities. The rest were not receiving any instruction.

399. Measures taken by the local governments are:

[1] Additional assignment of Japanese language instructors

[2] Assigning part-time Japanese-language lecturers or assistants (including educational counselors)

[3] Introducing training for teachers in charge.

[4] Introducing or augmenting educational counseling, etc.

[5] Holding liaison meetings, etc.

[6] Designating research cooperative schools (area)

[7] Japanese language instruction for non-Japanese students living outside designated school districts

[8] Designating center schools (Teaching Japanese language for non-Japanese students attending regular schools)

[9] Preparing and distributing Japanese language study materials

[10] Preparing and distributing teacher's instruction materials, manuals, etc.

[11] Preparing and distributing guidebooks, etc., for parents or guardians

[12] Cooperative measures with NGOs, such as volunteer groups, et al.

[13] Budgeting for purchase of educational materials, etc.

Diagrams 3 and 4 show the present status according to the measures.

3. The woeful state of measures

400. How to compile the number of students who require Japanese language instruction remains unclear, for example, when (in how many years) will they be removed from compilation, whether Japanese national children returned from China are excluded from the compilation, etc. Moreover, the survey conducted by the Ministry of Education, Culture, Sports, Science and Technology includes

students who have never received Japanese language instruction.

In addition, measures to provide foreign children with Japanese language instruction leave much to be desired.

Diagram 3 shows the status of measures taken in Japan's 47 prefectures. The one topping the list is "Preparation and distribution of Japanese language lesson materials," followed by additional assignment and allocations of instructors. In municipalities, the allocation of part-time assistants predominates; also in certain towns, the measures listed above were never introduced. In view of the presence of children from various countries, instruction in Japanese language and other subjects, including on a one-to-one basis, is necessary.

4. Contents of Education

401. The Government Report states, "In actuality, when enrolling non-Japanese students in Japanese schools, each school is making efforts and devising ways to help them adapt to their new academic ambience in consideration of their homeland tongue and customs. Special lessons are provided individually to non-Japanese students in accordance with their aptitude and ability, and at ordinary schools "team-teaching" has been conducted in cooperation with more than one teacher." (para. 255)

This is false.

Most of the measures for non-Japanese children's education adopted by the Ministry of Education, Culture, Sports, Science and Technology are for instruction in Japanese language and guidance for social acclimation. Even then, Japanese language instruction deals mainly with only the basics. Aside from daily conversation, a higher level of learning is essential for learning other subjects. In fact, unless the mother tongue system is established, it impedes the study of other subjects even if they learn to speak Japanese, thus a guarantee of the use of one's mother tongue is essential. Books translated into homeland languages are also necessary

In the current Courses of Study, the foreign language basically is English, particularly in junior high schools. However, since children from many countries live in Japan, languages other than English should also be included in the curricula.

Moreover, the curricula requires internationalization.

In the Courses of Study, "international understanding" aims to foster qualifications required for Japanese living in an "international society." This constitutes education in different cultures and international understanding for the majority (Japanese), and while guidance for social adaptation is stressed for foreign resident children, it underlines the idea of assimilation. There is no viewpoint of multicultural education premised on living and learning with children from foreign lands. The trend seen in forcing "*Hinomaru*" and "*Kimigayo*," or respect for our tradition and culture as Japanese, as emphasized in the consultation on the review and amendment of the Fundamental Law of Education by the Minister of Education, Culture, Sports, Science and Technology, plainly indicates this.

5. Guarantee of homeland language and culture

402. As mentioned earlier, at present only Japanese language instruction and guidance for social adaptation at the initial stage are conducted. Education in consideration of the language and customs, etc. of a child's homeland is conspicuously absent, and even in cases of lessons outside the regular class, instruction is given in Japanese.

The underlying problem remains that public education in Japan is solely for the people of Japan. Article 18, Item 4 of the School Education Law stipulates that one of the objectives of grade school education is that "children develop an ability to properly and adequately understand and use of the Japanese language as required for daily life." This, then, represents the problem.

As expressed in the Government Report, "In extracurricular activities, no restrictions have been imposed on offering non-Japanese students opportunities to learn their own language and culture." Thus, the provision of education in a child's mother tongue and mother culture in ordinary original classes was overlooked and in actuality, the guarantee of one's mother language and culture is all but nil.

The guarantee of one's homeland tongue and culture is required in various senses, such as regarding a child's identity. In particular, if giving instruction in the Japanese language without guaranteeing the homeland tongue, children soon forget their own language. Thus, a guarantee of the child's native language must prevail together with instruction in Japanese.

With ratification of the Convention on the Rights of the Child, legislative preparation must unfold, to include how to guarantee non-Japanese children's right to education in Japan's public school system and guarantee one's mother language and culture in line with Article 29, Paragraph 1 of the Convention on the Rights of the Child.

6. Too many children not going to school

403. The aspect of Japanese society which does not favor the minority is reflected in its school system, and there have been many cases of discrimination and bullying affecting non-Japanese children. Partly because of the present system based on Japanese language instruction and guidance in how to adapt, differences in culture and values are ignored and poor Japanese language ability and diverse values receive a negative evaluation, which appears in Japanese children and forms a cause for discrimination and bullying. Accordingly, many non-Japanese children do not attend school, and reportedly, as the grade becomes higher, the rate of non-attendance increases.

Moreover, the number of non-Japanese children not enrolled in school is outstanding.

Diagram 5 shows the number of foreign residents registered according to nationality and age in 2000.

According to the survey of the Ministry of Education, Culture, Sports, Science and Technology,

"The status of accepting non-Japanese students who require Japanese language instruction," if based on the mother tongue, shows that Portuguese prevails among 7,425 children, Chinese for 5,429 and Spanish for 2,078. It is not clear how much overlaps among foreign residents registered according to nationality as seen in Diagram 5 and non-Japanese pupils and students who require Japanese language instruction, but in addition to Brazilians, Filipinos and Peruvians, many Chinese are newcomers, so a great many children may very well overlap in this respect. Thus, quite a few children presumably are not going to school.

According to a 1999 survey conducted by the "T" City Board of Education in Aichi Prefecture (Table 1), indeed more than 40% of registered foreign residents of junior high school age were not in school.

Evidently, that they do not go to school owing to various conflicts or are dissatisfied with Japanese public education. A scattering of Brazilian and Peruvian schools, etc. have been established recently, but on a small scale, which also attests to dissatisfaction with Japan's system of education. However, the tuition for attending such ethnic schools is high, hence not all children who would like to attend can do so. Children who cannot attend can only look forward to Japanese public education, but under the prevailing system, as explained, fear exists that they will be ejected from it.

7. Guarantee of advancement to high school

404. At present, high school acceptance is based on a screening system. According to the Government Report, the rate of Japanese students progressing to high school reached 97% in 1999. But this figure ignored newcomers from abroad.

Based on the number of foreign residents registered by nationality and age in Diagram 5, the number of children of high school age totaled some 30,000, including Brazilians, Chinese, Filipinos and Peruvians. However, according to the Ministry of Education, Culture, Sports, Science and Technology survey, "The status of accepting non-Japanese students who need Japanese language instruction in 2000," a mere 917 children attended high school. The correlation between the two surveys is not clear as explained in 6 above. However, compared with the number of junior high school students, 5,694 in the survey on non-Japanese pupils and students who require Japanese language instruction in 2001, the number of high school enrollees was a very low 1,024. Judging from this, apparently many newcomer non-Japanese children are unable to advance to high school.

If a screening system same as that used for children born in Japan is adopted for these children, it will be extremely hard for them to get a higher education. While a few prefectures are giving special consideration in entrance examinations, such as setting special categories, adding *rubi* (*kana*) to Chinese characters (*kanji*), extending examination time limits, etc., a 1999 Mainichi Newspaper survey showed that eight prefectures are not making any consideration in this respect. (Since the subject of the survey included Japanese children returning from abroad, four prefectures affording

regard but only to returning Japanese nationals were added). Moreover, even in the case of prefectures that do provide consideration, the subject is limited to Japanese children returning from abroad and children returning from China in 16 prefectures (June 6, 1999, The Mainichi Newspaper).

Table 2 shows the rate of advancement to high schools by children returning from China, for whom comparatively good consideration to enable entering high school is made. Nevertheless, the figure is only about 50%.

This very low rate compared with children born in Japan shows that the problem cannot be resolved by the special regard extended today.

405. Furthermore, there is virtually no system of guidance for children after high school matriculation. In view of the high dropout rate, the immediate establishment of a special guidance system is mandatory. Measures such as increasing school curricula enabling the use of a child's homeland language and culture, for instance, by adding foreign language courses at high schools require implementation.

406. The root of the problem lies in the stance of the Ministry of Education, Culture, Sports, Science and Technology to adhere to the Japanese nationality and the will for permanent residence. During an interview with a Mainichi Newspaper representative, the then chief of adaptation guidance in the Division of Overseas Children Education Non-Japanese Children responded, "Advancement in high school of non-Japanese children shall be judged in the field of education in light of actual conditions. They will be admitted if they consider it significant from the viewpoint of education for international understanding, and if they do not, they will not be admitted." As mentioned earlier, "education for international understanding" is positioned as a resource for Japanese children, and the chief's response was based on the concept that public education is national education. Specific measures should be promoted to ensure that all children, including newcomer non-Japanese, have access to secondary education.

8. Multi-cultural education

407. Article 29, Paragraph 1 of the Convention on the Rights of the Child makes it an important educational issue to find ways to have Japanese children acquire the attitude of living together with friends coming from dissimilar cultural circumstances.

In Japan, this is called education for international understanding or for recognizing diverse cultures and is positioned as a resource for Japanese children. However, it is not an inherent right for newcomer non-Japanese. The guidance literature for non-Japanese children "Welcome to Japan!" issued by the Ministry of Education in 1995, points out that school admission of foreign children provides Japanese children an opportunity for directly experiencing and communicating with a different culture and is significant by improving children's international qualifications and ability. The review and amendment of the Fundamental Law of Education in consultation with the Minister

of Education, Culture, Sports, Science and Technology, currently in progress, are unfolding based solely from the standpoint of how to rear Japanese citizens living in a global age, hence the present contents are merely event-oriented and from curiosity. Fear prevails that this method may make such children the object of Japanese juvenile curiosity, or characterize their cultures without careful consideration and sort them according to diverse values, thereby further widening the distance between Japanese and foreign children.

Since children from abroad also live in the present and have their own personality, it is necessary to find something that makes them meet and unite with Japanese children beyond their differences. Thus, multicultural education enabling them to live together and respect each other is required. To achieve this demands recognizing the right of children coming from abroad to live in the present, with the positive measures mentioned above taken.

9. The so-called Amerasian problem

408. The number of children born between military men or civilian personnel of U.S. military based in Okinawa and Asian women (including Japanese) is assumed to exceed 3,000, though no formal investigation into this has been made. As the situation stands, [1] since the children have dual nationality, they have the right to an education in the language and culture (values) of their parents (double education), and [2] owing to discrimination and bullying for such handicaps as appearance, poor ability to speak Japanese, etc., they are loath to attend public school. Inasmuch as this problem could not go unresolved, in June 1998 prefectural residents established an "Amerasian School in Okinawa," currently enrolling some 50 children kindergarten through ninth grade (third year junior high). As the school is not accredited under the School Education Law, it cannot obtain public aid hence functions under deplorable conditions. Moreover, even though students complete their schooling there, they are not treated as having finished their education, thus suffer disadvantages in trying to receive a higher education and qualifications in social life.

