REPORT ON THE IMPLEMENTATION IN JAPAN OF THE CONVENTION ON THE RIGHTS OF THE CHILD

JUNE 1997

JAPAN FEDERATION OF BAR ASSOCIATIONS
(JFBA)

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Approved at the JFBA Board of Governors
in March 1997

Submitted to the United Nations in June 1997

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INTRODUCTION

1. The Initial Report by the Japanese Government quotes in its opening the first paragraph of the Children's Charter of Japan established in 1951:
"The child shall be respected as a human being; the child shall be esteemed as a member of society; the child shall be raised in a good environment," and appreciates that "it has been recognized by many Japanese people as a significant philosophy acknowledging the fundamental rights of children and promising to guarantee and promote their well-being" (para. 1), followed by "With the ratification of the Convention on the Rights of the Child..... as a turning point, the awareness of the rights of children has continued to grow, and the spirit of respecting and protecting the rights of children is now understood among the Japanese people more than ever before". The Report then goes on to point out that "The Constitution of Japan..... stipulates that fundamental human rights", including civil liberties and social rights, "are 'conferred upon this and future generations in trust, to be held for all time inviolate'"(para. 2), and summarizes that "The Constitution protects the fundamental rights of children as well." (para. 3)

2. The Report then provides an overview of Japanese legislation, including the Child Welfare Law, the Fundamental Law of Education, the Juvenile Law and the Labor Standard Law, as well as measures taken under the legislation, and states that "Following the ratification of the Convention", which "provides for fundamental principles for protecting the rights of all children", "the Japanese Government has been striving to consolidate various measures within the existing legal framework to implement the Convention effectively." (para. 10)

However, the analysis of the measures in the Report is no more than a specification of the appropriate laws and regulations, lacking an approach of concrete examination on whether the rights of children are sufficiently guaranteed. In addition, the Report goes no further than the viewpoint that rights are something which are given to children, with no description or analysis embracing the concept that children themselves should be involved in realization of the rights of the child by participating in the process and expressing their views.

3. The Report mentions as current problems that "cases of child-abuse are on the increase and the situation of juvenile delinquency and bullying is becoming increasingly serious, partly because of demoralizing influences from ruined modern society such as the weakening of human relations, including those with parents, and the overflow of harmful information" (para. 10), but in regards to overcoming these problems, it does not go any further than the abstract and general statement that "families, local public entities, schools, the police and non-governmental organizations as well as the Government have to act in concert for the best interests of the child. Furthermore, all the people in Japan should deepen their understanding on the Convention and strive to achieve such goals." (para. 11) As is evidently shown by the fact that "Ratification of the Convention ..... did not require any amendments to Japanese legislation nor any new enactments of law" (para. 12), the Government has not made any specific efforts to "consolidate policies in a comprehensive manner" (para. 11). For example, the Ministry of Education issued an Administrative Vice-minister's notice entitled, "Regarding the Convention on the Rights of the Child" on May 20, 1994, which expressed a view that "the effectuation of the Convention does not require any particular amendments to existing legislation relating to education."

4. Such an attitude by the Government, which leaves the legislation and actual practices violating the Convention untouched, infringes upon Article 4 of the Convention which stipulates

that States Parties must undertake all appropriate measures for the implementation of the rights recognized in the Convention. In undertaking such measures, the Convention on the Rights of the Child aims to realize children's participation and expression of views in the process. Nevertheless, the child as the subject of these efforts is completely left out and ignored in the Government Report.

5. This problem can be found in many parts of the Government Report. As an example, we can take up and analyze here the descriptions about freedom of expression, freedom of thought, conscience and religion, freedom of association and of peaceful assembly, protection of privacy and prohibition of torture, which are indispensable preconditions when making children subjects of participation and of exercise of their rights.

6. All of these descriptions in the Government Report commence with the sentence that all people, including children, are guaranteed the right to..... under the provisions..... of the Constitution and laws (para. 83, 100, 101, 102), and conclude that these rights are therefore absolutely guaranteed to children as well with only a few exceptions. Also, for the prohibition of torture, the Report cites Articles 13 and 36 and Article 38-1 of the Constitution which guarantee the right to all people, and states that the right is guaranteed to children as well. However, no consideration is made at all to the point that since children are not experienced nor informed about exercising their rights, it is necessary to establish an appropriate environment in order for them to actually enjoy and exercise these freedoms and rights.

7. To get away with the conclusion that these rights are also guaranteed to children by commencing the descriptions of such rights in the aforementioned manner is strong evidence of the Government's lack of understanding of the significance that the rights guaranteed to all people, including children, in the International Covenant on Civil and Political Rights had to be guaranteed yet once again to children by the Convention on the Rights of the Child; i.e. in order to guarantee these rights to children, a special guarantee appropriate to children, including the atmosphere which allows them to participate and express their views, is needed.

8. Special consideration appropriate to children is also needed in areas other than civil liberties. Also in the areas of welfare, education and juvenile delinquency, it would seem that certain institutions do exist, which guarantee rights to children, but there also exist some cases where institutions are used in such a manner that children have their personality repressed and dignity destroyed and they can be seriously damaged both mentally and physically. We cannot state that Japanese children are guaranteed their rights unless these problems are overcome.

9. Many citizens and NGOs in Japan, including the Japan Federation of Bar Associations (JFBA), strongly requested the Government, during the course of preparation of the Government Report, to examine exhaustively situations where problems exist taking into account the above problems, and submitted a considerable volume of written opinions pointing out the real situations in which children are placed as well as the problems they present. Quite regrettably, however, the Government Report dared to ignore these requests and opinions, thus providing a distorted picture of Japan's actual situation. The Government Report does not reflect correctly the present situation, difficulties and tasks of Japan.

10. With regard to the rights of the child, it is essential for both children and adults to establish the opportunity to learn and deepen their understanding of the principles and rules on

the rights of the child raised by the Convention so that they will be able to act in compliance with them. It is also essential to establish, in each field where children are concerned, a system with which children can express their views as well as a system for providing rectification should the former system fail to work.

11. Regarding the violation of these rights, a complaint is filed with the court in many cases, asking for relief. However, the court often dismisses these complaints saying that they are unlawful or, when it accept them as lawful suits, it often refuses to provide relief, saying, for example, that the action was within discretion of the school. Thus, the court does not necessarily play the relief role sufficiently (For example, on February 22, 1996, the First Petty Bench of the Supreme Court refused to provide relief in a case over the school rule enforcing close cropped hair, saying that the school rule was not legally binding and therefore did not infringe on the rights of students. On July 18, 1996, the First Petty Bench of the Supreme Court turned down a complaint from a female student who violated school rules prohibiting permed hair, on the reason that there was no deviation from discretion). In order to overcome such problems, it is necessary to establish a training system throughout the courts regarding the rights of the child and make it compulsory for court staff, including judges, to receive training, and to establish the principle that the court should comply with the best interests of the child when making judgements in cases relating to the violation of the rights of the child (Article 3-1 of the Convention). It is also essential to set up independent, authoritative entities, other than the court, that are appropriate for guaranteeing the rights of children, such as an ombudsperson. However, with regard to the role played by the court in the implementation of the rights of children, the Government Report does not make any reference to the current situation and problems, nor does it show even the slightest sign of having examined them.

I. GENERAL MEASURES OF IMPLEMENTATION

A. Measures Taken to Harmonize National Law and Policy with Provisions of the Convention

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1. Provisions in Japanese legislation which are clearly contrary to the Convention should be revised immediately.
2. All Japanese legislation should be reviewed and revised from the standpoint of assuring the dignity of children. Especially in regards to conduct prohibited for the protection of children as in Article 34 of the Child Welfare Law, it should be reviewed from the standpoint of conduct violating the personality and dignity of children.
3. The reservation made by the Japanese Government with regard to Article 37 (c) of the Convention should be withdrawn.
4. Regarding the "Civil Liberties Commissioners for the Rights of the Child" initiated by the Government, it is essential to secure the independence and strengthen the investigative authority of this body, and to consolidate their financial base and enhance methods of selecting commissioners. Especially, specific measures to make them familiar to children and to ensure their cooperation with the public and NGOs should be introduced.

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1. Necessity to Review Existing Japanese Legislation

12. Paragraph 12 of the Government Report states that "Ratification of the Convention ..... did not require any amendments to Japanese legislation nor any new enactments of law, since most of those matters have been stipulated by the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights ..... and are guaranteed under the existing legal framework of Japan, including the Constitution", asserting that nothing in the existing Japanese legislation is against the Convention. However, there are provisions which are clearly contrary to the Convention, as will be shown later.

13. In addition, the Convention further deepens the idea of human dignity as proclaimed by "the International Covenant on Economic, Social and Cultural Rights", "the International Covenant on Civil and Political Rights" and "the Constitution of Japan", by positioning the child as being the subject of these rights, and therefore it goes without saying that the existing Japanese legislation needs to be reviewed in light of this spirit. Regarding "conduct prohibited for the protection of the child" in the Child Welfare Law (Art. 34), for example, it is necessary to review the provision from the viewpoint of inviolability of the personality and dignity of children and in particular, to specify that parents, teachers and administrators of facilities, who are responsible for the survival and development of children, are also required to comply with those prohibitions.

14. Furthermore, no laws or regulations in Japan declare children to be the subjects of rights, in the first place, and children's subjectivity for rights should be proclaimed within the Japanese laws and regulations concerned.

15. The JFBA suspects that the following provisions are against the Convention; they need to be revised from the viewpoint of the child and its dignity. Specific problems in these provisions will be pointed out later in the respective sections dealing with them.

- When there is a conflict of interests between the child and parental authority, the child himself/herself should be granted the right to designate his/her temporary representative (III-D)
- Regarding a petition for loss of parental authority, the child himself/herself should be granted the right to file such a petition (Art. 834 of the Civil Code) (V-G)
- Discrimination between men and women in terms of marriageable ages, i. e. 18 years of age for men and 16 years of age for women (Art. 731 of the Civil Code) (III-A4)
- The provision that the amount of legal inheritance of an illegitimate child shall be a half of that of a legitimate child, should be revised (Proviso of Art. 900 (4) of the Civil Code) (III-A1 (1))
- Article 49-2 (1) of the Family Registration Law which requires, when registering the birth of a child, indication of being a legitimate child or not, in the column of relationship with parents, should be deleted. (III-A1 (1))
- Article 1- 2 of the Enforcement Regulation of the Child Rearing Allowance Law (Payment of child allowance to a family of mother and child is stopped when the child is recognized by the father, and commences only when the act of desertion has been continuous for at least one year) (III-A1 (2))
- Article 2 (1) and (3) of the Nationality Law (Fathers' recognition and the children's acquisition of nationality, and acquisition of nationality by the child whose parents are unknown) (IV-A4, 5)
- Article 12 of the Nationality Law (Acquisition of nationality for children born outside of Japan) (IV-A6)
- Lack of Authoritative judicial review of the "Discretion of the Minister of Justice" in the Immigration Law (V-C-9)
- Article 31 of the Juvenile Law "interpreting service for no charge for non-Japanese children" (VIII-A7(7))
- Introduction of the public attendant or defender system (VIII-A3)

2. Problems in the Reservation Made by the Government when Ratifying the Convention

16. As a reason for making a reservation to Article 37 (c), the Government Report explains that "persons under 20 years of age are dealt with as 'juvenile' as provided for in Article 2 of the Juvenile Law, under which any person less than 20 years of age deprived of liberty is to be separated from persons equal to or more than 20 years old. There is an obvious difference with the standard of age applied for separation as prescribed in the Convention."

17. However, the above reservation is problematic. Firstly, it can be interpreted as having been made with regard to "the principle of separation from adults deprived of liberty" itself on the pretext of the difference of age categories between Japanese laws and the Convention. The Juvenile Law stipulates that when juveniles are detained before sent to the Family Court they shall be kept, in principle, in a juvenile classification home specially designed for the protection of juveniles. However, they are often detained in practice in the "daiyo-kangoku" (substitute prison), and the custody in a juvenile classification home is exceptional. When juveniles are detained at the "daiyo-kangoku", they are placed in the same area of the same building, though in separate custody cells. In addition, as the cells are laid out in a comb-like or fan-like plan, this means that it is possible for detainees to view each other and to see what other detainees are

doing (Also in detention centers, as different facilities from substitute prisons, detainees are placed in the same area of the same building, which creates the same problem. See VIII-A4 (6) for this problem). With the ratification of the Convention on the Rights of the Child, it is urgent to prohibit at least the detention of juveniles in substitute prisons. In practice, however, it is planned to make substitute prisons permanent facilities. Reservation of the principle of separation from adults can be constructed that it is motivated to justify the plan.

18. Secondly, the Government Report mentions as a reason for the reservation that the Japanese Juvenile Law demarcates juveniles becoming adults at the age of 20. In order to better ensure the protection of juveniles, i.e. for educational treatment and welfare assistance, the Japanese juvenile legislation has expanded the range of juveniles from below 18 to below 20, aiming to further contribute to the realization of the rights of children. In this regard and in light of the objective of Article 41 of the Convention, age demarcation in Japan between juveniles and adults should be regarded as an impetus for developing and promoting the philosophy behind Article 37 (c) of the Convention instead of being opposed to it, and therefore there is no need for the reservation in question. A declaration of interpretation that "In these provisions, 'adults' shall be interpreted as people who are regarded as 'adults' in the domestic laws of Japan" would suffice.

19. For these reasons, the Japanese Government should withdraw the reservation promptly.

3. Declaration of Interpretation in Ratifying the Convention

20. In addition, the Japanese Government added two declarations of interpretation, when ratifying the Convention; one for Article 9-1 and the other for Article 10-1. The problems of these Declarations of Interpretation will be discussed later (VIII-B-1).

4. Activities and Organization for Monitoring the Rights of the Child

21. Paragraph 15 of the Government Report states that the Government initiated the system of "Civil Liberties Commissioners for the Rights of the Child" in August 1994 "as an administrative measure to guarantee the rights of children", and proclaims that "As of January 1, 1996, 515 persons are designated as Civil Liberties Commissioners for the Rights of the Child, and posted in every prefecture in Japan."

22. It was pointed out from an early stage that, upon ratification of the Convention, monitoring activities for "the implementation of the rights set out in the Convention" and organs for this purpose need to be established. The Government established Civil Liberties Commissioners for the Rights of the Child "as an administrative measure" which can play such a role, and the Commissioners have started operations in some areas.

23. However, for the newly-established "Civil Liberties Commissioners for the Rights of the Child" to fully perform their task of monitoring and supervising the implementation of the rights of children from the standpoint of children, there are problems arising as shown below:

(1) Lack of Independence

24. As the government itself admits, the system of "Civil Liberties Commissioners for the Rights of the Child" is designed to strengthen the efforts for the rights of the child within the framework of the human rights protection organs that have already been provided by the Ministry

of Justice, and is not set up as an independent, third-party organ established as a monitoring organ exclusively for the interests and rights of children. As early as November 1991, the JFBA pointed out the need for the national and local governments to set up Ombudsmen in order to establish the rights of the child and redress the violations of those rights, and made specific recommendations on the framework and content of such ombudsmen. In addition, at the Diet session which discussed the Convention, each political party urged the Government to establish such an organization, but the Government did not adopt any policy of setting up a new, independent institution with strong authority to carry out investigation and make recommendations.

(2) Accessibility of Commissioners to Children

25. Although the "Civil Liberties Commissioners for the Rights of the Child" have started their activities, the Government Report does not show whether they are actually used by children themselves. The Ministry of Justice has at least prepared a leaflet informing children of the establishment of this system, and some Commissioners have personally made efforts to make it familiar to children.

26. As stated in Paragraph 15 of the Government Report, however, they are "giving counsel on human rights at homes and in guidance rooms of the Regional Legal Affairs Bureaus and the District Legal Affairs Bureaus", which means they have no offices of their own. The Commissioner has not been sufficiently consolidated yet into a system which many children are willing or able to use. This is a problem to be solve urgently.

(3) Selection of Commissioners

27. "Civil Liberties Commissioners", from whom "Civil Liberties Commissioners for the Rights of the Child" are nominated, are appointed by the Minister of Justice from among those candidates recommended by the heads of municipalities after hearing from Bar Associations. However, these candidates do not always have sufficient understanding of the rights of children. For the selection of Commissioners, it is necessary to establish a process through which only those with a full understanding of the rights of children and to whom children can speak their minds will be selected, by listening to the opinions of children and by considering a requisite endorsement by citizens and groups who are involved in activities relating to children or to invite candidates for such posts publicly. Paragraph 15 of the Government Report states that individuals concerned with education as well as lawyers have been nominated as "Civil Liberties Commissioners for the Rights of the Child". However, many of those "individuals concerned with education" are former principals of schools, and considering the facts that in Japan many cases concerning the violation of the rights of children have occurred in schools and that those who have committed such violations, as well as those who are involved, can be often former colleagues and subordinates of the Commissioners, the current selection is quite problematic for Commissioners from whom disinterested judgement is required.

(4) Authority of the Commissioners and Basis for Their Activities

28. For Civil Liberties Commissioners for the Rights of the Child to fully perform their tasks with children in the future, they have to be given a broader authority with which they can freely access any pertinent evidence and data in order to go further than the current voluntary investigation. It is also essential to provide financial assistance and staff to support these activities. At present, however, much is dependent on the Commissioners' enthusiasm and voluntary activities, with neither financial support nor staff being sufficient. Moreover, for "Civil Liberties Commissioners for the Rights of the Child" to fully conduct monitoring activities

for the rights of children, it is essential to maintain cooperation and coordination not only with other administrative organs but also with lawyers and bar associations and citizens and groups who are involved in activities relating to children. Such cooperation and coordination, unfortunately, is insufficient at present.

5. Problems of the Notice by the Administrative Vice-minister of Education

29. Paragraph 22 of the Government Report states that the Ministry of Education has instructed educational institutions by issuing a notice to ensure that schools will propagate the spirit of respecting fundamental human rights extensively. It is understood that this notice refers to the Education Ministry's Notice No. 149 issued by the Administrative Vice-minister on May 20, 1994. The notice states, in issue-specific requests for consideration set out as "points to be heeded", that "It is extremely important for children to understand their rights and duties correctly", daringly adding "duties" explicitly to the issue of "rights". Traditionally, Japanese schools have stressed only "duties", paying little heed to the "rights" of children. It is therefore all the more necessary to make the "rights" as recognized in the Convention thoroughly known. The fact that the notice, nevertheless, explicitly mentions "duties" indicates the Ministry's intention to dilute the significance of the Convention.

