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**The Convention on the Rights of the Child:
95 Issues to be Solved in Japan**

NGO Report to the U.N. Committee on the Rights of the Child
(Summaries & Recommendations)

Coordinated by

Federation for the Protection of Children's Human Rights

International Movement Against All Forms of Discrimination and
Racism - Japan Committee (IMADR-JC)

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Introduction

1. Process of the Preparation of This Report

The preparation of this NGO report to the U.N. Committee on the Rights of the Child (hereafter referred to as "the Committee") was coordinated by Federation for the Protection of Children's Human Rights (FPCHR) and International Movement Against All Forms of Discrimination And Racism - Japan Committee (IMADR-JC).

FPCHR, which consists of both affiliated organizations and individual members, has disseminated and promoted the Convention on the Rights of the Child (hereafter referred to as the Convention) actively since its establishment in 1986. It has published Japanese translations of the Convention (translated by Study Group on International Education Law), including those of its drafts. It has also published a variety of materials such as the Convention on the Rights of the Child and the Problems of National Legislation, the Convention on the Rights of the Child: Q & A for Its Implementation, and Start to Practice the Convention on the Rights of the Child from Today and the Convention on the Rights of the Child: Handbook for Practice. FPCHR has also clarified the problems of national legislation and institutions and made suggestions to the Diet and the Government, for the purpose of realizing effective ratification. After the ratification, FPCHR sent questionnaires to local municipalities on the implementation of the Convention and published a report on the implementation of the Convention on the Rights of the Child in Local Municipalities (Akashi Shoten Publishers), based on the responses by 503 municipalities, in June 1997. FPCHR has also conducted a survey on the awareness of teachers and other staff of the Convention and a final report is now under preparation.

It has been one of FPCHR's priority areas of activities to follow the work of the Committee and to make it known in Japan. For this purpose, FPCHR has sent Yuji HIRANO to Geneva since the second session of the Committee (September-October 1992) and let him observe all the examinations of States Parties reports, in cooperation with other organizations and individuals. The details of the examinations have been published on the by-monthly bulletin of FPCHR, available both to the Government and to individuals and NGOs.

IMADR, which has consultative status with the U.N. Economic and Social Council, has initiated global activities in the fields of non-discrimination and the protection of minorities. It has actively disseminated and promoted the Convention as well. IMADR is also a member of NGO Group for the Convention on the Rights of the Child and takes part in its Sub-group on the Sexual Exploitation of Children.

This report has been prepared in cooperation with their affiliated organizations as well as many other organizations and individuals (See ENDNOTE for the list). FPCHR also conducted a survey, specifically for the purpose of preparing this report, to find out the extent to which the Convention is recognized and the issues to be solved for better implementation.

2. Problems of the State Party Report of Japan

The Government of Japan submitted its initial State Party report (CRC/C/41/Add.1, hereafter referred to as "SPR") dated 30 May 1996 to the Committee. Though the report followed the reporting guidelines prepared by the Committee in its form, it is hard to argue, when you examine it, that the Government understood the meaning of the reporting system provided by the Convention. The report is only a list of legal provisions, institutions and policies which concern children. It contains little descriptions on the actual situations and problems, including how the practices are, how children rights are violated and what challenges we face for the future protection of these rights. In many respects, it does not meet the requests of the guidelines, gives inaccurate accounts, offers incorrect or narrow interpretations of the Convention and leaves out some important points. Since it hardly contains self-evaluation which is required by the reporting system, a fruitful examination by the Committee cannot be expected if the dialogue is solely on this report. It is unlikely, neither, that the preparation and examination of the report would lead to the promotion of children rights.

In light of these grave defects of the governmental report, FPCHR and IMADR-JC decided to prepare a comprehensive NGO report to be submitted to the Committee.

3. Organization and Contents of This NGO Report

As is represented in its title the Convention on the Rights of the Child: 95 Issues to be Solved in Japan this report identified 95 issues which are especially problematic in the implementation of the Convention in Japan. These issues are arranged in accordance with the Committee reporting guidelines. Each item consists of (a) a brief summary of the present state of affairs and the problems, (b) detailed background information and (c) recommendations to the Government, with a view to facilitating the use by the Committee and other readers. The present report is a summarized version, putting together (a) and (c), specifically prepared for the pre-session working group. The complete one will be submitted to the Committee in due time.

In selecting those issues, the drafters tried to cover as many areas as possible in which the Committee has shown strong interest, making the best use of their experiences of observing the Committee (national economic policies, international cooperation and violence against children including corporal punishment and abuse as well as sexual violence and exploitation). On the other hand, they intended to include such problems which are universal but have not often been taken up by the Committee (victims of crimes, children in the mass media, the right to play, disasters and prevention of juvenile delinquency). It is needless to say that the report touches upon such phenomena as are unique in Japan or are particularly distinct in Japan (competition in school entrance examination / too early childhood education, non-attendance at school, *naishin-sho*, which is a confidential school report to higher educational institutions, school rules, bullying and parent-child suicide / murder of children by parents). The involvement of IMADR-JC helped the drafters to enrich the chapter on non-discrimination. The principle of respect for the views of the child is taken up under eight headings.

4. Basic Attitudes to the Preparation of This Report

In preparing this NGO report, the drafters tried, first of all, to evaluate the implementation of the Convention from the viewpoint of the civil society and to identify the problems in guaranteeing children rights in Japan. It is because the important objectives of the reporting procedures under the Convention is to promote active discussions at the national level, providing stimuli through the dialogue at the Committee, and to improve the national capacity to implement the Convention.

Second, the drafters placed emphasis on making the procedures and discussions of the Committee widely known. It is not only because this will result in a more convincing report but also it will be helpful to make the national discussions richer by evaluating the implementation of the Convention in light of the ideas and expert views of the Committee. For that purpose, FPCHR published annual for Monitoring the Convention on the Rights of the Child by the Civil Society and NGOs (February 1997), with a view to providing information on the basic knowledge of the Committee, the summary of its discussions in each field (English translation was distributed to the members of the Committee at the end of its fifteenth session) and the initiatives by NGOs in other countries for monitoring the Convention and preparing NGO reports.

Third, the drafters made it a principle to cite the provisions of the Convention when pointing out problems and making recommendations. They also tried to provide detailed interpretations of the articles as far as possible. This is because the Committee has a tendency to focus on policies rather than to provide legal arguments by invoking the articles of the Convention. The drafters wanted to contribute, although in a small way, to the development of legal interpretations by the Committee. The drafters wish to continue this contribution apart from the preparation of the NGO report.

5. Concluding Remarks

Challenges remained to be addressed, during the process of the preparation of the report, including the promotion of extensive discussions at the civil society and participation of children. However, the drafters are proud of the report, which may be useful for the Committee as well as for individuals and NGOs in Japan, as a checklist to overview the situations which Japanese children face and as a basis for the subsequent constructive dialogues with the Government, local municipalities, the Diet and local parliaments.

This report is to be submitted to the Government of Japan. The Committee can refer to and quote from this report as GO report by Federation (for the Protection of Children Human Rights).

I. GENERAL MEASURES OF IMPLEMENTATION

(1) Preparation and Publication of the Report

*The Government considers the preparation of the report to the Committee only as a formality, not as an opportunity for the comprehensive and self-critical review of the implementation of the Convention. For this reason, the report was prepared without involving the Diet and civil society including NGOs in constructive dialogues at all levels. In this way, this report does meet the demands and expectations of the Committee in its contents. Since the report has not been disseminated in an active manner, its existence and contents are hardly known among the general public [SPR 35].

RECOMMENDATIONS

1. The reporting procedures should be considered as good opportunities to grasp the actual situations of children's rights, to review the existing legislation and policies in a self-critical manner and to pursue constructive dialogues at all levels. In the process of preparing the report, there should be in-depth discussions at the Diet on children's rights and problems to be solved. Meaningful participation of the civil society and NGOs should also be ensured. In particular, special attention should be paid, in the spirits of the Convention, to the efforts for reflecting children's viewpoints and opinions in the report.

2. The report itself and the process of the dialogue with the Committee should be disseminated in an active manner, in order to encourage and promote extensive discussions on the implementation of the Convention. In particular, the Diet should be briefed and consulted in detail on the process and results of the dialogue including the Committee's suggestions and recommendations.

(2) Reservations and Declarations

*Under the present wording, the reservation to Article 37 (c) of the Convention is broader than the intention expressed in the SPR 13 and how the reservation will be applied remains to be vague. If the explanation in the SPR 13 is the only reason for the reservation, it is inappropriate to make the reservation to the whole principle of "separation of children from adults", enumerated in the second sentence of the said provision. It is sufficient to declare that the principle is not applied, as an exception, when "adults" are 18 and 19 years of age.

*The SPR does not even mention the two declarations in the field of immigration control, which may intend to preserve administrative discretion. In particular, the declaration to Article 9, para.1, is a reservation in substance and also raises concern as to its compatibility with the object and purpose of the Convention. See also (54) in this regard.

RECOMMENDATIONS

The Government should make it clear to the Committee that the reservation to Article 37 (c) is only applied when "adults" are 18 and 19 years of age and that the principle of "separation of children from adults" continues to be applied in other cases. The Government should withdraw the declarations to Article 9, para.1 and Article 10, para.1 and admit that the provisions of Article 9, para.1 is applied to cases of deportation under the Immigration Control and Refugee-

Recognition Act.

(3) Status of the Convention in National Legislation

*The Convention overrides ordinary laws in national legislation [No mention in the SPR]. However, Japanese courts generally are not active in applying human rights treaties in judicial cases, with no exceptions with respect to the Convention on the Rights of the Child. New developments have been observed in relation to the International Covenant on Civil and Political Rights, with the increase of court decisions which have applied its provisions in a positive manner. This does not hold true, at the present stage, for the Convention on the Rights of the Child.

RECOMMENDATIONS

Courts should fully recognize that Article 3, para.1 and Article 4 require that the provisions of the Convention should be taken into consideration in cases which concern children's rights. Therefore, courts should realize the application of the Convention as one of their functions. When the provisions of the Conventions are invoked, courts should examine the provisions in substance, not dismissing the arguments automatically on the assumption that the rights set forth in the Convention are already reflected in the Constitution. In such cases, courts must not accept interpretations and arguments by administrative bodies easily. Courts should adopt interpretations which are agreed globally, referring fully to the comments and observations expressed by the Committee on the Rights of the Child and other human rights treaty bodies.

(4) Legislative and Administrative Measures

*The Government maintained that ratification of the Convention did not require any amendments to its national legislation [SPR 12]. However, there are many matters which require enactments, amendments and abolitions of national legal provisions (legislative measures) or improvements of their application and administration (administrative measures). In particular, the following points obviously raise concern as to their conformity with the Convention and require immediate legislative and administrative measures: different minimum ages for marriage between boys and girls (See (17)); legal and institutional discrimination against children born out of wedlock, including in relation to the acquisition of nationality (See (18)); discriminatory treatment against Korean children who go to their own ethnic schools, including that matriculation from those schools is not recognized as qualification for national and public universities examination (See (21)); prohibition of political activities of upper secondary school students by the notice of the Ministry of Education (See (42)); legal provisions which may and does lead to statelessness (See (41)); lack of involvement of the family court in adoption procedures in some cases (See (57)); inadequate protection of due process of law in juvenile protection procedures (See (87) & (88)), in particular as regards access to legal assistance (See (89)) and free assistance of an interpreter; and lack of explicit prohibition against the use of children in pornographic materials (See (94)).

RECOMMENDATIONS

In order to ensure the consistency between national legislation and the Convention, relevant national laws should be enacted, amended or abolished. In particular, immediate legislative and administrative measures are needed as regards the above-mentioned points which obviously raise concern as to their conformity with the Convention.

(5) Legal Reforms in Progress

*Some of the important legal texts which concern children are now under review [No mention in the SPR]. However, the principles and provisions of the Convention are not fully taken into consideration in the reviews. For example, in the revised Child Welfare Law (June 1997), the idea that the child is a subject of rights was not explicitly mentioned. Neither the principles of the Convention, including the best interests of the child (Article 3) and the respect for the views of the child (Article 12), were introduced. The same holds true for the Juvenile Law and the family provisions of the Civil Code, which are now under review.

RECOMMENDATIONS

When enacting or amending any laws which concern children, measures should be taken to ensure that the provisions of the Convention are fully taken into consideration. Such measures include making the provisions of the Convention fully understood among drafters of bills and the Diet members and exchanging sufficient and positive dialogues with individuals and NGOs who are involved in children's issues. During the process, particular attention should be paid to the principles of the Convention including the best interests of the child and respect for the views of

the child.

(6) Policy-Making

*The Convention is not used as a basis for policy-making and there are no comprehensive national policies or plans of action on the rights of the child. The general principles of the Convention are hardly taken into account in the formulation of policies and children never participate in the process [No specific mention in the SPR].

RECOMMENDATIONS

1. With a view to guaranteeing and promoting all the rights set forth in the Convention, a comprehensive national plan of action should be formulated. The national plan should cover children of all ages.
2. When formulating policies concerning children, all the provisions of the Convention should always be taken into account. In order to reflect children's opinions in the policies, such measures are needed as conducting questionnaire surveys and holding children's public hearings. The introduction of "child impact assessment" procedures should also be considered with a view to ensuring the best interests of the child in all policy decisions.

(7) Coordinating and Implementing Bodies / Data Collection Mechanisms

*A comprehensive body for implementing the Convention or for coordinating relevant policies has not been established either at national or local levels. The Management and Coordination Agency is not an adequate entity for policy coordination with respect to the Convention [SPR 26, 27 & 29]. Though data collection mechanisms are generally established, there are areas which are not covered at all or are covered only partially. Collected data are not effectively used.

RECOMMENDATIONS

1. In order to ensure comprehensive perspectives on the issues concerning children's rights, a body for implementing the Convention and coordinating relevant policies should be established. All the concerned public entities, including the Ministry of Finance, should be represented there. Also, local municipalities should be encouraged to establish focal points on the rights of the child.
2. Data collection mechanisms should be improved so that the actual situations of children's rights can be understood accurately. A comprehensive body which is mentioned above is necessary to ensure systematic analysis and effective use of the collected data. In order to enable the civil society to monitor children's rights, the collected data should be publicized in an active manner unless they infringe privacy of individuals.

(8) Bodies for Monitoring and for Providing Remedies

*An independent body for monitoring the implementation of the Convention, such as an ombudsperson for children, does not exist. "Civil Liberties Commissioners for the Rights of the Child" and other counseling services have limits in monitoring the implementation or providing remedies for children [SPR 15 & 28]. Courts do not function enough as bodies to provide appropriate and prompt remedies.

RECOMMENDATIONS

1. In order to ensure effective monitoring on the implementation of the Convention, there should be further consideration for the establishment of a permanent monitoring body, such as an ombudsperson for children, which is independent from the administration.
2. In order to make "Civil Liberties Commissioners for the Rights of the Child" effective, such measures should be adopted as reinforcing their investigating power, giving them wide publicity among children, ensuring their independence, making the appointment procedures appropriate and democratic, providing adequate opportunities for training, expanding financial and human support and encouraging cooperation and contact with lawyers, other individuals and NGOs. At the same time, support should be provided, in the fields of publicity and finance, to bar associations and NGOs which are working to help children.
3. To ensure that courts perform appropriate functions as bodies for providing remedies on human rights issues, radical reform should be carried out. Judges should be provided with opportunities for training on the Convention and other relevant international standards including in the field of the administration of juvenile justice.