409. On July 10, 2000, the Tokyo Bar Association requested the Government, Okinawa Prefecture and relevant municipalities to improve the situation on ground that [1] it violated a child's right to equal education regardless of nationality and to compulsory education free of charge, and [2] to an education in the language and culture of his/her parents and a multicultural education. However, no noticeable improvement has been made.

Diagram 1. Number of Non-Japanese Pupils and Students

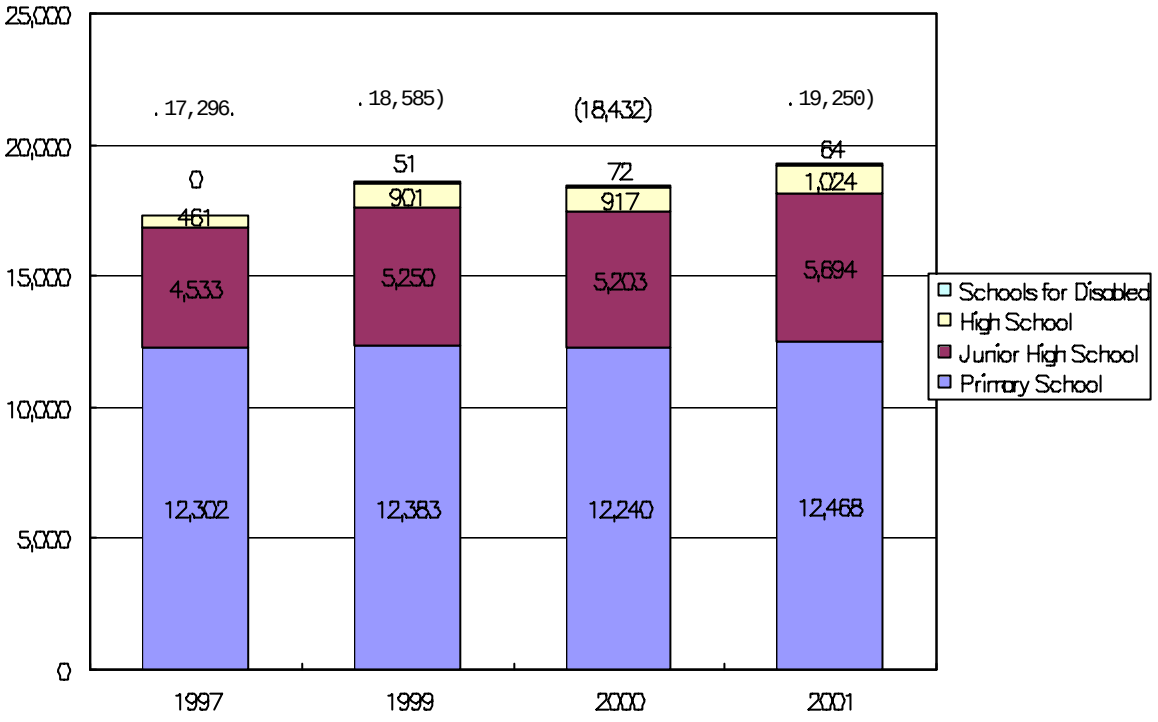

Diagram 2. Number of Schools enrolling Non-Japanese Children

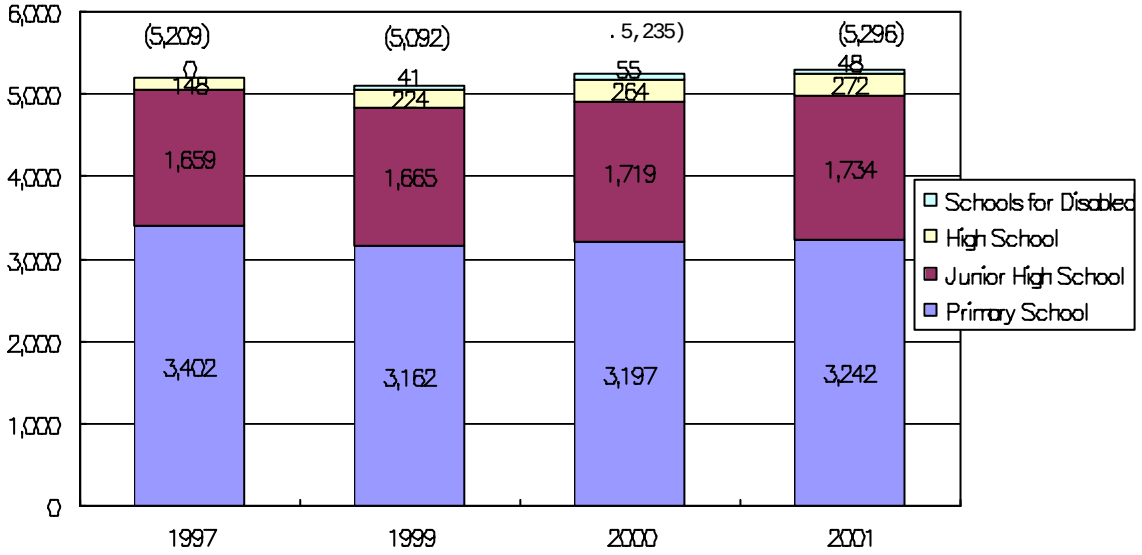

Diagram 3. Status of measures taken in Prefectures

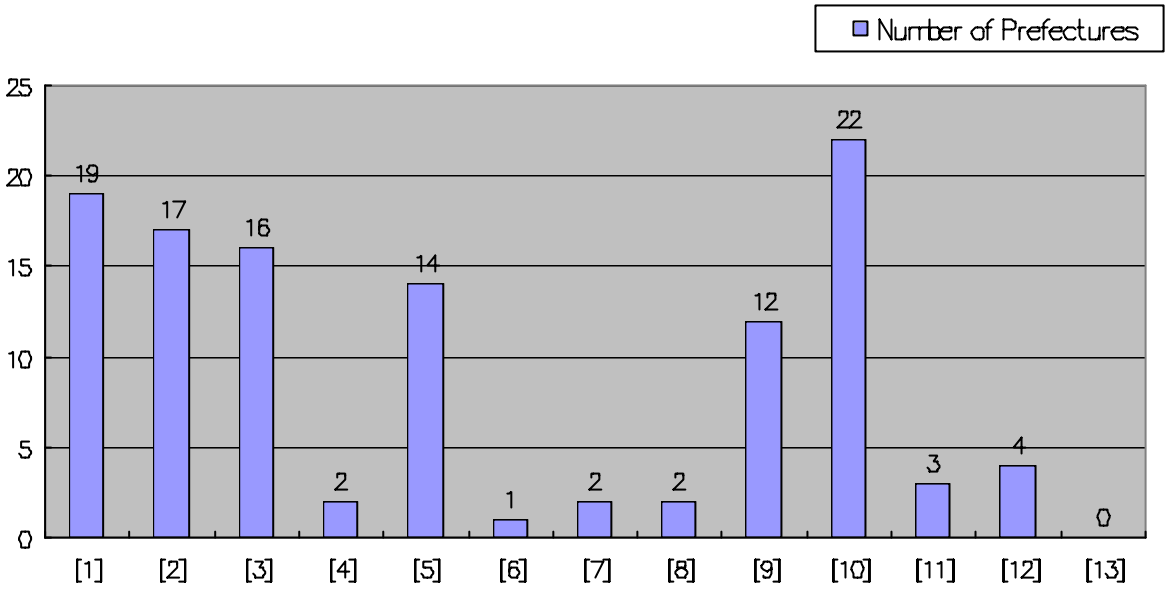

Diagram 4. Status of measures taken in Municipalities

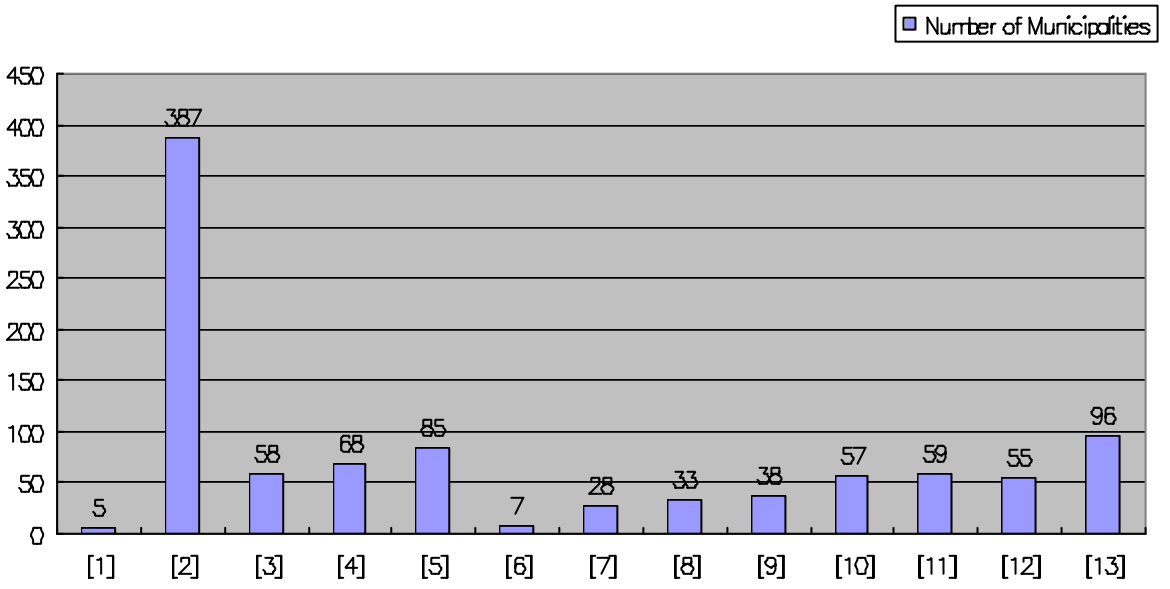

Diagram 5. Number of foreign residents registered by nationality and age

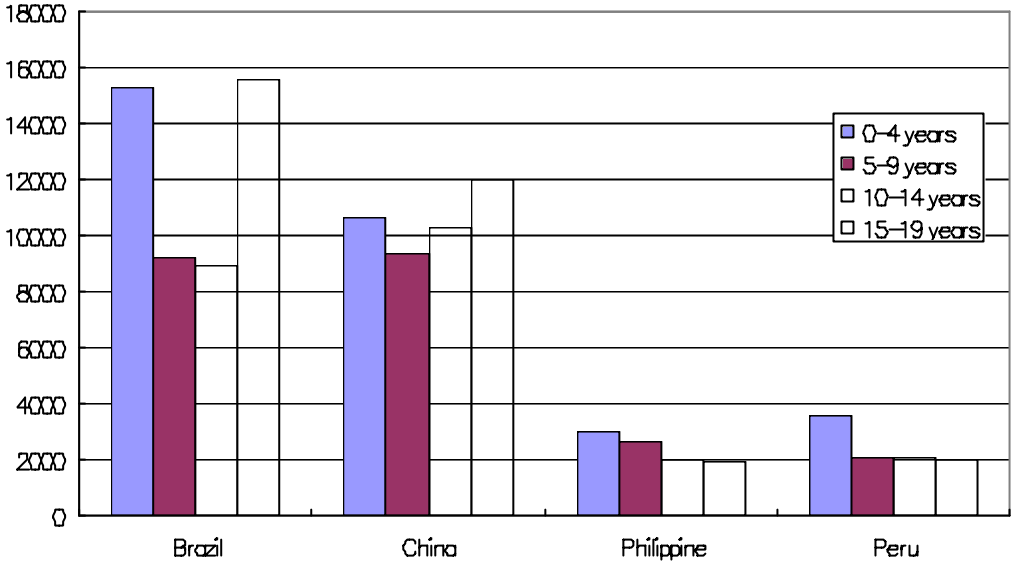

Table 1: School Enrollment of Non-Japanese Children

(Survey by "T" City Board of Education in Aichi Prefecture in January 1999)