30. Moreover, regarding the provisions from Articles 12 to 16 of the Convention, the Notice asserts that these rights provided by these articles can be limited by the judgement of individual schools, stating that "Of course, schools can establish ..... school rules as applying to students, within a reasonable range necessary for achieving educational goals." In addition, the Notice is not prepared to allow participation of students and parents in the procedures for establishing, revising or abolishing school rules, stating that "School rules ..... should be determined according to the responsibility and judgement of individual schools." With regard to the rights of children to express their views, the Notice states that "the provision of the Convention sets out a general principle that views expressed by a child should be given due weight in accordance with the age and maturity of the child, and does not require that they always be reflected", presenting problematic interpretation which may denigrate the importance of this right, while the Convention guarantees it to children in a concrete and substantial manner .

31. We cannot help but assess that the attitude of the Ministry of Education seems to be trying hard to reduce the full granting of guaranteed rights to children. When incidents of bullying and corporal punishment take place continuously, with no sign of improvement, it is necessary for the Ministry of Education itself to change its views about the Convention.

B. Existing or Planned Mechanisms at National or Local Levels for Coordinating Policies Relating to Children and Monitoring the Implementation of the Convention

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1. An implementation organ which carries out comprehensive and unified measures for the rights of the child should be newly established.
2. For implementing measures concerning children, a system should be newly established for hearing children's views and ensuring children's participation as well as a system for hearing opinions and suggestions from the public and NGOs.

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1. Disharmony among Organs for the Implementation of the Convention

32. Paragraph 29 of the Government Report states that "administrative organs are currently implementing various measures from their own standpoints to perform the duties prescribed by the Convention. And upon the implementation of measures, however, these administrative organs promote close cooperation and take care to achieve collaboration within the Government as a whole." And, as administrative organs for implementing various measures relating to children in Japan, Paragraph 26 of the Report lists the Ministry of Health and Welfare, the National Police Agency, the Ministries of Justice, Education and Labor, and the Management and Coordination Agency in charge of coordinating measures among these Ministries and Agency.

33. In Japan, however, as is clearly shown in the Government Report, these 7 concerned entities are involved in implementation of measures for children in a separate fashion from one another under a vertically stratified administrative system characteristic of the Japanese bureaucracy, instead of carrying out comprehensive and harmonious measures. The Management and Coordination Agency carries out only liaison and coordination among the measures in such a manner so that it does not infringe upon the "territories" of the differing respective entities, and does not have authority to rectify vertically stratified administration.

34. One of the negative aspects of this vertically stratified administrative system is reflected in the fact that even after the effectuation of the Convention, any measures in the areas of child welfare, family, juvenile justice, education, and labor continue to be implemented separately from one another, while remaining within the legal system for each of the respective areas and having separate funding from respective ministries and agencies. But, it is most clearly reflected in the fact that the "Domestic Action Plan towards the Year 2000", formulated by the Government as a follow-up measure to the "World Summit for Children", lacks concrete measures and does not place any specific responsibilities on individual ministries and agencies.

35. Moreover, when comparing with the ratification of the Convention on the Elimination of All Forms of Discrimination against Women, it becomes clear that the Japanese Government shows reluctance to implement the Convention on the Rights of the Child. Aiming the ratification of the Convention on the Elimination of All Forms of Discrimination against Women, the Japanese Government set up the "Headquarters for Planning and Promotion of Policies relating to Women" at the Prime Minister's Office with the Prime Minister established as its head, and in 1977 a Domestic Action Plan was formulated, establishing the basic long-term direction

for achieving compliance. With these moves, the Equal Employment Opportunity Law was enacted and the Civil Code, the Nationality Law, the National Pensions Law, etc. were all revised. In addition, the New Domestic Action Plan was formulated in 1987, and 2000 Plan for Joint Participation of Men and Women was formulated in 1996, setting a long-term direction towards the 21st century. Compared to the implementation of the Convention on the Rights of the Child, the Government has shown a much more active posture.

36. As the Convention on the Rights of the Child requires a review of the administrative measures concerning children based on the Convention, a repositioning of individual measures within the overall framework guaranteeing the rights of children and promoting them in a comprehensive manner, a specific proposal has been made by NGOs that a "Children Agency" be established at national level and a "Children Bureau" for local public entities as new implementation entities designed to deal with children's issues comprehensively from a professional standpoint. However, the Government has not shown any move to change the traditional administrative system so far.

37. It has also been pointed out that in planning and implementing measures concerning children, it is necessary to consider the establishment of a "Public Hearing for Children" where children's views can be heard and children's participation is realized as well as a "Children Council" where opinions and proposals of individual citizens, groups and NGOs involved in children's affairs are collected. But, the Government has not made a move in this direction so far.

2. Implementation of the Convention at the Local Level

38. The Government Report barely mentions what specific measures have been undertaken by local governments in implementing the Convention. It seems that the National Government has not even made a survey regarding the implementation of the Convention at local level.

39. Between August and October 1995, the "Liaison Council to Advance Guarantees for the Rights of Children", one of the NGOs in Japan, conducted a questionnaire survey to 732 local governments, including 47 prefectures, 662 cities and the 23 special wards of Tokyo, on measures taken for implementing the Convention (Response rate: 35 prefectures (74.74%), 473 cities (66.01%), 16 special wards (69.57%); total 488 responses (66.67%)). The results show that only 54 local governments "have conducted or plan to conduct a survey regarding the situation of children" as a precondition for formulating measures relating to children.

40. With regard to those efforts relating to children's participation and expression of views, only 8 local governments responded that they allowed children to participate in the councils, etc. established by local governments and only 5 responded that they planned to do so. Regarding the so-called "Children's Congress", 40 local governments held this on a continuous basis, 119 had held it in the past and 22 planned to do so in future. In many of these cases, however, the Children's Congress was either aimed at enhancing children's interest in and understanding of municipal administration and the municipal Congress or organized as an event to accompany municipal commemoration projects, and therefore not really guaranteeing the rights of children to participate and express their views. In addition, it seems that for most local governments, the selection of members for the "Children's Congress" is left to schools (or principals), instead of autonomous selection by the children themselves.

41. The survey results also revealed that 28 local governments had established a system for registering complaints and 9 were considering the establishment of such a system. However, 9 meant the Civil Liberties Commissioners for the Rights of the Child as initiated by the Ministry of Justice, 3 meant selecting a general ombudsperson of their own and the remainder referred to education counseling by phone and mail, etc., which means that they barely have an effective system.

42. As we have seen, measures for implementing the Convention on the Rights of the Child are extremely insufficient at local levels as well. Especially, for establishing a system that would secure children's participation, there is a long way to go.

C. Dissemination of the Convention

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1. Dissemination of the Convention to children, which is required by the Convention, should be further strengthened. Especially, descriptions and details of the Convention within textbooks should be improved so that children will be able to gain sufficient familiarity with the Convention.
2. For those who work with children, such as teachers, judges and police officers, a training system should be established to deepen their understanding of the Convention and such training should be made compulsory.

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1. Dissemination to Children

43. The posters for schools, as prepared and distributed by the Ministry of Foreign Affairs, mention children's right to express their views as one of the main features of the Convention and point out that "It should be admitted that children may state their opinions freely on matters relating to them, express themselves freely and have assemblies freely. To realize this, however, children should also think of others and comply with moral principles." Even though no limitation is imposed on the children's right to express their views as in Article 12 of the Convention, this explanation may mislead children to wrongly believe that similar limitations as those in Article 13 are imposed. Moreover, as Japan has a history of imposing nationalistic ideas under the guise of moral education, it is generally regarded as problematic to stress conformity to "moral principles". Furthermore, these posters are not used in such a manner to attract pupils' and students' attention.

44. In the questionnaire survey to local governments mentioned above, while 21 local governments (4.3%) answered that they "have carried out or are carrying out PR activities" to children through PR papers and magazines and 12 (2.4%) said that they "are planning or considering to do so", as many as 359 local governments (79.7%) replied that they "are not planning or considering to do so." With regards to the preparation and distribution of posters, leaflets or pamphlets, while 29 local governments (5.9%) "have done so or are doing so" and 23 "are planning or considering to do so", 342 local governments (70.0%) "are not planning or considering to do so." The dissemination of the Convention is decisively slow and the Convention is hardly known at all to children.

45. One of the NGOs in Japan, the National Liaison Council of Children Theaters and Parents and Children Theaters, conducted a questionnaire survey in February 1995, by selecting 100 areas from all over Japan, then selecting 42 children from each area so that the age distribution and the ratio between boys and girls were well balanced (4,200 children in total), and distributing the questionnaire through Children Theaters (Response: 2,516 children; Response rate: 59.9%). The results revealed that 1,256 children (50.2%) "had never heard of the Convention or its title" and 547 children (21.7%) "had heard of the title but did not know the contents", which indicates that the dissemination of the Convention had barely been promoted. In addition, to the question "How did you learn about the Convention ?", 30.8% answered "from parents", 24.5% said "from the media", and 18.9% said "from school teachers", with the volume

of information from school being very low.

46. According to the Asahi Shimbun newspaper on March 25, 1996, members of the "Teenagers' Group to Disseminate the Convention of the Rights of the Child" conducted a questionnaire survey on March 17 at subway stations in Sapporo to 200 pupils and students of elementary, junior high and senior high schools. Even though Sapporo City had prepared and distributed a pamphlet to pupils and students of elementary and junior high schools, 98% of the elementary school pupils, 70% of the junior high students and 74% of the senior high students answered that they had "never heard of the Convention", indicating that the Convention remains unfamiliar to children.

2. Handling of the Convention in Textbooks

47. In schools, which are the most appropriate places for disseminating the Convention to children, not only are posters for schools not fully utilized but also the Convention is hardly taken up in daily education activities. In fact, although textbooks play an extremely important role in school education in Japan, a survey of textbooks by the "Liaison Council to Promote Guarantee of the Rights of the Child" revealed that out of 53 textbooks of social studies and home management currently used in junior and senior high schools, 7 of the books did not make any reference to the Convention. Out of the 46 textbooks that referred to the Convention, 36 simply mentioned the title of the Convention, covered it in a superficial manner by providing fragmented descriptions in sections such as "Children of the World" or "Children in the Developing Countries", or did not go any further than providing an abstract introduction to the principles or a brief description of the process for its enactment. On the whole, descriptions that make the Convention familiar to children are not enough.

3. Propagation of the Convention to Public Servants

48. Education and training to propagate the Convention to public servants, including teachers, police officers and judges, who are involved with children issues, are decisively inadequate.

49. Paragraph 34 of the Government Report states that the Ministry of Education is striving to "propagate the objective of the Convention through various bulletins, training courses and conferences focusing on teachers." In reality, however, such training opportunities are small in number and their contents are not effective enough to realize the rights of children. As a result, one report says that "for teachers who are not used to legal terminology, the text of the Convention is difficult to understand, making it much more harder to explain it all to pupils and students. Many teachers are at a loss how to explain it in order to ensure children's understanding." (Naigai Kyoiku Vol. 4680; December 8, 1995)

50. In the questionnaire survey conducted on 4,400 teachers by the "Committee on Human Study concerning Teachers" from the General Institute of National Education and Culture of the Japan Teachers' Union, to the question "Do you think that your daily education activities will change due to the Convention?", as many as 60% of the respondents answered that such activities "will not change" or "will hardly change." Teachers with the opinions that "it cannot be helped if the rights of children are limited in schools" and "it is difficult to guide children if they claim their rights" accounted for over 40% respectively. Some teachers believed that "some students do ignore other people's rights, but if each student were to claim his/her rights, then the schools

could not be managed."

51. Although a number of lawsuits relating to the rights of children are pending in court at various levels, i. e. from the Supreme Court to the lowest court, no ruling has been given as yet which advances the rights of children based on the provisions and the intention of the Convention after its ratification.

52. Regarding the public officials who are deeply involved with the rights of children, such as police officers and personnel of detention facilities, Paragraph 85 of the UN Rules for Protection of Juveniles Deprived of Liberty stipulates that such officials must receive "training on international standards and standing rules relating to human rights and the rights of children". As required by this stipulation, it is very important to provide such officials with education regarding the Convention on the Rights of the Child as well as the UN rules or standards relating to the Convention. However, such training is rarely given and hardly any budget is allocated for such purposes.

53. It is vital to establish a training system for helping public officials involved with children, such as teachers and judges, that will deepen their understanding of the Convention and to make it compulsory for them to receive this special training.

D. Publication of the Government Report

54. At the preparation stage of the Government Report, the JFBA submitted a request to the Minister of Foreign Affairs on December 6, 1995, asking for the following two points to be considered: <1>to disclose the latest progress of preparations for the Initial Report, and <2>before finalizing the initial report, to disclose the draft report and guarantee opportunities for NGOs, including the JFBA, to express their views. When the Committee on the Rights of the Child of the JFBA inquired at the Ministry of Foreign Affairs about these requests on February 23, 1996, the Ministry did not give any clear response to request <2>, i. e. disclosure of the draft report, although it responded to request <1> that as of February 1996, they had completed a compilation of reports from the separate ministries and agencies for the Government Report. Therefore, the JFBA prepared a document listing items to be incorporated in the Government Report in specific areas and submitted it on March 21, 1996 to the Human Rights and Refugee Division of the Multilateral Cooperation Department of Foreign Policy Bureau at the Ministry of Foreign Affairs. But, the Ministry did not respond to the suggestions made by the JFBA.

55. On March 14, 1996, the Government organized a meeting to hear opinions from the private sector and the Ministries of Foreign Affairs, Health and Welfare, Education, Justice, Posts and Telecommunications and Labor participated at the meeting along with the Police Agency. It was only an "unofficial hearing" where representatives of citizens and NGOs, who had previously submitted their opinions in writing, expressed their views and the Ministries and Agency concerned made a few comments in reply. With no constructive exchange of opinions, there was no substantial or helpful dialogue at all. Therefore, the citizens and NGOs asked for an opportunity to have constructive dialogue with the Government once again, but such an opportunity was never organized until the Government Report had been submitted, making the unsatisfactory "unofficial hearing" the only opportunity. In addition, the draft report was not disclosed in advance.

56. Regarding the points which citizens, NGOs and the JFBA had noted as issues to be incorporated in the Government Report, the finalized Government Report did not mention these at all.

57. According to the guidelines by the United Nations' "Committee on the Rights of the Child", the preparation processes for government reports must "facilitate and promote participation of the public and public examination of government policies." However, the Government was extremely reluctant to allow participation of citizens and NGOs, which went against the objectives of the guidelines.

II. DEFINITION OF THE CHILD

A. Marriage and Assumed Majority

Article 731 of the Civil Code, stipulating that men may get married at the age of 18 and women at the age of 16 and that after marriage they are regarded as assumed adults, represents discrimination by sex and therefore it should be revised.

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58. Under the Civil Code of Japan, men are allowed to become married at the age of 18 and women at the age of 16 with the consent of their parents (Articles 731 and 737 of the Civil Code), and after marriage, they are regarded as having attained adults (Article 753 of the Civil Code). Therefore, women can be regarded as adults before the age of 18 years. Discrimination by sex in the marriageable age will be discussed later (III-A-4), but difference between men and women in assumed majority is also a problem.

B. Capacity to Take Legal Action

59. See III-D-3 and 4.
Especially, for child abuse and petitions for loss of parental authority, see V-F.

C. Medical Treatment

60. See VI-A-9.

III. GENERAL PRINCIPLES

A. Non-Discrimination

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1. Discrimination against children born out of wedlock (illegitimate children) in terms of legal inheritance, family registration and birth registration forms, child rearing allowance system, time limit for filing claims of recognition and absence of a system enabling joint exercise of parental authority, should be eliminated through legislative measures.
2. The following measures should be taken to eliminate ethnic discrimination.
(1) A public education system which guarantees ethnic education to children of "ethnic minorities" should be ensured.
(2) For graduates of schools providing ethnic education (ethnic schools), including Korean schools, qualification should be granted for taking such examinations as the entrance examinations of national universities, the Junior High School Graduation Equivalency Test and the Qualification Test for University Application, based on a due appreciation of enrollment in and graduation from ethnic schools.
(3) Measures should be taken to eliminate discriminatory practices against students enrolled in schools providing ethnic education, including Korean schools, as well as discriminatory attitude among Japanese people.
3. A curriculum allowing alternative options should be guaranteed so that children will not be deprived of an opportunity to receive education because of religious beliefs.
4. Discrimination between men and women with regard to the marriageable age in Article 731 of the Civil Code should be eliminated.

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1. Discrimination against Children Born Out of Wedlock (Illegitimate Children)

(1) Outline of Discrimination against Children Born Out of Wedlock)

61. In Japan, discriminatory practices against children born out of wedlock still prevail as described below:

62. Firstly, the Proviso of Article 900 (4) of the Civil Code prescribes that the inheritance of a child born out of wedlock shall be a half of that of a legitimate child. Secondly, Article 49-2 (1) of the Family Registration Law stipulates that, in registering the birth of a child, it is required to indicate whether the child is legitimate or illegitimate, and the child's relationship with his/her real parents, which must be indicated under Article 13 (4) of the Family Registration Law, is shown differently for a child born out of wedlock from the case of a legitimate child. Thirdly, a system of parents' joint parental authority is not available for a child born out of wedlock. Fourthly, discrimination exists with the payment of child rearing allowances, as will be discussed in (2) of this section. (Article 1 (2) and (3) of the Enforcement Regulation of the Child Rearing Allowance Law stipulates that child rearing allowances shall not be paid when an illegitimate child is recognized by his/her father, which is a different situation from that of a legitimate child whose parents are divorced). Fifthly, discrimination exists with the acquisition of nationality as well (See IV-A-4). Sixthly, discrimination also exists in the form that while no time limit is set for a legitimate child bringing an action asking for affirmation of a parent-child relation, the period for a child born out

of wedlock to file such a claim for father's recognition is specified to be within 3 years after the death of his/her father or mother.