(9) National Economic Policies

*Budget allocations for child-related fields are not adequate. As of 1997/98, the national budget

for education and science exceed the defense budget only slightly. In the context of de-regulation, privatization and decentralization, the budget for child-related fields is not secured duly. In particular, the budget cut for education is discussed often and the reduction of teachers, the abolition of free provision of textbooks and other issues are being proposed. The budget is prepared through individual negotiations between the Ministry of Finance and other Ministries. The best interests of the child are not considered sufficiently during this process [No mention in the SPR].

RECOMMENDATIONS

Necessary measures should be taken to ensure the best interests of the child in the process of budget formulation, including the establishment of a body for implementing the Convention and for coordinating relevant policies, where the Ministry of Finance is represented as well (See (7)), and the introduction of special procedures in the discussion on the budget. As regards education, in particular, measures such as realizing appropriate class sizes (See (74)), making compulsory education completely free and introducing free upper secondary education (See (76)) are required in light of Article 4 of the Convention as well as the economic standards in Japan.

(10) International Cooperation

*The amount of Japan Official Development Assistance (ODA) is higher than any other country [SPR 23 - 25]. However, there are no adequate mechanisms to ensure that the best interests of the child are met in ODA provisions. Since nearly 60% of the total amount of ODA is provided as loans, economic efficiency is given higher priority because of the need to repay the debt. As a result, large-scale development projects are often preferred while basic social development programmes tend to be dismissed. In addition, there are no adequate guidelines on environment, gender, indigenous peoples and human rights violations including forced evacuation.

RECOMMENDATIONS

1. When providing ODA, the best interests of the child should be a primary consideration in light of Article 3 of the Convention. The needs of children in especially difficult circumstances and the impact on environments and peoples' lives should be studied adequately in advance. Also, reference should be made to the concluding observations, if any, adopted by the Committee on the Rights of the Child on the concerned countries. Specific and effective guidelines should be formulated on children, environments, gender, indigenous peoples and human rights violations.
2. The tendency that large-scale development projects are preferred should be changed and more budget should be allocated for basic social development programmes. In addition, it is necessary to increase the proportion of donations and technical cooperation in the total sum of ODA and to make more donations untied.
3. With a view to ensuring effective use of ODA, disclosure of information on ODA should be promoted. At the same time, independent mechanisms for evaluation should be established. It is necessary to carry out such evaluations in cooperation with NGOs both in and outside Japan.
4. In order to enable Japanese children to recognize the importance of social development and to participate in the resolution of global issues, development education and international human rights education should be promoted in light of Article 29, para. 1 of the Convention.

(11) General Measures for Dissemination of the Convention

*Dissemination of the Convention by the central and local governments [SPR 30-34] is not sufficient both in quantitative and qualitative terms. The extent to which the Convention is recognized has not been surveyed by the authorities. During the process of dissemination, it has hardly been emphasized that the child is a subject of rights and that the Convention contains important principles including the best interests of the child and the respect for the views of the child. Therefore, the general awareness of the rights of the child remains low. Little attention has been paid to dissemination for minorities such as aliens and persons with visual impairments.

RECOMMENDATIONS

1. Surveys should be conducted from diverse viewpoints to find out the extent to which the Convention is known. On that basis, comprehensive and systematic strategies for the dissemination should be formulated in order to raise awareness of the Convention and the rights of the child. It is desirable that the activities for dissemination be conducted under the auspices of a comprehensive body for the implementation of the Convention, rather than leaving the task

to individual agencies.

2. Support should be given to local municipalities in the areas of information and finance for the dissemination of the Convention. Such support is required particularly in the dissemination for aliens and persons with disabilities. Dissemination through the mass media, such as newspapers, television and radio, should be actively pursued.

(12) Dissemination of the Convention to Children / Human Rights Education

*Children know about the Convention even less than the general public; 70 - 80% of children do not have sufficient knowledge of the Convention. Even the posters produced by the Ministry of Foreign Affairs for children [SPR 31] have not been used adequately. In school education, the Convention and the rights of the child are not taught adequately.

RECOMMENDATIONS

1. Surveys should be conducted from diverse viewpoints on the extent to which the Convention is known among children and a comprehensive and systematic strategy should be formulated for the dissemination for children. In planning and implementing the strategy, adequate cooperation with NGOs, including those which consist of children themselves, and the mass media for children should be pursued. In view of the fact that there are many children who do not attend school (See (70)), the dissemination should not be done only through schools. Equal emphasis should be placed on the direct dissemination to homes and other places where children may gather. Support should be given to the dissemination for children conducted by local municipalities.

2. Information should be disseminated among children in a way which will enable them to understand the specific contents of the Convention and to actually exercise their rights, taking the realities of Japanese children into consideration. For this reason, it is necessary that materials to be used in the dissemination be prepared in cooperation with children themselves, reflecting their opinions.

3. Dissemination of and education on the Convention should be promoted in school education, through developing educational programmes on the rights of the child and the Convention as well as collecting and publicizing good examples of relevant educational practices. Systemic human rights education should also be promoted in light of the Plan of Action for the U.N. Decade for Human Rights Education.

(13) Education And Training of Professionals on the Convention

*Training on the Convention has been provided to some extent for teachers and child welfare personnel [SPR 32-34]. However, the training does not reflect the views of the Convention that the child is a subject of enjoying and exercising their rights. Education on the rights of the child is not sufficient in schools for professionals. As a result, resistance against the new child-oriented views of the Convention is firmly entrenched among them. Judges, law enforcement officers such as the police and prosecutors, the staff of juvenile correctional facilities and doctors and nurses are provided seldom with education and training on the Convention.

RECOMMENDATIONS

In the process of educating and training professionals working with or for children (teachers, child welfare personnel, judges, law-enforcement officers including prosecutors and policemen, the staff of juvenile correctional facilities, doctors and nurses), education on the Convention and relevant international standards should be adequately provided. Such education should adequately reflect the views of the Convention that a child is a subject of enjoying and exercising their rights.

(14) Relationships between The Authorities and Individuals and NGOs

*Though there has been some progress in the improvement of the relationships between the authorities and individuals and NGOs [SPR 11], the relationships are still not constructive as regular and continuous dialogues have not been achieved yet. Though the Diet is in the process of considering the draft Law for Promoting Civil Activities, the need for financial assistance to NGOs is not given adequate consideration.

RECOMMENDATIONS

1. In light of the fact that the available resources (Article 4 of the Convention) include human resources, the roles which individuals and NGOs have played in protecting and promoting the rights of the child should be duly appreciated. At the same time, procedures and mechanisms should be established to enable them to participate in the implementation and dissemination of the Convention, with a view to reflecting their experiences and viewpoints on legal reform and

policy formulation.

2. When enacting the Act for Promoting Civil Activities, NGO activities should be supported in financial and other aspects, including the establishment of favorable treatment for them in the tax system (for example, by introducing tax exemption for donations to NGOs). At the same time, adequate attention should be paid to ensuring independence of NGOs. In addition, publicity and other measures should be taken to improve social status of NGOs.

II. DEFINITION OF THE CHILD

(15) Definition of The Child

*Various terms are used in national legislation to cover those below 18 years of age, such as "jido"(pupil or child), "shonen"(juvenile or boy) and "seishonen"(adolescent or young person). Each term has different definitions in different laws. The term "child" used in the Convention was translated into "jidou" in Japanese; it confused the situation even more, because "jidou" is often understood as those between 6 - 13 years of age in an academic or general sense. In addition, since majority is attained at 20 years of age in national legislation, the rights of those between 18 - 19 years of age may be placed in a vacuum. Another problem is that the age when the child must be heard in family procedures is 15 years of age, which is too high [SPR 65] (See (34)). Also, the Penal Code and local ordinances define the age of sexual consent differently [SPR 45] (See (95)).

RECOMMENDATIONS

The terminology in national legislation which relates to those below 18 years of age should be standardized. The translation of the term child which is used in the Convention, should be changed into odomo which can be applied to larger age-groups than idou. Consideration should be given to lowering the age of majority to 18 years of age as well as to reviewing the minimum age when the child must be heard and the age of sexual consent.

III. GENERAL PRINCIPLES 1. Non-Discrimination

(16) Discriminated Buraku

*In spite of the fact that the Convention prohibits discrimination on the grounds of "social origin", "birth" and "other status", discrimination against those who come from *Buraku* communities is firmly entrenched in Japanese society, including the field of education. The "dowa issue" in the SPR 52 is the official term for this discrimination against *Buraku* communities. This discrimination was initiated in the early 17th century with a political aim of achieving control over the general population. Legislation which explicitly provides for the prohibition, elimination of and sanctions against all forms of discrimination has not been enacted yet. Sufficient measures have not been taken to provide remedies for victims of discrimination, to prevent it and to improve human rights education [SRP 48-53 and 218].

RECOMMENDATIONS

1. Legal and institutional measures should be taken to eliminate discrimination against those who come from Buraku communities. Such measures include the prohibition of personal research into Buraku origins, the explicit prohibition of discriminatory actions between individuals and the establishment of mechanisms for providing effective remedies. In developing those measures, due consideration should be given to input from the victims of discrimination and human rights violations as well as suggestions and recommendations adopted by the Committee on the Rights of the Child, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.

2. In order to ensure that children from Buraku communities have the right to equal access to education, in particular to upper secondary education and higher education, all necessary measures, including affirmative actions, should be taken. Also, in light of the spirits of the U.N. Decade for Human Rights Education, it is required to take such measures as encouraging universities and colleges to create courses of dowa education, educating teachers through initial and in-service training, reviewing curricula and strengthening awareness-raising campaigns.

(17) Girls

*The minimum age for marriage is lower for girls than boys [SPR 39]. At the social level, the stereotyped idea on men's and women's roles is still reproduced through school education. In addition, strong discrimination against women is strongly entrenched particularly in the field of

employment, which negatively affects life planning of girls. Sexual violence against girls is also prevalent (See also (95)).

RECOMMENDATIONS

1. The Civil Code should be revised to set the same minimum age for marriage between boys and girls.

2. In order to achieve gender equality education, all necessary measures should be taken, including encouraging to eliminate descriptions in textbooks which are based on the notions of gender discrimination, to introduce registers of students where boys and girls are not separated and to reinforce gender equality education. It is also required to make efforts to raise awareness of teachers and parents. In order to prevent discrimination against women in employment, effective measures should be taken, including the introduction of severer sanctions against discriminatory companies.

In order to prevent sexual violence, such measures as are recommended in (93) should be taken.

(18) Children Born Out of Wedlock

*In spite of the fact that the Convention prohibits discrimination on the grounds of "birth" and "the status...of the child's parents", children born out of wedlock are discriminated against legally and institutionally in such areas as inheritance, description on documents, nationality (See (41)) and provision of child-rearing allowance (See (64)). Many problems in the system of affiliation also give negative impacts on the right of the child to know his/her father. In addition, they are sometimes refused to be registered or be issued passports. Social discrimination against them is firmly entrenched as well; they are more likely to be aborted than children born in wedlock [No mention in the SPR].

RECOMMENDATIONS

1. In light of Article 2 and other relevant provisions of the Convention, all the provisions that are discriminatory against children born out of wedlock should be repealed from national legislation, namely the Civil Code, the Family Registration Law, the Nationality Law and the Child Allowance Scheme Law. Those provisions are based on the concept of the patriarchal family system the preference of legal marriage. In addition, it is required to take steps to eliminate social stigma and discrimination against children born out of wedlock, including awareness-raising campaigns.

2. In order to ensure the right of the child to know his/her parents (Article 7 of the Convention), the current system of affiliation, which was derived from the patriarchal family system, should be reformed. Special attention should be paid to the following points: (a) when the father enters his name voluntarily as the father in the notification of birth, it should be understood that the father recognized the child as his own; (b) time and expense required in paternity suits should be reduced, and; (c) effective procedures should be introduced for establishing paternity.

3. In light of Article 18, para. 1 and Article 27, para. 4 of the Convention, consideration should be given to the creation of , for example, the wage deduction system or the system of advance payment by the State, in order to ensure effective recovery of maintenance (See (56)).

(19) Okinawa

*Okinawa is located in the southern part of Japan. It was an independent country called "Ryuku Kingdom" until it was invaded by Japan in the late 19th century. Since then, Japan has imposed discriminatory policies on Okinawa on a structural basis. The overlooking presence of U.S. military in Okinawa (75% of all U.S. military bases in Japan) seriously impairs the right to life and safety and the right to education of Okinawan children. They often suffer sexual violence by U.S. military personnel. In addition as the Japanese Government does not recognize the Okinawan (Ryuku) people as a minority, and the Okinawan language and culture are in jeopardy of extinction [No mention in the SPR].

RECOMMENDATIONS

1. Recognizing the fact that the children of Okinawa have been forced to suffer to a much greater degree than children of other areas, all necessary measures, including negotiations with the United States, should be taken to ensure the principles of non-discrimination (Article 2 of the Convention) and the best interests of the child (Article 3). In particular, urgent measures are required to ensure the right of the child to life and survival and the protection against sexual violence. Also, in light of the fact that the noise of military aircraft gives a negative impact on education of the children, steps should be taken to improve educational conditions.

2. The people of Okinawa (Ryukyu) should be recognized as a minority who has their own

language, culture and history. Cultural and educational policies should be based on this recognition.

(20) Ainu People

*The Ainu are an indigenous people in Japan, who mainly live in Hokkaido at the north end of Japan. They have been deprived of their land and mother tongue through exhaustive assimilation policies [SPR 306]. The access rates of the Ainu children to upper secondary education (78.4%) and higher education (8.1%) are lower than those of the Japanese children living in Hokkaido (94% and 27.4%, respectively) [SPR 218]. They are hardly offered ethnicity-specific education neither. The New Ainu Law (the Law on the Knowledge of the Ainu Traditions and Other Matters), which was enacted in 1997, is still inadequate in its contents.

RECOMMENDATIONS

1. The Ainu should be explicitly recognized as an indigenous people. Necessary measures should be taken in accordance with Article 30 of the Convention and U.N. Declaration on the Rights of Minorities (1992), including the protection of ethnicity-specific education such as learning of the Ainu language. When the policies and studies concerning the Ainu people are developed, the views of the Ainu people should be respected to the maximum degree.
2. All necessary measures should be taken to eliminate discrimination against the Ainu people. In particular, attention should be paid to the establishment of their economic independence and measures to guarantee them equal access to education. In light of Articles 29 and 17 of the Convention, it is also necessary to promote studies and surveys on the history, culture, and actual situations of the Ainu people, to compile educational and other materials and to incorporate the results into school education and social education.

(21) Korean Permanent Residents

*Nearly half of the registered aliens in Japan are now Korean permanent residents, as a result of Japan historical colonization of Korea and the forced evacuation of the Korean people. Social discrimination, including employment, is firmly entrenched against children of Korean permanent residents. Though cases of violations have often occurred, few perpetrators have been arrested [SPR 51]. Fearing discrimination, many children cannot preserve their identity as Koreans [SPR 306]. Ethnicity-specific education is supported seldom by the authorities [SPR 219]. Children who go to their own ethnic schools are given discriminatory treatment, including that matriculation from those schools is not recognized as qualification for national universities examination, on the ground that those schools are not authorized as "schools" defined in Article 1 of the School Education Law [SPR 231].