	Number of registered residents	Number of enrolled children	Rate of non-enrollment
Primary school age	484 (including 376 Brazilians)	363 (including 292 Brazilians)	25.0%
Junior high school age	187 (including 122 Brazilians)	102 (including 75 Brazilians)	45.5%
Total	671 (including 498 Brazilians)	465 (including 367 Brazilians)	30.7%

(The above figures do not include Korean nationals and students attending schools for persons with impaired vision or hearing, or for the disabled)

Table 2: Comparison between the number of third-year (ninth grade) junior high school students enrolled the previous year and the number of high school (full-time) freshmen enrolled in the current year among students returning from China

(Simple advancement rate to high schools)

Year	(1)	(2)	(3)	(4)	(5)
1996	611	325	53.20%	80.30%	97.10%
1997	678	358	52.80%	81.99%	97.00%
1998	823	384	46.65%	82.64%	97.00%
1999	870	481	55.28%	90.00%	96.90%

(1) = Number of third-year junior high school students enrolled the previous year (A)

(2) = Number of high school (full-time) freshmen enrolled in the current year (B)

(3) = B divided by A: Simple advancement rate to full-time high schools

(4) = In the case of students returning from abroad whose parent(s) work overseas

(5) = General national average (including part-time students)

Based on surveys by the Ministry of Education on the status of children returning from China and on the status of children returning from abroad

VIII SPECIAL PROTECTION MEASURES

A. Juvenile Justice

1. Need to amend the Revised Juvenile Law

[1] Under the Revised Juvenile Law, the age at which criminal punishment is allowed has been lowered from 16 or older to 14 or older, and in principal, a juvenile of 16 or more who commits an international crime causing the death of a victim shall be referred to a public prosecutor. This amendment should promptly revert to the provision stipulated prior to the revision since the new version runs counter to respect for the juvenile's right of rehabilitation into society, as stressed in Article 40, Paragraph 1 of the Convention on the Rights of the Child, and the Ryad Guideline. It also contradicts Article 40, Paragraph 3 of the Convention on the Rights of the Child, "the establishment of specifically applicable laws, procedures, authorities and institutions."

[2] According to the Revised Juvenile Law, the maximum period for protective detention can be (specially) extended from four to eight weeks. This amendment should promptly revert to the earlier version since it goes against the provision of Article 37(b) of the Convention on the Rights of the Child, which stipulates that arrest, detention or imprisonment "shall be used only as a last resort and for the shortest appropriate time."

[3] The Revised Juvenile Law allows the prosecutor's presence in family court if necessary to find facts relevant to serious crimes punishable by two or more years in prison. This amendment should promptly revert to the provision before the revision as the new version forces a juvenile to undergo fact-finding through a procedure even more unfavorable than for adults and because it contradicts Article 40, Paragraph 2 (b) (iii) of the Convention on the Rights of the Child guaranteeing the right to a fair hearing by an impartial authority. Even if a prosecutor's presence is permitted, the system of his/her presence should be included only in consideration of guaranteeing the juvenile's rights by introducing hearsay rules, guaranteeing the right to cross-examine and to choose among procedures.

[4] The Revised Juvenile Law acknowledges the right of prosecutors to appeal with regard to the cases wherein a prosecutor's participation is decided, which can force the juvenile into a prolonged procedure and an unstable situation. This provision requires prompt abolishment as it defeats the purpose of the law, a guarantee of the juvenile's right to grow and develop.

2. Investigations should be visualized by such means as videotaping to eliminate illegal investigation as soon as possible. Since investigating authorities remain unduly dependent on confessions, the need arises to monitor instances of situations in which they exert pressure on a juvenile's defensive weakness and derogate his/her character and dignity by using such means as assault, threatening and leading questions to extract a statement against his/her will.

3. For juveniles generally unable to defend themselves and lack financial ability, a system should be introduced to provide a defense counsel and/or attendant at national expense in order to guarantee the juvenile's right of self-defense with a legal counsel throughout, from investigation to the disposition at a family court.

4. A basic principle should be that "arrest, detention or imprisonment of a juvenile shall be the last resort." Arrest, detention and protective custody in Juvenile Classification Center, in reality are imposed unnecessarily and too easily. This situation demands amendment, with alternative measures considered. Moreover, extensions of detention periods and protective custody are in fact widely imposed, which conflicts with the spirit of the domestic legislative provisions and requires amendment.

5. To encourage judges to act with prudence in the need to take juveniles into custody, an attorney's right to be present and state his/her opinions should be guaranteed in detention hearing for investigative detention and protective custody.

6. In juvenile proceedings, notice of the charge against the juvenile should be in writing. Should there be a change of the charge, the same procedure should be conducted by notifying the revision in writing.

7. Procedures should be improved so that a juvenile's right to examination and cross-examination of witnesses is guaranteed, with said right explicitly stated by legislation.

8. In many cases, investigating authorities conduct supplementary investigations or family courts make them to do after the commencement of family court hearings, in defiance of the principle that such hearings should start only after investigations are completed. Since such activities may produce an unjustifiable violation of the juvenile right to receive a fair court hearing, supplemental investigation in principle should be prohibited.

9. The judgment of discharge by reason of not guilty should have the effect of prohibition of double jeopardy so that the juvenile can be freed from the procedure earlier and stabilize his/her life.

10. Human and material services at Juvenile Prison should be enriched with a sufficient budget in terms of how juveniles should be treated, aimed at individualizing treatment and diversifying its content and method.

11. To guarantee the juvenile's right to social rehabilitation, as specified in Article 40, Paragraph 1 of the Convention on the Rights of the Child, and the right to privacy provided in Article 40, Paragraph 2 (b) (vii), when treating juvenile crimes, the media should not release the name of juveniles so that viewers or readers cannot presume the defendant's identity.

1. Current status of Japan's juvenile judiciary and the issues

(1) Philosophy of the Juvenile Law and framework of juvenile proceedings

410. The Juvenile Law in Japan defines a juvenile as all people below the age of 20 and that, if juveniles commit a crime, all the cases should be sent to a family court for hearing according to procedures differing from criminal procedures for adults.

The purpose of the Juvenile Law is not to punish a juvenile who has committed a crime but to protect the person and support his/her growth and development. To realize this, an inquisitorial system has been adopted wherein judges, prior to proceedings, review every report forwarded by investigative authorities with a prosecutor's presence excluded and the hearsay rule waived.

(2) Problems of juvenile proceedings shown in civil case judgment

[1] The trouble with judgments in juvenile cases

411. Under the inquisitorial system of juvenile proceedings, a kind of casework function has been applied in many cases, that is, the philosophy of protection of juveniles has been exercised. However, there appears no sign of relenting that investigators take advantage of a juvenile's defensive weakness and compel him/her to make a false confession using assault, threatening and leading questions. Moreover, a family court judge in finding facts must to be critical about evidence submitted by the police and prosecutors because the hearsay rule does not apply. The fact is, however, that a judge tends to start proceedings with the impression that the juvenile is guilty; he or she neglects the juvenile's nature of being vulnerable and easily influenced, and jumps to conclusions unfavorable to the defendant from over-dependence on confessions. Furthermore, a juvenile is not guaranteed the right to examination and to cross-examination of witnesses unlikely to criminal procedure for adults. Owing to these, some judges actually hand down mistaken judgments.

[2] The "Soka Murder Case"

412. In 1985, a junior high girl was murdered – the so-called "Soka murder" – with a number of juvenile suspects arrested. They proclaimed their "not guilty" (based on no fact of delinquency), but the Supreme Court rejected their assertions and decided "guilty" (based on the fact of delinquency) at an appeal hearing. After the victim's family filed a suit for damages, the civil trial served as a virtual "new trial" to resolve the false accusations. The major point of controversy was the evaluation of

evidence. Each piece of significant evidence found on the victim's body and clothes, such as saliva, semen and hair, was classified as type AB, which did not match the blood type of any of the accused juveniles. The victim's blood type was A. At this civil trial, on February 7, 2000, the Supreme Court (appeal hearing) overturned the Tokyo High Court's decision ordering the parents of the accused juveniles to pay compensation and remanded the case to the Tokyo High Court. In the remanded hearing on October 29, 2002 a virtual decision of not guilty was handed down.

413. In this case, attorneys who performed their duties as attendants for juvenile proceedings and counsels in the civil trial pointed out three factors: [1] On one hand, investigating authorities concealed evidence which shows juvenile's innocence and on the other hand, framed evidence was freely submitted in the name of supplementary investigation. [2] The main point of controversy was evaluation of material evidence attached to the victim's body and clothing, such as saliva, semen and hair, which contradicted the blood types of the juveniles, yet the judge of the juvenile proceeding (appeal hearing) delivered a verdict of "guilty" with undue dependence on confession before thoroughly reviewing the evidence. [3] There was a need to provide the right to examination and cross-examination of witness, which serve to check the function of indiscreet judges who abuse their discretion.

[3] The "Yamagata Meirin Junior High School Case"

414. On March 19, 2002, the Yamagata District Court dismissed a compensation claim filed by the family of the victim, a seventh-grade boy,

415. Called "The Yamagata Meirin Junior High School Case," it involved a seventh grade boy in Shinjo City of Yamagata Prefecture who was found dead rolled in gym mat with his head down in a mattress storage space of the school gym. Police could not obtain material evidence related directly to the incident, but elicited confessions from juveniles through tricky questioning even while the cause of death had yet to be identified. The controversial point in the subsequent hearing was credibility of the statements of the juveniles and of witnesses, with the suspects vacillating between denials and confessions. The Yamagata Family Court handed down a decision of no disposition on ground of not guilty owing to acceptable alibis, etc. to three of six juveniles who had been brought to court, and put the other three protective disposition on ground there had been evidence of delinquency. The Sendai High Court dismissed an appeal filed by the three juveniles as the court decided that their confessions were made voluntarily during the phase of investigation, thus were credible. As the reason for decision, the judge stated no alibis had been established for three juveniles who were found not guilty by the Family Court.

416. The verdict of the Yamagata District Court's civil trial for the same case contrasted with to how the appeal for the juvenile proceedings reached the decision. The appeal for the juvenile proceedings emotionally and subjectively judged the voluntary and credible nature of the juveniles'

confessions made during investigation, focusing on descriptions of a deposition and an investigator's testimony. The District Court then judged objectively and analytically and rejected the credibility of the juveniles' confessions after examining whether there had been changes in the confessions, and if so, reasonably. The Court also sought the existence of objective evidence supporting the confessions, whether the confessions contradicted the evidence, if a secret was revealed (a fact that could not have been found by an investigator in advance and confirmed after the confession), and if the confessions were unnatural or unreasonable. Thus, the Court dismissed the claim filed by the victim's family and showed that the appeal for juvenile proceedings had suffered a wrong judgment.