63. Regarding discrimination with inheritance, the Tokyo High Court showed judgement in its decision on June 23, 1993 (Hanrei Jiho Vol. 1465 p.55) and in its ruling on November 30, 1994 (Hanrei Jiho Vol. 1512 p.3) respectively that the provision in Proviso of Article 900 (4) of the Civil Code is against any such equality under the law as stipulated by Article 14-1 of the Constitution and therefore is null and void. But, the Grand Bench of the Supreme Court judged in its decision on July 5, 1995 (Hanrei Jiho Vol. 1540 p. 3) that the provision cannot be said as being against Article 14-1 of the Constitution (It should be noted, however, that five judges dissented the court opinion).

64. These forms of discrimination not only represent "discrimination by birth", as prohibited by Article 2 of the Convention, but also are against "prohibition of discrimination against a child because of his/her birth" in Article 24-1 of the International Covenant on Civil and Political Rights and "equality under the law" in Article 26 of the Covenant.

65. The General Comment on Article 24 of the Covenant (adopted on April 5, 1989) states that "Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between ..... legitimate children and children born out of wedlock". In addition, the Comments of the Human Rights Committee (Paragraph 11), in consideration of the third periodic report of the Japanese Government on the Covenant, point out that "The Committee is particularly concerned at the discriminatory legal provisions concerning children born out of wedlock. In particular, provisions and practices regarding the birth registration forms and the family register are contrary to articles 17 and 24 of the Covenant. The discrimination in their right to inherit is not consistent with article 26 of the Covenant."

66. Thus, it is obvious that discrimination against children born out of wedlock in Japan is against the International Covenant on Civil and Political Rights as well as against the Convention on the Rights of the Child. Therefore, Japanese legislation should be amended immediately to eliminate such discriminatory practices by abolishing discrimination affecting inheritance, family registration and birth registration forms, and payment of child rearing allowance, removing time limit for bringing a claim for father's recognition and by initiating a system that enables joint parental authority (Note: "Statements for Legislative Amendment to Eliminate Discrimination against Illegitimate Children" by JFBA; February 1994).

(2) Discrimination in the Child Rearing Allowance System

67. As one of the social security measures for children, there is a system of child rearing allowance which is paid to children of those families who do not share an the cost of living with the father, such as fatherless families (VI-C-3). However, the Child Rearing Allowance Law and its Enforcement Regulation select children born out of wedlock from children entitled to child rearing allowance and define them as "children conceived out of marriage (including cases where the mother is in a common law marriage) [children acknowledged by their father shall be excluded]" (Article 1 (2) and (3) of the Enforcement Regulation of the Child Rearing Allowance Law). So when a child born out of wedlock is acknowledged by their father, the child rearing allowance will not be paid unless other requirements are met, such as the father deserting the child for at least one year (Article 1-2 (1) of the Enforcement Regulation of the Child Rearing Allowance Law).

68. In contrast, when parents of a legitimate child are divorced, desertion is not required for receiving child rearing allowance (Article 4-1 (1) of the Child Rearing Allowance Law).

69. In both cases when a child whose parents are divorced and a child born out of wedlock

receives acknowledgement by their father, the mother is usually a single person in parental authority and is also economically responsible for rearing the child. In terms of necessity for guaranteeing a living, there is no difference between the two such children. Although the fact that the father has acknowledged a child born out of wedlock does not necessarily mean that he contributes maintenance right away, child rearing allowance is not given to these children. This is irrational discrimination against children born out of wedlock. In addition, if the child refrains from exerting his/her right to claim for acknowledgement by his/her father in order to receive child rearing allowance, the rights of the child to know his/her parents and to be brought up by them are also violated.

70. In this regard, the Nara District Court judged in its decision on September 28, 1994 that the Regulation which denies the entitlement of children born out of wedlock and acknowledged by their father is against Article 14 of the Constitution which stipulates equal protection under the law. But, the appeal court, the Osaka High Court, ruled on November 21, 1995 that it is within the discretion of legislators and is not against equal protection under the law.

71. From the above reason, the phrase in parentheses of Article 1-2 (3) of the Enforcement Regulation of the Child Rearing Allowance Law, i. e. (children recognized by the father shall be excluded), should be deleted to eliminate discrimination against children born out of wedlock.

2. Ethnic Discrimination

72. The Government Report does not make any reference to the issues of discrimination against children of "ethnic minorities" (Article 2), such as Ainu children and children of Korean permanent residents in Japan, nor to the issues of guarantee to ethnic education (Article 30).

(1) Discrimination against Graduates from Korean Schools

73. The Government does not regard "Korean schools" established by Korean permanent residents in Japan as "schools" under the School Education Law. Consequently, graduates from Korean schools are subject to disadvantages when trying to enroll upper secondary or higher education because it is required to have completed "schools" under the law.

74. Many public and private universities appreciate the achievement of Korean schools and approve graduates from Korean schools as being qualified to take the entrance examination, under Article 56 of the School Education Law and Article 69-5 of the Enforcement Regulation of the said Law, but national universities do not approve such graduates as being qualified to take the entrance examination.

75. For foreign students studying in Japan and Japanese children who have returned to Japan after living abroad, the Government approves them as qualified to take entrance examinations to national universities by applying Article 69-1 of the Enforcement Regulation of the School Education Law, even when they have studied a different curriculum from those within the education system or the Guidelines of Instructions for Study in Japan. Nevertheless, graduates from Korean schools are not approved as qualified to take entrance examinations to national universities.

76. The same discrimination also exists with regards to the qualification for taking the Junior High School Graduation Equivalency Test and the Qualification Test for University Application.

77. For one graduate from a Korean school who tried to take an entrance examination to a public junior college for nursing, it is reported that the Ministry of Education put pressure on the junior college to reverse its approval of her qualification to take the examination. Due to such practices, students of Korean schools are forced to take differing approaches, such as enrolling in and graduating from correspondence senior high schools approved by the Government in addition

to attendance at Korean schools and passing the Qualification Test for University Application before studying at junior colleges for nursing.

(2) Discrimination against Students of Korean Schools

78. As a consequence of the Japanese Government's policy of not approving Korean schools as formal educational institutions, students of Korean schools had not been allowed to join the National Athletic Association of Senior High Schools to which students of senior high schools under the School Education Law were members, and their playing of sports with students of the same ages had been limited for many years. Demanding rectification of such a situation, the JFBA issued in October 1992 an "Investigation Report on Discrimination against Korean Upper Secondary Schools by the National Athletic Association of Senior High Schools, Recommendation to the Ministry of Education and Request to the Association".

79. Another consequence of the Government's policy is that, with Japan Rail companies established through privatization of the National Railways Corporation, Korean students had been treated disadvantageously with respect to discount rates of commuting passes, which was a phenomenon not found with private railway companies, though this difference in discount rates was eliminated on April 1, 1994.

80. Such discrimination against Korean schools and their students is also reflected in the social consciousness of the Japanese. Female students of Korean schools wear a Korean folk costume, chima chogori, when commuting to schools. Incidents of shouting "Go back to Korea!" at students wearing such chima chogori or attacking them, such as slashing their chima chogori with a knife, have frequently occurred. To such a situation, the Chairman of the Tokyo Bar Association issued a statement on July 7, 1994, urging the Japanese people to awake from such unpardonable conduct and asking the institutions responsible for ensuring the safety of foreign residents in Japan to take measures that would prevent such incidents.

3. Discrimination through Religious Beliefs

81. A case is reported in which a child who could not participate in training for martial arts during the physical education class because of religious prohibitions and he was finally expelled from school.

82. The student entered a public technical college in April 1990. As he could not participate in training for *Kendo*, Japanese fencing, because the religion he professed prohibits martial arts, he asked the college to approve his request to observe and not to practice the class. But, the college refused to accept it and, as a result, he could not be qualified as having completed physical education which was a compulsory subject and was sent back to repeat the same grade (refusal of advancement to the next grade) for 2 consecutive years. In addition, because of this repetition, he was associated with being one of "those students who are inferior in academic performance and are unlikely to complete the course", which constitutes one of the reasons for expulsion, and was consequently expelled from the college in April 1992 .

83. Regarding the repetition and the expulsion from the college, the student filed a suit demanding cancellation of these penalties, alleging that these actions consisted violation of the freedom of religion and the right to education when forcing a student who does not participate in Kendo training because of his religion to participate in such training and giving him these disadvantageous penalties. On March 8, 1996, the Supreme Court gave a decision that admitted the student's claim for cancellation of these penalties. However, as the District Court had

rejected the petition for the suspension of execution of these penalties, the student was forced to spend 4 wasted years without any opportunity of receiving education at the public technical college.

4. Discrimination between Men and Women ---Discrimination in the Marriageable Age

84. Article 731 of the Civil Code prescribes differing marriageable ages for males and females; i.e. 18 years old for males and 16 years old for females. At the basis of this age differences between males and females, there lies the concept of differing sexual roles, males go to work and females stay at home; i.e. although maturity in economic ability is required for males in addition to physical maturity, only physical maturity and abilities for household tasks and child rearing are required for females. However, this distinction itself represents discrimination between men and women, and there is no rationality for discrimination in marriageable ages.

5. Discrimination against Disabled Children

85. See VI-B.

6. Discrimination against Foreign Residents

86. See VIII-C.

B. Best Interests of the Child

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1. An express provision should be incorporated in the domestic laws concerned, including the Child Welfare Law, to the effect that "the best interests of the child should be considered".
2. Along with administrative and legislative bodies, courts of law should also highly regard the "best interests of the child" and play active roles in realizing such rights of the child.

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1. Best Interests of the Child

(1) Consideration of the Best Interests of the Child in domestic laws

87. The Government Report points out that Article 13 of the Constitution, Articles 1, 2 and 3 of the Child Welfare Law, Article 1 of the Juvenile Law, and Article 3 of the Maternal and Child Health Law "assume that a child's best interest is to be considered in each individual case." .

88. However, a fundamental law relating to the child which would serve as the hub of these laws does not exist, nor is there any plan to establish such a law.

89. Moreover, it is extremely problematic that the principle and spirit of Article 3 (the best interests of the child) of the Convention are not clearly shown within existing domestic laws. Examination of the respective provisions mentioned in Paragraph 54 of the Government Report reveals that Article 13 of the Constitution is only a general provision that stipulates "the rights of the people", including adults "to the pursuit of happiness". Article 2 of the Child Welfare Law prescribes that the state and local public entities shall be "responsible for the sound development of the child both in mind and body", Article 1 of the Juvenile Law specifies that "sound development of the juvenile shall be ensured" and Article 3 of the Maternal and Child Health Law stipulates for infants and toddlers that "their health shall be maintained and enhanced." Since the Government ratified the Convention on the Rights of the Child, "sound development" in these provisions should be interpreted in accordance with the spirit of "the best interests of the child". However, the Government does not exhibit such an attitude, as will be illustrated later.

90. Furthermore, in the interim report on the amendment of the Child Welfare Law published in November 1996 by the Central Child Welfare Council of the Ministry of Health and Welfare, which was established after the ratification of the Convention with the aim of revising the Child Welfare Law, there is no statement either to the effect that "the best interests of the child" should be explicitly stated in the revised law.

91. It is urgently needed to explicitly stipulate "primary consideration of the best interests of the child" set out in Article 3-1 of the Convention in the domestic laws concerned.

(3) Consideration of the Best Interests of the Child in Courts of Law

92. Article 3-1 of the Convention prescribes that along with social welfare institutions, administrative authorities and legislative bodies, courts of law must also primarily consider the best interests of the child. In Japanese courts, however, the best interests of the child is not necessarily regarded as important, which causes difficulties for realizing the rights of the child.

<1> Obstacles Caused by Formal Requirements

93. When rights of a child are violated, it is essential that the child is relieved from such violations by the power of the law. As there is no court specifically established for children

regarding civil affairs, except for matters relating to the status of children (adoption, etc.), the same civil suits as those employed by adults must be filed for the protection of the rights and liberties of the child. There is also a restraint that a child must always be represented by a person in parental authority or a guardian, as a child is not allowed to undertake a valid act of litigation by himself/herself before he/she comes of age. (III-D-3)

<2> Obstacle of Educational Discretion (VII-F)

94. The judicial precedents virtually confirm undue restrictions on the human rights of the child that occur in schools by adjudging that "schools possess broad discretions for immature students enrolled at the school as an aid for achieving educational purposes" and that "it is not illegal or unjustifiable unless it is improper or unreasonable, such as noticeably lacking rationality according to the norms generally accepted by society." Consequently, it is no exaggeration to say that the human rights of the child do not enter through the school gates.

95. For example, the following cases have been confirmed by the court as being within the discretion of the principal used for educational purposes.

(a) Many public junior high schools regulate hair styles by school rules. Some rules require boy students to have close-cropped hair and girl students must have hairstyles that do not reach eyes nor shoulders, or if their hair is past their shoulders it must be tied into one or two bunches.

(b) To students coming to school without wearing school uniform, some public junior high schools even though they are public schools did not allow them to enter the premises of the school or have them study in the principal's room separately from other students in the name of "Guidance on Behaviour".

(c) Some senior high schools totally prohibit students from obtaining a driving license for a motor cycle or driving it, even though students have reached the legal age (16 years old) at which they are allowed to do so.

96. Children are forced to observe detailed school rules established by schools with regard to hairstyles, clothing, behavior outside the schools, etc. and if they do not observe them, they may be given penalties, such as prohibition of attendance to school and expulsion from school.

2. Provision of Protection and Aid

97. There are only a few cases in which the court may interfere with family affairs in Japan where it is said that "the law shall not enter the home." For example, the court handed down decisions on cessation of the parental authority in only 10 cases in 1990, 23 cases in 1991 and 8 cases in 1992. In reality, cases of improper conduct of adults towards children (child abuse, desertion, psychological harassment, etc.), which may be termed an abuse of parental authority, are far from few, and legal intervention in family affairs is necessary at times. In some cases, however, excessive importance given to parental authority gets in the way, making relief difficult. It is necessary to initiate regulations which provides that the best interests of the child shall be primary consideration and to review the existing regulations relating to child abuse (See V-F for details).

3. Standards for Safety and Health and Criteria for the Number and Suitability of Staff

98. "The Minimum Standards for Child Welfare Facilities" (Ministerial Ordinance) mentioned in the Government Report contains at least the following problems.

99.(1) Although the criteria for the qualification and number of the staff in major pertinent professions (nurses, nursery teachers, child instructors, etc.) are specified, the criteria

for the qualification and number of other associated staff are not stipulated. As a result, staff members in those major professions are forced to perform miscellaneous chores beyond the scopes of their duties, which hinders them from adequately carrying out their primary duties.

100.(2) The Minimum Standards were established in 1948. Since then, there have been many requests to review them, but the Government has not made any fundamental review, keeping them at low levels for almost 50 years now. This has led to the acceptance by heads of local public entities and facilities that practices are fine if these do not violate the existing Standards, which has caused the actual levels to become fixed at low standards.

101. For example, the standard number of nursery teachers required for children under 3 years ole is one for every 6 children in Japan. Compared to the standards of Denmark, which allow for 2 nursery teachers plus 1 assistant for every 10 children, Japanese standards have been held at a low level. Regarding the protective institutions which accommodate children without families (children from 2 years old to 18 years old are under care), the capacity of a room is set at 15 children maximum and the space per child is set at 2.47 square meters or more. (Likewise, the space standard for mothers' homes is generally set at 2.47 square meters or more per person).

102. Not only is no consideration made for the protection of privacy of children during the age of puberty, but also they are forced to live in a cramped space together with other children. Raising the minimum standards is urgently needed.

103.(3) There are no standards stipulated for the establishment and management of elementary and junior high schools, even though Article 3 of the School Education Law stipulates that these schools shall be established "according to the standards for establishment provided by competent authority". It is problematic that minimum standards for foster parents, custodians (Article 27-3 of the Child Welfare Law) and temporary shelters (Article 33 of the said law) are not set out.

C. The Right to Life and Guarantee of Survival and Development

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1. Every possible measure should be considered and promoted to improve the current situation in which a number of children commit suicide, including suicides due to bullying.
2. Active measures should be considered and promoted to decrease traffic accidents and school accidents involving children.

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1. The Right to Life

104. The number of children (below 20 years old) who committed suicide in 1994 was 580 according to the National Police Agency, posting an increase over the previous year of 133 children (29.9%). High school students were at the top with 184 suicides (31.7%), followed by 123 children who were not enrolled at any school and unemployed (21.2%), 87 junior high school students (15.0%), 78 working children (13.4%), 37 university students (6.4%) and 14 elementary school students (2.4%). Regarding the ratio between the two sexes, boys accounted for 70.9% and girls for 29.1%. Especially over the recent years, there exists an extremely peculiar problem that cases of suicide due to "bullying" by classmates have been occurring. According to the Ministry of Education's survey on the "Present Situation of the Problems in Student Guidance", for example, over 56,000 "bullying" cases took place during 1994 in public elementary, junior high, senior high schools and schools for disabled children throughout Japan, with 31% of elementary schools, 55% of junior high schools, and 38% of senior high schools having experienced "bullying". Looking at the differences by grade, the number of bullying cases increases as the grade becomes higher from the elementary school, and becomes largest during the first and the second grades of junior high school. In the background to this problem, there is the competition and pressure for passing entrance examinations starting from kindergarten and elementary school ages in order to be prepared for the diplomaism society where one's employment and social position are determined by educational background. Many children are deprived of time for leisure and play and are forced to study at cram schools called "*juku*" until late at night since elementary school age. As a result, they give in to the practice of bullying, because of frustrations, getting rid of stress or because they have no time for fun. As a result of such bullying, children have committed suicide one after another. Drastic countermeasures are needed, based on the consideration that children's rights as the background of the bullying. (VII-C).

105. In addition, with the development of a car society, children in Japan are always exposed to the danger of traffic accidents during commuting and playing around their houses. Children injured in traffic accidents total some 70,000 every year and children killed by traffic accidents reach some 400 (counting the cases of death within one year after the accident). Traffic accidents account for 5-10% of the causes of death for children, excluding infants under one year, as the third highest cause following diseases and accidental deaths.

106. Moreover, accidents causing casualties are numerous in schools where safety should be essentially guaranteed, due to the lack of adequate safety measures. According to the survey by the Japan Physical Education and School Health Center, the number of accidents under the

control of schools, to which compensation was paid from the mutual aid insurance of the Center was over 1,110,000 cases in 1993 (among them, 166 cases involved death) (See VII-K).