RECOMMENDATIONS

1. In order to eliminate social discrimination against the children of Korean permanent residents in Japan, all necessary steps should be taken, including educational measures based on the ideas of multi-cultural coexistence and respect for human rights, also in light of Article 29 of the Convention. In particular, effective preventive measures are required against violence against Korean residents, including criminal prosecutions.
2. In light of the provisions of Articles 30 and 29 of the Convention, the right of the Korean children to their own ethnicity-specific education should be recognized. Review of curricula and support to "ethnicity clubs" and "ethnicity classes" should be promoted. In addition, in light of Articles 2 and 28, para. 1 of the Convention, ethnic schools should be accepted as those equivalent to the "school" mentioned in Article 1 of the School Education Law and measures should be taken such as the financial support to these ethnic schools and the recognition of their matriculation as qualification for national universities entrance examinations at the national universities.

(22) Children of Other Aliens

*Particularly as regards children of aliens who overstay their visa permits in Japan, many human rights problems occur in the field of registration of birth, nationality, social security, health and education. Medical security is threatened particularly, because the possibility of applying for the medical health insurance scheme or the emergency medical aid under the Public Assistance Law was excluded in 1990s for aliens who stay in Japan on a short-term basis or overstay their visa permits [SPR 193]. The right to ethnicity-specific education is not guaranteed for any alien children [SPR 231]. In addition, alien children who are 16 years of age or older are obliged, with some exceptions, to put their fingerprints on the alien registry and always carry their alien registration cards. See also (41) on birth registration and nationality and

(54) on the separation of alien children from their parents.

RECOMMENDATIONS

With a view to ensuring the rights of alien children adequately, relevant laws, institutions and policies should be reviewed comprehensively. In particular, it is required to ensure that all the children of aliens who overstay their visa permits in Japan are registered after birth, that no child would become stateless and that those children are guaranteed adequately the rights to health and medical care, to social security and education including ethnicity-specific education. The Alien Registration Law, which obliges aliens to put their fingerprints on the alien registry and to carry their alien registration cards, should be revised as well. It is encouraged to consider the introduction of amnesty, which recognizes residency status of aliens who overstay their visa permits in Japan, and the ratification of the U.N. Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

(23) Children with Disabilities

*According to government statistics, the incidence of disability is approximately 4% among the whole population. This is extremely low in light of the international recognition that approximately 10% of the population have disabilities. This is due to the fact that "disability" is recognized on a restricted basis, which leads to the marginalization of and discrimination against the disabled. Prejudice against disabled children is still strong, not only among the general public, but also among professionals. Segregation is the *de facto* standard in the field of welfare and education, contrary with the global trend for integration. This results in the preservation and fixation of the discrimination. There are no provisions in national legislation which explicitly prohibits discrimination on the basis of disability [SPR 49 and 166-177].

RECOMMENDATIONS

1. The restrictive definitions of disability should be revised so that they be harmonized with the standards of the U.N. Declaration of the Rights of Disabled Persons and the International Classification of Impairments, Disabilities and Handicaps adopted by WHO (World Health Organization).
2. In order to eliminate discrimination and prejudice against disabled children, public education and awareness raising should be further promoted. Training should be provided for professionals and administrators who work with or for disabled children. The principle of segregation in the field of education and welfare should be abandoned, since it results in the preservation and fixation of the discrimination. In light of Article 23, para. 1 and other relevant international standards such as the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, integration of disabled children should be promoted.
3. In light of Article 2 of the Convention, discrimination on the ground of disability should be explicitly prohibited in the Basic Law on Disabled Persons and other relevant national laws, thus providing a clear legal basis for the elimination of such discrimination.

III. GENERAL PRINCIPLES 2. THE BEST INTERESTS OF THE CHILD

(24) The Best Interests of The Child in Laws And Policies

*The provisions of the Child Welfare Law, the Juvenile Law and the Maternal and Child Health Law [SPR 54] only provide for the healthy development of the child and other general concerns, not the principle of the best interests of the child as a criterion of judgement in various activities and decisions which concern children. During the process of policy-making including the formulation of the budget, the best interests of the child are not considered adequately. Specific procedures to ensure the best interests of the child do not exist neither. See also (6), (9) and (10).

RECOMMENDATIONS

The provisions of Article 3, para. 1 of the Convention should be explicitly reflected in laws, regulations and administrative procedures which concern children. It is also required to establish mechanisms and procedures to ensure this principle, also taking the principle of respect for the views of the child into consideration.

(25) The Best Interests of The Child in Individual Decisions

*In administrative and judicial procedures including family trials, the best interests of the child are not necessarily a primary consideration. Ways of thinking commonly accepted by the society, the interests of the parents, social order and administrative efficiency override them in many cases. In particular, when the child seeks for remedies against discrimination by law or

human rights violations by the authorities, courts tend to approve the broad discretion of legislative organs and administrative bodies including schools. See also (3) and (7) [No mention in the SPR].

RECOMMENDATIONS

Along with the immediate implementation of the recommendations in (25), training should be provided for judicial officers, including judges and family court probation officers, with a view to ensuring full understanding of the object of Article 3, para. 1 of the Convention.

(26) Minimum Standards

*The Minimum Standards for Child Welfare Facilities [SPR 56-58] have never gone through major improvements since 1948. As a result, the Minimum Standards are inadequate in terms of providing for material conditions and the arrangement of the staff and their suitability. Also, the Minimum Standards fail to assure the protection of human rights (See (58)). In addition, no Minimum Standards are provided for the establishment of elementary and lower secondary schools and the suitability of foster parents. Though de facto standards are established in both cases by laws, decrees and notices, they are inadequate in content. See also (29) and (74) as regards schools.

RECOMMENDATIONS

In light of Article 3, para. 3, Article 4 and other relevant provisions of the Convention, the Minimum Standards for Child Welfare Facilities should be revised and improved. In the fields where clear minimum standards are not provided, namely as regards the establishment of elementary and lower secondary schools and the suitability of foster parents, minimum standards should be set out urgently.

III. GENERAL PRINCIPLES 3. LIFE, SURVIVAL AND DEVELOPMENT

(27) Suicides by Children

*Many cases of child suicides occur. According to the National Police Agency, 515 persons below 20 years of age committed suicides in 1995, 33.4% of which belonged to upper secondary schools, 13.8% to lower secondary schools and 1.5% to elementary school. According to the Ministry of Education, around 150 pupils and students in public schools killed themselves every year [No mention in the SPR] (See also (81) as regards bullying). Preventive measures, including the improvement of counselling systems, are still insufficient. There is room for improvement in the way of granting compensation to the bereaved as well.

RECOMMENDATIONS

1. On the basis of comprehensive studies on the causes of suicides, necessary preventive measures should be taken, including the better organization of counselling services and the provision of education directed to the development for respect for life. It is required to take steps to mitigate problems in human relations and to ease children stress, such as securing relaxed after-school times and adequate holidays.
2. The current system of the school mutual benefit association should be reconsidered, where benefits are provided when the child committed suicide at school while they are not provided when the child committed suicide at home, whatever the motivations were.

(28) "Parent-Child Suicide" / Murder of Children by Parents

*Against the background that parents consider children as their own properties, "parent-child suicide", in which parents killed themselves along with their children, often occurs. The motivations include disease or weakness of the parent or his/ her spouse, family troubles, and weakness or disability of the child [No mention in the SPR]. Though this phenomenon is nothing but an act of murder of children by parents, it is often tolerated out of sympathy for the parent(s), that the homicide is considered an act of "parental affection" which follows the traditional spiritual climate of Japan. There is a tendency on the part of the authorities and society in general not to give adequate consideration to the circumstances which force them to commit suicides or to the social remedies for prevention [No mention in the SPR].

RECOMMENDATIONS

1. The relevant authorities should conduct surveys on, grasp and analyze the actual situations of parent-child suicide with a view to promoting preventive measures such as the consolidation of counselling and support services.
2. Awareness-raising campaigns should be initiated so that law-enforcement officers, judges, the mass media and society in general tolerate an act of murder of children by parents, out of

easy sympathy which would lead to inadequate consideration to the background of the incidents and the social remedies for prevention.

(29) School Accidents

*There are more than 1.6 million cases of school accidents every year, such as accidents on the way to and from school, during physical education lessons or extra-curricular activities, sudden deaths and accidents due to facility defects. However, no minimum standards exist on the national level concerning the school safety. There are even cases in which the school is unwilling to call an ambulance for an injured child and wish to transfer him/her by a teacher's car or a taxi. Since the law does not provide liability without fault in this regard, it is difficult to charge the school in cases of those accidents [No mention in the SPR].

RECOMMENDATIONS

In light of Article 3, para. 3 and Article 6 of the Convention, measures should be taken to prevent school accidents. Such measures include setting the school safety standards, establishing the systems and procedures for emergency care and providing guidelines for physical education and extra-curricular activities at school. It is also required to provide liability without fault in cases of school accidents and to establish the system of state redress, through the adoption of the school Accident Compensation Law demanded by the Japan Educational Law Society and other organizations or through the revision of the Law on the Japan Physical Education / School Health Center.

(30) Traffic Accidents

*As many as 1,943 children were killed in traffic accidents in 1995. In particular, there are many cases in which infants and young children were run over by cars and in which young persons were killed due to their mishandling of motor-cycles. Sufficient measures are not taken to ensure safety for young children on the way to and from school and to provide appropriate safety education [No mention in the SPR].

RECOMMENDATIONS

1. In order to prevent traffic accidents involving infants and young children, necessary measures should be taken, including providing appropriate distance between the home and the school, securing the safety of the roads to school and consolidating the roads in the community systematically.
2. In order to prevent accidents involving motor-cycles driven by young persons, such measures should be taken as the reinforcement of safety education provided by driving schools and other institutions. The use of motor-cycles should not be regulated by school rules, since it is likely to lead to an increase, rather than a decrease, in accidents.

(31) Victims of Crimes

*Approximately 10% of the total number of victims of homicide are children under 15 years of age. Cases of abduction and disappearance often occur as well. There are many children who suffer from trauma due to murder of or assault on their family members. However, only some of those children receive appropriate care by a few private organizations. Public support is scarce for such care. [No mention in the SPR]. See also (95) concerning sexual offences.

RECOMMENDATIONS

1. In order to prevent children from becoming victims of crimes, all feasible measures should be taken, including the review of city planning, with emphasis on parks and roads where crimes are likely to occur, and awareness-raising in the community. It is also necessary that children be instructed through effective methods on how to deal with the situations when such crimes become imminent.
2. In light of Article 39 of the Convention, counselling and other appropriate measures should be taken for the recovery and social rehabilitation of children who have suffered from crimes themselves or whose family or friends become victims of crimes. For that purpose, it is required to seek adequate cooperation from private organizations that have already initiated such activities.

(32) Safety and Health of Children Who Live Around U.S. Military Bases

*Not only in Okinawa (See (19)), children who live around U.S. military bases have their rights to safety and health infringed. The noise of the aircraft including fighter planes has a negative impact on those children who are likely to suffer from hearing problems due to the noise, to catch colds and to show kinds of behavior which require careful attention. Many children have

difficulty in feeling calm and relaxed, in concentrating and in establishing relationship with others. There is a survey which shows that more underweight babies are born in the areas where the noise of aircraft is tremendous, than in other areas [No mention in the SPR].

RECOMMENDATIONS

In light of Article 6 of the Convention, measures should be taken to ensure that the right to life, survival and development of children are not threatened around U.S. military bases, including the prevention of negative effects of military aircraft on their health.

III. GENERAL PRINCIPLES 4. RESPECT FOR THE VIEWS OF THE CHILD (RVC)

(33) General Awareness on The RVC Principle / Representation and Assistance

*The fact that the SPR adopted the title the Opportunity to Express the View to head this principle exemplifies that the Government maintains a negative attitude regarding this principle (See also (38)). There are no provisions in national legislation which generally guarantee the right of the child under Article 12, para. 1 of the Convention [SPR 61]. This principle is not taken seriously among parents, professionals who are involved in child-related work, society in general and children themselves. The factors which hinder the expression of the views and participation of children include: (a) children lack of self-confidence, (b) children lack of sympathy and understanding of the actions and words of other children, (c) adults lack of understanding concerning children exercise of their rights, (d) the shortage of information which is essential for the expression of the views and participation, and (e) the pressure of competition in school entrance examinations (See (68)). There are little well-established mechanisms for representing children or supporting the expression of the views and participation by children.

RECOMMENDATIONS

1. Negative attitudes toward the principle of respect for the views of the child should be corrected. Awareness-raising campaigns should be initiated, targeting professionals who work with or for children, parents, civil society and children themselves. It is encouraged to revise important laws which concern children, including the Child Welfare Law and the School Education Law, with a view to incorporating this principle as general provisions. Through administrative measures, it should be ensured that no child shall be treated to his/her disadvantage on the ground of their opinions expressed.

2. All necessary measures should be taken to support children in the expression of the views and participation. Such measures include: promoting the establishment of "an appropriate body" (Article 12, para. 2 of the Convention) including NGOs; creating other appropriate systems to represent children; securing access to necessary information for the expression of the views and participation; providing education which is necessary to develop the capacity of children to express the views and participate, and; giving financial support for children's.

(34) RVC in Judicial Proceedings

*In the family proceedings, there are some areas in which judges are not obliged to consult the child. In particular, since family courts are not involved when the parents divorce by an out of court agreement without conflicts over designation of the person in parental authority, it is likely that the right of the child to express his/her views or the best interests of the child are not ensured. Even when there are provisions to oblige the judge to consult the child, he/she is not required to do so if the child is below 15 years of age, which is rather high [SPR 65]. In juvenile hearings, the rate of the cases in which a legal guardian is appointed is very low, around 1% of the total (See (88)). Therefore, adequate support is not provided for juveniles in expressing their views [SPR 66]. In addition, the respect for the views of the child is not mentioned at all in legislation.

RECOMMENDATIONS

1. The Civil Code and the Rules for Determination of Family Affairs should be revised with a view to ensuring the right of the child to be heard in all the family proceedings and to ensuring that custody be always designated through family trials when the couple with children divorce. It is also required to consider lowering the age when the child must be heard. In addition, all necessary measures should be taken to ensure the principle of respect for the views of the child.

2. All appropriate measures should be taken to assist the child in the expression of his/her views at juvenile hearings. Such measures include the revision of the Juvenile Law and other relevant provisions with a view to ensuring that legal guardians be appointed at the state cost in

all juvenile hearings, without whom the hearings cannot be held.

(35) RVC in Administrative Proceedings

*There are many lacunae in administrative proceedings with regard to the right of the child to express his/her views. For example, the Administrative Procedure Law and the Administrative Appeal Law are not applied to taken at schools or juvenile institutions, or to decisions concerning the placement of children in welfare facilities [SPR 67]. Concerning punishment and discipline in juvenile correctional facilities, the rights of juveniles to express their views and to be provided with fair opportunities to make complaints are not guaranteed by law [SPR 71 & 110]. In the procedures for involuntary admission to medical facilities, the opportunities to be heard are not given to children except in the procedures concerning those who are drug addicts. Procedures do not exist which take into consideration the special needs of children, such as those measures which affect children of aliens and refugees (See also (54) & (85)).

RECOMMENDATIONS

1. In the Administrative Procedure Act and the Administrative Appeal Law, those provisions which excludes the application of these laws in the areas which are closely related children, such as schools and juvenile reformatories, should be repealed. It is required to repeal, as well, Article 33-4 of the Child Welfare Law, which exclude the application of the Administrative Procedure Act in relation to the placement of children into child welfare institutions.
2. In light of Article 12 of the Convention and para. 70 of the U.N. Rules for the Protection of the Juvenile Deprived of Liberty, the relevant provisions of the Prison Law and the Reformatory Law should be revised, with a view to ensuring the right of the juvenile to explanation, defense and fair opportunities to appeal in punishments and disciplinary actions at juvenile correctional facilities. In relation to involuntary hospitalization, as well, the relevant laws should provide that the child must be heard in the process.
3. As regards actions which affect aliens and refugees, necessary measures should be taken to ensure that such actions take the special needs of children into consideration.