417. With the discrepancy of rulings between higher and lower courts for juvenile proceedings in this case, several judges claimed that there was a limit to fact-finding function in juvenile proceedings owing to its framework and that the law had to be revised in the point of a prosecutor's involvement in juvenile proceedings. As is stated later, the prosecutor's participation was actually incorporated in the Revised Juvenile Law that took effect April 1, 2001. However, the real issue is not the framework of juvenile proceedings but illegal police investigations and judges' over-dependence on confessions forcibly extracted by police trickery. This problem has not in the least been resolved by the revision of the law, and it deserves strict observance. To prevent a court decision from being based on false confessions elicited by unseemly interrogation, methods must be defined to judge the legality of police investigations. For instance, videotaping can be effective as it allows viewing police interrogation room practice. A system to introduce such a method should be adapted without delay.

(3) Insufficient guarantee of the right to request defense counsel and attendants

[1] The child's right to legal counsel

418. Protective measures can benefit a juvenile as educational and welfare measures to support a child's growth and development in terms of the Juvenile Law. On the other hand, incarceration in a reformatory school and protective detention in a juvenile classification center until judgment which puts a juvenile under detention against his/her will for either long or short periods, constitutes a major restraint on a juvenile's personal liberty. Since family court proceedings significantly restrict a juvenile's freedom, support from attorneys independent of the State is essential to prevent abusive use of State power. Moreover, it is no less essential than in cases of adult's criminal procedure that a juvenile's delinquency shall be found through due process as a requisite for disposing protective measures. In this sense, it can be argued that a juvenile must be guaranteed the right to proceedings with a lawyer's support. Especially considering a juvenile's defensive weakness and the illegal investigations described above, as article 37(d) of the Convention provides, it is very important to guarantee the right to request defense counsel or attendants for juveniles. Even where there is no dispute over fact-finding, the best interest of the child cannot be realized until a juvenile undergoes

court proceedings on his/her own initiative and is guaranteed the right to state his/her will during the process. Thus, support by legal professionals who have adequate knowledge and understanding of juvenile hearing procedure and the Juvenile Law is necessary for a juvenile to exercise the right to state his/her will during a hearing. Actually, a lawyer as an attendant serves as more than that in the juvenile judicial system. In a case where one is appointed, he/she becomes enmeshed in even a juvenile's history and family environment and helps guarantee the juveniles right to grow and develop by providing a protective ambience. Attorney-attendants play an invaluable role as they help juveniles to rehabilitate.

419. However, it cannot be said that the right to request counsel and attendants is guaranteed to a juvenile under physical restraint in any current phase. Juveniles are not guaranteed the right to request lawyers at national or public expense if in a phase of investigation and of juvenile proceedings at a family court.

To guarantee the right to request lawyers and attendants for juveniles most of them are of limited resources, a system is required, one that grants them lawyers and attendants appointed at public expense. Realization of such a system is now under debate, though nothing has been decided at this point.

[2] The Duty Lawyer System

420. In 1990, the Japan Federation of Bar Associations initiated the Duty Lawyer System under which a lawyer on duty provides free interview service once to suspects, including juveniles, mainly at the investigation stage if so requested. By October 1992, the system had taken effect at every Bar Association throughout Japan to facilitate easier access to attorneys. To secure for a person who cannot afford legal assistance the right to appoint a defense counsel or attendant, the system is linked with the "Defense Aid System for Criminal Suspects" for persons undergoing investigation and the "Attendant Aid System for Juvenile Protection Cases" for juveniles at the family court wherein lawyer fees, etc. are paid through the Legal Aid Association's program.

421. [3] Many benefit from the JFBA system

These practices as implemented by JFBA have a beneficial effect on the ongoing discussions toward realization of a system of defense counsel and attendants handled at national expense. Meanwhile, the number of juveniles for whom attendants are appointed has been on the rise since 1988, as the result of the on-duty lawyer and legal aid systems. As for ordinary cases, excluding traffic-related cases, the annual ratio in the number of appointed attendants has increased every year as follows.

1996 3.3% (lawyer-attendant accounts for 92.8%)
1997 3.7% (lawyer-attendant accounts for 94.6%)
1998 3.9% (lawyer-attendant accounts for 92.5%)
1999 4.4% (lawyer-attendant accounts for 91.5%)

2000 5.1% (lawyer-attendant accounts for 91.7%)

Also, given the rate of attendant appointment by crime in 2000, in 57.9% of homicide cases, in 42.9% of rape cases, in 31.1% of arson cases, in 29.5% of burglary cases, etc., attendants are appointed. So-called serious crimes show a relatively higher rate of attendant appointment.

422. [4] Need for more legal support

Although the appointment rate has increased, the percentage of cases where an attendant is appointed remains extremely low compared with the total cases brought before family courts. Especially the data shows that homicide, a major crime, making up less than 60% and burglary less than 30% shows the support by attendants is very poor.

423. [5] Juveniles free to request legal counsel

The "attendants-for-all-cases system" launched by the Fukuoka Bar Association started February, 2001 featured in the spotlight as it took the initiative in promoting an attendant system handled at national expense.

This is how "the attendants-for-all-cases system" works in cooperation with a family court: A judge asks a juvenile during a protective detention hearing whether he/she is willing to have an attendant appointed. If the juvenile answers in the affirmative, a lawyer visits the suspect before he/she directly appoints the lawyer. This resulted in about a 57% rate of attendant appointment among the total number of juvenile who were given decisions of protective detention from February to December, 2001.

This system rates high regard as it serves as a bridge to realize an attendant system handled at national expense, while no attendant system exists as a requirement.

The attendant system is not actually a requirement but depends on a juvenile's will. That is, the rate of attendant appointment can change depending on the personality of a juvenile and a court's method of notifying a juvenile, thus it is understandable that the rate cannot be stable. It gives hope for early realization of the attorney system handled at national expense.

(4) Juveniles exposed to dangers of supplementary investigation, referral to prosecutor and indictment

424. On March 29, 1991, the Supreme Court argued, as a dictum, that the prohibition of double jeopardy does not apply to a family court decision that no disposition be imposed on a juvenile because of not guilty even if the family court examined the fact. According to this, if a juvenile wins a decision of no disposition after a great deal of effort to prove his/her innocence in family court, the juvenile may be open to charges by a criminal court when he/she becomes an adult. In the sense of putting a juvenile to a precarious position and placing the brunt of the burden, the Supreme Court's decision is irrational and unfair. In fact, there was a case wherein a juvenile actually was charged by a criminal court even after a family court handed down a decision of no disposition for the juvenile

based on a finding of not guilty.

425. In this, called the Chofu Case, five juveniles made an appeal to the family court judgment to send them to the reformatory school in spite of their assertion of innocence. The Appellate Court reversed and remanded to the family Court because the family court erred in deciding they were guilty. In the remanded proceeding at the family court, one of the five juveniles, who turned 20 after being remanded, was sent to a prosecutor as an adult. Another managed to draw a judgment of no disposition based on not guilty prior to turning 20. The remaining three, found guilty again, were referred to prosecutors as eligible for criminal punishment on ground that evidence from extensive supplemental investigation negated the binding force of the appeal. The prosecutors indicted not only the four referred juveniles but also the one who drew a decision of no disposition based on not guilty.

426. The Supreme Court concluded that in the case of one juvenile, under 20 at the time of being referred and indicted, the decision of the amended family court proceeding violated the principle of prohibition of unfavorable change and indictment of the prosecutor was illegal under the Juvenile Law. As for the other four, extensive proceedings continued and the juveniles had to undergo twenty-six trials. In the end, the prosecutors dropped the indictment faced by a situation where an acquittal was foreseen as evidence proving their innocence approached the final stage.

427. On December 12, 2001, the Tokyo High Court's hearing of a claim for criminal compensation in this case ruled that judgment rendered by the family court's remanded proceeding had been arbitrary and self-righteous. The hearing regarded that the family court's remanded proceeding had misvalued what the evidence could prove and led to the conclusion that went against the upper court's decision only to end in a critical mistake of fact. The Tokyo High Court also regarded the investigation of prosecutors after the decision of referral as nothing more than unnecessary blame on the appeal hearing for evidence evaluation and as insufficient to support positive evidence, including the confessions, although the prosecutors indicted anyway.

428. The decision delivered by the appeal court on criminal compensation stated critical issues in judgment (evidence evaluation) made by family courts and prosecutors. Yet, the potential for resurgence of such issues exists since there is still no principle of prohibition of double jeopardy applicable to a court decision that no disposition shall be imposed on a juvenile based on not guilty. To resolve the issues requires developing provisions for procedures that spare juveniles illegal and unjustified proceedings.

(5) Contents and issues of the Revised Juvenile Law

429. As stated above, with a division of rulings between a family court and a high court in a case involving many people concerned such as the "Yamagata Meirin Junior High School Case," the court started suggesting the need for "proper finding of fact." Later, in March, 1999, a bill to revise the

Juvenile Law was submitted, focusing on prosecutor participation in proceedings and granting them the right to appeal. Diet deliberation started in May 2000, but the bill was aborted with dissolution of the Lower House the following month.

430. Three ruling parties, however, submitted another bill to revise the Juvenile Law as a lawmaker-initiated legislation in September, 2000, against a background of major crimes committed by 17-year-old juveniles like the "housewife murder" and "bus hijacking" that drew nationwide attention. This bill included lowering the age at which criminal punishment is allowed and was enacted on November 28, 2000, with additional provision of "legislative review five years after its enforcement." The law took effect on April 1, 2001.

431. The "revised" Juvenile Law includes six main amendments:

[1] The age at which criminal punishment is allowed has been lowered from "16 years or older" to "14 years or older"

[2] In principle, a juvenile shall be referred to the public prosecutor if he/she at the age of 16 or older has committed an intentional crime causing a person's death.

[3] The maximum period for protective detention can be (specially) extended from "four weeks" to "eight weeks."

[4] The prosecutor's presence in a family court hearing is accepted if necessary to make a finding of fact for grave crimes punishable by two or more years in prison.

[5] A collegiate court system presided by three judges is introduced.

[6] Certain consideration is given to the victim (e.g. viewing and copying records, family court hearing the victim's opinion, being notified of the court's decision).

432. According to recommendations by the Committee on the Rights of the Child, there exists a need to review the judicial system for juveniles in accordance with the principles and provisions of the United Nations standards. However, the contents of the revision are not in line with their recommendations. Rather, the revision runs counter to the United Nations standards.

Specifically, the idea of "criminalization" and "getting tough" as implied in [1] and [2] go against respect for the juvenile's right of rehabilitation into society, which is emphasized in by Article 40, Paragraph 1 of the Convention on the Rights of the Child and in the Riyadh Guideline. It also contradicts Article 40, Paragraph 3 of the Convention on the Rights of the Child, "the establishment of specifically applicable laws, procedures, authorities and institutions."

Moreover, the extension of protective detention, referred to in [3] above, runs counter to the provision of article 37 (b), which stipulates that arrest, detention or imprisonment shall be used only as a last resort and for the least appropriate time.

The participation of prosecutors in judicial proceedings, stated in [4] above, calls for juveniles to be treated even more harshly than adults. The judge tends to launch proceedings with the idea the juvenile is guilty because the principle of exclusion of prejudice does not apply, the hearsay rule is

excluded from judicial proceedings for juveniles, and because all evidence gathered by the police and prosecutor goes to the family court judge in advance of the hearing. Next, if the juvenile denies the charge, the prosecutor will attack him/her severely. This goes against Article 40, Paragraph (b) (iii) of the Convention, which guarantees the right to a fair hearing by an impartial authority.