2. Guarantee of Survival and Development

107. Paragraph 60 of the Government Report states that the Government "has been implementing various measures to ensure the survival and development of children, which have been consolidated every year." The problems in these measures are pointed out in Chapters V and VI of this report. The following are the areas which needs our attention and consideration:

108.(1) The right to alternative care and protection and the right to express views on such matters are not stipulated as being the rights of the child in domestic laws. Article 27-1 and 3 of the Child Welfare Law prescribe that, for alternative care and protection, prefectures shall place children in the hands of foster parents or custodians or ensure that they will be accommodated in an infants' home, protective institution, home for juvenile training and education, etc., but these provisions only specify the responsibilities of local public entities.

109.(2) Most of the children deprived of the home environment live in institutions. However, such children deprived of the home environment should essentially be guaranteed the environment closer to home life. The custodian system provided for by the Child Welfare Law as a measure of alternative care and protection is not working at all, and the foster parent system has not been developed adequately. However, in order to realize the best interests for individual children, group homes and foster parents are more desirable for children than institutions. Accordingly, efforts are needed for improvements in this respect.

110.(3) Japan has an issue of children of foreign residents who have been in Japan for a long time or who have permanent residence in Japan as a result of historical circumstances (mainly Korean permanent residents) as well as an issue of children of various foreign residents who have recently come to work in Japan.

111. In providing alternative care and protection to children of foreign residents in Japan, however, the Japanese Government does not pay any ethnic or linguistic considerations. Given the rights of children of minorities and persons of indigenous origin (Article 30), this situation is extremely problematic. The establishment of national policies to deal with this issue is urgently needed.

D. The Right to Express Views (Article 12)

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1. Regarding school rules, opportunities for children enrolled in the school to express their views on the contents and the implementation procedures and consider revision and amendments periodically every year, should be institutionally guaranteed.
2. A system should be initiated under which children enrolled in the school and their parents can participate in the process of determining the contents of school education, including the contents of curriculum, selection of textbooks, extra-curricular activities and school events.
3. For cases in which the child and his/her legal representative, such as the person in parental authority, cannot reach agreement regarding the execution of litigation in civil, family or personal status actions and conciliation procedures, a system under which the child can designate a special representative at the expense of the State should be initiated.
4. In every procedure relating to the status or rearing and custody of the child, an opportunity in which the child can express his/her views without being influenced by his/her parent(s) should be institutionally guaranteed for the child who is at least 10 full years of age or over.
5. Regarding discipline procedures in schools, the opportunity for the child to present at the meeting for determining basis and measures at discipline should be guaranteed along with an opportunity for the child to present his/her views. In addition, a system for filing a complaint regarding the determined disciplinary action with a third-party institution or the Education Board should be initiated.
6. Regarding discipline procedures in juvenile training schools, basis for discipline and the type and severity of disciplinary measures should be thoroughly communicated to the child in advance.

In addition, the presence of the child at a meeting for determining the basis for discipline and a specific disciplinary measure should be guaranteed along with the opportunity for the child to express his/her views, and a system for filing a complaint regarding the determination of a disciplinary measure with a third-party institution should be initiated. Moreover, the opportunity for the child to express his/her views and file complaints about achievement evaluation under the current progressive treatment system, should be institutionalized.

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1. Spirit of Article 12

112. The Government Report concludes in Paragraph 61 that the child's right to express his/her views in Article 12 of the Convention is guaranteed on the grounds that Articles 13, 19 and 21 of the Constitution guarantee respect for the dignity of individuals, freedom of thought and conscience and freedom of expression, respectively. However, this is a sign of the Government's inadequate understanding of the vital meaning within Article 12 of the Convention.

In fact, the Notice from the Administrative Vice-Minister of Education titled "Regarding 'The Convention on the Rights of the Child'" (dated May 20, 1994; Notice of the Ministry of Education No. 149) states that "regarding the right to express views as prescribed in Article 12-1 of the Convention, it is a general provision of principle that views expressed by a child should be given due weight in accordance with the age and maturity of the child, and does not require that these should always be reflected" (see annex), thereby negatively reducing the importance of Article 12 of the Convention.

113. The purport of Article 12 lies in the idea which has been established by various international rules that, in order to assure "the best interests of the child" in Article 3 of the Convention, it is essential to guarantee the child an opportunity to express his/her views freely on all matters affecting the child as the right of the said child himself/herself. The objective of Article 12 is to prescribe the idea as a principle in procedures. What is most important therefore is that this right to express views should be assured as an inherent right of the child, differing from such rights as freedom of expression and freedom of thought and conscience.

114. Freedom of expression and freedom of thought and conscience are prescribed separately in Articles 13 and 14 of the Convention. Article 12 establishes the right to express views as an important right which constitutes a general principle of the Convention, independently from Articles 13 and 14 of the Convention, and urges the governments to take legislative and administrative measures for assuring this right. However, because of lack of perception in this matter, the Government Report completely overlooks the need to guarantee the right to express views in the situation of Japanese children as discussed below.

2. The Right to Express Views on School Rules and the Contents of Education

115. Although the Government Report does not make any reference to the guarantee of the right to express views as recognized under Article 12-1 of the Convention, one of the important issues in Japan which should be improved is that of pupils' and students' participation in the process of determining of school rules and the contents of education at school.

(1) Opportunity to Express Views on School Rules

116. School rules in Japan restrict the rights of the child in regard to a wide range of matters, including hairstyles, clothing and the overall behavior outside of school and impose disadvantageous dispositions, such as disciplinary sanctions, upon students who break them. In some cases, even corporal punishment is inflicted because of the breach of school rules. As a result, school rules constitute the norms greatly affecting Japanese children in their school life.

117. Determination of the contents of school rules, however, is seen as the exclusive right of the principals/teachers. Opportunities for students enrolled in the school to express their views on the contents of school rules, such as requests for improvements, is not guaranteed at all in procedures. Students are required to observe existing rules unconditionally.

118. Given the purport of Article 12, it seems to be essential to guarantee a system in which students can express their views on these rules as a precondition for requiring compliance.

119. In some schools, the student council, a self-governing organization of students, is allowed to make proposals for improvements on unreasonable points of school rules and any improvements are implemented finally through consultation between teachers and parents. But such practices are carried out only at the discretion of individual schools. Therefore, the Government should take measures at all schools to institutionally ensure opportunities for students in expressing their views on the contents of school rules.

120. In this regard, the Notice from the Administrative Vice-Minister of Education mentioned earlier affirms that "school rules are specific arrangements for ensuring that pupils and students will achieve a sound school life and better development, and should be determined according to

the responsibility and judgement of individual schools." This is a completely unjustifiable statement which ignores the request for assuring children's participation under Article 12 (1).

121. In Katano City, Osaka Prefecture, when the 3rd Municipal Junior High School decided to abolish uniforms from academic 1996, based on a consensus of students, parents and teachers, the Education Board of Katano City provided administrative guidance to the principal of the junior high school, strongly urging him to completely withdraw the decision, and the principal unilaterally withdrew the decision to abolish the uniform. On October 31, 1996, the Osaka Bar Association sent an advisory opinion to rectify this complete withdrawal, on the grounds that it went against the purport of the Convention on the Rights of the Child. In Kyoto Prefectural Katsura Senior High School, although the students' general assembly adopted a resolution to oppose the introduction of uniforms, with the approval of 93.3% of the students, and requested the principal to take the resolution into account, the principal ignored it and declared the introduction of uniforms. The Kyoto Bar Association also requested the principal on February 18, 1997 to fully discuss the matter with students, teachers and parents and respect their opinions in making a decision. These incidents clearly reflect the inadequacy of Government measures illustrated in the above-mentioned Notice from the Administrative Vice-Minister of Education.

(2) Opportunity of the Child's Participation regarding the Contents of School Education

122. In Japan, the authority to determine the contents of school education (contents of curriculum, selection of textbooks, extra-curricular activities, school events, etc.) is possessed exclusively by the principal and teachers. The participation of students and parents in the process of determining such contents is not guaranteed at all.

123. Children going to school spend most of the day at school and are assured of their rights to receive education. Nevertheless, in determining the contents of their school life, no opportunity to express their views or participate at all is given to children under the current system, which is remarkably lacking in guarantees for the rights of the child when compared to the systems of Western countries, and urgently needs to be improved.

3. Judicial Proceedings

124.(1) Paragraph 63 of the Government Report states that: "With regard to all matters on which anyone is generally guaranteed the opportunity to be heard in any proceedings of a judicial and administrative decision or measure affecting him/herself, the child is also provided the opportunity to present his/her view."

125. However, what is required of States parties is not only to examine whether there exist opportunities to hear opinions generally but also to examine the procedures relating to all judicial and administrative decisions and measures as to whether the system that guarantees opportunities for the child to present his/her views freely is assured according to the intention of Article 12 of the Convention. But, no examination on such matters is made at all in the Government Report.

(2) Civil Procedures and Civil Conciliation

126. Paragraph 64 of the Government Report states that a child can act and express his/her views as a party to litigation or as a person with legal interests through his/her legal representative.

127. However, when a child and his/her legal representative (mainly the parents) cannot reach an agreement on the execution of a legal action and when the legal representative does not

take legal action or does not participate in proceedings as a person with legal interest against the will of the child, there is no system in Japan under which the child can act directly as a party to litigation. In addition, although there is a system for designating a special representative when the interests of a child is in conflict with that of his/her parent(s), the right to apply for a special representative is limited to a person in parental authority, which makes the system redundant in cases such as described above.

128. To cope with such cases, a system under which a special representative speaking for the interests of the child can be designated promptly at the expense of the state without the consent of the person in parental authority under special circumstances, should be initiated in order for the child to substantially express his/her views in litigation procedures.

129. The same applies to civil conciliation.

(3) Actions Relating to Personal Status, Family Trials, and Family Conciliation

130. In family cases, such as family trials and family conciliations, there are many procedures affecting the child, as they deal with matters relating to the status, rearing, custody, etc. of the child. These include legal proceedings for the custody of children, such as the designation or change of person in parental authority, rearing expenses, etc. upon divorce through trial or conciliation or upon acknowledgement, permission from the Family Court in the adoption of minors, the special adoption and the loss of parental authority.

131. Paragraph 65 of the Government Report asserts that the opportunity to express views is guaranteed, on the grounds that the Rules on Family Trials stipulate that the child's statement shall be heard if he/she is 15 years of age or over.

132. But, this assertion is problematic. Firstly, regarding the designation and change of the person in parental authority of the child, the child who is 10 years of age or over has full capability of expressing his/her views on such matters and his/her views should be duly respected, either upon divorce of parents through trial or conciliation or upon acknowledgement. Therefore, the present system which requires hearing of the child's statement only when children are 15 years of age or over, is beyond discretion of the State party. The age should be reduced to 10 years.

133. Secondly, Paragraph 65 of the Government Report states that if the child is less than 15 years of age, the Family Court may hear his/her view *ex officio* and that there is nothing to impede the child from presenting his/her view voluntarily if he/she wishes to do so. However, if the Family Court may hear the child's view *ex officio*, it is left to the discretion of the court and is not guaranteed institutionally as being the right of the child. Also in the actual application, many courts rarely hear the child's view if he/she is less than 15 years of age and decide based only on his/her parents' judgement. It cannot be said that application of this system has been fully established.

134. It is also an unrealistic theory that it is generally possible for a child under 15 years of age to presents his/her view in a Family Court voluntarily when no such opportunities are guaranteed.

135. Thirdly, the hearing of a child's statement who is 15 years of age or over also presents many problems. To begin with, although it is institutionally required to hear a child's statement in conciliations and trials regarding the designation of a person in parental authority of the child (Articles 54, 70 and 72 of the Rules on the Family Trial), when such designation of the person in parental authority is made concomitantly with the conciliation or trial in which divorce itself is made the issue, there is no provision that requires hearing a child's statement. In Japan, the designation of the person in parental authority of a child is more often made concomitantly with the conciliation or trial in which divorce itself is made the issue, and consequently, the hearing of

a child's statement is not guaranteed in many cases even when the child is 15 years of age or over.

136. In addition, hearing procedures in conciliations and trials on the designation or change of person in parental authority is merely a formal procedure like confirming the child's wishes in writing through a parent cohabiting with the child. Consequently, it is often a mere confirmation of an agreement made between the parents. Regarding the procedures for hearing the child's statement in these cases, it is necessary to initiate a system which enables a child to express his/her views faithfully to his/her wishes, without being unduly influenced by either of his/her parents.

(4) Criminal Action and Juvenile Trials

137. The Juvenile Law stipulating the procedures of juvenile hearings does not expressly guarantee opportunities for juveniles to state their views. In addition, it prescribes that leave from a court is necessary even for parents or an "attendant" who is a legal representative to state his/her opinion (Article 30 of the Rules on the Juvenile Proceedings). Moreover, in the practice of the procedures, l, a juvenile often cannot present his/her view freely in an atmosphere which cannot be described as "soft and gentle with warm consideration" (Article 22 of the Juvenile Law), due to the judge's investigative interrogation and inquisitorial attitude.

138. Therefore, it is necessary that anted as an "attendant" is appointed in the procedures of every juvenile proceedings and serves as an assistant independent from the parents, helping the juvenile to present his/her view. But, the Government is reluctant to initiate a system for this purpose. In 1995, the percentage of the cases in which an "attendant"was appointed was 1.2% (in which attorney 2,116, others 141).

139. For details on the above, see VIII-A. Juvenile Justice.

4. Administrative Procedures

(1) The Administrative Procedure Law and the Administrative Appeal Law

140. Paragraph 67 of the Government Report concludes that the right to express views on administrative matters is assured in the main by the Administrative Procedure Law and the Administrative Appeal Law.

141. However, with regard to the Administrative Procedure Law, all matters in the field of education are exempt from application. Also in the field of child welfare, many matters including the termination of admittance to child welfare facilities are exempt from application. Accordingly, procedures for explanations and hearings, stipulated in the Administrative Procedure Law, are not applied to many matters relating to a child.

142. Also with regard to the application of the Administrative Appeal Law, the field of education is not contained within its scope. Administrative acts within juvenile training schools and juvenile classification homes are also exempt from application on the grounds that they are procedures related to judicial proceedings. For these two fields, there is no way of *ex post facto* relief.

143. In addition, the Administrative Appeal Law has been established as a part of the procedures of *ex post facto* relief with regard to administrative acts in general. When the agency to be sanctioned has a superior agency, an application for review is supposed to be made and when it does not have a superior agency, a complaint is supposed to be made. However, in both cases, the body making such judgement consists exclusively of those within the administration and therefore lacks any disinterested neutrality and fairness as a judgement body. Moreover, it sometimes draws a conclusion without asking the agency in question to adequately disclose

information nor fully explain and prove its case based on evidence, and procedures are often delayed unnecessarily. Even though many defects, including the above, have been pointed out, no fundamental improvement has been made to this system. It is impossible to approve that such a system as being adequate to ensure opportunities for the expression of views.

144. Accordingly, the Administrative Procedure Law and the Administrative Appeal Law are almost of no use in the fields of education, child welfare, and correction in juvenile justice system, containing a number of problems for guaranteeing the right to express views, as shown below.

(2) Education

<1> Procedures in the Decision of Educational Measure at the Stage of Compulsory Education of the Disabled Child

145. In the procedures to enter a school at the compulsory education stage (elementary and junior high schools) of a disabled child, an Enrollment Guidance Committee is established in each municipality based on the Enforcement Ordinance of the School Education Law, and when the Committee judges that the child's disability falls within Article 22-3 of the Ordinance, a school for special education (schools for children with visual impairments, schools for children with hearing impairments, schools for the other handicaps) is to be designated as the school that the child should be enrolled in. In many cases, such a designation is asserted to be imperative and the child is forced to enroll in the designated school against his/her will and against the will of the child and his/her parents. There are many cases which develop into disputes of discrimination by disability.

146. Regarding the judgement procedures of the Enrollment Guidance Committee which affects handicapped children significantly as described above, it is vital to make institutional improvements, such as the guarantee of opportunities for adequate discussions until agreement and satisfaction are attained and the introduction of the procedures for the child to file a complaint against the judgement of the Committee, so that the opinions of the child and his/her parents will be heard and respected.

<2> Procedures in School Disciplines

147. Paragraph 69 of the Government Report states that the Government has sent notices to educational institutions about the matters to be heeded and considered when taking disciplinary actions. However, the description is vague and is remarkably inadequate in terms of understanding the problems with school discipline procedures in Japan and the recognition of points needing improvement.

148. The actual application of school disciplines in Japan is highly contrary to fair procedures, in that the standards of sanctions lacks clarity, that they are applied arbitrarily under the name of "educational consideration", that they are applied with no advance notice and that they are also against the principle of proportional severity*, and have led to a number of legal actions, as will be detailed in VII-E.

149. Moreover, school disciplines are generally practiced in a way that is against the purport of Article 12 of the Convention, in that the recognition of the act to which a sanction is applied and the determination of an appropriate sanction are made by a body composed of the principal and teachers alone, and that the opportunity for the child to state his/her view is not guaranteed at all.

150. When an act which is purported to be the one under discipline takes place, the teacher responsible for the child's class or the teacher responsible for student guidance questions the child about the circumstances in a manner similar to a "police interrogation" and the results of such interviews are reported to a committee (mostly teachers' meeting), which decides appropriate

sanctions. During the process, however, it is not made known to the child on what grounds the accusation is based, nor is the child given any opportunity to refute or to explain himself/herself. In addition, the child is not allowed to attend the meeting at which any disciplinary action is decided, nor is there any system of appeal in which the child can complain *post factum* about the basis of severity of the sanction. But, the Government has maintained this absence of procedural guarantee with these points by stating that they are matters within educational discretion of the principal. As a consequence, "the best interests of the child" are replaced in reality by "maintenance of school order" and "securing of authority of the school and teachers", and in not a few cases, an innocent child is disciplined or given a severe punishment, such as expulsion from school, for a trivial matter, causing serious damage to a child at an important stage of development. The necessity of ensuring the opportunity to express views in the process of these decision procedures is strongly urged.