(36) RVC in Education Procedures

*In taking disciplinary action against a child or suspending his/her attendance at school, the school is not obliged by law to notify the child of its intention beforehand and to provide him/her with an opportunity to explain him/herself. The Ministry of Education only has stated that it is "desirable" to hear the child concerned and has instructed schools to give "consideration" to creating opportunities for the child to be heard. The Ministry has failed to take sufficient measures to ensure the procedural rights of children [SPR 69 & 226]. In addition, there are cases in which the school, wishing to avoid formal disciplinary action, forces its students to withdraw from school voluntarily through means such as harassment, threats, persistent persuasion and coaxing. Concerning RVC in decision-making concerning the method of education for disabled children [SPR 68], see (73).

RECOMMENDATIONS

1. The School Education Law should be revised with a view to obliging the school, in taking disciplinary action against a child or suspending his/her attendance at school, to notify the child of its intention beforehand and to provide him/her with an opportunity to explain him/herself. Legislative measures are required as regards appeal procedures after the action. In addition, the Ministry of Education should provide guidelines concerning the specific procedures including the way a representative is appointed.
2. All appropriate measures should be taken to prevent that children are forced to withdraw voluntarily from school

(37) RVC in Child Welfare Procedures

*When a child is placed into a foster care or a child welfare facility at the consent of the person in parental authority or the guardian, it was not required that the child be consulted [SPR 70 & 125]. The situation improved when the Child Welfare Law was revised in June 1997 and "the will of...the concerned child regarding his or her placement" was added as one of the required items on the report to be made by the head of the child guidance center. However, the Administrative Procedure Law and the Administrative Appeal Law are not applied to decisions concerning the placement of the child in child welfare facilities [SPR 67]. In addition, there is still room for improvement in the areas of prior provision of information including study tours of the facility, of assistance to be provided by representatives or others and of the confirmation and correction of what is recorded in the report.

RECOMMENDATIONS

It should be fully understood among child welfare personnel, by notices or other means, that when a child is to be placed into a foster care or a child welfare facility, sufficient information should be provided beforehand, through such means as interviews with the foster parent or study visits to the institution, and consent of the child should be obtained. It is also required that the system of support through a representative who is independent of the parents or the authorities be established. The report made by the head of the child guidance center should be disclosed to the child or, if appropriate, to his/her representative so that corrections may be proposed when necessary.

(38) Participation in Schools

*In the notice issued on 20 May 1994 [SPR 22], the Ministry of Education showed a restrictive attitude against Article 12, para.1, of the Convention and did not even mention the expression of the views and participation of children in relation to the establishment of school rules [SPR 84 & 226]. Also, the expression of the views and participation of children are not guaranteed at all in decision-making on what should be taught in lessons. Though most schools have pupil or student councils, such councils are considered part of school educational activities and do not function as bodies which express the views and participate in the school management, representing pupils or students. There are many school rules and student guidance schemes which hinder the expression of the views and participation of pupils and students (See (80)). In lower secondary schools, in particular, the existence of "*naishin-sho*" (a confidential school report to higher educational institutions) has a chilling effect on students (See (79)).

RECOMMENDATIONS

1. In light of Article 12 of the Convention, the School Education Law and other relevant laws should provide the right of children to participate in school management. At the same time, institutional arrangement should be made through such means as the introduction of requirements that each school establish a school council, where teachers, children, parents and representatives of the community are represented. In particular, in the process of establishing and amending school rules and of deciding what should be taught in lessons, it is required to ensure children active participation in light of para. 21 (c) and 31 of the Riyadh Guidelines. In this regard, awareness-raising should be pursued targeting the educational authorities and school staff.

2. In order to remove school rules and student guidance schemes which hinder the expression of the views and participation by pupils and students, all necessary measures should be taken, including advice and guidance to boards of education and schools. *Naishin-sho* (a confidential report to higher educational institutions) should be disclosed to the child him/herself and his/her parents, in order to prevent its chilling effect on children.

(39) Participation in Child Welfare Facilities

*There are no provisions in the Child Welfare Law and the Minimum Standards for Child Welfare Facilities which require child welfare facilities to consult children on the management, rules and guidance schemes of the facility. No such instructions or advice to do so have been given to the facilities [No mention in the SPR].

RECOMMENDATIONS

In light of Article 12 of the Convention, the right of children to participate in the management of child welfare facilities should be guaranteed by the Child Welfare Law and other relevant laws. Efforts should be made to establish institutional arrangement for that purpose as well. There is also a need to consider methods such as periodic surveys by anonymous questionnaires or interviews. In this regard, awareness-raising should be initiated among child-welfare personnel.

(40) Participation in Policy-Making

*Very few local municipalities guarantee opportunities for children to express their views and participate in the process of formulating policies which affect them, such as admitting child representatives in relevant councils or holding public hearings for children. Though "children's parliaments" have been held in many municipalities, only a few aim at reflecting children's voices in public policies and many such parliaments have served only as temporary arrangements [No mention in the SPR]. Also, there is much room for improvement in the management of these initiatives, including the way in which representatives of children are determined.

RECOMMENDATIONS

1. In light of Article 12 of the Convention and the provisions of the Riyadh Guidelines, measures should be taken to ensure the expression of the views and participation by children in the process of formulating child-related policies at the national and local levels. Such measures include conducting questionnaires, holding public hearings for children, admitting child representative in relevant councils and organizing children parliaments and children Diet. In this regard, it is essential to disclose necessary information in a manner which is understandable to children, to assure them adequate access to information, to inform them of how their views were considered and reflected in decisions and to make institutional arrangement, including financial support, with a view to ensuring their active participation.

2. In selecting representatives of children to councils and children parliaments public applications should be the principle, not through recommendations by school principals and other means. Measures are required to ensure balanced representation of ethnic groups, nationalities, disabilities, genders and age-groups.

IV. CIVIL RIGHTS AND FREEDOMS

(41) Nationality And Registration of Birth

*A child born out of wedlock between a alien mother and a father who is a Japanese national cannot acquire Japanese nationality at the time of birth unless paternity has been recognized before the birth, since the Nationality Law does not permit retroactivity of recognition of paternity. This is not the case, however, if the parents got married afterwards and the child became legitimate. Thus, illegitimate children are discriminated against in the acquisition of nationality after the birth. When a child of a Japanese national was born abroad and acquired dual nationality, he/she shall lose Japanese nationality retroactively unless his/her intention of reserving it is declared, according to the provisions of the Nationality Law and the Family Registration Law. However, since the declaration must be submitted within a period as short as 3 months after birth, many Japanese children, who were born in Philippines and other Asian countries between Asian mothers and Japanese fathers, have been deprived of their Japanese nationality due to late submission of the declaration. In addition, quite a few children who were born in Japan to aliens in an irregular situations remain unregistered and stateless. At the end of 1995, there were 464 children (4 years of age and under) who were stateless in Japan, according to statistics compiled by the Ministry of Justice [SPR 72-73 & 75]. Children born out of wedlock sometimes are refused to be registered in the family registers and the residents' cards or be issued passports (See also (18)).

RECOMMENDATIONS

1. In order to eliminate discrimination against children born out of wedlock in the acquisition of nationality, which derives from the practice under the Nationality Law, recognition of paternity should be retroactive to the time of birth. For that purpose, it is required to change the interpretation of Article 2, para. 1 of the Nationality Law and to revise its Article 3.

2. Article 12 of the Nationality Law and Article 104 of the Family Registration Law should be revised so that the period for the declaration of intention to reserve Japanese nationality be extended in accordance with the realities. As regards children who were between Asian mothers and Japanese fathers, including Japanese-Filipino children, a survey should be conducted on their actual situations and, when the recovery of nationality is necessary, appropriate remedies should be provided.

3. Local municipalities should refrain from reporting to the Immigration Bureau when it receives the notification of birth from an alien who overstay their visa permits in Japan. At the same time, they should make efforts to grasp the situations of statelessness within their jurisdiction and to eliminate such situations. In addition, it should be prohibited to refuse the receipt of the notification of birth and the registration in the family register and the resident card in relation to children born out of wedlock.

(42) Freedom of Expression And Information / Freedom of Association And Assembly

*There are many school rules and practices which violate the right of the child to freedom of expression and information and the right to freedom of association and assembly. These include: censorship of student newspapers; restriction by school rules on the distribution of leaflets and other documents; and too much interference in what is to be done by students in school festivals. In addition, the notice of the Ministry of Education titled "On the Political Knowledge and Political Activities in Upper Secondary Schools" (1969) denies the right of upper secondary school students to be involved in political activities [SPR 83-84 & 101].

RECOMMENDATIONS

Each school should be given guidance and advised to change its school rules and practices which violate the rights of children to freedom of expression and information and to freedom of association and assembly. The notice of the Ministry of Education titled in the Political Knowledge and Political Activities in Senior High School which is contrary to the object of Articles 13 and 15 of the Convention, should be withdrawn immediately.

(43) Freedom of Thought, Conscience and Religion

*The Government considers "*Hinomaru*" as the national flag and "*Kimigayo*" as the national anthem. However, there are children who refuse to stand up when *Hinomaru* is hoisted and to sing in unison along with *Kimigayo*, considering that these are the symbols of pre-war Japanese militarism and imperialism. This often causes controversy in relation with the right of the child to freedom of thought, conscience and religion. Many conflicts over the relationship between education and religion occur as well, including the case where a student was expelled from school because he refused to take part in *kendo* (Japanese fencing) exercises on the basis of his religious belief.

RECOMMENDATIONS

Boards of education and schools should be given guidance and advised (a) to observe the agreement of the Murayama Cabinet (13 October 1994), which stated that the government does not intend to interfere with and correct what pupils and students think in relation to *Hinomaru* and *Kimigayo*, (b) not to take disciplinary actions or other forceful measures in relation to cases in which pupils and students voluntarily refuse to stand up when *Hinomaru* is hoisted and to sing in unison with *Kimigayo*, and (c) to prevent actions which may infringe upon the child freedom of religion. It is also required to encourage the development of appropriate guidelines for the relationship between freedom of religion and education and the balance between the right of the parents and that of the child in relation to freedom of religion.

(44) Protection of Privacy

*There are many school rules, practices and actions by teachers which infringe on children's privacy and correspondence or hurt children's honor. Teachers infringe on a child privacy when they do not to disclose the *naishin-sho* (a confidential school report to higher educational institutions) to the child him/herself or when they interfere in the private life of a child through school rules. School personnel violate the child right to secrecy of correspondence when they unseal mail addressed to children. There are many infringement on the child right to privacy as well in child welfare facilities including protective institutions [SPR 106].

RECOMMENDATIONS

Each school should be given guidance and advised to change school rules and practices which infringe on children privacy and correspondence and hurt children honor. Also, it is required to take measures such as the improvement of the Minimum Standards for Child Welfare Facilities and the establishment of appropriate guidelines in relation to children privacy in child welfare facilities.

(45) Roles of Mass Media

*The mass media, including those for children, are considerably developed [SPR 85-90]. However, there are many issues to be solved in light of the right of the child to have access to appropriate information (Article 17 of the Convention). As regards the protection of the child from harmful information and material, in particular, discussions on the development of appropriate guidelines have been extremely insufficient. Violent expressions are almost unchecked including those on games [SPR 95-99]. In addition, little consideration has been given to the linguistic needs of minorities including persons with visual or auditory/speech impairments. Little effort has been made to encourage children's participation in the mass media or to promote media literacy education.

RECOMMENDATIONS

1. The mass media should be given necessary appeals and encouragement with a view to ensuring the effective implementation of Article 17 of the Convention, while due respect should be given to its independence. Such efforts are particularly required in relation to the guarantee of access to information and material from a diversity of sources, the consideration to the linguistic needs of minorities and the participation of children in the mass media. Also, education on media literacy should be promoted so that children can approach the mass media from critical and autonomous viewpoints.

2.As regards the protection of children from harmful information and materials, necessary steps should be taken to develop appropriate guidelines in light of Article 17 (e) of the Convention and para. 43 and 44 of the Riyadh Guidelines. During the process, it is required to urge self-regulations by the mass media, mainly through extensive discussions on such expressions with the participation of children, not focusing on the regulations by the authorities without sufficient consideration.

(46) Children in the Mass Media

*Basically, the mass media reports sensationally on issues such as juvenile crime or prostitution of upper secondary school girls, based on stereotyped ideas. Though due consideration is given to the privacy of juvenile suspects or offenders [SPR 270], there have been some cases in which the names and/or photographs of the juveniles were made public in the media, when the offences were grave. It is not rare that the circumstances are reported in such detail that it becomes easy to identify the juvenile. Details of child victims, particularly those of sexual offences, are sometimes reported without consideration to their privacy. In addition, the Convention rarely is mentioned in the reporting of cases concerning children.

RECOMMENDATIONS

It should be encouraged to develop guidelines on descriptions of children or child-related issues in the mass media, particularly in relation to children's privacy, based on extensive discussions with the participation of children. It is also required to provide the mass media with information on the Convention and other relevant international instruments, with a view to improving their understanding of the rights of the child.

(47) Corporal Punishment in Schools

*In spite of the legal prohibition, corporal punishment in schools has been on a continuous rise. Even cases of death have occurred. The SPR 227 reports less on the incidence of corporal punishment by omitting the number of cases reported to the Ministry of Education. Preventive measures are insufficient, as is represented by the lack of effective complaint mechanisms, the inadequacy of reporting procedures and too light sanctions against the perpetrators. A considerable proportion of both teachers and the general public approve corporal punishment against children in some ways.

RECOMMENDATIONS

1. Systematic surveys should be conducted on corporal punishment in schools to grasp the actual situations and all effective measures should be taken to prevent it in light of Articles 37 (a) and 28, para. 2. Such measures include: improving the procedures for reporting corporal punishment (including mandatory inclusion of children's opinions); organizing the procedure for filing complaints, to which children can have access without apprehension; and just handling (including criminal prosecution if necessary) of offending teachers. Possible civil actions against the offending teachers should also be considered.

3. In the courses on the educational curriculum and in training sessions for current teachers, appropriate teaching programs (including training in teaching without resorting to corporal punishment) should be offered. Campaigns to enlighten parents and the general public are also required. They should be informed that the corporal punishment of children is prohibited by law and that there are systems for filing complaints when a child is subjected to such punishment.

(48) Corporal Punishment against Children with Disability

*Corporal punishment against disabled children is more likely to happen. Teachers and nurses administer corporal punishment, sometimes without good consideration, sometimes with the professional belief that corporal punishment is necessary to guide the child to overcome his/her disability. However, many of such cases are not revealed. Even in lawsuits, the administrative and judicial authorities take a discriminatory stance against the disabled child [No mention in the SPR].

RECOMMENDATIONS

Teachers, parents, and all special teachers who work with or for handicapped children should receive thorough training so that they will be aware that no corporal punishment is allowed with handicapped children. Training is also required for judges so that they will not arrive at a discriminatory decision in incidents of corporal punishment of handicapped children. To prevent corporal punishment at special schools or facilities for handicapped children, all necessary measures should be taken (including periodic on-site studies by a third party).