433. Thus, the Revised Juvenile Law runs counter to United Nations rules in several points. Nevertheless, not one discussion concerning details of the United Nations rules concerning this has featured in Diet deliberations.

To revise the Juvenile Law evidently was a major task, and supposedly after a half-century represents fundamental legislation regarding how the world of adults views children and supports their growth. In reality, however, the law was revised in an amazingly short time without advance national discussions.

(6) Status of operating the Revised Juvenile Law

(i) Report from the Supreme Court

434. The following shows the status of operating the Revised Juvenile Law for one year April 1, 2001 to March 31, 2002 (excerpts), according to a Supreme Court report.

(A) Lowering the age at which criminal punishment is allowed

435. There have been no cases where a juvenile under 16-year-old was referred to the prosecutor during the period.

On December 4, 2002, The Koriyama Branch of the Fukushima Family Court referred a 15 yea-old boy to the prosecutor on the ground of his malicious delinquency and victim's emotion. The boy had been sent to the Koriyama Branch for the fact that he'd committed burglary and confinement. This was the first case where a juvenile under 16 years old was referred to the prosecutor and indicted to the criminal court, but it clarifies that such an operation of the law goes against the stream of the right of rehabilitation into society that is granted to juveniles.

(B) Referral to prosecutors on principle

436. Sixty-five juveniles subject to "referral on principle" were given final dispositions during the above one-year period. The following is a breakdown of the charges and definitive measures.

[1] Homicide 12 cases

6 - referral to prosecutor (50%) 6 - protective measure (50%)

[2] Injury resulting in death 44 cases

30 - referral to prosecutor (68.2%) 14 - protective measure (31.8%)

[3] Robbery resulting in death 9 cases

8 - referral to prosecutor (88.9%) 1 - protective measure (11.1%)

The average rate of referral to prosecutor for homicide (including attempted) over the past decade

was 24.8%, 9.1% for injury resulting in death and 41.5% for robbery resulting in death. This shows that the rates of referral to prosecutor for homicide and robbery resulting in death approximately doubled those prior to the revision, and the one for injury resulting in death rose more than sevenfold.

(C) Collegiate court system presided by three judges

437. There were 27 cases wherein final judgment was handed down by on the collegiate court system during above period.

Injury resulting in death accounted for 33%, homicide 15%, robbery resulting in death 7%, rape resulting in injury 7% and others 38%.

(D) Participation by prosecutors

438. During the above period, there were 27 cases where final judgment rendered with prosecutors' involvement.

Injury resulting in death accounted for 27%, rape 22%, homicide 11%, robbery resulting in death 11%, robbery resulting in injury 11%, attempted murder 7%, robbery 7% and confinement resulting in death 4%.

In seven cases both the collegiate court system and prosecutors participation were adopted. The breakdown:

Homicide: 3 cases
Robbery resulting in death: 2 cases,
Robbery resulting in injury: 1 case
Confinement resulting in death: 1 case

(E) Extension of the maximum period for protective detention (special extension)

439. There were 40 cases wherein the period for protective detention was specially extended, with final judgment delivered during the above period. The average was 45 days (6 weeks, 3 days). The breakdown:

More than 4 weeks: 2 cases
More than 5 weeks: 17 cases
More than 6 weeks: 9 cases
More than 7 weeks: 12 cases

(F) Accommodation toward victims

440.

[1] Viewing and copying records	498 out of 506 applicants
[2] Hearing victim's opinion	146 out of 150 applicants
[3] Notification of court's decision, etc.	545 out of 553 applicants

(ii) Status of operation and issues of the law from the standpoint of lawyers attending juvenile proceedings

441. According to a report from attorneys who actually participated in proceedings as attendants, the situation regarding juvenile proceedings at family courts is significantly changing from what it was prior to revising the law. There were several cases wherein operation of the law was unacceptable in principle of protection of juvenile, a fundamental principle of the Juvenile Law. The following are issues seen in individual cases.

(A) A juvenile referral to prosecutor on principle

442. (a) Issues in cases where a juvenile is referred to prosecutor on principle are quite critical. Some cases have been reported when juveniles were referred to prosecutor without issuing orders for investigations to family court probation officers. The result of investigations made by a family court not only constitutes basic data for deciding how to deal with a juvenile but also scientific evidence of great value, even if the juvenile is referred to prosecutor and indicted to criminal court, in determining appropriate punishment or judging transfer to family court appropriate as Article 55 of the Juvenile Law provides. Thus, it is not permissible to cut off the investigation. The Family Bureau of the Supreme Court also expressed their opinion about this point. According to it, because "investigation" stated in the proviso of Article 20, Paragraph 2 of the Juvenile Law is the same "investigation" in Article 8, an order for investigation must be issued to a family court probation officer before a hearing starts for a case wherein a juvenile is referred to prosecutor on principle.

443. (b) The Family Bureau of the Supreme Court explained what is needed in the investigation of a case wherein a juvenile is referred to prosecutor on principle as follows: "It is required to have the viewpoint of determining if some measure other than criminal punishment is appropriate for the juvenile. Accordingly, sufficient investigation and examination are necessary in the point of severity and social impact of the case. In reporting the investigation result, criminal punishment and protective detention should be compared and judged which is more appropriate. If protective measure is chosen, then it must specify not only the reason why it is appropriate but also the reason why criminal punishment is inappropriate.

This view of the Family Bureau makes it hard for a family court probation officer to find a decisive reason for regarding judgment for criminal punishment inappropriate even when the officer thinks protective measures are appropriate for the juvenile. After all, the officer submits an investigation report with an anguished decision of referral to prosecutor "on principle."

It is not easy to adduce proof even to support the idea that criminal punishment is inappropriate, and very few cases would apply the proviso if the adducing process were required; that is, it would create a narrower window of opportunity to choose measures to meet a juvenile's individual

circumstances as endowments, personality and peculiarity in his/her growth history. Thus, considerable fear exists that the proceeding will become nothing more than a criminal trial in which sentence is decided according to the standard of punishment.

444. (c) Diagnostic reports from a juvenile classification center are largely influenced by the revision. As the measure of referral to prosecutor has emerged as a general principle, the report increasingly seems to imply the stereotyped opinion that "the conclusion is made before diagnosis." Taking one case as an example, there is a diagnosis opinion that says, "Since the law was revised, proper decision to this juvenile is to be referred to prosecutor on principle as the juvenile can not be regarded as deviated in his/her qualification as the exception, although he/she would be transferred to a reformatory school if there had been no revision of the law."

445. (d) Final Dispositions from judges are also influenced by the revision. Judges tend to choose referral to prosecutor, which is unfavorable to a juvenile even in a case where the juveniles do not need such protection as is provided in the proviso judges used to choose protective measures. Conversely, juveniles who require protective measures supposedly tend to rate decisions of "referral to prosecutor owing to incapability of protection."

446. (e) Certain juveniles commit crimes without particular malice, causing death as the unfortunate result, and some so-called model students happen to get involved in incidents because they could not adjust to a situation far removed from daily life. Even in such cases, only the results come to the fore and lead to a decision of referral to prosecutor.

447. (f) There was a problem of influence on juveniles caused by criminal trial proceedings after a judgment of referral even before the "revision," but now that referred cases are dramatically increasing, the problem is more conspicuous and the adverse effects from the problem are becoming more serious.

< Prolonged period for detention>

448. In usual criminal cases, detention after arrest is followed by another detention after a suspect is indicted. But in juvenile proceedings, a protective detention is added between the two detentions to prolong the total detention period uniformly. The situation is more severe in denial cases since the revision changed the maximum period for a protective measure.

< Infection with bad conduct at a detention center>

449. Juveniles are supposed to be separated from adults at a detention center (Article 37 (c) of the Convention on the Rights of the Child), but some actually live together with adults at high risk of being infected with bad conduct.

<Juveniles shutting their minds in open court>

450. At an open court, a juvenile may be exposed to harsh rebuke from the victim's relatives such as "It's all just an excuse!" and strongly condemned for showing no remorse by a prosecutor who speaks for only the victim. This can strengthen the juvenile's defensive attitude and make it hard for

him/her to express any remorse that may have been generated and in turn seal off the juvenile's mind. This situation is unfavorable to both defendant and victim.

< Speaking to juveniles>

451. Unlike in a juvenile proceeding where a judge who reviewed a social record in advance approaches a juvenile directly in a small court, a judge rarely approaches a juvenile in a criminal trial. Criminal trials barely function as a classroom.

(B) Prosecutor participation

452. A family court rules on allowing a prosecutor to participate at its discretion "when recognizing the need for a prosecutor's presence at a trial to acknowledge the juvenile's delinquency." However, once this was construed too broadly and resulted in a decision for a prosecutor's unnecessary presence. Originally, the prosecutor's involvement was advanced legislation on the assumption that a judge needs to avoid conflict with a juvenile and ensure diversified viewpoints in incidents of fierce controversy over a delinquency fact, such as it the case of including the Yamagata Meirin case. But in one instance, a judge made a decision, based on strong personal desire, to have a prosecutor present in a the case that lacked controversy over corpus delicti.

A prosecutor's involvement in this kind of case can hurt the casework function of juvenile hearing and lead to neglecting the fundamental principle of protection of juveniles.

(C) Collegiate court system presided by three judges

453. In conventional pre-conferences between an attendant and a judge, the judge often expresses his/her own thoughts and impressions frankly and exchanges opinions on measures for a juvenile together with the attendant. However, regarding a case wherein it was decided to use the collegiate system preside by three judges, certain attorneys who had pre-conferences with a judge reported that the judge did not disclose impressions that the court had and failed to have further discussion since "no conclusion was reached under the collegiate system." Family court probation officers also say that conferences are hard to manage as they find it difficult to communicate with judges under the collegiate court system.

(iii) Summary

454. As seen the state of operation during the year after enforcement of the Revised Juvenile Law, especially in instances wherein "referral to prosecutor on principle" was subjected to consideration, the proviso of Article 20, Paragraph 2 came to be applied more narrowly with juveniles tending to be easily referred to prosecutor and indicted to criminal court under the guise of "principle." The rate of referral to prosecutor in cases of injury resulting in death shows it remarkably, while the rate ten years prior to the "revision" was less than 10%, it jumped to approximately 70% after the revision.

Moreover, juveniles are treated in the same way as adults, and trials are conducted in a manner similar to adult trials, which tends to impose punishment when pronouncing sentence. The pieces of casework function in juvenile proceedings once clear have become opaque.

After the revision, the situation has come to go against the directions at which United Nations rules aim, which is to distinguish children from adults and treat children using special procedures giving consideration to their characteristics.

2. Other issues - Consideration of factors in the Government Report

(1) Investigation of juveniles .Paragraph 294 of the Government Report.

455. Paragraph 294 of the Government Report states that when questioning juveniles, full consideration is given to time, place, their conduct, etc. However, the manner in which the paragraph describes it is not only abstract; it presents a situation remote from reality.

The truth is that investigative authorities often use such tactics as assault, threat and deception and in other ways ignore the right of a juvenile suspect by taking advantage of his/her detention at a police cell.