151. It is true that the Government states in the Notice from the Administrative Vice Minister of Education mentioned earlier that "Disciplinary actions at school, such as expulsion from school, suspension from attendance, and admonition, must be undertaken carefully and precisely with actual educational consideration. In doing so, it is important to fully heed the circumstances of individual pupils and students by having an opportunity to hear the circumstances and opinions from the pupil or student, to ensure that the measure will have actual educational effects, instead of being a mere punishment." But, instead of being satisfied with such a formal, abstract notice, the Government should immediately take specific measures, such as initiating procedures to assure opportunities for pupils and students to express views which are appropriate to each development stage of elementary, junior high, and senior high school stages, as well as establishing a system for filing complaints with a third-party institution or the Education Board.

(3) Child Welfare Facilities

<1> Decision of Accommodation into a Facility

152. The Child Guidance Center has the authority to decide the accommodation of a child into a child welfare facility. By this decision, the child leaves his/her family to live at a facility. Under the present system, however, an opportunity to hear the child's view is not guaranteed, which is clearly against Article 12 of the Convention.

153. In deciding to accommodate a child at a facility or to move an accommodated child to another facility, the Government should consider a special factor that such a child is burdened with various difficulties because of child abuse, desertion, etc. by parent(s), and take specific improvement measures that will enable such a child to fully express his/her views.

<2> Treatment at the Facility

154. At child welfare facilities, there are many cases of violation of human rights, including corporal punishment, which will be detailed later (V-E-3, 4). Regarding these illegal and harsh treatments at facilities, however, there is no system at present to monitor complaints from victimized children.

155. For children accommodated at such facilities, a plea for them by their parents cannot be expected. In addition, considering circumstances under which they have experienced abuse before being accommodated in facilities as well as the closed, control-oriented nature of child welfare facilities, a special relief system should be considered. The guarantee for opportunities in expressing the views of the children is also needed for special consideration.

156. Therefore, instead of simply establishing the opportunity to express views, other specific measures, such as establishment of a third-party entity for the acceptance of reports by children and for periodic examinations, provision of legal representatives, such as attorneys,

speaking on behalf of children, disclosure of management systems for facilities to public, and preparation and distribution of a guide book offering information on where to report and consult.

(4) Correction Facilities - Procedures for Disciplines and Promotion to the Next Stage

157. In the course of protective education at a juvenile training school, which is a part of protective measures taken under the procedures of juvenile justice system, a disciplinary measures can be imposed on a juvenile when he/she commits misconduct. Regarding the nature of the disciplinary measure, Article 8 of the Law on Juvenile Training Schools provides for three kinds of measures.

158. Regarding the procedure to determine specific disciplinary measures, however, the law stipulates that it is left to the discretion of the heads of individual juvenile training schools, and that in many cases such determination is made by the Disciplines Examination Committee established at the school, without the presence of the juvenile or an opportunity for him/her to present his/her views. Despite the fact that disciplinary measures include serious punishments, such as solitary confinement for a maximum of 20 days or reduction in marks affecting promotion to the next stage, the juvenile is not allowed to attend the Examination Committee nor file a complaint *post factum*, only being heard by staff members in charge.

159. At the present juvenile training schools, a promotion system by stages has been adopted as an index for measuring achievement of tasks and merits towards a probationary discharge (progressive treatment system; Article 6 of the Law on Juvenile Training Schools); promotion is granted based on evaluation in achieving of individual tasks and common tasks and the time taken until probationary discharge is determined by the pace of progress. However, such evaluation of achievement is also an exclusive right of staff, and no opportunity is guaranteed for a juvenile to present his/her views, ask for correction or file a complaint with regard to the contents of evaluation of his/her achievement.

160. This absence of opportunity for expressing views in practices at juvenile training schools is inappropriate, considering the fact that a juvenile training school is a part of the educational program designed for rehabilitating children. The Government should urgently consider specific measures, including amendments to existing legislation, for ensuring opportunities so that the child may express his/her views in a specific manner on the procedures for discipline and promotion.

IV. CIVIL RIGHTS AND FREEDOMS

A. Right to Acquire a Name and Nationality (Article 7)

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1. Article 3 of the Nationality Law should be amended to allow retroactive acknowledgement of children, and eliminate any discrimination against children born out of wedlock (illegitimate children) with regard to acquisition of nationality.
2. Article 2 (3) of the Nationality Law should be amended to allow children born in Japan without nationality to acquire Japanese nationality.
3. Article 12 of the Nationality Law and Article 104 of the Family Registration Law should be amended to extend the period of submission of notification for reservation of nationality of Japanese children born outside of Japan (for example, till the child reaches the age of 20).

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1. Current Status of Foreign Children in Japan

161. Since around 1985, foreigners started coming to Japan in increasing numbers. In 1985, there were 1.99 million foreigners who came to Japan for the first time, but the number reached 3.09 million in 1994. In 1985, the number of foreigners with alien registration cards was about 850, 000 but it was increased to 1.35 million in 1994; 78% of them are Asians and the second largest group are the South Americans who account for 15% of the total. The number of children younger than 20 years of age with alien registration cards is 240,000 as of the end of 1994.

2. Increase in Numbers of Foreign Children Not Registered after Birth

162. With an increase of foreigners in Japan, the number of people overstaying visas (so-called illegals) has increased to about 300,000. Many such overstaying females are unmarried, and when they give birth to children, many do not submit notification of birth of their children fearing that if they do so, the authority will discover their illegal status. There are municipalities which accept submission of foreign registration and notification of birth of their children born in Japan from such overstayers, but the number of such municipalities is still small. There is no statistical data on children if notification of birth is not submitted and such children are, in effect, left without nationality and deprived of any rights to medical, welfare and educational benefits.

3. Increase in Children without Nationality

163. According to statistics from the Ministry of Justice, the number of children under the age of 4 without nationality in Japan was 74 at the end of 1990. By the end of 1994, the number had increased significantly to 266. However, this represents only the number of registered children without nationality and the fact remains that there is no way of knowing how many unregistered children there are whose notification of birth has not been submitted.

4. Acknowledgment by Father and Acquisition of Nationality for a Child:

An issue under Article 2 (1) of the Nationality Law of Japan

164. The Government's interpretation of 'at the time of birth' in Article 2 (1) of the Nationality Law of Japan, stipulates the very moment the child is born, and its legal father or mother must be a Japanese national at that very time. In the case of a child born out of wedlock (illegitimate child), a legal father and child relationship may only be established with acknowledgment of paternity. If the mother is a foreigner and the father is Japanese, unless the father acknowledges paternity of the unborn child, Japanese nationality may not be acquired even if the father acknowledges paternity after the child is born. According to Article 3 of the Nationality Law of Japan, a child born out of wedlock (illegitimate child) whose paternity has been acknowledged by the father after the birth shall receive Japanese nationality if the father and mother get married and the child acquires status as a legitimate child. This is clearly a discrimination against children born out of wedlock (illegitimate children) and is in violation of Article 2 of the Convention.

165. Over the last few years, at least 3 cases have been brought to court in regard to acquisition of nationality. The Japan Federation of Bar Associations conducted an independent study of one of the cases (Plares Asada Daisuke case) and issued a warning to the Minister of Justice on June 26, 1996 urging him to admit Japanese nationality to Daisuke (4 years old) immediately and to start amending the Nationality Law of Japan.

5. Acquisition of Nationality for Children whose Parents are Unknown: An issue of Article 2 (3) of the Nationality Law

166. The purpose of Article 2 (3) of the Nationality Law of Japan is to prevent statelessness. The requirements are that a child is born in Japan and that both parents are either unknown or stateless. Therefore, even when parents are known, because of the difference in legal principle of the countries of the parents (for example, jus sanguinis and jus soli principles), a child may become stateless if unable to acquire either nationality.

167. Moreover, in one case, a foreign woman who was thought to have come from Southeast Asia to work in Japan, gave a birth to a boy and soon after abandoned the baby without leaving any address. The boy (Andere, 5 years old) took legal proceedings requesting confirmation of Japanese nationality. In this law suit, the meaning and burden of proof of the requirement 'when either a mother or father is unknown' became an issue. In January of 1995, the Supreme Court acknowledged that the boy had Japanese nationality, but it is still obvious that Article 2 (3) is imperfect in that it may leave some children stateless depending on its interpretation.

168. To rectify the two aforementioned points, Article 2 (3) needs to be amended so that all the children who are born in Japan and who might become stateless are to be given the Japanese nationality.

6. Acquisition of Nationality for a Child Born Outside of Japan: An issue of Article 12 of the Nationality Law of Japan

169. Article 12 of the Nationality Law of Japan stipulates that a Japanese national who was born outside of Japan and who acquired a foreign nationality by birth shall lose their Japanese

nationality retroactively to his/her birth unless his/her intention of reserving Japanese nationality is declared in accordance with the Family Registration Law of Japan. Moreover, Article 104 of the Family Registration Law stipulates that this period for submission of declaration to reserve must be within 3 months after the birth. Therefore, there are increasing cases where a child who was born to a foreign national and a Japanese national, and who by birth was entitled to Japanese nationality, could not acquire Japanese nationality because the parents did not know about this submission of declaration to reserve Japanese nationality. Especially, in the Philippines, there are many such cases among children born through marriage between Filipino women and Japanese men; this becoming a social concern as Japanese/Filipino children's issue. It is necessary to amend the Law to extend the period of submission of declaration for reservation till at least a child reaches the age of 20.

B. Freedom of Expression (Article 13)

General restrictions on children's right to freedom of expression under the pretext of protecting children should be stopped.

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170. Paragraph 83 of the Government Report states that "In Japan, freedom of expression is guaranteed to the people, including children, under the provisions of Article 21 of the Constitution, and is paid the greatest respect as an essential right for maintaining democracy". However, freedom of expression including children's "freedom to ask for, receive and communicate all types of information and opinions" is generally restricted under the pretext of protecting children, and such restrictions are accepted as being just and proper. For example, with regard to textbooks for elementary school, junior high school and high school, the Ministry of Education reviews their contents and the wording used for details of contents under the textbook certification system. Only textbooks which have passed such a certification system can be used by the schools. Thus, descriptions which might not be in conformity with certification criteria are voluntarily avoided and the provision of wide ranging information is often hampered. Recently, a correct description was deleted because it differed from what a governmental official had stated during one of the sessions at the Diet. However, later it turned out that what the governmental official said was in error and controversies arose.

171. Provision and expression of information in the form of books/magazines, movies, music, etc. are often managed, controlled and restricted on the grounds that children are at risk and such practices are generally accepted. There are cases where junior high schools and the Board of Education prohibited their students from going to any rock concerts (see note), where a junior high school canceled a students' theatrical performance the day before the show because of the intervention by the local forestry office and the police (see note), when a private junior high school regarded unimportant comments made by a student in his conversation with other students as being slanderous against a director of the school and ordered the student to leave the school, forcing him to move to another school (see note), and when publications on children's rights, which had been sent to the student councils, were returned or kept out of sight from students by the school authorities so that students' access to such pertinent information was restricted (see note). These cases were brought to the attention of the Bar Associations and were taken up by them.

172. With regard to issues relating to school rules in Paragraph 84 of the Government Report, please refer to VII-F.

C. Access to Information (Article 17)

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1. It is necessary to provide information to children as to what constitutes violations of the human rights and where to seek help in case of any infringements upon such human rights through corporal punishment, bullying, imposition of school rules, etc.
2. To protect children from harmful information, we must cease relying on the police force to restrict such information. Instead, we should promote such measures as local activities, self-imposed controls and development of children's judgement.

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173. Paragraphs 86 - 90 of the Government Report take up the establishment of libraries, recommendation of cultural assets for children, movies and broadcast programs, and state that they help children "use information and materials from various national and international sources".

However, there is no mention about whether current measures are sufficient or how children are actually responding to existing measures. Actually, in most cases, school libraries where children go to for information do not have librarians able to help children trying to access such information. Moreover, news articles and stories being published in school newspapers and student council's newsletters are inspected by the school authorities on the grounds that such practices are necessary in showing concern for the children.

174. As described later, there are many cases where the rights of the child are violated through disciplinary corporal punishment, bullying, restriction through school rules and child abuse. There is lack of information as to what constitutes violation of their rights and where to go to for help.

175. As for harmful information, Paragraphs 94 - 99 of the Government Report merely emphasize measures taken in protecting children from such information, without making any reference to the problem that these measures lack consideration to the specific expression of the Convention, "bearing in mind the provisions of Articles 13 and 18 (Article 17 (e))". The excuse or the grounds used to explain the aforementioned cases (where entry into a rock concert was prohibited, or where access to publication on children's rights was restricted) is the protection of children. The phrase "Protection of children", is used as an easy excuse to interfere with children's access to necessary information.

176. As for protection from harmful information, the Government Report talks about regulations and measures such as the recommendation of the Councils (Paragraph 95), nomination of harmful materials by prefectural authorities (Paragraph 96) and self-restraint and self-control (Paragraphs 97 and 98).

177. However, in Japan such protection from harmful information is enforced through police powers and not through local activities or self-restraint.

178. The Government Report simply states that local activities are essential and the Government "encourages such activities of local organizations and residents" (Paragraph 99), providing no description about the actual status of such activities. In addition, the Report does

not make any reference to measures for helping children make correct judgement and criticize harmful materials, nor does it point out what difficulties such measures entail and what results such measures produce. There is a concern that restriction and control of harmful information through police powers may violate freedom of expression.

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

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1. Among the Japanese there are mixed opinions about using the "Rising Sun Flag" as the national flag and "Kimi-ga-yo" as the national anthem, and their compulsory use at school events and activities should be stopped.
2. Distributing questionnaires about children's thoughts and beliefs in school should be stopped.

3. In school, freedom of religion must be guaranteed by not forcing children to participate in religious ceremonies, and by providing alternative curriculum for those children who may not participate in some of the curriculum for religions reasons.

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179. As for using the Rising Sun flag as the national flag and Kimi-ga-yo as the national anthem, there is persistent opinion that these are strongly connected with pre-war Japanese militarism and there are mixed opinions, for and against, among the Japanese people. Nevertheless, the Government requests in its Guidelines of Instructions for Study that the Rising Sun flag be displayed as the national flag and Kimi-ga-yo be used as the national anthem during various school events and in 1989, the Government made their use compulsory. Therefore, regardless of children's thoughts and conscience, participation in school events where the Rising Sun flag and Kimi-ga-yo are used is compulsory and freedom of thoughts and conscience is thus violated. Moreover, it is not uncommon that questionnaires on thoughts and beliefs are distributed in schools. In fact, there was a case in which the data collected by the Board of Education through pupils and students showed that such questionnaires included questions on thoughts and beliefs and children appealed to Bar Associations for relief, alleging that such a questionnaire infringes upon their privacy (see note).

180. Despite the statement in Paragraph 100 of the Government Report, compulsory participation in religious events and school management lacking religious considerations are common. According to a survey conducted by the Japan Federation of Bar Associations in 1985 on the rights of the child and school life, it was discovered that there were schools with school rules prohibiting religious activities both in and out of school. In 1989, when Emperor Hirohito passed away, under instructions from the Ministry of Education, school children were forced to offer silent prayers. There was a case where a student who missed a special class held on Sunday morning because of his attendance at Sunday Mass was treated as being absent, and another case where a student was forced to repeat the same grade and finally to leave school because for religious reasons the student refused to participate in the compulsory class of "Kendo", Japanese fencing. Against these cases which lacked due consideration on the part of school, law suits were brought to court. In the first case, the Tokyo District Court refused to give relief. With regard to the latter case, in 1993 the Kobe District Court refused to give relief, but at an appellate court a ruling of relief was granted. Finally, in 1996, the Supreme Court gave a judgement that this was in violation of the law. As shown above, getting judicial relief is difficult.

E. Freedom of Assembly and Association (Article 15)

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1. A Governmental notification that prohibits high school students from engaging in political activities should be abandoned.
2. School rules that require students to get permission from school for organizing or attending assemblies and associations should be abandoned.

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181. With regard to freedom of assembly and association, a tendency to think that children cannot be entrusted with such a freedom and that it is appropriate to restrict such freedom is more prevalent than in the case of freedom of thought and conscience.

182. In October of 1969, the Ministry of Education issued a notice prohibiting high school students from participating in political activities, "because high school students are still going through mental and physical development stages and if they become involved in political activities, this would mean that they are influenced by particular political positions without adequate capability of judgement, which may make it difficult for them to make judgement from a broader perspective in the future".

183. According to the aforementioned survey conducted by the Japan Federation of Bar Associations in 1985, there were schools with such school rules that stipulate, for example, "Students who wish to participate in assemblies, events, trips and day trips in and out of school or who wish to organize and/or participate in assemblies and associations must get prior permission from the principal through the teachers in charge and vice principal", "students are prohibited from joining political organizations or equivalents or getting involved with any political activities regardless of whether such participation and involvement is in a group or as an individual." Such school rules reflect the thinking of adults in general about freedom of assembly and association for children. There is also a report of a public junior high school which prohibited students from participating in a symposium held to protest against the school rule imposing close-cropped hair.

F. Protection of Privacy (Article 16)

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1. Placing value on the protection of privacy of children in school and other facilities is necessary. Conducting surveys to gather information on things private to children and which are not really required and making such information public should be prohibited.
2. Measures need to be taken to protect the privacy of children who have engaged in delinquency or who have been victims of crimes so that their privacy is not infringed by mass media, etc.

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

185. Moreover, the environment or facilities serving children often lack sufficient consideration for the protection of children's privacy. As will be described later on, at a protective institution, for example, it is granted under the Government minimum standards to accommodate many children in a small room and private rooms are not guaranteed. Under such circumstances it is impossible to expect that children' privacy can be protected from each other. It is also common for dormitories to place telephones at locations where supervisors can overhear the conversation.

186. Moreover, unnecessary and irrelevant private information is collected under circumstances where children dare not refuse under the pretext of inspection of personal belongings, individual diagnostic test, etc. and often the information thus collected is published. There was a case where a female high school student was asked to raise a skirt and show her underwear and when the student was found not to be wearing designated underwear, she was denounced as being like a "prostitute". There was another case where during a swimming class, epileptic children were asked to put a mark on their swimming cap for everyone to notice (see note). Such cases of infringement of children's privacy were reported to Bar Associations.