(49) Corporal Punishment and Inhuman Treatment in Other Places

*Corporal punishment in protective institutions and other child welfare facilities is not explicitly prohibited by law and the way of thinking that justifies corporal punishment is firmly entrenched among the staff. Actually, corporal punishment and abuse by the head or staff of protective institutions have been exposed sometimes (See (58)). The same holds true for day-care facilities. Torture and inhuman treatment by the police and the staff of juvenile correctional facilities are prohibited by law [SPR 107-110]. However, there are cases in which physical and mental violence are perpetrated by the police during interrogations in order to obtain confessions which are deemed crucial for the investigation. In these and other cases, attendance of attorneys and parents rarely is secured. See (53) on parental abuse and (81) on bullying.

RECOMMENDATIONS

1. Corporal punishment should be prohibited clearly by law at child welfare and child care facilities and measures equivalent to advise [refer to (47)] should be taken with regard to corporal punishment in school to prevent such a form of punishment.
2. All necessary measures should be taken to prevent physical and psychological violence during investigations at police stations. These measures include a ban on holding individuals in a detention room (a substitute prison), a holding facility at a police station; insistence on the presence of a person such as an attorney during an investigation, swift and just investigation of the incident and appropriate disciplinary action for the perpetrator, and training of police officers.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

(50) Parental Authority

*The Civil Code has no provisions on the duties and responsibilities of the parents to assist the child in exercising his/her rights or on the principles of the best interests of the child and respect for the views of the child [SPR 111-113]. In addition, corporal punishment by parents is not explicitly prohibited by law. As a result, "parental power" is likely to be understood as the authority of the parents to control their children as they wish. Awareness of parents has not been raised in this regard and efforts to change such attitudes have not been made.

RECOMMENDATIONS

The provisions of the Civil Code concerning parental authority should be thoroughly revised on the basis of the concept of parental responsibilities to the child, and the provisions and principles of the Convention especially in regard to the respect of the best interests and opinions of the child. At the same time, steps including a public campaign should be taken to change the awareness of the general public concerning parental responsibilities.

(51) Shared Responsibilities of the Parents

*In spite of the laws and policies which state the principle of shared responsibilities of the parents [SPR 112 & 114], the child-rearing responsibility still falls overwhelmingly on the mother. The conventional idea that "men are for work and women are for families" is supported still at high rate (43.8% among men and 35.4% among women). Though 44.5% of women got maternity leave after having babies, only 0.16% of men did so. "*Tanshin-funin*", the practice in which a man is transferred alone to local branches or offices apart from his wife and children, is considered almost as normal.

RECOMMENDATIONS

1. In order to enhance the awareness concerning shared responsibilities of the parents further efforts should be made such as reviewing school education <ref. (17)> and campaign aimed at the general public.
2. In order to accelerate the participation of the father in child-rearing, necessary legislative and administrative measures should be taken, including honest implementation of the ILO Convention Concerning Family Responsibilities, and the Convention for Elimination of Discriminations against Women. Especially the steps to accelerate the acquisition of nursing leave of the father, and the prevention of "*tanshin-funin*" (those who take up posts in another city, leaving their families behind) of the father with children are required.

(52) Support to Families

*Support to parents in the performance of their child-rearing responsibilities generally is insufficient. The existing counselling services [SPR 17, 119, 155-157 & 213] are not widely

known and qualified counsellors are not available in adequate numbers. In particular, there are many problems to be solved concerning support to single-parent families. The need for support has not been recognized yet in relation to single-father families are concerned. There is extremely insufficient support to families with behavioral problems, which sometimes induces murder of children by parents (See also (28)). As regards financial support to families, see (64).
RECOMMENDATIONS

1. Support to the parents in the performance of their child-rearing responsibilities should be strengthened, such as improvement of counseling service and circulation of information on it, as well as encouragement of and assistance to counseling activities of self-help groups and NGOs.
2. Support to the single-parent family should be thoroughly reviewed in the light of the difficulties faced by such families. Non-financial support such as psychological support like counseling service, assistance to housework, and provision of childcare service in flexible forms should also be introduced or improved. Such services should be made available to the father-child families, as well.
3. Sufficient support should be provided to the families with behavioral problems such as domestic violence, alcoholism, and drugs. Such support should include the expansion of counseling service, establishment of public rehabilitation facilities and temporary shelters, and financial support to self-help groups.

(53) Child Abuse

*The number of cases of child abuse reported to child guidance centers was 1,961 in 1994 [SPR 154]. Still, it is estimated that at least 4,900 cases happened in that same year, if the number of cases found by other entities is added. Since the reporting duty is merely a moral obligation without penal provisions, it is assumed that the number can be several times more. Legal provisions to deal with abuse have many lacunae other than the ineffectiveness of the reporting obligation. For example, corporal punishment by parents is not explicitly prohibited by law. The due process of law is not guaranteed as regards with urgent temporary care [SPR 159]. In addition, since greater respect is given to parental authority (See also (50)), only exceptionally do the judicial authorities intervene in the protection of abused children [SPR 151]. Judicial involvement is restrained, in part, due to the lack of systems to suspend parental authority temporarily or partially. The present system only allows for the complete removal of parental authority. Also, institutional arrangements to address this issue are inadequate. Institutional arrangements for the recovery and rehabilitation of abused children, including those in child welfare institutions, are inadequate [SPR 159]. Little care is offered for abusers neither.
RECOMMENDATIONS

1. Thoroughgoing survey of the number of cases and causes of child abuse should be conducted.
2. In order to protect the victims of abuse effectively necessary revisions should be made of the relevant laws such as the child Welfare Law and the Civil Code. Minimum revisions required are as follow: the person responsible for reporting on child abuse should be designated, and the penalty for the failure to report, and the immunity in the case when the report was found a mistake should be stipulated: appropriate procedure such as the consent of the parents and the permission of the court should be established as to emergency temporary protection of children, and the right to study of the children thus protected should be guaranteed: a system of temporary or partial suspension of the parental rights should be instituted: the right to complain should be granted to the child himself/herself or his/her special proxy approved by the court with regard to the entry into child welfare facility, and the temporary or partial suspension or loss of the parental rights.
3. Institutional foundation to cope with child abuse should be strengthened, centering around the child counseling center, and the establishment of network for inter-disciplinary cooperation should be encouraged and supported. In order to secure the profession of case workers dealing with child abuse, their professional qualifications should also be strictly defined.
4. Measures should be taken for the rehabilitation and return to society of the abused children, including the placement of qualified counselors and therapists at child welfare facilities. Providing counseling and therapy to the parents abusing their children is also required to enable the abused children to return to the home as much as possible. At that time, giving the family court the authority to order counseling to the parents abusing their children should also be considered. Measures to separate the abusing parents, not the abused children, from the family should also be considered.

(54) Separation from Alien Parents / Family Reunification

*As is represented in the declarations to Article 9, para.1 and Article 10, para.1 of the Convention, the administration has wide discretion in the field of immigration control. Sufficient measures have not been taken to prevent, in the best interests of the child, separation of children from their parents and to promote family reunification [SPR 130-131]. Concerning alien parents who are rearing children of Japanese nationals, there has been some progress by the notice of the Ministry of Justice (dated 30 July 1996), which announced its policy to recognize, in principle, their residency status. However, this policy is not to be applied to parents who are not custodians or parents of children who are permanent residents.

RECOMMENDATIONS

The declaration of interpretation on Articles 9 and 10 should be repealed. Flexible application of the Ministry of Justice notice of July 30, 1996, and the revision of the Entry and Departure Law and the Law for Recognition of Refugees are required in the direction of preventing the separation of the parents and children and facilitating their reunification. At that time, special emphasis should be put on the alleviation of the requirements for recognizing residency status to the parents, who are not custodians, and the parents of children who are permanent residents, the review of the period of prohibition of entry of the aliens, who have been punished with compulsory departure, and the securing of legal examination concerning the decision on the separation of the parents and children.

(55) Contact with Parents

*The right of the child to maintain contact with both parents (Article 9, para.3, of the Convention) is not explicitly guaranteed in the Civil Code or the Child Welfare Law. In particular, there are many cases where contact is not ensured after divorce. On the contrary, it is sometimes difficult, in child welfare institutions, to prevent such contact which is not in the best interests of the child due to the strong parental authority (See also (50)). Child-parent contact in other institutions [SPR 128] is not guaranteed in adequate frequency.

RECOMMENDATIONS

- 1.The Civil Code should have a provision with regard to the right of the child to maintain personal and regular contact with both parents. In order to have his right secured in the event of divorce, the family court should be involved in one way or another in the divorce of the parents with children.
- 2.The Child Welfare Law should have a provision reflecting Article 9, Clause 3 of the Convention so that the contact with the parents against the best interests of the children at child welfare institutions could be prevented.
- 3.Contact between the parents and children at child welfare institutions should be guaranteed in adequate frequency.

(56) Maintenance of the Child

*90% of the divorces are arranged by agreement without the involvement of the family court. In many cases, agreements on the maintenance are not concluded. Even in cases of divorces arranged through the mediation of the family court, such agreements are concluded only in 72% of the cases. Furthermore, only 14.9% of those mothers receive the maintenance in accordance with the agreements. It is more difficult to recover the maintenance from a parent who resides in another countries [SPR 135-136].

RECOMMENDATIONS

- 1.For the divorce of the couple with children the provisions of the Civil Code and other relevant laws should be revised concerning the agreement on the maintenance. In order to secure the effective recovery of the maintenance such systems as the registration of agreements on the maintenance , the deduction of the maintenance from the salaries, and the advancement of the maintenance should be created.
- 2.In order to make it sure that the child born between a Japanese father and an Asian mother can receive the payment of the maintenance by the Japanese father, positive means of cooperation with the countries concerned including the conclusion of bilateral agreements should be explored.

(57) Foster Care and Adoption

*Alternative care is provided through placement in institutions in the overwhelming majority of cases. Sufficient measures have not been taken to secure more family-like forms of alternative

care, such as foster care [SPR 141]. Concerning adoption, legal safeguards are inadequate to ensure the best interests of the child. For example, approval from the family court is not required in cases where a person is to adopt a minor who is a lineal descendant of him/herself or his/her spouse [SPR 144]. In particular, necessary safeguards are not secured in inter-country adoption and it is very likely that the best interests of the child are not ensured adequately.

RECOMMENDATIONS

1. Every effort should be made to correct the tendency of over-emphasizing placement in institutions and to provide more family-like forms of care to the child, who has been deprived of home environment. Especially, effective measures to secure a sufficient number of foster parents are needed. Besides, measures such as awareness enlightening campaign should be taken in connection with the fact that foster parents and adoption are the system to benefit the child.

2. The provision in the Civil Code that no permission of the family court is required for adoption of a minor who is a lineal descendant conflicts with Article 21 (a) of the Convention, and should therefore be deleted. In order to ensure that adoption is made in the best interests of the child legal safeguards such as counseling provided to the real mother before and after delivery, guaranteeing a period of careful consideration, and profit should also be established. Ratification of the Hague Convention concerning International Adoption and other measures should be taken to establish stricter protective measures than for domestic adoption.

(58) Protective Institution

*Protective institutions serve children without guardians, abused children and others in need of protection on the grounds of undesirable family environments [SPR 140]. However, the Minimum Standards for Child Welfare Facilities remain to be extremely inadequate for protective institutions, both in terms of the standards of living of the children and the number of the staff employed [SPR 56]. Explicit legal provisions, including the prohibition of corporal punishment, or administrative standards do not exist as regards the protection of children human rights in institutions. Independent monitoring bodies has not been established neither. In addition, sufficient support is not provided to prepare the children for future independent and responsible lives.

RECOMMENDATIONS

1. In order to guarantee adequate standards of living to the children and to enable the staff to provide good care to individual children, the Minimum Standards for Child Welfare Facilities should be drastically improved in accordance with the provisions of Article 3, Clause 3 and latter part of Article 4 of the Convention. Especially, it is required to show concrete guideline by introducing provision concerning the guarantee of human rights of the child in the Child Welfare Law including explicit prohibition of corporal punishment, and to provide training opportunities for the staff. In order to strengthen adequate supervision of the staff measures should be taken such as imposing the duty on child welfare facilities to report on the cases of violence of human rights and accepting complaints from children by independent monitoring agencies.

2. In order to support the children for future independence, measures should be taken such as allowing the child to remain in the child welfare facilities till age 18 even after employed, following graduation from lower secondary school.

IV. BASIC HEALTH AND WELFARE

(59) Children with Disability

*The policy of normalization and social participation of disabled persons is still not more than an idea in many aspects [SPR 168]. Emphasis is still placed on the efforts by disabled persons themselves to overcome the disability and adapt themselves to the society, which induces the compulsion to independence training through corporal punishment or violence (See also (48)). Placement in institutions, separated from their own communities, has continued to be a central part of the treatment of disabled children, particularly for those with mental or severe disability [SPR 172]. Adequate measures have not been taken to ensure respect for the views of the child in placement procedures [SPR 70] and in the periodic review of the placement [SPR 160]. In the field of employment, the statutory minimum rate of employment for disabled persons, which is already very low, has not been achieved even by the central and local governments; and they are not guaranteed the minimum wages [SPR 176]. Many severely disabled children are left without vocational guidance and training, due to shortage of

institutions and their capacity to take in the children. As regards education for disabled children, see (73).

RECOMMENDATIONS

1. The policy to emphasize overcoming the disability and social adaptation should be revised, and a comprehensive review of welfare services for disabled children should be made in accordance with the principle of Article 23, Clause 1 of the Convention. At that time, the realization of such ideals as normalization, social participation and equality should be aimed at in the context of the relevant international documents including the UN regulations concerning equal opportunities for disabled persons.

2. In the treatment of disabled children emphasis should be put on community based rehabilitation in the context of the provisions of Article 23, Clause 1 and Article 9, Clause 1, which stipulate the principle of forbidding separation of parents from children, of the Convention. With regard to placement in and discharge from institutions the opinions of the disabled children and their parents should be given due consideration, and periodical check based on Article 25 of the Convention should be conducted. Increasing pre-school nursing facilities and improving the nursing system for disabled children of school-age after school, and during holidays and long-term leaves are also urgently needed.

3. The national and local governments should improve the employment environment of disabled persons including the raise in the statutory minimum rate of employment, take the initiatives in achieving the statutory minimum rate of employment and guiding private enterprises about its observation. Steps are also needed to enable the children with severe or complex disabilities to receive vocational guidance and training.

(60) Health and Health Services for Pre-School Children

*Initiatives for infants and children in general are not adequate under the present maternal and pediatric health policy, emphasis being placed on medical examinations aimed at the early identification and treatment of disability [SPR 185] and measures for underweight and premature infants [SPR 162-163]. The eugenic ideology, which considers disability negatively, is firmly entrenched in the ways of thinking of many medical professionals. Understanding and awareness-raising on the idea of normalization are not sufficient. Aid for medical expenses of infants and children is only provided for in cases in which the child was born prematurely, is disabled and/or has a designated disease such as tuberculosis and infantile cancer. Some local municipalities independently provide such aid for infants and children in general, which produces gaps in parents' burdens of medical expenses depending on where they live.

RECOMMENDATIONS

1. General measures for mother and child health care should be reviewed, and measures aimed at infants and children in general should be strengthened such as the development of primary health care, and promotion of environmental hygiene and breast feeding. It is also required that efforts be made to dispel the eugenic ideology in the context of the care of disabled children itself be re-examined while conducting sufficient dialogue with the disabled persons and children and their families.

2. In order to secure the reduction in the parents' burden of medical expenses and equal access to health services in the context of Article 2, Article 3, Clause 2, and Article 24, Clause 1 of the convention, assistance at the state level for medical expenses of the children should be examined.