For instance, on January 11, 2000 one police station received a warning from the Yokohama Bar Association. During October 1994, in one of its interrogation rooms, officers banged a juvenile's head on a desk and resorted to threat in order to elicit an confession of wrongdoing. In June of the same year, during interrogation, they assaulted and intimidated a juvenile by yelling and slapping his face because he did not make a statement according to investigator command.

Investigations of this kind run counter to Article 37 (a) of the Convention on the Rights of the Child.

(2) Promoting the child's reintegration and taking a constructive role in society (Paragraph 296 of the Government Report)

456. [1] Paragraph 296 of the Government Report mentions that juveniles under 16 years of age who are serving sentences are to be treated in accordance with the purpose of the Convention on the Rights of the Child. However, no juveniles under 16 have actually received criminal penalties as of now.

457. [2] It also reports that goals have been set with new measures introduced for juveniles placed in juvenile prison, goals being to clarify problems that led the inmates to commit crimes, draft personalized treatment plans meeting juvenile characteristics, foster an awareness of respect for the dignity and value, rights and basic freedom of the human being, et al. The Report states all this will be implemented according to plan.

The revision of the Juvenile Law appeared to make juvenile prisons install and conduct two policies for treating juveniles on the basis of reform schools, one being individualized treatment, the other, diversification of contents and methods for the treatment.

However, prisons impose labor on juveniles and limit their education as a substitute for the tasks to four hours a day maximum (Article 85, Paragraph 1 of the Prison Law Enforcement Regulations). In this context, individualization of juvenile treatment obviously has a limit. Nor are the contents of how to treat juveniles unified among the eight prisons maintained throughout Japan. In some, juveniles share daylight-hour labor with adult convicts, while others do not practice this. The role lettering, a representative system for juvenile treatment, has yet to settle itself though already introduced. Moreover, an individual teacher system as part of the individualized treatment for each juvenile is operated by some prisons but not by others.

The Juvenile Prisons accept convicts under 26 years of age, and the overwhelming majority in them are adolescents who are 20 years or older. Thus, striking a balance throughout the facility, individualized treatment for juveniles under 20 years of age who are very few appears very difficult.

The government drafted a policy of individualized treatment for juvenile inmates in response to the Revised Juvenile Law, but to fully implement the policy demands taking adequate measures in the point of budget to enrich needed human and physical resources.

458. [3] To promote juvenile social rehabilitation, Article 61 of the Juvenile Law "prohibits newspapers and media forms from running stories or photos that can lead to presuming the person appearing in the publication is the juvenile involved in a certain case. This provision also applies to juveniles who have been tried in family court or a person who was indicted for a crime committed when he/she was juvenile."

Many cases have complied with this provision but not certain major cases involving homicide or other factors that draw public attention. In such incidents, publications are wont to use a suspect's real name or an alias that lead viewers to presume the juvenile's identity. This is typical of the weeklies and usually exposes facts of the juvenile's private life and growth history. This violates the child's right to social rehabilitation as guaranteed in Article 40, Paragraph 1 of the Convention on the Rights of the Child. It also runs counter to the right to privacy provided in Article 40, Paragraph 2 (b) (vii).

459. In relation to this, a Nagoya High Court ruling on June 29, 2000 specified the media as having violated the right of the child, citing the Convention on the Rights of the Child. The case was brought by a juvenile seeking damage from a publishing firm whose magazine showed an assumed name for the juvenile accused of murder on ground the name could easily lead readers to presume his identity and that it contradicted Article 61 of the Juvenile Law prohibiting "running stories or photos which can lead to presuming…identity." The judge recognized the publisher's liability for damage. The court's ruling expressed that, based on the provisions of Articles 3, 5 and 6, Article 29 Paragraph 1 (a) and Article 40 Paragraph 1 of the Convention on the Rights of the Child, Article 14, Paragraph 4 of the International Covenant on Civil and Political Rights, the Beijing Rules, etc., Article 61 of the Juvenile Law is construed as a provision "to protect, by means of press restraints, the basic human

rights to considerate treatment for a juvenile's sound growth during his/her development stage as well as the juvenile's right to honor and privacy," while reflected by Article 13 of the Convention that grants children the right to honor and privacy, and to that extent, the "freedom of expression " by the media can be restricted. People's right to know is also restricted for the same reason.

460. However, there was one opposite judicial proceeding where freedom of expression gained priority over the right of children. The verdict handed down by the Osaka High Court on February 29, 2000 began by explaining how Article 61 of the Juvenile Law should be construed. Article 61 is the provision having the charitable objective of achieving the purpose of the Juvenile Law, encouraging a juvenile's sound growth and in consideration of criminal policies to facilitate a juvenile's rehabilitation into society and secure practical effectiveness of "criminal punishment as a preventive measure." This was followed by, "Therefore, we cannot construe that Article 61 applies the right to non-coverage under one's own name. Even if we construe that it does, we cannot find Article 61 as taking priority over freedom of expression, considering that the Juvenile Law does not provide a penalty against a violator." The Osaka High Court overturned a district court decision ordering the publishing firm that ran the juvenile's real name and photo to compensate for damages on ground that the expression did not constitute a violation of the right to privacy if the expression was justified in the interests of society and unless the content and method of the expression was unjustified. This case later went to the Supreme Court, but was dropped by the convict, who was still a juvenile when the crime occurred, and the verdict of the Osaka High Court prevailed.

461. According to the Osaka High Court decision, Article 61 is neither about the right nor too weak to declare the right, and it asserted emotionally and violently based on the abstract words "justified in the interests of society" that "it is evident that society in general has a major interest in identifying a suspect…" and "even coverage using a real name is admitted as justifiable in case a suspect is caught red handed for a serious crime." The case was not examined in terms of the actual situation surrounding the Convention of the Rights of the Child and other international treaties on human rights and their trend. As a result, the rights which conflicts with freedom of expression were considered highly unfair owing to lack of awareness and understanding that the rights of a child to grow and develop, to honor, and to privacy are internationally approved basic human rights.

462. Following the Nagoya High Court ruling of June 29, 2000, the publishing firm appealed the case to the Supreme Court where it continues. The case draws attention to whether the Supreme Court will deliver a decision in consideration of the Convention on the Rights of the Child and other international treaties on human rights.

(3) Appeal and re-appeal in the Juvenile Law

463. According to Paragraph 298 of the Government Report, revising the Juvenile Law gave prosecutors the right to appeal in cases where prosecutor participation is allowed. This positions a

prosecutor as a denunciator who attacks a juvenile and intentionally prolongs the procedure to force the defendant into an unstable situation. This contradicts the purpose of the Juvenile Law that is designed to support sound juvenile growth and development.

There have been no cases of prosecutor appeal among 27 cases where participation by a prosecutor was allowed during one year after the Juvenile Law took effect.

(4) Notification of offense (Paragraph 299 of the Government Report)

464. According to Paragraph 299 of the Government Report, the Rule of Juvenile Proceeding provides that a juvenile shall be informed of the reasons for proceedings at the beginning of the proceeding of deciding commitment to a juvenile classification center" and at the beginning of "the initial hearing." The reasons are usually cited from a "description of juvenile transfer" in a transfer report written by a prosecutor. The same paragraph states that notification of reasons for proceedings is made at the phase of the family court probation officer's investigation before initiating proceedings.

However, notifications of reasons for proceedings are not in writing, unlike in cases when a suspect is indicted in a criminal case. Juveniles sometimes have difficulty comprehending the reasons for proceedings when cases are complicated.(Para.299)

Moreover, unlike in criminal cases that adapt the count system, notified reasons for proceedings cannot limit the subject to be dealt with by the proceedings. A court can acknowledge, as needed, delinquency facts in addition to the reasons notified, which is a so-called "change of acknowledgement." Consequently, more delinquency facts may be introduced unexpectedly without giving the juvenile sufficient chance to justify and/or disprove them, which is called a "surprise attack."

A juvenile should be informed of the reasons for proceedings in writing, and the reasons should be the sole subject of proceedings. Each and every time a change occurs in the fact used as the subject of proceedings, the amended reasons for proceedings should be notified to the defendant in writing. It is required to specify and practically apply this kind of system.

(5) Prohibition of compelling juveniles to testify against themselves

465. The title of the paragraph 300 of the Government Report of Japanese edition is "prohibition of copelling juveniles to testify their disfavorable contents" while that of the English editon is "prohibition of compellingg juveniles to testify against themselves." It should be corrected according to English edition.

466. The Government Report only mentioned notification of the right of refusal to make a statement during a decision procedure for protective detention as well as at juvenile proceedings. But the problem remains that it shows no sign of significant decline that police and prosecutors put the squeeze on juvenile's defensive weakness and compel him/her to make a false confession using

brutality, intimidation and leading the juvenile to an unfavorable circumstance, with subsequent fact-finding proceedings based on the false confession submitted as evidence. Many family court judges fail to consider that investigators paid no regard to a juvenile's defensive weakness, with the judge engaging in fact-finding while accepting testimonial evidence at face value. The "Soka case" and the "Yamagata Meirin Junior High School case," both described earlier, also manifested this kind of problem.

467. Investigations should be under strict control in terms of prohibiting the compelling of juveniles to testify against their will, but nowhere did the Government Report mention this. The Report is also defective in its paying no attention to the requirements for a family court judge. A family court judge is required to not only provide an explanation that a juvenile shall not be compelled to make a statement against his/her will during the proceedings but also discard the idea of undue dependence on confessions and carefully examine the reliability of confessions made at the phase of investigation, and determine if corroboration is represented by objective evidence.

(6) Right to examine witnesses and to cross-examine

468. Paragraph 301 of the Government Report states that the right to examine witnesses and right to cross-examination are adequately guaranteed. This held true for the First Government Report.

However, an attorney and his/her juvenile client are allowed nothing more than a request for an examination of evidence. The judge is given a free hand to decide what witness (evidence) will be taken under a system where the hearsay rule is not applicable and where unlimited evidence can be submitted to a court by police and prosecutors. While examination of witnesses is conducted when the defendant disagrees with documentary evidence in criminal court proceedings, it is not allowed to disagree with documentary evidence in juvenile proceedings. In addition, an attorney and a juvenile are not permitted to cross-examine witnesses who originally gave a statement.

Actually, in the juvenile proceeding's appeal hearing in the "Soka Case," while an attorney wanted to call as witnesses seventeen people involved in its investigation, including interrogators, an anatomist and an evaluation engineer from the prefectural crime laboratory, the court allowed only the chief investigator and the anatomist and sharply limited what the attorney could examine in advance. The judge permitted nothing more. The main controversial point in this case was evaluating material evidences with blood type, AB (saliva, semen and hair) which contradicted the blood types of the juvenile suspects. Even examining the evaluation engineer, who identified the blood type as AB, was not allowed.

It was never clarified that fact-finding made by the appeal court had ignored common sense of forensic medicine and ended in scientific mistakes, until the evaluation engineer and a forensic expert were questioned at the subsequent civil trial.

The judge's attitude toward proceedings and undue reliance on confessions had motivated the

decision regarding how to take evidence during the proceedings. In the sense of serving to check judges' wont to make self-righteous judgments, the right to examine evidence and to cross-examination for juveniles and their counsel must be instituted as a system.

(7) Detention at the phase of investigation (Paragraph 306 of the Government Report)

469. [1] The Government Report states, "Consideration is given to the character of juveniles detained at the investigation stage. For instance, no juvenile may be detained without unavoidable reason, and if detained, the Juvenile Classification Home may be designated as a detention place. Detention and shelter care may be taken as an alternative to detention." (Para.306).