187. Children's private information, such as records on abuse, exploitation, illness, victimization, misdemeanors and school activities is often collected against the wishes of children and published in the mass media. Even though the Juvenile Law prohibits the mass media from publishing children's names, etc. (Article 61), the actual names and photos of the arrested boys were published in the mass media in the case of murder of 4 people in a family in Ichikawa, Chiba Prefecture, and in the case of confinement and deadly assault of a female high school student in Ayase, Tokyo. Moreover, photos and private information about the child victimized

in the latter were also published. In the case where a girl was raped by U.S. Military personnel in Okinawa, reporters were hounding her family and friends persistently, and such information that made identification of the victim possible was published. Another case was when private information of a child's stay at a hospital, where the child received genetic treatment, was reported against the child's and parents' will. Also lists of students who passed the entrance examinations for high schools and colleges/universities are published in newspapers and magazines, even though such information is considered private. (The Japan Federation of Bar Associations recommended a stop to such practices in February, 1996 after receiving a petition for relief.)

188. Private information collected at schools is provided to third parties for non-school purposes without consent from students. There was a case reported where photos of all the students in a school were given to the police to help them with their investigations. Another reported case is the case of murder of mother and child in Ayase where an innocent student was arrested under a false accusation because information concerning the accused boy was given to the police as part of the information on students who were truants.

189. With the juvenile proceedings, a special emphasis must be placed on protection of privacy, and in Japan such hearings are not open to the public (Article 22-2 of the Juvenile Law). However, it is not uncommon that information gets leaked to the criminal investigation authorities without the knowledge of the involved children, enabling such authorities to make a "supplementary investigation".

G. No Child Shall be Subjected to Torture or other Cruel, Inhuman or Degrading Treatment or Punishment. (Article 37 (a))

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1. Every measure should be taken to root out such treatment that may seriously impair a child's dignity as a human being, such as bullying and corporal punishment at school.
2. Every measure should be taken to root out corporal punishment and bullying at facilities accommodating children.

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190. Paragraphs 107 - 110 of the Government Report limit the discussion to criminal procedures and correctional institutions. This right, in the first place, makes it clear that treatment with dignity and respect as guaranteed in Article 7 of the International Covenant on Civil and Political Rights applies to children, and its application is not just limited to criminal procedures and correctional institutions. Children are physically, economically and socially in a weaker position than adults and need to be provided with more careful and extensive protection.

191. Details will be analyzed in VII-C, but at school, bullying and corporal punishment are rampant and children are forced to close-crop their hair and wear uniforms. Children are not treated as subjects with their own independent personality. Bullying and harassment to such a degree that drives children to commit suicide are common, and there was a case where a teacher buried a student up to his neck at the beach to make him confess to extorting other students (1989). There was another case where a teacher beat a student to death because she did not obey what the teacher said (July of 1995).

192. As for wrongful infringement of rights of children in juvenile justice system, a detailed analysis is made in VIII-A. At various institutions accommodating children, regardless of whether they are private or public and regardless of the type of institution, corporal punishment, harassment, bullying and harsh discipline are rampant. There are cases where a child was injured or died as a result of a mock lynching at protective institutions and other similar institutions for children. In November of 1992, an emotionally disturbed child at a juvenile prison received corporal punishment and was confined to a solitary room and prohibited from reading books, magazines, etc. (see note). There is also a case where students died after being assaulted by teachers at a private training institution (Tozuka Yacht School), and in July of 1991, two children died of heat strokes after being confined to a container for more than 40 hours where the temperature climbed to more than 40 degrees Celsius during the day at a private correctional institution (Kazenoko Gakuen). There is also a case where children of Aum Shinrikyo followers were left confined at a facility without being given sufficient food or education. Such incidents do occur in reality at various institutions for children.

193. Children who become victims of criminal acts suffer mentally and physically. Yet, there is no system for protecting children from inquisitive people or help get rid of fear, terror and distrust of people and heal their psychological damage. In reality, they are forced to repeatedly recount their terrifying experiences for the police and prosecutors during the judicial procedures. The reality is that even children who were sexually assaulted do not receive any special care or consideration. In Paragraph 283 of the Government Report, there is a description

about support activities given to children who are victims of criminal acts. However, such activities are still not functioning effectively.

194. When a child is tortured or treated inhumanely there are no support institutions readily available for the child, or shelters to protect the child from further damage or organizations to give relief to the child, and this remains a problem in light of Article 39 of the Convention.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parent-Child Relationship and the Involvement of the State (Articles 5 and 18)

The terms employed in the provisions concerning 'parental power' of the current Civil Code of Japan allow an interpretation that parents may exercise comprehensive control over their child. Such provisions should be revised to clearly state parents' responsibility for the upbringing of children, and to stipulate that a child's best interests should be the primary consideration when direction and guidance are provided by parents.

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195. Parents are responsible for the upbringing and development of their children. While parents bear 'responsibilities, rights and duties' for providing the child with 'direction and guidance in a manner consistent with the developing capacities of the child', this is conditional upon the exercising of the child's rights and does not refer to unlimited control. Parents' responsibilities for upbringing and development of children are the primary responsibilities and are in principle not subject to any intervention or interference by the State or by any other party. The State is obligated to assist parents positively (not simply to complement their efforts) in accomplishing their responsibilities. The State is also obliged to respect direction and guidance provided by parents and may intervene or interfere only when necessitated by the child's best interests. The parents' responsibility for child rearing is a joint responsibility of both parents and the State must use its own best efforts so that this principle may be recognized.

196. Under the current situation in Japan, however, it is often wrongly considered that parents can exercise comprehensive control over their children. Moreover, the State does not provide adequate assistance to parents to accomplish their responsibilities for child rearing, while on the other hand it disregards parents' direction and guidance with regard to the rights of the child (particularly the right to education). The State also disrespects the joint responsibilities of parents for child-rearing.

197. In Japan, there is a deep-rooted notion that parents may exercise comprehensive control over their children. Such a notion seems to be related to the provisions in the current Civil Code. While stipulating that the parents, who are in 'parental authority', bear 'duties towards and rights in caring and education of the child', these provisions exclusively refer to the rights of the parents over the child, such as the right to discipline the child, the right to designate the child's whereabouts, the right to give permission to the child's vocation, as well as the right to agree on the child's marriage. Rights on the part of the child are not fully recognized by the provisions of the Civil Code, as the Code further provides that the child be 'subjected to' parental power.

198. Misunderstanding of 'parental power' as stated above often leads to such situations when parents determine the rules of daily life or educational plans for their children ignoring or disrespecting the children's own will, or even abuse their child causing death through excessive discipline or punishment (see V-G on child abuse).

199. There are also cases where parents send their children to private discipline training

facilities on the basis of their 'parental power' for reasons such as a child's disobedience to parent's disciplinary rules. If a child is injured or dies as a result of chastisement or punishment exercised by personnel involved in activities of such private training facilities and when a suit is filed, the account usually given by such personnel at the hearing is that they were 'exercising the parental power (especially the right to discipline) in place of the parents.' This also indicates the underlying notion that anything could be done to the child under parental power.

200. Responding to such situations, calls to review the content of 'parental power' have been gradually growing louder recently and some critics also claim that the term 'parental power' itself should be changed as with the case of Germany and some other countries. The Government Report completely ignores these issues while it repeatedly states that 'the child is subjected to the parental power of the parents', and the Government is making no efforts in terms of national policies to rectify the wrong understanding of 'parental power'. The Government should revise the provisions of the Civil Code which presently contain expressions which may be interpreted as permitting comprehensive control over children by the parents.

201. It may be also pointed out that parental direction and guidance concerning child's rights are notably ignored in school education. Schools and boards of education firmly refuse any positive involvement of the parents in school education in the form of criticism, requests, etc. regarding the systems and contents of school education.

B. Responsibilities of Parents (Articles 3, 18 and 27)

The existing tax and social security systems, which are household-based systems, offer favorable treatment to dependent spouses. These systems should be transformed into individual-based systems in order to prevent fixation of dividing roles by gender.

Parents' Responsibilities for Child Rearing and Assistance by the State

202. With reference to the parents' responsibilities for child rearing as prescribed in Article 18-1 & 2 of the Convention, Paragraph 114 of the Government Report proposes 'to correct the rigid conception of dividing roles between women and men' and 'promote the joint participation of women and men in the local community and family life' so as to create a society in which both women and men may jointly participate. The awareness of gender is changing in Japan. With respect to the idea that "men are for work and women are for families', a survey conducted in 1987 showed that 36.6% of women supported these sentiments but the figure had decreased to 22.3% when surveyed in 1995. Responses by men are especially noteworthy as the ratio of those who supported the idea sharply dropped from 51.7% in 1987 to 32.9% in 1995 ('Survey on Public Opinion on Women', March 1987, 'Survey on Public Opinion on Joint Participation of Men and Women', July 1995, issued by the Prime Minister's Office).

203. As for the actual practice of sharing household work and child rearing, the lower the child's age is, the more inclined the husband is to participate in child rearing. However, it is still below a desirable level: the degree of satisfaction expressed by wives is the lowest at 56.6% among those aged between 40 and 49, and it is also low at 57.8% for working wives compared with 63.1% for non-working wives ('The 1st Nationwide Research on Family Trends' issued in 1993 by the Institute of Population Problems of the Ministry of Health and Welfare). This suggests that, although the Government Report states in Paragraphs 114 - 117 that the publicity and educational activities, such as Home Education Classes, Assistance Programs for Fathers' Participation in Home Education and the provision of information on Home Education, are carried out, they are still far from being widely practised. What is needed are specific policies to bring about structural and conceptual reforms, such as the establishment of social mechanisms for facilitating higher public awareness on the issues concerned.

204. The problems of the tax and social security systems are factors particular to Japan, which contribute to strengthening of the idea to divide social roles by gender. In Japan, favorable treatments are applicable to the spouse of an employed income earner provided that the spouse's annual income is within specific limits. In taxation, there is a system to allow exemption of up to ¥760,000 from taxes levied on employed persons (system of exemption for spouse; system of special exemption for spouse) if the annual income of the spouse is ¥1.41 million or less. Similarly, pension schemes offer a system for exempting payment of premiums exclusively for spouses of employed persons if the spouses' annual income is ¥1.3 million or less and the same is offered for the medical insurance system. The behavior of the Japanese female labour force shows a typical M-shaped pattern; female workers withdraw once from the labor market when they get married or give birth to a child and later return to the job market when the

child reaches school age. Upon returning to the labor market, however, they show a very distinct inclination to confine their income within a level that entitles them to favorable offers from the tax and social security systems. This further forces women to remain in auxiliary labor, thus contributing to fixation of the division of roles between genders. It is therefore necessary to transform the existing household-based tax and social security systems into individual-based systems in the future.

C. Separation from Parents (Articles 9 and 10)

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1. The Japanese Government should withdraw the interpretation it proclaimed of Article 10-1 of the Convention.
2. The Immigration Control and Refugee Recognition Law should be amended to prevent a child from being forcefully separated from parents by any deportation order given to parents of foreign nationality and also to enable effective judicial review to be conducted on deportation orders issued by the administrative authorities.
3. Amendment of laws should be implemented to provide for a mandatory hearing of a statement by the child in all situations where the separation of the child from the parents results, including cases of placing children at a Child Welfare Facility, a Juvenile Classification Home or a Juvenile Training School.
4. Some Japanese laws stipulate that statements by a child must be heard if the child is 15 years or older. However, such a mandatory hearing should be also made applicable for younger children, at least for children who are 10 years or older.

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205. The following principles for the separation of a child from parents are derived from Article 9 of the Convention.

<1> Separation against the will of the parents shall be limited to cases where a judicial authority decides that such a separation is necessary for the best interests of the child.

<2> When a judicial authority is making a decision on the separation of the child from parents, concerned parties should take part in the proceedings and be guaranteed to have their statements heard.

<3> The child has the right to remain in contact with parents after any such separation has been decided.

206. The Convention provides that concerned parties should be given an opportunity to participate in the proceedings and make their views known in cases where a child is separated from parents against the will of the parents. Nevertheless, under Japanese national regulations, procedures for hearing of statements, particularly hearing of statements by children, have not been fully established, and such hearings are not fully carried out in practice either.

207. Paragraphs 125 and 126 of the Government Report point out that it is a provision of law that statements by children, if 15 years or older, must be heard when placing children into custody of foster parents or sending them to an institution against the will of their natural parents. It is quite possible, however, that children under 15 years old are capable of forming their own opinions and therefore an obligatory hearing of statements by the children should apply also to children under 15 years of age.

208. In the field of juvenile justice system, no express provisions are given by law for the right of the child and other concerned parties, such as the parents, to make a statement of views in cases where the Family Court decides to send the child to a Juvenile Classification Home, Protective Institution, Home for Juvenile Training and Education, or Juvenile Training School. Because of this, in many cases the judge gives a one-sided view and, without hearing the views

of the child or other concerned parties, decides upon actions of separation such as mentioned above.

209. The Government argues in Paragraph 127 of its Report that even in such cases as above no problems should arise, as the Family Court confirms the child's will through protective considerations and it does not prevent the child from making a voluntary statement. Expression of opinion, however, is the fundamental right of the child forming the foundation of the Convention. There is apparently a great difference for an opportunity to express one's opinion between being dependent upon the protective considerations of the Family Court and being guaranteed as one's right.

The Government should amend the concerned laws to expressly provide for the rights of children and other concerned parties in having their statements heard.

210. Besides the problems pointed out so far, there is also a problem which does not involve state measures. In Japan, there are many employees who are obliged to live alone far away from their family because their employers order to transfer and it is almost impossible to refuse it. In several cases, empolyers force employee either to accept the "single transfer" or be dismissed or degraded. There has been an instance in which the Bar Association recognized such a case as being an infringement on human rights and issued an advisory opinion (March 11, 1991 by the Tokyo Bar Association in the case of an employee of the Railway Technical Research Institute). Only few such cases, however, have been remedied through judicial proceedings.

211. In cases where a child's life or well-being is imminently endangered by abuse or where recurrence of previous abuse is anticipated, the separation of child from parents needs to be positively carried out in the best interests of the child, and it should be followed up by care extended to both the child and the parents. It is wrong to think that no further care is needed once a child has been separated from the parents or to dismiss the possibility of separation on the grounds that no system is available for providing care. In quite a few child abuse cases, it has been observed that an excessively passive approach towards separating a child from parents obstructs relief to the rights of the child. The Government has so far failed to introduce administrative or legislative improvements with respect to this issue. In order to cope with the problems of child abuse, comprehensive improvements are required in terms of legislation and the administrative application of laws (see V-G on child abuse for further information).

212. The treatment of a child during separation from parents varies according to the purpose of separation. Regardless of the purposes for separation, however, the right of the child to remain in contact with parents is not fully guaranteed, particularly so in cases of juvenile delinquency (e.g. meeting with a family member at the Juvenile Training School). In cases of child abuse, on the other hand, considerations are required not to force the child to remain in contact with parents against the child's will. Apart from these cases where a child is separated from the parents due to placement at an institution, there are also cases of divorce where a child is separated from one of the parents. In such cases, it is necessary that the parties concerned should clearly recognize that access to a separated parent is a right of the of the child (visitation should not be enforced or hindered, disregarding the will of the child).

Immigration Control and Separation of the Child from the Parents

213. Upon ratifying the Convention of the Rights of the Child, the Government pronounced,

in regard to prohibiting separation of child from parents provided for in Article 9-1 of the Convention, that 'it is understood that this provision is applicable to specific cases, such as cases of child abuse by parents, and is not applicable to cases where a child is separated from the parents as a result of a deportation order executed under the Immigration Control and Refugee Recognition Law'. The Government also pronounced with respect to provisions concerning the reunification of a family in Article 10-1 that "it is understood that the obligation to deal with the application to enter or leave a State in a 'positive, humane and expeditious manner', as stated in the provision, shall not affect the outcome of such an application."

214. Under the Immigration Control and Refugee Recognition Law, 'parentage of a Japanese national' is not recognized as residency status. Therefore, under this Law a child with Japanese nationality may be forcefully separated from a parent with foreign nationality if the parent is deported. For instance, there may be cases where overstaying a visa by a foreign spouse of a Japanese citizen is discovered and he/she is thereby given a deportation order, or cases where a foreign spouse of a Japanese citizen has to leave Japan as he/she has lost the status of residence as a spouse of a Japanese national due to divorce, etc. Such a deported foreign spouse may be forced to choose either taking his/her child along, who is Japanese, being born and growing up in Japan (the child having to be separated from the remaining parent) or leaving the child in Japan (the child being then separated from the deported parent). Moreover, concerning entry to or departure from Japan for the purpose of reunification of family, Article 5-1(9) of the Immigration Control and Refugee Recognition Law provides that a person who has been deported shall not be allowed to re-enter the country at least for 1 year after such deportation.

215. Furthermore, under the current Immigration Control and Refugee Recognition Law, it is left to the discretion of the Minister of Justice to determine whether or not a foreigner should be deported or whether or not a foreigner should be permitted to enter or leave Japan. Although a 'judicial review' is called for in Article 9-1 of the Convention, such a review is completely absent under the Immigration Control and Refugee Recognition Law, and, as a consequence, cases arise where the right of the child to 'grow up in a family environment, in an atmosphere of happiness, love and understanding'(Preamble of the Convention) may not be fully guaranteed as a result of immigration control administration.

216. Such application of the immigration control goes completely against the provisions of the Convention on the Rights of the Child and various civil liberty organizations and individuals supporting the human rights of foreigners have been severely criticizing this factor. In the case of Plares Asada Daisuke, a deportation order was given to Daisuke, 4 years old, and his Philippine mother, and the Japan Federation of Bar Associations issued a "warning" against the Minister of Justice, etc. on June 26, 1996, demanding revocation of the said deportation order on the grounds that such deportation would separate Daisuke from his Japanese father and thereby impair his human rights (IV-A-4).