(61) School Health

*Since collective vaccination at school caused damage to many children because of side effects, recommended and individual vaccination is the rule today. However, some municipalities still continue collective vaccination [SPR 186]. As regards health examinations at school, many point out that the safety, efficiency and necessity of some of the examination items have not been fully confirmed. Other problems include that several cases of food poisoning or allergy accidents caused by school meals have occurred, that the school health system is still inadequate with only one health teacher staffed in many schools and that effective health education is not provided sufficiently. In particular, mental health of children and adolescents is not addressed to the necessary extent. See also (29) on school safety and (63) on sexuality education.

RECOMMENDATIONS

1. Collective vaccination and health check at school should be re-examined from the viewpoints of necessity, safety and effectiveness. Especially, (similar) medical service, for which the

school is originally not responsible, should not be brought into the school. In implementing school health measures it is necessary to provide sufficient information to the children and parents, to secure their consent or leave room for selection, and to pay due consideration to privacy.

2. In order to prevent food poisoning and allergic diseases caused by school lunch, further efforts should be made to secure the safety and hygiene in school lunch program.

3. The traditional policy to put emphasis on physical health should be revised, and measures to maintain the mental health of the children should be further promoted. In this connection, such steps should also be taken as placing more than one nurse-teachers in each school and introducing the system of out-of-school counselors.

(62) HIV/AIDS

*Nearly half of persons affected with HIV/AIDS were infected, not through sexual contacts, but through imported condensed blood products which were polluted with HIV. This incident is called "medicine-induced AIDS" and the number of the victims is estimated at around 2,000; many of them are or were children, over 60% of whom were below 17 years of age at the time of infection. The drug companies and the Ministry of Health and Welfare were blamed severely, the former for having continued to sell the polluted blood products and the latter for failing to take necessary measures to stop it, both being aware of the possibility of HIV infection. As a result, measures such as compensation and treatment were initiated. However, there is much room for improvement. Sufficient measures, including education, have not been taken to prevent infection through other channels including sexual contacts (See also (63)). Discrimination against persons affected with HIV/AIDS is firmly entrenched in Japanese society [No mention in the SPR].

RECOMMENDATIONS

1. Terms of conciliatory settlement signed between the plaintiffs and the defendants (the state, the Ministry of Health and Welfare, and fine pharmaceutical companies) on March 29, 1996 in the lawsuit over AIDS victims caused by polluted blood products should be fulfilled faithfully, and especially permanent counter-measures including the establishment of treatment system should be promptly carried out. Every effort should be made in regard to the relief of over 1,000 patients, who have not yet started a lawsuit.

2. The government should seriously reject upon the failure to prevent the occurrence of AIDS caused by polluted blood products in spite of the many similar cases such as thalidomide and SMON (Subacute Myelo-Optico-Neuropathy) related diseases in the past, and take all necessary measures to prevent the recurrence of similar incidents such as making a thoroughgoing study of the cause of AIDS affection, and understanding a comprehensive re-examination of pharmaceutical administration that had permitted the profit-oriented development of new medicine.

3. In order to eliminate the discriminations and prejudices against the victims of HIV/AIDS (including those who were infected through sexual contact), awareness raising should be further promoted through school education and public campaigns. Steps to prevent HIV infection such as effective sex education in school, AIDS education and awareness raising campaign are also needed. Preventive measures should always be planned and implemented in the context of the necessity of eliminating discriminations and prejudices.

(63) Sexuality Education / Reproductive Health

*Effective sexuality education is hardly provided at school, in part because many people think that children should not be taught in detail about sexual intercourse. Children obtain most of the information through the mass media, which include much unscientific and inaccurate information and do not pay sufficient attention to equality between men and women or to human rights. In reproductive health services outside school, the needs of adolescents are hardly taken into consideration. As a result, though the total number of cases of abortion decreased by half over the past 20 years, the number doubled as far as those below 20 years of age are concerned [No mention in the SPR].

RECOMMENDATIONS

1. In order to make it possible to provide scientific, effective and systematic sexuality education in school such measures as the review of curriculum and encouragement of research and training of teachers should be undertaken. Especially, for the purpose of preventing sex violence, the denial of the view that the victims are also to blame, the strengthening of sexuality education for men who are vulnerable to become the assailants, and introduction of programs to

prevent or refuse sex violence should be carried out.

2. Efforts should be made to develop reproductive health services, which take account of the needs of the youth, in the context of the resolutions of the UN Population Development Conference (Cairo, September 1994) and the World Conference on Women (Beijing, September 1995)

(64) Social Security

*The child allowance scheme [SPR 195] is short in its term of availability (until 3 years of age). The provision is decided on the merit basis and is inadequate in light of Japanese price level. Under the child-rearing allowance scheme [SPR 196], children born out of wedlock and of single-father families receive discriminatory treatment. In addition, the provision may be limited depending on the father's income despite the lack of effective systems for recovery of maintenance. Public assistance for keeping the minimum standards of living [SPR 198] maintains low standards for the protection of children. The income of the child who started to work after leaving compulsory education and the allowance under the child (child-rearing) allowance schemes are deducted from the total amount of aid. Educational aid is limited to compulsory education, which may restrict a child access to pre-school, upper secondary and higher education.

RECOMMENDATIONS

1. Child allowance should define the child as the person entitled to it, and restrictions of payment of child allowance depending upon the income of the parents should be abolished. Also, all children should be made the objects of payment, and the amount of allowance should be sharply increased.
2. The Child-rearing Allowance Law should be revised to abolish the discriminations against the children born out of wedlock and to pay child-rearing allowance to single-father families on the basis of Article 2 of the Convention. Income restrictions concerning the payment of child-rearing allowance should not be introduced without establishing effective system to secure the recovery of child-rearing expenses.
3. With regard to livelihood protection the standards of protection of children should be raised. Educational assistance should also be reviewed from the viewpoint of guaranteeing access to pre-school, upper secondary and higher education instead of being limited to compulsory education alone. As to the adjustment of parallel benefits, review should be made in the best interests of the children.

(65) Day-care Services

*Though day-care centers and kindergartens play important roles in providing pre-school care and education, they are under different jurisdictions. The former is under the Ministry of Health and Welfare and the latter is under the Ministry of Education. The beneficiaries of the public day-care services are limited to children whose parents are at work during the day [SPR 200]. More than 40,000 children are waiting for admittance to day-care centers, not being able to be admitted immediately. Many parents use unauthorized day-care centers and facilities which are not provided with public assistance. Flexible forms of care, including nursery, extended-hour, night-time and after-school care, are not offered on an adequate basis [SPR 204-206]. Day-care for disabled children is not provided at every day-care center and extra assistance is not provided to after-school child-care programmes which receive disabled children [SPR 207]. The Minimum Standards on the facilities and staff are not adequate for all kinds of day-care services. Also, the Guidelines on Day-Care do not provide specific guidelines on human rights nor regarding alien children.

RECOMMENDATIONS

1. Further review of nursing system should be made from the standpoint of guaranteeing pre-school care and education to every child. Especially needed are the early unification between kindergartens and day-care centers, allowing all children, who so desire, to avail themselves of pre-school education and of nursing facilities, improving care services in various forms such as nursery, extended-hour, night-time and after-school care, reducing the burden of nursing expenses to be paid by the parents, etc. Raising the minimum standards is also required.
2. In accordance with the idea of normalization the care of disabled children should be provided in all nursing facilities. Similar approach is needed for after-school care of children.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

(66) General Remarks on Education

*Not only in the field of education, there is still a general tendency in Japanese society to consider children as objects of protection and control. Therefore, it is still widely believed that children need concentration on school work, harsh discipline including sanctions, isolation from harmful environments and training to be adapted to group relationships during the growing process. Those functions are principally performed by schools. Thus, so-called "control-oriented education" through rigid school rules and guidance (See (80)) and other means has been justified, in part because cooperation among the home, the school and the community has not been effective in the areas of child-rearing and prevention of juvenile delinquency. At the same time, children are deprived of leisure due to the continuous intensification of competitive education, which derives partly from the so-called "academic background-oriented society", and the growth of subjects in the school curricula. Democratization of the educational system and the school, which is essential to change these circumstances, has not been achieved to satisfaction. The top-down system, organized in the order of the Ministry of Education - boards of education - schools, is established firmly. Little attention is paid to the idea that parents, children and representatives of the community are the subjects of school management on an equal basis.

RECOMMENDATIONS

A comprehensive review of the education system should be made with a view to guaranteeing the rights mentioned in the Convention fully to children. Special emphasis should be put on the implementation of the Convention at school (68), securing a relaxed environment for children (69, 85), and promoting the democratization of the education system and school. The work should be carried out through participation of children, parents, teachers and wide segments of civil society including NGOs.

(67) Implementation of the Convention at School

*The notice issued by the Ministry of Education just before the entry into force of the Convention (dated 20 May 1994) [SPR 22] delivered a message that the Convention does not affect school management in any way, rather than promoting the implementation of the Convention at schools. Since sufficient measures have not been taken to change attitudes of individuals and teachers (See (11) (13)) to improve the difficult conditions for education, there has been little progress in implementing the Convention at schools, as will be explained below. In particular, the realization of the general principles of the Convention, including the respect for the views of the child (See (36) & (38)), is inadequate.

RECOMMENDATIONS

The Ministry of Education should issue a new notice aimed at ensuring the implementation of the Convention at school on the basis of the examination at the committee, and the proposals and recommendations from NGOs including this report. The Ministry of Education should also take all necessary steps aimed at implementation of relevant laws, improvement in the application of relevant laws, and awareness-enlightening campaigns. At that time special attention should be paid to the respect of children's opinions (Article 12) and other general principles of the Convention and the guarantee of civil rights.

(68) Competition in School Entrance Examination / Too Early Childhood Education

*Against the background of so-called "academic background-oriented society", where undue respect is paid to academic background in the employment and other fields, the rank of universities is established firmly. This leads to harsh competition in school entrance examinations or special education for the gifted, sometimes initiated during the pre-school period, for the purpose of enabling them to enter famous universities. Children who go to "juku"(private educational institutions principally for the purpose of enabling children to enter good schools) occupy 20% of the elementary school pupils (more than 90% of those who wish to enter private lower secondary schools) and 60% of the lower secondary school students. Due to those circumstances, the rights of the child to development and to rest and leisure are damaged. This also gives a negative impact on the realization of the aims of education set out in the Convention [No mention in the SPR].

RECOMMENDATIONS

In order to ensure that education be conducted to achieve that objective stated in Article 29 of the Convention necessary steps should be taken to provide the following conditions: First, guidance and supervision should be given to see that the column for academic background be deleted from the papers of the applicants for the positions in the government service or in the

private sector in order to eliminate discriminations based upon academic ability and personality of the applicant according to the criteria of the employers. Second, curriculum in elementary and junior high schools should be reduced drastically. Third, the minimum standards for free time necessary for the children to take rest and develop creativity in order to guarantee the various rights mentioned in Article 31 of the Convention should be established, and a campaign directed toward the school and family to help them observe such minimum standards should be organized.

(69) Non-attendance at School

*0.24% of the elementary school pupils and 1.67% of the lower secondary school students are not attending school. In the background of this "non-attendance" phenomenon are various kinds of human rights violations in public education. Thus it would hinder the best interests of the child and the rights of the child to life, survival and development to force children to go to school. However, the Ministry of Education adheres to the preservation of the present public education system, not attempting to take fundamental measures to find solutions to the disadvantage facing the children who do not attend school [SPR 223]. In addition, the right to education has not been guaranteed for the majority of such children.

RECOMMENDATIONS

1. The Ministry of Education should recognize that the current school education system is one of the main causes of non-attendance at school and should set down to its guaranteeing to children all of their rights mentioned in the Convention. The Ministry of Education should also check the status quo of the schools from the viewpoint that education is a right, not a duty, of children, and remind the boards of education and schools that they are not allowed to force children to attend school or to discriminate against those children who do not attend school.

2. In accordance with the provisions of Article 28, Clause 1(b) of the Convention equal access to senior high school education should be guaranteed to all children regardless of whether they attend school or passed the qualifying examination.

(70) Home-Based Education

*Under present legislation, all parents have the duty to send their children to school. Alternative forms of education, including home-based education which is based on the primary responsibility of the parents for the upbringing of the child, are not approved. Therefore, "non-attendance at school" is the only way for children to avoid or to protest against various human rights violations occurring at school.

RECOMMENDATIONS

In accordance with Articles 5 and 18, Clause 1 alternative forms of education including home-based education based on the primary responsibility of the parents for the upbringing of the child should be approved as soon a day as possible from the viewpoint of guaranteeing the children's right to education. Guarantee of the right of access to upper secondary and higher education should be applied to home-based education, as well.

(71) Dropout of Upper Secondary School

*Nearly 100,000 students dropout of upper secondary school every year. The dropout rate amounts to 2.1% [SPR 224]. One of the major reasons is the prevalence of "unwilling entrance" due to the so-called "slicing" education system. In this system, students are screened out based on the results of their academic performance and are forced to enter upper secondary schools within reach of their abilities, not in accordance with their wish. Those students do not find their studies at school interesting and often dropout with the reason that they want to "change the course of their lives". Another reason is that the present system of and subjects of study in upper secondary education do not meet the diverse needs of children. There are schools which force their students with behavioral problems into "voluntary withdrawal" from school (See (36)). Also, it is extremely difficult for dropouts to return to school.

RECOMMENDATIONS

1. In accordance with Article 28, Clause 1 (b), (e), a comprehensive review of the current lower and upper secondary education system should be undertaken in order to guarantee access to upper secondary education to all children and to prevent dropout from upper secondary schools. In the process special attention should be paid to re-examine the entrance exam to upper secondary schools including the possibility of abolishing it and to reduce "unwilling entrance" due to so-called "slicing" education by eliminating the disparity among different upper secondary schools. It is also necessary to increase room for varied options with regard to

school subjects and course for advancement in order to meet the diverse needs of the students and to enhance their will to study.

2. Necessary steps should be taken to prevent the forcing of "voluntary withdrawal."

3. Measures should be taken to enable the students, who dropped out, to return to school or enter other educational institution promptly and easily as much as possible.

(72) Illiteracy / Evening Lower Secondary School

*The Government records the rate of enrolment in compulsory education at almost 100% [SPR 5]. However, it is estimated that more than 1.65 million persons who are 16 years of age or older have not completed compulsory education. Also, the incidence of non-attendance is on the increase every year. Thus, functional illiterates actually exist and may continue to do so in the future. The Ministry of Education argues that compulsory education is available only for children between 6 - 15 years of age and would not provide older persons with basic education. "Evening lower secondary schools" serve those persons, including children who did not attend compulsory education schools. However, there are only 34 evening lower secondary schools in 8 prefectures. The number of students who learn there is small as well, a little more than 3,000.

RECOMMENDATIONS

In accordance with the provisions of Article 28 of the Convention, Article 13, Clause 4 of the International Convention Concerning Economic Social and Cultural Rights, and the principles of the International Year of Literacy (1990), necessary legislative and budgetary steps should be taken to officially recognize evening lower secondary schools in order provide those, who did not complete compulsory education, with an opportunity of basic education. It is at least required that prompt action be taken to survey the actual conditions of those who did not complete compulsory education, to guarantee the necessary number of years of study, suitable for the students enrolled in evening lower secondary schools, and to establish more than one evening lower secondary school in every prefecture.

(73) Education for Children with Disability

*Contrary to the global trend, education programmes for disabled children segregate them into different schools or classes. Schools exist for children with visual impairments, children with auditory/speech impairments and children with other disabilities. Special classes are also set up for disabled children [SPR 173]. Where the child should be admitted is decided on the basis of the type and degree of the disability. Schooling counselling [SPR 68] actually functions as an opportunity to persuade the parent (and the child) to enter a class or a school for the disabled. The opinion of the parents and the child is not fully heard and respected. Even when the child is placed in an ordinary class, he/she is left without special considerations such as the arrangement of extra teachers and the provision of helpers. There are many problems to be solved in education at schools and classes for the disabled.