470. [2] However, the present period of time and practices concerning detention, such as jail detention, protective detention substituted for jail (before a case goes to a family court) and protective detention (after a case goes to a family court) contradict the above principle and the objective of Article 37 (b) of the Convention: "The arrest, detention or imprisonment of a child shall be used only as a last resort and for the shortest appropriate time."

471. [3] In the light of 13. 2 of the Beijing Rules and Rules 2 and 17 of the UN regulations for the Protection of Juveniles Deprived of Liberty, "as a last resort" under said paragraph of the Convention means that when judging if a juvenile should be placed under physical restraint, the feasibility of such alternatives as careful supervision, restriction to one's own home, and accommodation in an educational institution must be considered, together with the possibility of holding a hearing if such measures are used for the juvenile in question.

472. [4] However, in Japan, such alternative to arrest is not systematically available. With regard to jail detention, protective detention as a substitute for jail detention whereby juveniles are detained at a Juvenile Classification Home is the lone alternative, although seldom used. In addition, when the Court renders a judgment as to whether a juvenile should be detained, public prosecutors do not asset or explain the circumstances under which it is difficult to use alternative means, thus a juvenile is detained too easily simply through examination into whether the case satisfies requirements almost identical to those for adults. Moreover, in the provisions of Japan's Juvenile Law, the need for "efforts to secure alternative means" is rarely taken into consideration, even though Article 43 of the Law stipulates that no juveniles shall be detained "unless absolutely necessary."

As a result, many juveniles are detained in practice, although Paragraph 306 of the Government Report makes no reference to the fact. Meanwhile, protective detention as a substitute for jail is hardly ever applied.

Even when a decision is made that a juvenile must be detained, protective detention substituted for jail should be applied more often. As for jail detention, a stricter practice should be exercised that unless the required "efforts to secure alternative means" is not satisfied, the decision to detain a juvenile "by absolute necessity" shall not be made. Furthermore, for protective detention as a

substitute for jail, the traditional interpretation administration has been that requirements the same as for adults may be applied. However, other less restrictive means, such as careful supervision, should be adopted. Here too, stricter interpretation must be employed.

In addition, with respect to the place of detention, considering the spirit of "accommodation at an educational institution or a Home," the provision of the Juvenile Law that "a Juvenile Classification Home can be used as a place of detention" must be observed. In practice, however, children are rarely detained at a Juvenile Classification Home as most of them go to a "*daiyo kangoku*" (substitute prison) where it is hard to separate them from adults.

Therefore, in order to make the requirements authorizing detention stricter, a defense counsel's rights to be present and to state opinions during the hearing for detention of a juvenile, which are not allowed under the current legislation, should be permitted, according to Article 37(d) & Article 40(2)(b) of the Convention.

473. [5] Moreover, the requirements for determining protective detention are vague and in actual application, juveniles placed under detention when their cases are being sent to the family court in principle are ruled subject to protective detention. Questions to juveniles when deciding protective detention are mere formalities and substantial requirements for protective detention have not been considered.

At present practically 100% of the children decided as subject to protective detention go to a Juvenile Classification Home, under Article 17(1) of the Juvenile Law, with the precipitate that protective detention at home under a family court probation officer's supervision, as provided for in Article 17(1), remains nothing more than a dead letter. The present state wherein the said system that equals "careful supervision" as defined in the Beijing Rules is completely disregarded, which means alternative measures have not been carefully considered, runs counter to the spirit of the Convention

As seen from figures in material attached to paragraph 307 of the Government Report, "Total number of juveniles sentenced to general protective disposition and subtotals corresponding to existence/non-existence of measures for detention and shelter care (protective detention)," protective measures from 1994 to 2000 maintained an upward trend as follows.

1994	14,249 protective detentions	1995	13,865 protective detentions
1996	14,739	1997	16,839
1998	18,865	1999	15,939
2000	18,072		

Here too, as in the case of jail detention, to tighten the requirements for protective detention, a defense counsel's right to be present and state opinions during the detention hearing must be institutionalized. At present, these rights are left to the discretion of a judge and often denied in practice.

474. [6] Regarding the provision stating that detention "...of a child...shall be used...for the shortest appropriate time," the length of time and actual status of detention in Japan should be called to question.

The period of detention in investigation stage cannot be extended, "unless absolutely necessary" even for adults. With juveniles, whether detention should be extended must be more strictly judged. In reality, though, the extended detention even for juveniles is too easily allowed for reason of a serious case or a complicity case entailing a lengthy investigation.

475. [7] As for protective detention in a Juvenile Classification Home, the Juvenile Law stipulates that in principle detention should not exceed two weeks, aside from exceptional cases when an additional two weeks may be granted once "if continuation is specially required." However, extending the period for protective detention is becoming a basic principle in practice, and the proceeding due date of many juvenile cases are set at more than three weeks after the decision of protective measures. Thus, the principle and exception contradict one another here, too.

476. [8] Moreover, as mentioned paragraph 306 of the Government Report, the revision of the Juvenile Law does allow extending the period of protective detention up to eight weeks three times at maximum in cases having witness examination (special extension of protective measure).

Before the revision, juveniles could stay at home and continue proceedings after withdrawing protective detention in cases that had many opportunities of witness examination. But the law was "revised" on ground of the abstract possibility of "escape" and "suicide and self-laceration."

Considering that extending the period for protective detention was becoming a principle, as mentioned, fear exists that an extension of up to eight weeks will easily occur in cases having witness examination, etc.

477. [9] Today's state as mentioned above runs counter to the spirit of Article 37 (b) of the Convention and the international standing rules stating that physical detention of a juvenile should be used for the shortest possible time. It is therefore of urgent necessity for requirements authorizing the term extension of protective detention to become stricter in actual practice. Accordingly, practical operations require improvement aiming at more strict requirements including extending the period for detention and protective detention, with provisions for specifying special extensions of protective detention reviewed.

(8) Supervision and monitoring of corrective facilities, and procedure to file complaints (Paragraph 310 of the Government Report)

478. According to Paragraph 310 of the Government Report, as a system to supervise the treatment of juveniles to realize proper control and management of correctional institutions, nationwide inspections are conducted by the Ministry of Justice (Correction Bureau), with regional inspections conducted by the Regional Correction Headquarters for the institutions under their respective jurisdiction. Thus, the issues requiring improvement as pointed out by the inspectors were promptly

corrected." (Para.310)

But the Government Report fails to clarify what the inspectors suggested as needing improvement and in what way they were improved. It lacks concrete explanation.

As for filing complaints, the report states that juveniles at corrective facilities can make use of administrative redress such as petition and reporting of human rights violation as well as judicial redress such as civil suits and criminal complaint and accusation. There is no doubt that the system exists, but the Government Report does not touch its practical availability. Doubts prevail regarding the effectiveness of each system and whether such systems are, in reality, available to juveniles whose performance is assessed by prison officers.

The report also states that juveniles can claim complaints against how they are treated and come forward to express their opinions at reform schools. Here again, doubts exist concerning effectiveness as seen in cases of juvenile in prison.

Concerning the juvenile classification center, it is easy to guess that the juveniles rarely claim complaints against such officers and instructor since the facilities retain juveniles for only short periods, and their attitudes are submitted via reports of diagnosis results to a family court and reflected in the judgment.

B. Sexual Exploitation and Sexual Abuse

1. The Government should investigate the changes foreseen concerning the number of arrests for violating the Child Prostitution and Child Pornography Prevention Law (Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children) after it took effect, and the number of arrests for breaking the Child Welfare Law, Prostitution Prevention Law and Juvenile Protective Municipal Ordinances before the Child prostitution and Child Pornography Prevention Law, and report the effects of enforcing said law with respect to the control and prevention of crime.

2. To promote education in problems of child prostitution and child pornography, the Government and municipalities should establish specific programs and make efforts to encourage people concerned so that such problems can be treated in human rights education at schools and workplaces.

3. The Government should investigate the status of victims of child prostitution, child pornography and child sexual abuse with respect to how they were treated during investigations and trials, and learn the actual state of victims who suffer secondary damage during judicial procedures. It should not only improve the situation but also enhance the protection of victims while considering revision of the Criminal Procedure Law.

4. The Government and municipalities should realize that no improvement worth evaluation has been made concerning physical and mental traumatotherapy, recovery and a system to guarantee life security in society for child victims of sexual exploitation and sexual abuse, and establish a fundamental improvement plan in terms of both hardware and software, and provide a budget for implementation.

5. The government should clarify the obstacles foreseen regarding the exchange of information, investigation, judicial mutual assistance with foreign agencies, etc. when applying the provisions of punishment for Japanese nationals guilty of violating the Child prostitution and Child Pornography Prevention Law abroad, and in order to remove these obstacles and establish close relations with the agencies, it should proceed with negotiations with them while considering the conclusion of bilateral or regional agreements to resolve commercial sex abuse problems.

6. When reviewing the law, scheduled for three years after its enforcement, punishment for simple possession of child pornography, tougher sentences, control of porno-comics and child pornography on the Internet, etc. form points of issue. However, from the viewpoint mentioned earlier, the Government should analyze the results of the three-year enforcement carefully so that an amendment truly required to root out and to eliminate the sexual abuse of children and help recovery from damages, rather than merely widening the punishable conduct.

479. 1. Paragraph 338 of the Government Report cites the number of arrests for violating the Child Prostitution and Child Pornography Prevention Law and included an explanation that suggests these arrests are fruits of enactment of the law. However, according to the data in paragraph 337, which totals the arrests for breaking the Child Welfare Law, Prostitution Prevention Law and Juvenile Protective Municipal Ordinances, the number of the latter remarkably declined in 2000.
Some view this as merely because welfare offenses, covered by other statutes before, now come under the Child Prostitution and Child Pornography Prevention Law. This being the case, the effects of enforcing the new law for the control and prevention of offenses becomes questionable, and a proper evaluation cannot be made. Conversely, the possibility exists that offenses involving the act of having a child make an indecent behavior formerly punishable by up to 10 years imprisonment under the Child Welfare Law, are now subjected to a mere three years for child prostitution under the new law. In fact, certain cases in which a contradictory outcome resulted from enforcing this law appeared among recent offenses.

Detailed investigation and analyses are required to determine if any crimes were not controlled prior to enforcement of the new law, whether it produces different effects regarding punishment after

arrest, and exactly how it serves to enhance the protection of human rights of the child.

480. 2. Paragraph 336 of the Government Report describes training for police and prosecutor personnel, public relations and awareness-stimulating activities by the police. However, it recounts not one achievement to show that the enlightenment and education campaign concerning the dignity of sex as the human right of the child, the seriousness of violating this, and enforcement of the Child Prostitution and Child Pornography Prevention Law has produced satisfactory results at school or workplaces, particularly among men and boys who can be perpetrators.

Public relations and awareness-raising activities by the police may warn that child prostitution and child pornography constitute a crime, but they cannot teach the meaning and importance of protecting the dignity of sex as the human right of the child, which is essential in this issue.

To eliminate sexual exploitation and sexual abuse demands ongoing human rights education by schools and enterprises. The Government should request the Ministries of Education, Culture, Sports, Science and Technology, and of Economy, Trade and Industry to develop specific educational programs together with local authorities and boards of education to encourage this form of education in schools and private enterprise.