217. As if responding to such criticism, the Ministry of Justice issued a notice on July 30, 1996 to the heads of Local Immigration Control Bureaus and Branches to the effect of permitting changes in status of residence by a foreigner who is the natural parent of an unmarried Japanese minor and who wishes to stay in Japan in order to support the child. In such a case his/her status of residence can be changed from 'tourist', 'entertainer', etc. to 'long term resident' valid for a period of one year provided that 1) he/she is in parental authority of the child and 2) he/she is in fact rearing the child. As the period of stay can be extended, it has become

practically possible for those who meet such qualifications to remain in Japan permanently. At the same time, the Ministry of Justice announced that the Minister of Justice shall issue 'special permission for residence' to an overstaying foreign parent of Japanese nationals as a 'parent of Japanese national' provided that the parent meets the requirements of the above notice. This will substantially prevent occurrences of tragic separation of child from parents such as described above. Nevertheless, it cannot be said that such measures will satisfy the demand of the Convention on the Rights of the Child in that; the improvement remains at the level of administrative application effected by notifications and does not provide protection of rights by law; application of the measures is left to the discretion of the Minister of Justice; and the measures do not include any procedures for judicial review.

D. Recovery of Maintenance for the Child (Article 27 (4))

Systems should be established to ensure agreement on maintenance for children of parents divorced by agreement and to allow easy recovery of maintenance through judicial systems when it is not paid voluntarily.

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218. In Japan, parental authority goes to the mother in more than 80% of divorce cases. However, the average wages of the female worker is only about the half that of the male worker. In particular, the income of the fatherless household supported by a divorced mother is less than one third that of the average household and at about the same level as the livelihood protection expense provided by the Public Assistance Law (¥2.03 million per year in 1993). Furthermore, 45% of the fatherless households with divorced mothers are with a child of 11 years or younger (1993 National Survey on Fatherless Households, etc.). For these households, payment of maintenance by the father is essential as the above mentioned income is not sufficient for the mother to raise the child on her own.

219. In divorce by agreement, which accounts for approx. 90% of the divorce cases in Japan, the agreement on maintenance is not obligatory and such an agreement is concluded in only a few cases in practice. Even in divorce by conciliation, in which a Family Court is involved, an agreement on maintenance is concluded only in 72% of the cases. In addition, although living expense exceeds ¥70,000 a month for the averaged-aged child, the amount of maintenance agreed upon in divorce by conciliation remains at low levels, falling into the range of ¥20,000-¥40,000 in 30% of the cases and ¥40,000-¥60,000 in 22%. According to the 1993 "National Survey on Fatherless Households, etc." by the Ministry of Health and Welfare, the proportion of divorced women currently receiving maintenance from their ex-husbands is 14.9% and the figure rises only to 31.3% when those who have received maintenance in the past are included. Because of such conditions, the right of the child to education is not guaranteed as indicated by cases of children who have had to give up higher education due to financial problems.

220. The primary cause for such situation may be that the agreement on maintenance is not a requirement for effecting a divorce. Other causes may be related to the fact that the existing system for ensuring payment of maintenance consists only of recommendation for execution, order of execution and compulsory execution. Recommendation and order are seldom used as these means are only applicable to cases where a Family Court has been involved in concluding the agreement on maintenance. Compulsory execution is not used commonly either because the proceeding is very troublesome.

221. The Japan Federation of Bar Associations recommended the introduction of the following systems to the Government in 1992.

<1> System for Reporting Agreements on Maintenance

Under this system, a written agreement on maintenance shall be attached to the notification of divorce when reporting a divorce by agreement. To promote the negotiations and agreement on maintenance upon reporting a divorce, a maintenance agreement sheet shall be attached to the current form of divorce notification as an integral component. However, such agreements on

maintenance shall not be a requirement for effecting a divorce by agreement. The reporting of the maintenance agreement under this system works as a basis for the methods of ordering payments of maintenance as outlined by the following.

<2> System for Ordering Payment of Maintenance

This system applies when a person has obtained a written agreement on maintenance (discussed in <1>). Under such a system, a person shall be able to demand on the basis of the said agreement that the Family Court order payment of maintenance. According to the existing systems, compulsory execution cannot be carried out unless the obligation for payment of maintenance is contained in the protocol of conciliation or compromise recording the consent or in a notarized deed. Since more than 90% of the total divorce cases in Japan are by agreement, however, it is rare to gain a title of obligation with executive power by means of including such obligation of payment for maintenance in the protocol of conciliation or compromise. Therefore, there remains an urgent need for establishing a system for ordering payment of maintenance so that it may become easier to secure regular maintenance.

<3> System for Deducting Maintenance from Salary

This system shall be utilized when payment of maintenance with a title of obligation is not forthcoming. Under this system, a person shall be able to demand the Court to order the employer of the obligor, regarding the employer as a garnishee, to deduct maintenance from the future monthly earnings of the obligor. Considering that maintenance should be paid regularly, this system offers advantages in avoiding cumbersome procedures required for repeated compulsory executions against unpaid payments of maintenance, as well as enabling the securing of future payments by the filing of one demand.

<4> System for Payment of Maintenance by the State

Under this system, the State shall pay maintenance on behalf of the obligor and collect this from him/her. When an obligor of maintenance is not a salary earner, maintenance cannot be deducted from any income of the obligor (according to the system described in <3>). In such a case, the State shall pay maintenance on behalf of the obligor and thereby be assigned the right of claim for such maintenance and collection from the obligor.

<5> System for Favorable Treatments under the Tax Law

Under this system, payment of maintenance is encouraged by permitting tax exemption for maintenance in accordance with the existing system of tax exemption for dependents under the Tax Law.

E. Children Deprived of a Family Environment (Article 20) and Protective Institutions

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1. It should be expressly provided by law that corporal punishment against children by staff of child welfare facilities is prohibited. At the same time, such staff should be provided with effective training for the purpose of preventing corporal punishment.
2. Children should be ensured of opportunities for participating in the operations of child welfare facilities and a body should be created for performing periodical monitoring of conditions for the children.
3. Considering the extremely low existing standards for facilities, number of staff, etc. applicable for installation of a child welfare facility (so-called Minimum Standards for Child Welfare Facilities), these standards should be reviewed and amended.

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1. Introduction

222. In Japan, most children who have been deprived of a family environment are placed in Protective Institutions, including Infant Homes (see V-F for reasons of scarcity with foster placements). While most Protective Institutions are private institutions, the State and Local Governments are entitled to supervise the operation of both public and private institutions as they are providing subsidies within the scope of the 'standards' discussed later.

223. The Convention of the Rights of the Child guarantees the following rights of children who are placed in Protective Institutions:

- Right to special protection and assistance and continuity of upbringing (Article 20)
- Right to provision of adequate number of suitable staff and facilities (Article 3)
- Right to protection from abuse, etc. by staff (Article 19)
- Right to an environment for fostering self-respect and dignity of the child for recovery from neglect or abuse by parents (Article 39)
- Right to freedom including protection of privacy and right to expression of opinion (Articles 12 - 16)
- Right to periodic review by an authorized agency of treatment provided to them (Article 25)

224. The Government Report discusses these rights only sparingly: Paragraph 140 provides a brief outline of Protective Institutions in relation to Article 20 of the Convention; Paragraphs 159 and 282 refer to Protective Institutions as housing for children abused or neglected by parents in relation to Articles 19 and 39 of the Convention; Paragraph 56 refers to the 'Minimum Standards' for staff and facilities (without mentioning the contents of standards) in relation to Article 3 of the Convention; and Paragraph 160 refers to inspection by administrative agencies to ensure the 'Minimum Standards' in relation to Article 25 of the Convention. Through these limited references, the Report suggests that there are no particular problems concerning Protective Institutions. On the contrary, however, there are many points for improvement as discussed in the following.

2. Basic Viewpoints

225. In Japan, it has been taken for granted for a long time that children in institutions should be given treatment inferior to that extended to children living in normal surroundings, since welfare, in particular the welfare of children, has been regarded as a favor rather than a right. Human rights and dignity of children placed in institutions have not been given the requisite respect. These children have been regarded as subjects for management, and quite often violence (corporal punishment) has been exercised against them under the guise of discipline.

226. During the period immediately after the World War II, the care for children at institutions was primarily aimed at providing clothing, food and housing for orphans. Today, however, many of the children sent to institutions are those who have complex problems with family relationship, etc. and require more individualized and specialized care.

227. However, institutions still do not fully recognize the child as being an individual person and fail to provide care in line with such recognition. Nor does the Government provide adequate measures for promoting such care. Institutions are still extremely regulation-oriented and this makes it difficult for children in institutions to develop an independent attitude even after they left the institution and are living in society.

228. Every child has an equal 'right to care'. Children in institutions bear traumatic mental wounds as a result of being forcefully separated from their parents. Many of them further deepen such pain by thinking that they were sent to an institution because they were no good, whereas, in truth, they are not in the least responsible for any such placement. Institutions must offer those children a place for recovering from the traumas and also an environment that fosters self-respect and dignity. In this regard, the 'right to care' should be extensively guaranteed for children in institutions (Article 20).

229. As for the content of this care, normally this is mainly determined unilaterally by staff 'for the sake of children' and children are not fully guaranteed any opportunities for making their own decisions even with minor matters of their daily life. Such care often results in an imposition of obligations, and intervention being excessively exercised by adults 'for the sake of children' leads to management of children that impairs their development as independent persons.

230. The Convention on the Rights of the Child recognizes the right of the child to express opinion and also respects the right of the child to self-determination, i.e. the right to make independent choices and decisions concerning their own existence and life. In the light of such provisions, it is not enough to merely give children the right of receiving care which is defined by adults; children should be allowed to exercise their right to choose and determine the content of the care for themselves.

231. It is also necessary to establish a system for reviewing treatment of children in institutions, instead of leaving it entirely to the goodwill of the individual personnel or institutions.

232. Involvement of adults who are forming a consistent relationship of trust with children in institutions is essential for ensuring the children's right of receiving adequate mental and physical care while also respecting their right of self-determination. Such a consistent

relationship with adults will provide a solid background for children in institutions from which they can develop their personality and learn to be independent through making their own choices and decisions concerning their existence and life. It is also essential that a complete and equal partnership be realized with such adult-children relationships (UN Guidelines of Riyadh). In other words, children cannot develop any capacity for making autonomous choice and decisions concerning their own existence, life, etc. unless, during the process of growth from infancy, they are accepted by an adult in a complete and equal partnership, their personality is shown due respect and their autonomous involvement with society is ensured.

3. Corporal Punishment

233. It should be noted first of all that no statistics have been compiled by the Government either for corporal punishment and inappropriate conduct against children exercised by staff at protective institutions or for appeals of dissatisfaction filed by children and parents against such practices. Therefore, this report on the current situation of corporal punishment can only be based on such cases as have appeared in newspapers or been petitioned to the Bar Association.

234. Although incidents of corporal punishment at Protective Institutions have also been observed over the past (e.g. Demand of December 18, 1986 by the Osaka Bar Association), a series of cases of assault and injury inflicted by staff at institutions has recently been reported over a short period of time.
<1> In the case of an Institution in Fukuoka Prefecture (May 1995): The staff of the institution routinely battered children with bare hands and frequently beat them with wooden swords or threatened them with objects such as baseball bats and hammers. Finding such a situation unbearable, a group of children, including senior high school students, reported it to the media.
<2> In the case of an Institution in Chiba Prefecture (April 1996): The superintendent of the institution routinely threatened children with a knife when scolding them and exercised punishments such as fire to a tissue held in a hand of a child. 13 children, ranging from elementary school to senior high school students, fled from the institution and ran to the Child Guidance Center seeking help.

235. In these cases, however, both those who were responsible at the institutions and government officials responsible for supervising these institutions commented that the cases were merely 'discipline going beyond bounds'. It was further discovered that in both cases some conscientious staff of the institutions had reported these situations to the respective Local Governments but their reports had not been dealt with properly. It was only after the children themselves had appealed to an outside organization that these cases became publicly known.

236. As indicated by these cases, there is a deep-rooted sense of affirmation towards corporal punishment among institutions in Japan. The Government therefore should at least include provisions for 'prohibition of corporal punishment' under the Child Welfare Law, as well as introduce programs to train staffs.

4. Management as a Breeding Ground for Corporal Punishment

237. Many institutions set out detailed rules which extensively restrict children's lives. Cases are reported in which: a school curfew is set at 6:00 p.m., applying even to senior high school students, thus preventing them from participating in extracurricular activities; possession

of private property is strictly limited; rising time is set for school children even on public holidays; children must report a special destination whenever they leave the home; or too many daily tasks and events are scheduled so as to leave little free time for children to play. Violation of these rules may invite punishment, e.g. no television for failing to tidy up the room or missing a meal for neglecting daily tasks. There is a great risk that excessive regulation of conduct by rules of the institution may lead to violation of the rights of the child guaranteed under the Convention in areas such as freedom of expression (Article 13), freedom of thought and conscience (Article 14), freedom of association (Article 15) and protection of privacy (Article 16). Therefore the legitimacy of the rules should be examined from a viewpoint of guaranteeing those rights to the child. It should be borne in mind in particular that the provisions of the Convention attach no restrictions on protection of privacy (Article 16) and ensure complete respect for the right to protection of privacy.

238. In order to improve the current situation as described above, it is necessary to secure opportunities for children to participate in the operations of institutions, as well as establishing a third-party body to monitor any threats to children's living conditions.

5. Problems of 'Minimum Standards for Child Welfare Facilities'

239. The 'Minimum Standards for Child Welfare Facilities' established by the Government set forth conditions for staff and facilities of protective institutions. These Standards were originally developed, accompanying the enforcement of the Child Welfare Law in 1948, on the basis of prevalent living standards at the time of serious devastation and deprivations during the period following the end of World War II. Although the Standards were to be revised in accordance with the improvement of national life and economic development (Notice by the Vice-Minister of Health and Welfare issued in 1948), they have remained almost unchanged to this day. Moreover, these Minimum Standards have always actually functioned as 'maximum standards' in application. While some Local Governments raise the Standards in application, most apply the Standards as they are. As discussed in the following paragraphs, not only are the contents of the existing Standards inadequate but also the budgeting system for running costs by the State and Local Governments for implementing these Standards (expenses for welfare measures) is inadequate.

240. Although it is necessary to provide more extensive care to children in protective institutions than children living with their family in order to help recovery from their mental traumas and to foster an independent attitude, the existing standards of staff and facilities fall far below those levels necessary to serve such purposes. In order to firmly guarantee human rights of children in the institutions, the 'Minimum Standards for Child Welfare Facilities' need to be fundamentally reviewed, and such a review should be provided for by law, not merely by the rules of the Ministry of Health and Welfare, so that future opportunities for periodical review of the Standards may be secured.

(1) Inadequate Staff Conditions

241. The number of staff required for an institution is determined according to the standards for staff allocation included in the 'Minimum Standards for Child Welfare Facilities' established by the Ministry of Health and Welfare. According to such standards, 1 member of staff is required for every 6 children age 6 or over. This means that 10 staff are required at an institution accommodating a maximum of 60 children. However, the Labor Standards Law

prescribes that the working hours should be 40 hours per week at 8 hours per day, totaling 1,800 hours per year. According to these Standards, the number of working days for staff should be 225 days per year, which, when divided by 365, only accounts for 62% of full capacity. In other words, under the current situation, only 6 out of 10 staff workers can be actually allocated to tasks and these 6 members of staff workers are undertaking care for 60 children, taking turns over 2 or 3 shifts.

242. Such overloaded working conditions prevent the staff from devoting enough care to each child even if they wish to do so; they cannot find time to sleep in the vicinity of younger children, but on the other hand they cannot manage to find enough time to counsel the problems of adolescents as they are occupied with providing care for the younger children. Furthermore, there has been a growing need recently for specialist staff, as institutions have been receiving an increased number of children with serious problems, such as abuse, various emotional disturbances and mental retardation. Nevertheless, there are no legal obligations to provide staff of institutions with training or continuous guidance that is required for providing competent child care, and also the regular turnover of staff is hindering accumulation of experience.

(2) Inadequate Facility Conditions

243. 'The Minimum Standards for Child Welfare Facilities' include the standards for facilities along with the aforementioned standards for staff. The standards allow each child to occupy only a small area, stipulating that 'the number of children assigned to one room shall be 15 or less, securing an area of 2.47 ㎡ or more per child.' According to the standards, 3 children are to be placed in a room of about 7.5 ㎡ and 4 children in a room of about 10 ㎡. In cases of slightly larger rooms, bunk beds of about 1.6 ㎡ each are built against the wall on opposing sides of the room, leaving barely enough space for placing desks at the rear. Such a room usually accommodates about 8 children and quite often the only time a child can find solitude is when getting into the bed and drawing the curtain.

244. A living environment like this makes it difficult to protect children's privacy. Although institutions are supposed to offer a child an environment in which to develop an independent attitude as well as helping to heal previous traumas, a child living at an institution cannot even secure a place where he/she can find some solitude.

245. In addition, the Standards only designate the number of lavatories and require institutions accommodating 30 or more children to allocate a medical room and a lounge, failing to ensure an allocation of even a study room or a recreation room. While over 90% of graduates from junior high schools enter senior high schools in Japan, the rate drops to about 50% for the children living in the institutions. This is related to the inadequate physical environment for learning provided in the institutions, as well as the incompetence of the institutions in guiding children for making future plans and for stimulating a motivation to learning.

6. Importance of a System to Relieve the Rights of the Children in Protective Institutions

246. In many cases children in protective institutions cannot expect their parents to represent their rights. Moreover, children, whose human rights had been denied by abuse or neglect prior to admission to the institutions, have difficulty in identifying any violation of their human rights within these institutions. Given the regulation-oriented and closed nature of the institutions, it is also difficult for children to communicate with those at other institutions or to report cases of human right violations to an outside third party. If children are sent to institutions after losing their family, they might think that there is no alternative for them and therefore would try to endure life even if their human rights are being violated.

247. Considering the closed and bureaucratic nature particular to the Japanese institutions, a system for relieving human rights of the children in institutions should be established separately from that serving children living with families. Such a system is essential for fully ensuring human rights of children living at child protective institutions.

248. <1> Rights of Children to Express Opinion and Periodical Review

One of the major problems concerning the human rights of the children in institutions is the absence of any system for hearing the views of children in cases of violation of human rights at institutions. Although an inspection system by supervising governmental agencies is provided for under the Child Welfare Law, such inspections are performed primarily from a budgetary consideration and do not look into individual children's views or their living conditions. In order to ensure the right of children to express opinion or for a periodical review as prescribed in Article 25 of the Convention, certain actions are needed such as; establishment of a third party body, whose members include a person with experience in living at an institution; the receiving of reports from children and the carrying out of periodical inspections; assignment of lawyers to represent children; reform of operations at institutions to make them more open; and distribution of an easy-to-use children's guidebook for their rights-- such a guidebook should list organizations accepting reports from the children, as well as various guidance organizations for helping children make their views heard outside of institutions.