RECOMMENDATIONS

In accordance with Article 23 of the Convention and international instruments such as the "UN Standard Rules Concerning Equalization of Opportunity for the Disabled" integrated education should be made the principle of education for children with disability. It is also required that in accordance with Article 12 of the Convention procedural right should be guaranteed to ensure that the opinions of the children and parents are reflected in the choice of the school to attend. For those children with disability who are enrolled in normal classes it is necessary that steps be taken to provide service free of charge to meet their special needs such as appropriate facilities and equipment and allocation of additional teaching staff in order to guarantee their right to education not in formal but in substantial terms.

(74) Working Conditions of Teachers

*According to national standards, maximum numbers of students allowed in a class are 35 persons for the kindergarten, 40 for the elementary and lower secondary school and 45 for the upper secondary school by the standard. These figures are still larger than those of other Western countries. The number of lessons per week required of the teacher is high as well: 25.9 hours in the elementary school, 19.45 hours in the lower secondary school and 16.9 hours in the upper secondary school. With other tasks including conducting student guidance, supervising extra-curricular activities and participating in outside training, teachers are forced to work for long hours. As a result, they cannot provide attentive guidance and counselling for students. More and more teachers suffer from trouble with mental health because of stress,

and some teachers have died as a result of overwork. Since 1993, the plan for better organization of teachers has been carried out and new programmes were introduced such as team teaching. However, there is strong pressure against the improvement of the working conditions due to the ongoing reconstruction of the national finance [No mention in the SPR].

RECOMMENDATIONS

In accordance with Article 4 of the Convention necessary steps should be taken to provide sufficient guidance and counseling activities such as the reduction in class size, the increase in the fixed quota of teachers, lowering of working load of teachers, etc. by "making the maximum use of means available within the country." The school should promote the appropriate division of roles with the family, the community and other institutions than school. In the reconstruction plan of national finance consideration and measures are needed not to effect the education of children adversely.

(75) Free Education

*Though Article 26, para.2 of the Constitution provides for compulsory education free of charge in conformity with Article 28, para.1 of the Convention, the Government interprets the provision narrowly as prohibiting collection of lesson fees. It considers the free provision of textbooks merely as a legislative option [SPR 217]. As a result, the parents have to bear a burden of educational expenses including fees for teaching materials, school meals and other necessities such as designated school and training uniforms. As regards upper secondary education, the Government has no intention to consider making it free of charge, even when the rate of enrolment is around 97%, almost as high as compulsory education. The Government argues that "the introduction of free education" in Article 28, para. 1 (b) of the Convention is nothing more than an example of an advisable measure.

RECOMMENDATIONS

In accordance with Article 26, Clause 2 as well as Article 28, Clause 1 of the Japanese Constitution, the scope of free compulsory education should be expanded, and the materials and services essential to school activities should be provided without collecting expenses from the parents. This is especially true with the materials designated by the school for which there is no room for choice. In accordance with Article 28, Clause 1(b) making upper secondary education free or corresponding measure should also be studied.

(76) Curricula

*The standards for school curricula are set out in the so-called "Course of Study Programme", which has many problems. First, since the Government consider the Course of Study Programme to be legally binding, a teacher may be punished if he/she does not conform to it. In particular, there is a tendency that many disciplinary actions against teachers are taken as regards *Hinomaru* and *Kimigayo* (See (43)). Second, there are too many subjects for class study in the Course of Study Programme. As a result, many children cannot keep up with lessons. Third, the Course of Study Programme does not fully reflect the aims of education set out in Article 29, para.1 of the Convention, including respect for human rights and the environment or the spirit of international understanding [SPR 230]. Sexuality education is extremely inadequate as well (See (63)). Fourth, there is not much room for children and teachers to determine what to learn by their own will, based on the actual situations of the community and the children's lives.

RECOMMENDATIONS

The Course of Study should be defined as a guiding and advisory official document laying down the general standards of the contents of public education, and its contents should be strictly selected and considerably reduced. Strict selection and reduction of contents are necessary to prevent the occurrence of children, who cannot catch up with class teaching, to alleviate the entrance exam competition, and to guarantee the rights to rest, leisure and play as sought by Article 31 of the Convention. In accordance with Articles 12, 28 and 29 of the Convention the freedom of teaching by the teacher as stipulated in the ILO-UNESCO Recommendation Concerning the Status of Teachers and the participation of children in the preparation of school curriculum as sought by Clause 21(c) of Riyadh Guideline should also be widely realized. The purpose of education defined in Article 29, Clause 1 of the Convention should be fully reflected in the Course of Study.

(77) Screening of Textbooks

*A textbook cannot be used at school unless it is screened by the Ministry of Education. The

screening serves the purpose of state control on the contents of education and can exclude historical and other accounts which do not conform to the ideologies of the state power. This tendency has been particularly strong in the field of history education. Asian countries have criticized Japanese textbooks for distorted accounts of history. Also, the authors of history textbooks which have not passed the Ministry of Education screening have filed lawsuits against the Japanese Government. Due to this screening system, the right of the child to information, which is recognized in Articles 13 and 17 of the Convention, still is dismissed and the aims of education provided in Article 29, para.1 of the Convention are yet to be fully reflected in textbooks.

RECOMMENDATIONS

The Ministry of Education should stop authoritarian interference with textbooks, which conflicts with Articles 13, 28 and 29 of the Convention, and should examine to abolish the screening system of textbooks and to adopt free publishing system. The minimum requirement is that the screening opinion of the Minister of Education be reduced to guiding advice and the process of screening be totally published as first steps toward improving the textbook screening system.

(78) Preparation and Disclosure of Educational Records

*Schools and boards of education prepare and preserve many educational records, including: records on individual children such as cumulative guidance records and "*naishin-sho*"(confidential school reports to higher educational institutions); records of the proceedings of staff meetings and other meetings; incident reports including those on the incidence of corporal punishment; and accident reports which are to be prepared after school accidents. However, it is the rule that the concerned child and his/her parents cannot be involved in the preparation of incident or accident reports. The documents are not disclosed to them unless they apply to the local government for the disclosure of information. For this reason, there have been many cases in which inaccurate reports have been submitted to boards of education. Some cases involved underreporting the facts to the advantage of the school. Since records of the proceedings of staff meetings and incident or accident reports are not disclosed to the public in an active manner, it is difficult for individuals and NGOs to monitor school education [No mention in the SPR].

RECOMMENDATIONS

1. With regard to the preparation of the reports on school accidents and disasters procedure should be established on the basis of the right to control of self information implied in "privacy" in Article 16 and the right to expression of opinion in Article 12 of the Convention. Especially in the preparation of such reports the explanations and opinions of the affected children and their parents should always be listened to and copies of the reports should be presented. When there are conflicts between the school and the children and their parents with regard to facts of opinions, both views should be mentioned.

2. The law concerning opening of information to public should be enacted, and concerning papers necessary for surveillance of school education by citizens such as the records of staff meeting and the reports on school accidents and disasters procedure should be established on the basis of the principle of opening information to public while paying careful consideration to secure the privacy of individuals.

(79) *Naishin-sho* (Confidential School Report to Higher Educational Institutions)

**Naishin-sho* is a report to be submitted to higher educational institutions when a student wishes to go there, which contains evaluations of the student study and behavior. However, since the *naishin-sho* is not disclosed to the concerned child or his/her parents, except in a few local municipalities, it functions as an effective tool for controlling children in fact. In particular, the *naishin-sho* plays an important part in the entrance examination of lower secondary schools and what is written there greatly influences the result. Therefore, the *naishin-sho* gives a negative impact on the exercise of the rights by children in such a way that many students refrain from expressing critical views against the school or teachers, fearing that such mention may be made to his/her disadvantage in the *naishin-sho*. There are actually teachers who threaten students with such comments as "Don't you care what is written on your *naishin-sho*?". There have been lawsuits over the comments to the disadvantage of the students. [No mention in the SPR].

RECOMMENDATIONS

In view of the fact that *Naishin-sho* controls the children's mental condition and life, and the policy of its non-opening to public restricts the exercise of rights by the students the procedure

based upon the right to control of self information implied in "privacy" in Article 16 and the right to expression of opinion in Article 12 of the Convention should be established in the preparation. Especially in its preparation the explanations and opinions of the children and their parents concerned should always be listened to and its copy should be presented. When there are conflicts between the school and the children and their parents with regard to facts and opinions, both views should be mentioned.

(80) School Rules

*School rules and student guidance policies, which raise concern as to their conformity with the Convention, are widely practiced at schools. Such rules and policies include those which cannot be considered rational and necessary, such as requirements that all male students have close-cropped hair and very detailed regulations on clothes; those which raise concern as to their consistency with other laws, including the prohibition on obtaining for motorcycle licenses; those which regulate lives outside schools, including regulations on going outside home, trips, staying at someone's home, part-time jobs or relationship with the opposite sex; and those which impose excessive sanctions on violators. Many conflicts over school rules have occurred on a regular basis, some of which have developed into lawsuits. In spite of these facts, the Ministry of Education maintains that the validity of school rules is not affected by the Convention and does not encourage a review of them in an active manner [SPR 84 & 226].

RECOMMENDATIONS

All effective measures should be taken to revise the school rules in violation of this Convention. First of all, it is necessary to issue a notice to the boards of education and the schools requiring them to have a thorough-going review of the contents of the school rules in the light of the principles and provisions of this Convention. At that time special attention should be paid to ensure that the school rules (1)respect the dignity of human being (Article 28, Clause 2 of the Convention), (2)are not in conflict with laws and ordinances,(3)do not infringe upon the privacy of children (Article 16) and the parental right of education (Article 5), and (4)excessive punishments are not taken against the violations of the school rules. Secondly, guidance and advice should be given promptly to the schools through the board of education to revise the school rules which do not meet the above requirements. Thirdly, in introducing the school rules sufficient attentionshould be paid to the principle of respect of the opinions of the children in accordance with Article 12 of the Convention and Clause 31 of the Riyadh Guidance.

(81) Protection of Victims of Bullying

*There are more than 60,000 cases per year of bullying in school. The cases were reported by 34% of elementary schools, 58% of lower secondary schools and 40% of upper secondary schools. The Ministry of Education has acknowledged more than ten cases of suicide induced by bullying in recent years. Sufficient measures have not been taken to protect victims of bullying, including the improvement of reliable counselling services and the establishment of systems for emergency sheltering. In particular, adequate support is not given for the recovery and/or rehabilitation of children traumatized by bullying [SPR 225].

RECOMMENDATIONS

1. In order to make it easy to discover and resolve bullying appropriate conditions should be created to enable the children to consult somebody about bullying without any anxiety. To be more specific, in order to secure the cooperation of third parties, steps should be taken to circulate information on the contact addresses and phone numbers of the lawyers and NGOs involved in such consultation, to consider the appointment of ombudsperson for children, and to support private consultation agencies. A campaign aimed at the parents, teachers and general citizens to arouse their awareness of bullying is also needed.
2. Emergency refuge measures such as absence from school, and "classroom for rest" (bullying sanctuary) should be made available promptly in response to the self-declaration of the children, making it sure that the victims would not be subjected to any negative result.
3. A comprehensive study should be made about the long-range influence of the trauma by bullying on the children. For the victims of bullying professional care for recovery should be provided in response to the need and the victim's will, and the support to self-help groups should also be extended.

(82) Reaction to Bullies / Measures to Prevent Bullying

*The need of punitive measures against bullies is emphasized often. Help is not offered for the bullies so that they can change their behavior. Sufficient measures have not been taken to

prevent bullying, such as formulating whole-school policies against bullying and the use of practical methods which have been effective for the prevention. More efforts are needed to change the structure itself which gives rise to bullying [SPR 225].

RECOMMENDATIONS

1. Measures should be taken positively to depart from punitive measures against bullies and formal guidance only and to help bullies to change their behavior. At that time, full consideration should be given to the principles and provisions of the Convention and the UN Policy for the Prevention of Juvenile Delinquency (Riyadh Guideline). Counseling service for bullies should also be made available, and its existence should be known widely.

2. Efforts to prevent bullying should be promoted such as introducing the school-wide policy concerning bullying, and making use of the practical methods proven effective in preventing bullying. At that time, it would be efficient to seek the cooperation of NGOs. It should also be considered to examine the official positioning of non-violent methods for resolving conflicts within the framework of school curriculum.

3. The analysis and reform of the structure producing bullying should be undertaken urgently. At that time, special attention should be paid to ensure that the human rights of the children be respected in the home, school, community and all other areas. Steps should also be taken to reduce the mental stress of the children and to help the children enhance their self-respect.

(83) Sports Including Extra-Curricular Activities

*Sports are practiced widely in communities or extra-curricular activities at schools [SPR 247]. However, the first priority is given to achieving good results in sporting events. This "sport for victory" phenomenon causes bad effects including excessively long, unscientific and severe training imposed by instructors or seniors and the subsequent occurrence of accidents or physical troubles. In addition, since extra-curricular activities are often considered as part of the efforts to prevent delinquency, students are forced to join them in 55% of lower secondary schools, which makes it difficult for children to have personal leisure time.

RECOMMENDATIONS

In view of the fact that Article 31 of the Convention provides for the children's "right to rest and have leisure" and "right to do recreational activities" and UNESCO's "Charter on Physical Education and Sports" defines sports as a basic human right and total review of the children's sports which is now creating bad influence due to the principle of victory by all means. Especially, steps should be taken to prevent forcing excessive practice time, unscientific guidance, violence, accidents, occurrence of physical disorders, etc. along with the enlightenment of the awareness of teachers and other leaders. Participation in the sports events in the community and the school club activities should be left entirely voluntary. In order to make it possible for the children to join sports activities freely as they like the training of sports coordinators and instructors with scientific knowledge and guidance ability, and the promotion of the use of sports facilities in the school, the community and the workplace should also be encouraged.

(84) The Right to Play

*In spite of the provisions of Article 31 of the Convention, the importance of the right of the child to play is recognized hardly. The environment for children play has grown worse and worse, due to the following factors: there is little space where children can play without restrictions; children have lost both time for playing (See also (68)) and friends with whom to play; and the tradition of play inherited from generation to generation have been lost. Few measures have been taken which are necessary to improve the environment for children's play [No specific mention in the SPR].

RECOMMENDATIONS

1. The importance of "free play of children in the place of their daily life" should be recognized, and efforts should be started to appeal to the community at large and the officials concerned in local self-governing bodies to create the environment for playing. Reviewing of school education and guaranteeing free time to children are also needed in this connection.

2. It is necessary to improve the environment for the children to play and to train a large number of adults who assist the children to play and assign them to appropriate positions in municipalities. For this purpose it is necessary to seek the positive participation of the children, parents and local residents to have a sufficient exchange of views. At the same time, a survey of the activities of private volunteer groups engaged in the improvement of the environment for the children to play should be conducted, and positive measures of assistance to them should

be taken.

3. Participation of experts who are familiar with child development and of children themselves should be guaranteed in improving school facilities, housing program, town development, urban planning, etc.