481. 3. Paragraph 338 of the Government Report states that the police provide protection for victims of sexual exploitation and sexual abuse during investigations and trials taking into account the characteristics of children. Thanks to the provision of Article 12 of the Child Prostitution and Child Pornography Prevention Law, as well as the revision of the Criminal Procedure Law, a certain momentum for improving the operations becomes apparent.

However, from the standpoint of attorneys who attend police interviews and on-site investigations, and examination of witnesses during court proceedings as the victim's representative, the current state, which exposes victims to secondary damage owing to lack of understanding that they require traumatotherapeutical treatment as outraged victims, has not substantially changed. They are frequently blamed their inconsistency in statement because most of people don't understand that ugly memories of violation and brutality tend to retreat from memory and become confused from the shock sustained. Painful recollections are activated through repeated examination that exposes them to an avalanche of minute questions whose necessity for indictment is quite doubtful. In worst cases, the victims are asked there prior sexual experience and condemned as if they were at fault, and the victims find themselves mentally cornered by cross examination by a defense counsel to the degree it endangers continued examination.

To alleviate this kind of treatment, judicial officials must secure detailed medical information regarding possible posttraumatic stress disorder suffered by outraged victims. Moreover, the questions directed at children require prudent selection, with the method of questioning developed

while studying the forensic interview, a method developed in the United States. When necessary, the system should be improved, to include a revision of the Criminal Procedure Law.

482. 4. Paragraph 337 of the Government Report referred to police support for the recovery of victimized children and, in paragraph 344, for consultations and instruction at child guidance centers.

However, the number of cases wherein children regarded as victims of prostitution are treated as juvenile delinquents and sent to reform school or Support Facilities for Development and Self-sustaining Capacity remains unchanged. In reality, though, as there are many cases of child prostitutes being culpable for other crimes too, like drugs, theft, etc., to give consideration for victims of sexual crimes only is not allowed. Basically, correctional education in Japan lacks the recognition that a most juvenile criminals are victims of past human rights violation, such as maltreatment or child abuse, and is conducted based solely on the concept of having them acquire normative consciousness and learning to lead a well-regulated life. This kind of education cannot heal their physical and mental wounds as caused by forced sex and violence and makes it hard for them to acquire self-respect, which is necessary for recovery from trauma and a return to society.

It remains moot whether counseling and instruction by the police and child guidance centers includes this concept of social rehabilitation for victims of maltreatment.

The Government and municipalities must recognize that conventional child welfare policies and measures are severely if not entirely deficient in facilities and recovery programs, and among persons who give treatment and caseworkers, after which a basic improvement plan must be devised with full-scale implementation in light of Articles 15 and 16 of the Child Prostitution and Child Pornography Prevention Law.

483. 5. In paragraph 338 of its Report the Government stated that the Child Prostitution and Child Pornography Prevention Law contains a provision to punish offenses committed outside Japan, while paragraph 342 calls for cooperation with foreign agencies in accomplishing this. Two cases related to child pornography and one related to child prostitution were reported as instances of arrest based on the new law.

However, in a case where a Thai boy accused a Japanese man of indecent assault in 1997, the relevant public prosecutor's office after five years of investigation handed down a judgment to waive the indictment, the main reason being that the victimized boy's statements were inconsistent. Behind this decision lay suspicion that, after it was made known that the boy had undergone an earlier experience of child prostitution, Japan's public prosecutor deemed protection of the boy no longer necessary. This case had many problems such that owing to bungled handling stemming from international cooperation in the investigation, the probe was unduly prolonged and the boy's statements and material evidence were insufficient. At the civil trial seeking compensation pursuant

to a decision of exemption from indictment, the accused man admitted to the victim's claim, apologized to the boy, and paid compensation, thereby reconciling the matter in favor of the boy. This made more outstanding the problem that the indictment did not materialize as a criminal case.

In actuality, the number of child prostitution cases perpetrated by Japanese men in Asian countries is not declining. To expose these felons, a cooperative system whereby nongovernmental organizations, police, public prosecutor offices, courts and diplomatic operations in each country can exchange information and cooperate with counterparts in the other country, requires establishment. Furthermore, to expedite punishment for such offenses committed abroad, international agreements, treaties, etc. that promote mutual understanding of dissimilar criminal justice systems in the countries concerned and enable the required cooperation must be concluded.

The Government should learn from the above example of failure to exact punishment for offenses committed abroad, and promote bilateral or regional cooperation, the conclusion of international agreements, etc.

484. 6. Based on Article 6 of its supplement, the Child Prostitution and Child Pornography Prevention Law is scheduled for reviewed three years after its enforcement.

Consideration for the review and amendment has already started in the ruling Liberal Democratic Party. In addition to punishment for simple possession of child pornography, the control of porno-comics, which were discussed but not incorporated in the actual provisions and will be discussed again, tougher punishment, control of child prostitution using online assignation sites and delivery of child pornography are being discussed.

As for expanding the scope of punishment and related provisions, its deterrent effects on acts of human rights violation of children should be incorporated on one hand, problems such as possible violation of privacy and freedom of expression, etc. as well as alternative means also require careful consideration on the other.

Moreover, an investigation should be made on the status of implementation during the three years from the above viewpoint, with matters that have not been implemented on a full scale though stipulated in the law sorted out according to the points of issue and measures taken for improving their applications.

C. Child Refugee

1. For those applying for refugee status including children, they should be given protection such as guarantee of residence, physical freedom, the right to participate in the National Health Insurance system and entitlement to public welfare assistance even if they are unofficially resident in Japan at

the time of applying.

2. For those whom the United Nations High Commissioner for Refugees (Japan and Korea district office) has acknowledged as refugees according to a treaty, the Minister of Justice should acknowledge the necessity of protection, retract a forcible expulsion order if one has been issued, and allow them to be released if they have been held in detention.

3. For a child having no guardians and applying for refugee status, a new system should be established so that a guardian can be appointed for the child as soon as possible after the application is accepted.

4. If an officer interviews a child who has no guardians and is applying for refugee status, the officer should be obliged to get training for the child's psychological, emotional and physical development and behavior.

5. For children of foreign nationalities who have been, in their own countries, suffered torture or other cruel, inhuman and degrading treatment or punishment or fallen victims to armed conflict, a new system should be established to obligatorily protect them should they come and seek protection to Japan.

485. 1. Japan ratified the Convention Relating to the Status of Refugees in 1981 and granted asylum to 291 applicants. The total number of asylum applications received by Japan by the end of 2001 was 2,532. However, in the past 10 years only 94 people were given asylum out of 1,280 applicants, whereas Europe and North America annually granted asylum to thousands or tens of thousands of seekers. Japan remains reluctant to accept asylum seekers, as evidenced by the low proportion and few cases granted asylum in Japan.

In addition, there are the following problems regarding the procedures of applying for refugee status and the treatment of applicants.

2. Lack of appropriate protection and humanitarian assistance for children who try to acquire refugee status

486. In case a person applying for refugee status is unofficially resident in Japan at the time of applying, no residence permission including tentative qualification will be granted even if the application has already been filed. Therefore, in principle those applying for refugee status including children are not entitled to public welfare assistance or National Health Insurance.

3. Protection for those whom the United Nations High Commissioner for Refugees has acknowledged as refugees

487. As for those whom the United Nations High Commissioner for Refugees (Japan and Korea district office) has acknowledged as refugees according to a treaty, in some cases the Minister of Justice does not acknowledge the need for protection, maintains a forcible expulsion order and keeps them in custody. There have been no reports on such cases involving child refugees, but they could be treated in such a way.

4. Problems in procedures for acquiring qualified refugee status

488. For children who apply for refugee status without being accompanied by anyone, there is no system to allow them to have supporters or representatives. Also, there are no other special systems dedicated to the special procedures required when a child applies for refugee status. There are no systems in which officers questioning refugees undergo training for matters such as the child's psychological, emotional and physical development.

5. Extent of asylum procedures

489. For children of foreign nationalities who have been, in their own countries, suffered torture or other cruel, inhuman and degrading treatment or punishment or fallen victims to armed conflict, there are no systems to obligatorily protect them except for procedures for acquiring, based on the treaty, refugee status even if they come and seek asylum in Japan. This is the only system in which the Ministry of Justice grants residence permission at its discretion, and yet no standard for giving permission has been set.

D. Illegal Child Immigrants

1. The Immigration Bureau should amend how to treat illegal immigrants and residents, as currently they are all detained, regardless of whether they may escape or not, and should determine that detention is not allowed in cases where physical restraint to prevent escape, etc. is not needed. For detention after a forcible expulsion order has been issued, an appropriate maximum period should be set.

If the Immigration Bureau detains children on suspicion of illegal residency and entry, the children should be separated from all adults other than their parents. Also, education opportunities for the children should be guaranteed.

2. If an illegal child immigrant stays in Japan for a certain period and receives an education, etc., the child should be granted special residence permission in consideration of the best interests of the child.

1. All-detention principle

490. The Immigration Bureau detains all illegal immigrants and residents regardless of whether they may escape or not. They make no exceptions for children. Infants are sometimes detained at protective facilities, even though this is not obligatory. Unnecessary detention is equivalent to arbitrary detention. Also, detention after a forcible expulsion order has been issued can last indefinitely until the person is deported.

2. Treatment of children detained by the Immigration Bureau

491. In case the Immigration Bureau detains children on suspicion of illegal residency and entry, the children are not separated from adults. Also, there are no educational opportunities for the children while they are held in detention.

492. 3. According to statistics of the Immigration Bureau, there are currently more than 200,000 unqualified residents existing in Japan, including a considerable number of children. Some of them were originally brought to Japan when their parents illegally entered Japan, have a good command of the Japanese language, and have forgotten their mother tongue as a result of being educated in Japan; others were born in Japan as children of illegal entrants and are receiving education at Japanese schools. Also, some of them have not only received elementary and secondary education but also gone on to higher education and university or college. Some children are facing great difficulties in life and education, being deported to their home country even after staying in Japan for more than 10 years, despite being almost unable to use their mother tongue.

Ways should be explored to grant these children special residence permissions in consideration of the best interest of the child.

However, Japan's Immigration Bureau has deported a number of children in the past, stating: "the right provided in the treaty is guaranteed only within the framework of the residency system" and therefore that the right provided in the treaty does not cover children of unqualified residents. It has also been confirmed that courts also follow a similar practice.

In the Guidelines for periodic reports from States Parties (General Guidelines regarding the Form and Conditions of Periodic Reports to be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention), the Committee on the Rights of the Child requests each State Party to provide information concerning the "the measures adopted to ensure the rights set forth in the Convention to each child under the jurisdiction of the State without discrimination of any kind, including non-nationals, refugees and asylum-seekers" (para. 25) in connection with the principle of antidiscrimination as specified (Article 2 of the Convention). Therefore, they clearly consider that the rights of the child under the Convention should be guaranteed for children of foreign residents, etc.

regardless of residency status. Also, in connection with the best interests of the child (Article 3), they request each State Party to "provide information on how the best interests of the child have been given primary consideration in family life, school life, social life and in areas, such as ...." and the areas include "Immigration, asylum-seeking and refugee procedures" (para. 35).
Japanese immigration control practices violate this standpoint.

The system and operations should be amended so that the rights under the Conventions such as antidiscrimination (Article 2), best interests of the child (Article 3), prohibition of separation from parents (Article 9), rights to express opinions (Article 12), right to the protection of arbitrary interference with his or her family (Article 16), and right to education (Article 28), are duly considered when a judgment of compulsory expulsion is made concerning a child and his/her family without residency status.

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