VIII. SPECIAL PROTECTION MEASURES

(85) Refugee Children

*From 1982 to the end of June 1995, 1,151 persons sought asylum in Japan. Only 208 of them were recognized as refugees while more than half of them (651 persons) were not. As is represented in this fact, applications for asylum are dealt with in a restrictive manner. The asylum procedures themselves have many problems, which include: (a) the so-called "60-day rule" -- which requires all asylum applications to be submitted within 60 days from the date when a person arrived in Japan or when the circumstances arose which gave rise to a fear of returning -- is applied strictly; (b) sufficient explanations are not offered concerning the rights and the procedures provided by law; (c) effective legal assistance, including legal counsel, is not secured; (d) appeals are not considered by independent bodies; and (e) asylum-seekers and those who had not been recognized as refugees usually are detained. Also, there are no procedures which take into account the special needs of the child [SPR 249-251]. See also (22).

RECOMMENDATIONS

The asylum procedures should be reviewed comprehensively in the context of the Convention on Refugees, guidelines of UNHCR, and recommendations adopted by Amnesty International in March 1993. At that time, special attention should be paid to the relaxation of applications of the so-called "60-day rule", sufficient dissemination of the rights and procedures prescribed by law, provision of effective legal assistance such as attendance of an attorney, consideration of appeals by independent bodies, making exception the detention of those who are applying for recognition as refugees or who had not been recognized as refugees. Especially with regard to children, procedures taking into account their special needs are required in the context of Article 22 of the Convention and the 1994 "Guideline of UNHCR Concerning the Protection and Care of the Refugee Children".

(86) Disasters: the Great Earthquake in Hanshin and Awaji Areas

*The Great Earthquake in Hanshin and Awaji Areas, which occurred in January 1995 and took the lives of more than 6,400 persons (of which more than 200 were pupils or students), brought out the fact that many problems are yet to be solved in relation to the protection of children in disasters. Specific measures are required on the following points: (a) establishment of guidelines and systems for immediate relief activities and for functions of schools after disasters; (b) treatment of PTSD (post-traumatic stress disorder) and other psychological damage, including trauma caused by loss of parents or other family members; (c) inadequacy of public support for recovery of the standard of living; (d) prompt recovery of functions and facilities for day-care services and education programmes; and (e) ensuring the right of the child to play [No mention in the SPR].

RECOMMENDATIONS

1. In the context of Article 39 of the Convention measures should be taken to assist the children, who were affected by the Great Earthquake in Hanshin and Awaji Areas and other disasters, to recover from PTSD (Post-Traumatic Stress Disorder). All legislative and administrative measures should be taken to assist the recovery of the standards of living of the affected families such as the payment of allowance, low-interest long-term loans and other public support in the context of Article 27 of the convention.

2. All necessary steps should be taken to ensure that children would be protected with top priority in the event of emergency disasters so that all the rights prescribed in the Convention might not be deprived. Besides those mentioned in 1. above, such steps should include the guidelines and systems concerning the role of the school in emergency disasters, alternative measures for damaged facilities for day-care and education, promotion of restoration of damaged facilities, and guarantee of the right of the child to play.

(87) Administration of Juvenile Justice: Problems in the Family Court

*The descriptions of the SPR on the administration of juvenile justice are short and precise and serve as explanations on the ideas and procedures of the Juvenile Law currently in force [SPR

256]. However, in practice, the juvenile is not respected as a subject of inherent rights. The idea of securing healthy development of the juvenile through protection and education is not realized fully. For example, the juvenile often is deprived of his/her liberty without rational necessity (See (90)). Attorneys rarely are appointed as legal counsel for juveniles (See (89)). Additional investigations often are pursued after the case has been referred to the family court (See (88)). In addition, there are some trends which are likely to hinder the realization of the idea of the present legislation. For example, the Ministry of Justice has proposed to change radically the present *ex officio* hearing structure, which stresses the welfare approach, and introduce the adversary system with the involvement of prosecutors.

RECOMMENDATIONS

1. In the context of Article 40, Clause 1 of the Convention, steps should be taken to push forward the idea of healthy development of children as prescribed in the Juvenile Law. For this, it is necessary to prefer a place, where the juvenile can open his/her mind without anxiety instead of the prosecutor pursuing his/her criminal responsibility with impeachment, and therefore to repeal the "involvement of prosecutors", which undermines the foundation of the existing of Juvenile Law. Steps to minimize physical restraint of the juvenile <ref. 91> and to have an attorney appointed as an attendant at the costs of the state <ref. (90)> are also needed in the context of Article 37, (b) of the Convention.

2. All parties concerned with the administration of juvenile justice should be provided with training concerning the relevant international documents such as the Convention, the Beijing regulations, Riyadh Guidance, the UN regulations for protection of the juvenile whose liberty is deprived.

(88) Administration of Juvenile Justice: Chofu Case -- Practice Contrary to the Idea of the Juvenile Law

*In the administration of juvenile justice, the idea of the Juvenile Law (See (87)) is not realized fully as practice tends to be contrary to it. Exemplifying this fact is the "Chofu case", in which the due process of law which is guaranteed under the Constitution and the Code of Criminal Procedure was ignored in many respects. In this case, it was argued that the due process of law guaranteed for the adult is not applied necessarily to the juvenile, because special procedures are available to him/her. This justification completely contradicts the ideas and aims of the Convention and the Juvenile Law [SPR 256, 263, 265 & 268].

RECOMMENDATIONS

1. It should be recognized that the procedure in juvenile justice is a special procedure in accordance with the idea of Article 40, Clause 1 of the Convention, and that the due process of law should be guaranteed more carefully for the juvenile than for the adult, and all necessary measures should be taken to improve or prevent the administration contrary to the ideas of the Convention and the Juvenile Law. Especially, such principles as the prohibition of assumption of innocence, disadvantageous charge after appeal to higher court, and dual danger should be applied to the administration of juvenile justice, as well.

2. The actual situation, that despite the principle that the process at the family court should begin after conclusion of criminal investigation, supplementary investigation by police authorities is conducted unlimitedly after commencement of the process at the family court should be promptly corrected for the possibility of infringing upon the right to be guaranteed fair process of law (Article 40, Clause 2 (b) (iii)).

3. In view of the fact that the report on the process of juvenile justice is affecting its administration adversely, correct information should be provided to the mass media with regard to the idea of juvenile justice and the state of juvenile delinquency, and the development of appropriate guideline concerning the report on juvenile delinquency should be encouraged.

(89) Administration of Juvenile Justice: Legal Assistance

*The right of the child to have access to an attorney and to receive legal assistance free of charge is secured only to the same degree as it is with the adult, only when the juvenile is prosecuted under the criminal procedures, and only during the trial. Though the right to appoint defense counsel or an attendant is formally recognized [SPR 264 & 279], it has become a dead letter because the appointment of an attendant is not required before prosecution or referral to the family court, during the hearing of juvenile and after the trial or hearing has been completed. As a result, the percentage of the cases where an attendant was appointed is only 1% or so. These defects have been complemented by the "duty lawyer system" and the "attendant aid system for juvenile protection cases" initiated by the Japan Federation of Bar Associations with

the assistance of the State. However, there is an attempt to cut off the assistance to those systems without necessary legal and institutional arrangements, which may create a danger that systems to provide the juvenile with legal assistance are lost completely.

RECOMMENDATIONS

1. In the context of Article 37 (d) and Article 40, Clause 2 (b) (ii) (iii) of the Convention steps should be taken to fully guarantee the right to access to legal assistance to the juvenile, who is prosecuted for or found guilty of violation of the criminal law. First of all, the establishment of a system to appoint a lawyer (attendant) at the State expense for every juvenile before prosecution or refusal to the family court, during the protective procedure in juvenile justice or after imprisonment following conclusion of court trial or juvenile justice is needed. Secondly, in the administration of that system appropriate steps should be taken to make it easy for the juvenile to use it such as specifying the cases, for which the lawyer (attendant) should be by all means appointed, and dispatching the lawyer without the request of the juvenile.

2. The "duty lawyer system" and the "attendant aid system for juvenile protection cases" initiated by the Japan Federation of Bar Associations should not be retrogressed or suspended and should rather be positively maintained and progressed unless the above-mentioned systems are established.

3. Efforts should be made to explain to the people and have their understanding about the right to legal assistance of the juvenile, who is a subject of criminal case or juvenile protection case, and the reasons why that right should be guaranteed.

(90) Administration of Juvenile Justice: Deprivation of Liberty

* On the contrary to the provisions which discourage deprivation of liberty of the juvenile [SPR 275-276], it is the rule to deprive the juvenile of liberty, particularly during the process of an investigation, through the arrest, detention and protective detention. Moreover, most juveniles are not detained in the juvenile classification home but in the police detention facility (*daiyo-kangoku*, literally "substitute prison") where separation from adults are not complete. The juvenile is not attended by the parents or an attorney during an interrogation. Illegal methods for an interrogation, such as physical and mental violence, threat and coaxing, are used often. There are defects in the appeal procedures [SPR 280]. Thus, the provisions of Article 37, (b) - (c) are ignored in many respects.

RECOMMENDATIONS

1. In accordance with the provision of Article 37 (b) of Convention, investigation should be made in principle of the juvenile at home, and physical detention should be used only as the "last resort and for the shortest possible of time", not permitting the extension of detention and protective detention without strong reasons. Especially, the use of police detention facilities, which tend to become the hotbed for illegal investigation, should be abolished. Appeal procedures during detention should also be improved.

2. In accordance with the provisions of Article 37 (d) of the Convention and the UN Regulations Concerning the Protection of the Juvenile Deprived of Liberty, necessary steps should be taken for the juvenile under detention such as making legal assistance available free of charge and appropriate notice concerning the right to appoint a lawyer. Presence of a lawyer should be made a principle to prevent illegal investigation, and such steps as to deny validity to the evidence obtained through investigation not attended by a lawyer should be examined.

(91) Prevention of Juvenile Delinquency / Social Resources in the Community

* Policies for the prevention of juvenile delinquency are inclined to the control-oriented approach, such as those designed to "clean-up" harmful environments and those which plan activities for the protection and guidance of children [SPR 7]. These policies are not based on the ideas of the Riyadh Guidelines (U.N. Guidelines for the Prevention of Juvenile Delinquency) which attach importance to children's rights and social participation. As a result, the prevention of juvenile delinquency is entrusted virtually to the police. Sufficient attention is not paid to the enrichment of social resources through active involvement of the community or the promotion of the problem-solving and self-determination capacities of children.

RECOMMENDATIONS

Comprehensive review of preventive measures of juvenile delinquency should be made. For this, first of all, a system to check the existing conditions of the community should be established with a view to preventing juvenile delinquency. Secondly, programs for the prevention of juvenile delinquency with emphasis put on the improvement of the guarantee of the rights of the child

and the promotion of social participation should be developed. Especially, steps should be taken, including budgetary arrangements to enrich human resources such as those people who are required for the prevention of juvenile delinquency in the community. It is necessary to provide police officers, guidance counselors, school teachers, etc., who are involved in the prevention of juvenile delinquency in the community, with training to learn the ideas of this Convention and the Riyadh Guidelines.

(92) Drug Abuse

*The incidence of drug abuse and abuse of organic solvents such as paint thinners is on the increase [SPR 292]. However, measures taken to address the issue have been inclined to the judicial approach, such as the police control or the protection and guidance activities for children. Educational and awareness-raising measures for prevention have not been effective enough, in part because most of them are of a threatening nature, only stressing the dangers of drug and paint thinners [SPR 293-294]. In addition, there are very few specialized treatment institutions specifically for drug addicts. Support to self-help groups and other NGOs is inadequate.

RECOMMENDATIONS

1. In accordance with Article 33 of the Convention necessary steps should be taken to prevent the abuse of drugs and paint thinners by children such as the strengthening a cooperation among judicial authorities, juvenile detention facilities and medical services, and the improvement of educational and awareness-raising measures. The education for prevention of drug abuse should not be of a threatening nature to stress dangers, but should take full account of the background and causes of drug abuse to be effective.

2. In accordance with Article 39 of the Convention necessary medical system should be improved such as increasing the number of specialized treatment facilities for drug addicts, and public support should be provided to self-help groups, etc.

(93) Sexual Abuse and Violence

*Many cases of sexual abuse and violence occur at home, at school and in society. In particular, the increase of sexual violence cases by teachers have been pronounced. However, sufficient efforts have not been made to understand the actual situations in which sexual violence occurs. The relevant provisions in national legislation lack consistency and do not pay enough attention to the protection of the victims' human rights [SPR 295]. Sufficient measures have not been taken to reduce the number of victims and to support their recovery [SPR 296].

RECOMMENDATIONS

1. Provisions in the domestic laws relevant to sexual abuse and violence should be thoroughly reviewed from the viewpoint of the protection of human rights of the victims. Especially for children, special protective measures such as imposing heavier penal punishment upon the assailants are required. The period-of accusation for rapes and forced public indecency should be extended.

2. Investigative survey should be conducted to grasp the actual conditions of sex violence at home, school and the society. The relief system of the victims of sex violence should be established such as the improvement of complaining procedures and counseling service, the arrangement of training to law enforcement officers, and the provision of special care for the victims. Preventive measures such as awareness-raising campaign about sex violence are also required.

(94) Sexual Exploitation within the Country

*There are many defects in national legislation as regards the sexual exploitation of children, including the lack of legal provisions at the national level to punish the customer who has been involved in child prostitution and to explicitly prohibit the production, dissemination and possession of child pornography. As is represented by the fact that children who have been involved in prostitution are treated as "delinquents" rather than "victims", support for the recovery and rehabilitation of the child victims is inadequate [SPR 295-298].

RECOMMENDATIONS

In accordance with Article 34 of the Convention the Child Welfare law, the penal code, etc. should be revised and new legislative measures should be taken to introduce new provisions to prohibit specifically the act of becoming a customer in child prostitution and the production, dissemination and possession of child pornography. As for children above certain age level, however, sufficient attention should be paid to the privacy of children, requiring the victim to

complain directly. The training of law enforcement officers should be thoroughly conducted so that the provisions of Article 39 of the Convention and the Riyadh Guidelines are fully respected in the stage of investigation.

(95) Sexual Violence by Japanese against Asian Children

*In recent years, at least 34 Japanese were arrested in Asian countries concerned on the charge of sexual violence against Asian children. However, bilateral cooperation in investigations with the countries concerned hardly has been pursued. Also, the Japanese perpetrators hardly have been prosecuted on the charge of crimes committed outside Japan. In addition, due to the defects concerning sexual exploitation in national legislation, child prostitution by Japanese in other countries is, in itself, not punishable in Japan unless it is accompanied with other offences such as rape, indecent assault or other violence. Preventive measures are extremely inadequate [SPR 299-300].

RECOMMENDATIONS

In revising the penal code and the Child Welfare Law or introducing new legislation as stated in the above section measures should be taken to make them applicable outside of Japan as well. In order to facilitate the punishment of the crimes committed outside of the country such as sexual exploitation and violence on the basis of Article 34 of the Convention, etc., it is required to conclude a bilateral agreement with the country concerned about close cooperation in investigative efforts. Preventive measures such as the punishment of the travel agencies involved in sexual exploitation, and awareness raising campaigns should also be taken.

ENDNOTE: List of main organizations which were involved in the preparation of this report

Coordinators:

Federation for the Protection of Children Human Rights
International Movement Against All Forms of Discrimination and Racism Japan Committee

Main Organizations:

Action for the Rights of Children
All-Japan Prefecture and Municipal Workers Union
Buraku Liberation League
Convention on the Rights of the Child Network
Group to Fight Discrimination Against Children Born Out of Marriage
Hokkaido Utari (Ainu) Association
International Center for the Rights of the Child
Japan Teachers Union
Japan Women Council
National Association for the Liberation of Disabled Persons
National Dowry Educators Association
Okinawa Teachers Union
Otherwise Japan

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