249. <2> Appeal of Dissatisfaction against Placement in Institutions

The existing system offers no mechanism for hearing protests or statements by a child concerning decisions made by the Child Guidance Center to place the children in a Child Protective Institution, although it may be determining the abode of a child over a period of 10 years or more. Such a situation should be improved by implementing concrete measures, including amendment of laws, aimed, for example, at ensuring the child or guardian the opportunities for making their views heard at such times as when the Child Guidance Center is guiding a child, placing a child at an institution, or transferring a child from one institution to another.

250. <3> Securing Specialist Caseworkers

According to the existing laws, the Child Guidance Center functions as the main body for providing counseling on care or delinquency of minors under 18. The Child Guidance Center is responsible for determining whether the placement of a child in an institution is necessary or not, for selecting a particular institution to admit the child and for providing guidance and advice to staff of the institution following admission of the child. Under the existing laws, the Child Guidance Center also plays a central role in respect to cases of child abuse. It is stipulated by law that a person who has identified a case of child abuse shall report it to the Center, that the Center shall conduct investigations and provide assistance, and that the Center has the authority for appealing to the Family Court. Despite these central roles performed by the Child Guidance Center, however, many local authorities currently assign government employees with no specialized capacity as caseworkers. Concrete measures for improvement are required regarding these points.

7. Inadequate Care Following Discharge

251. Under the Child Welfare Law, children age 18 or younger are eligible to live in institutions. In the past, children were discharged from institutions when they graduated from junior high schools at age 15. It was then considered that since senior high schools were not

part of compulsory education, children should start working immediately after leaving junior high schools and no welfare assistance would be necessary for them. As the ratio of children entering senior high schools rose in Japan, however, expenses for senior high school education began to be paid for children in institutions. While this has brought a certain improvement, those who do not enter senior high schools and start working after leaving junior high schools cannot continue to stay at the institution after 1 year from graduation. Considering the current conditions of the Japanese society, it is too cruel to send children of 15 or 16 years old out into society on their own. They should be guaranteed residence at the institution at least until they reach 18, as with the cases of those who went onto senior high school. Although it is also necessary to provide some form of care after they have reached 18 and left the institution, only some institutions are currently providing such care. The existing system should be also improved in respect to this point.

F. Adoption and Foster Parents (Articles 21 and 20)

In Japan, the number of foster placements is considerably less than that of placements at protective institutions. Such a situation calls for an augmentation of concrete measures for promoting foster placements.

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252. Under the Civil Code of Japan, permission of the Family Court is not required in a case where a person adopts a minor who is his/her grandchild or his/her spouse's child (upon remarriage). According to Paragraph 144 of the Government Report, the reason for this exemption is that 'such adoption normally has little risk of impairing the welfare of the child.' In practice, however, there are quite a few cases where an adopted child is abused in the family of remarried couples. These cases cannot be completely prevented by the review that takes place when permission of the Family Court is applied for. But such a procedure could allow for 'counseling', as prescribed in Article 21-(a) of the Convention, in case any suspicion is felt during investigations by Family Court Probation Officers. As this indicates, the above provision for exemption in the Civil Code has many problems and should be revised in a manner that is consistent with the intention of the Convention.

253. Adoption and foster placement should be utilized for the benefit of children who cannot remain under the care of natural parents (Article 20-2 & 3 of the Convention). In Japan adoption has been carried out mainly 'for the benefit of the family' or 'for the benefit of the parents', and the idea of adoption 'for the benefit of the child' is, as yet, to be fully established.
As for foster placement, it was quite common in the past that foster parents accepted a child to help with work. Although foster placement has recently been increasingly recognized as a means of benefiting the child, the number of those volunteering to be foster parents is still very limited. A number of reasons are pointed out for this, including inadequate functioning of the staff at the administrative agencies in charge of arranging foster placement (the Child Guidance Centers), ambiguity concerning the legal position of foster parents and insufficient allowance paid to foster parents for providing adequate care to children. It is also pointed out that administrative agencies are so cautious about selecting foster parents that they are inclined to allow institutions to remain the principal solution.

254. The extreme scarcity of foster placements in Japan indicates that the Government is not carrying out measures effective enough to increase foster parenting. The Government Report claims in Paragraph 141 that 'the Government has overcome the conventional idea that foster parents must be humanitarians, and has been working to promote a new foster-parent system since 1987, with a view to broadly seeking foster parents and educating the average person in becoming a praiseworthy foster parent', but the Government has so far taken hardly any concrete measures to such effect.

G. Problems of Child Abuse

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1. Strict qualification requirements should be applied to caseworkers who are in charge of child abuse cases, so that the specialized capacity of such caseworkers can be ascertained.
2. An amendment of concerned laws is required to enable judicial bodies to become involved in a flexible and effective manner in the prevention or remedying of child abuse. For example, it should be legally permitted for a child, or representative of the child deemed to be suitable by the Family Court, to demand involvement of judicial bodies, or for the Court to order abusive parents to receive counseling.
3. Specialized facilities and staff should be secured to provide appropriate care to both an abused child and abusive parents.

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1. Introduction

255. The Government Report refers to child abuse in its Paragraphs 151-159. It has been only 4 or 5 years since the need of addressing child abuse problems began to be recognized in Japan. And while certain administrative measures have been implemented, there are still numerous problems to be solved. But these problems are not outlined in concrete terms in the Government Report.

2. Lack of Specialized Capability at Child Guidance Centers

256. In Japan, the Child Guidance Center is exclusively responsible for receiving reports on child abuse, conducting investigations, providing assistance to a child remaining in family custody, or determining the placement of a child at a protective institution. According to Paragraph 154 of the Government Report, in 1994 only 1961 cases of child abuse were consulted with the Child Guidance Center even though the number of minors age 17 or less was 25,516,000. This number is considered to be only the tip of an iceberg.

257. There are several possible reasons why the Child Guidance Center handles a small number of cases. One is that there are only 175 Child Guidance Centers throughout Japan, and only about half of these Centers recruit caseworkers as specialists. In other words, caseworkers in about 50% of the Child guidance Centers are ordinary public employees of municipal governments who have not studied sociology or child/family psychology. Moreover, these caseworkers are transferred back to general posts after a short period of time, making it impossible to ensure specialized capability of caseworkers. The Japanese Government should take measures, including amendment of laws concerning qualifications of caseworkers, to allocate specialist caseworkers to the Child Guidance Centers throughout the country.

3. Reinforcement of Cooperation among Concerned Bodies

258. Cooperation among concerned bodies is essential for effectively coping with cases of child abuse. As for developing such cooperation, the voluntary efforts of the private sector are leading the way in Japan, creating networks of concerned bodies in Tokyo, Osaka, etc. The

Ministry of Health and Welfare has formulated model projects for the management of child abuse cases aimed at strengthening cooperation between concerned bodies. But only 8 Local Governments across the country have launched these projects on trial and as little as ¥25 million has been appropriated to them. The Government should expand such projects and take appropriate financial measures for supporting them, as well as undertaking measures, including financial assistance, to further foster and develop private networks.

4. Amendment of Laws Required for Effective Judicial Involvement

259. Judicial actions are hardly functioning with good effect against child abuse cases in Japan. There should be quite a few cases where a child needs to be separated from parents to protect the human rights of the child. According to Government statistics, however, in 1991 there were only 10 cases across Japan in which the Child Guidance Center requested the Court for the placement of a child at the protective institution against the will of the parents and only 2 cases in which the head of the Child Guidance Center requested the Court for a forfeiture of parental authority. These extremely low figures suggest that many cases are left unsolved without receiving effective judicial intervention, rather than most cases of child abuse being solved before reaching a stage where judicial involvement becomes necessary.

260. Part of the reason for this is that the problems of child abuse have been recognized only recently and the level of awareness is still not high enough among parties who are in a position to promote judicial involvement (e.g. staff of the Child Guidance Center), as well as among parties involved in judicial proceedings (e.g. lawyers, Family Courts). However, the problems of the existing legal system also have to do with it as discussed in the following paragraphs, and improvement should be made in respect to these problems.

261. Under the Child Welfare Law and the Civil Code, a placement of a child at a protective institution may be requested against the will of the parents only by the Child Guidance Center (Articles 28 and 32 of the Child Welfare Law), and forfeiture of parental authority may be requested only by relatives, the director of the Child Guidance Center or the prosecutor (Article 834 of the Civil Cold and Article 33 (7) of the Child Welfare Law).

262. However, partly because Child Guidance Centers are not necessarily equipped with specialized capabilities, they tend to desist from requesting strong actions and rather persist in carrying out casework under agreements with parents. There are also very few cases where such actions are requested by the prosecutor. As a result, these existing systems to request judicial involvement for protection of children are not functioning competently in Japan.

263. It should therefore be recognized by law that the right to request judicial involvement should be held by the child and by a representative of the child deemed suitable by the Family Court.

264. Furthermore, under the existing legal system of Japan, only the complete forfeiture of parental authority is applicable, which is another reason for the unwillingness in utilizing the legal system as exhibited by those parties authorized to make requests for forfeiture of parental authority, as well as the Court responsible for making the judgement. The legal system should be improved by incorporating, for example, a system that permits temporary or partial suspension of the parental authority or a system enabling the Family Court to order abusive guardians to

undergo counseling. Such improvement would allow judicial bodies to cope with cases of child abuse in a flexible manner.

5. Inadequate Care Available for Child and Parents

265. When it is not appropriate for a child to live with his/her parents, the child may live at an Infant Home or a Child Protective Institution. As stated earlier, at most institutions the levels of both staff and facilities are inadequate and no specialist staff are allocated to provide individualized care to abused children. There are also no bodies available for providing specialized counseling to abusive guardians. It is extremely necessary to improve facilities and staff for providing care to abused children and their parents.

6. Importance of Promoting Universal Awareness among Concerned Bodies

266. It has not yet been fully recognized in Japan that child abuse is a serious problem against the human rights of a child and that it requires cooperation among the concerned bodies headed by the Child Guidance Center. This lack of awareness can be blamed for some serious consequences of child abuse, such as the case where a child was abused and died while the elementary school failed to take any action for fear of making the matter public even though the abuse had been detected by a teacher. The Government should take positive actions to enhance awareness at all the concerned bodies, including Child Guidance Centers, public health centers, doctors, schools, nursery schools, kindergartens, etc.

H. Japanese Children Transferred Abroad through Inter-country Adoption, etc.

The Government should investigate the current situation concerning inter-country child trafficking and introduce effective rules for mediation procedures with inter-country adoption which are currently carried out without any involvement by the Government.

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267. Recently there has been an increase in the number of Japanese children sent abroad through inter-country adoption, etc. The number of Japanese children sent to the USA. through adoption over 10 years until 1992 amounted to 605. Apart from those sent to the USA., it is also known that about 50 children were sent to 9 countries, including Great Britain, France, Germany, Sweden, Canada and New Zealand, over 10 years until 1993 (Survey by the Report Team of Asahi Shimbun, "Babies Crossing the Ocean" published by Asahi Shimbun Publishing Co.).

268. Article 21 (e) of the Convention on the Rights of the Child stipulates that inter-country adoption should be 'carried out by competent authorities or bodies', and the 'Convention on Protection of Children and Co-operation in respect of Intercountry Adoption' (the so-called Hague Convention) adopted on 29th May, 1993 further confirms that intercountry adoption should be carried out under the control of a central authority (Government). Article 21 (d) of the Convention on the Rights of the Child further demands that in intercountry adoption, the placement shall not 'result in improper financial gain for those involved in it'. In Japan, Article 34 of the Child Welfare Law prohibits the mediation of adoption 'for the purpose of gaining profits'. While this provision is also applicable to intercountry adoption, hardly any effort is made to inspect these practices. In addition to the said provisions of law, the Japanese Ministry of Health and Welfare issued a notice in October 1987 'on Guidance for Business of Mediating Adoption' to prefectural governors. According to it, when mediation of children is conducted as business, it falls under the category of the Second Class Social Welfare Service set forth in the Social Welfare Service Law and is thereby subject to mandatory reporting to the Governor. Notwithstanding these legal requirements, there is an increase in organizations mediating intercountry adoption without reporting it and, moreover, there said to be cases of mediation involving obstetricians and other personal channeling. It is also said that some adoption agents do not disclose the number of children they have dealt with and some also charge the adoptive parents several million yen for mediation. The Government so far has neither grasped these cases nor introduced any restrictions or rules to control such cases.

269. Furthermore, it is said that there are many cases in Japan where the mediating organization offers adoptive placement even before the child is born or cases where such an organization separates a child from the mother and obtains her 'consent' for inter-country adoption while she is subject to mentally and physically vulnerable conditions under the social pressure against 'prospective unmarried mothers'. The European agreement on adoption prohibits the attainment of a natural mother's consent for at least 6 weeks after the birth of the child. Although it is necessary in Japan to introduce a similar rule allowing the natural mother opportunities for longer consideration, the Government does not seem to be making any efforts to this effect.

VI. BASIC HEALTH AND WELFARE

A. Pediatric Support

The legislation system should be reframed to deal with the case when the child's parents unjustly do not approve of the needed treatment such as to make it possible that a representative for the child designated by the court or a hospital intending to give needed medical treatment, can seek judicial judgement, by which the child can receive prompt and proper medical treatment.

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1. Present Situation of Pediatric Support

(1) Aid for Medical Expenses

270. The Government has not undertaken any measures at national level to relieve parents' burden of expenses arising from medical treatment to their children except for cases of certain designated critical diseases, such as children's cancer; therefore, local governments are charged with the matter of aid for medical expenses. Then, Aid differs depending on each local government. For example, some local governments provide parents with aid for medical expenses until their children become 2 years old and some provide such aid until children reach 6 years, whereas there are some local governments which do not provide any such aid for medical expenses to parents.

(2) Decrease of Pediatrics

271. Under the medical insurance system of Japan, it is usually the case that medical institutions have a difficulty in operation unless in frequent use with a high amount of examinations and prescribed medications. The reason why the number of specialist pediatric clinics is decreasing is not only due to the falling birth rate, but also to the fact that pediatric doctors give less examinations and medications to patients who are infants and young children, and thus make less profit compared with other doctors. In general hospitals, the department of pediatrics gets closed or down scaled. According to a survey conducted by the Tokyo Metropolitan Government, the number of pediatric doctors decreased by 7.0% and the number of pediatric medical institutions fell by 6.3% during the 4-year period from 1990 to 1994. As the result of this decrease in the number of pediatric clinics or departments, each clinic or department now accepts a larger number of patients than before and therefore can spare less time for each patient. Thus, children can not receive adequate medical examination and treatment from doctors.

(3) Guidance in Medical Care and Nursing

272. For medical care of infants and young children, it is important to provide guidance in nursing to parents, grandparents or other persons taking care of children at home as well as providing guidance for medical care to the children themselves. However, such provision of guidance by doctors is not paid, under the current medical insurance system of Japan, as part of medical services. Moreover, a system for nurses specializing in pediatrics is yet to be established and the number of the professional staff who are able to give proper guidance in medical care and nursing is insufficient so far. Under such circumstances, the right of children

themselves, as well as parents and grandparents, etc. who take care of them to receive adequate guidance in medical care and nursing from doctors and other specialists, is not substantially guaranteed.

273. The standards of nursing which children receive when hospitalized were formulated in 1960 to be covered by the medical insurance system and the low level of these has remained the same ever since then. Hence, children are not given adequate nursing during their stay in hospital, with the result that the parents' attendance is inevitable. In some cases, it is the parents who are forced to give nursing of the kind that should rightfully be carried out by nurses, such as monitoring intravenous feeding. Meanwhile, under the Labor Standards Law of Japan, parents and other persons are not ensured leave for nursing. This raises a problem that parents can not easily take day-offs from work for the reason of nursing their children.

(4) Inadequate System Dealing With Contemporary Children's Diseases

274. Recently, children, especially those living in urban areas, start a busy life at kindergarten or lower grades of elementary schools studying hard and attending cram schools, etc. after school. Some children have problems even within their family such as disputes between parents. Although the number of children who are suffering from psychogenic disorders, bad physical conditions, autonomic imbalance, etc. has been increasing, there are almost no facilities open solely for children where they can rely upon consultation about their psychogenic diseases.

275. As for atopic dermatitis, from which many Japanese children suffer, it has a propensity that urban children are more prone to its serious condition. It is pointed out that the environmental pollution by car emissions, etc. is a possible cause, but not much has been done to solve such a problem.

(5) Emergency Medical Treatment Service

276. The system of emergency medical treatment services for children also differ depending on each local government. A night clinic or hospital designated for emergency is not available everywhere in the nation; a medical system, in which children who suddenly develop a disease can promptly and adequately be treated, has not been established.

2. Lack of Legislation System for Protection of Children from Parents' Unjust Rejection of Treatment Given to Children

277. When parents refuse to take sick children to the hospital for treatment or they do not allow their children to undergo a vital operation, it is often the case that no effective measure exists for securing treatment or an operation for the ill children.

278. Hospitals are not positive towards giving treatment to such children without their parents' consent, fearing that they may become involved in trouble or may not be paid medical fees. Under the present legislation of Japan, the only way to cope with such cases is for a third party to make a plea with a Family Court requesting the suspension of whole parental authority.

However, the right to make such a plea does not lie with the hospital. Although Child Guidance Centers are granted the right to make such a plea, they are hesitant to execute this right even in cases of typical child abuse, for the reasons that "it is unprecedented" or that "they do not want a hostile relationship with the parents," with the result that there are not many cases in which they have actually made a plea.

279. There should be a reform of the legislation system, under which children themselves,

their representatives designated by the Family Court, and hospitals are granted the legal right to make a plea to an order where judicial authorities can decide whether parents' rejection of treatment upon children is justifiable or not immediately after such pleas, and if decided unjustifiable, an order should be made by which children may receive treatment immediately.

280. Among cases of parents' rejection for medical treatment upon their children, there are those caused by the parents' religious belief, such as the rejection of blood transfusions by a Jehovah's Witness. It is requested that judicial authorities shall carry out a prompt and effective involvement with such cases as well.

3. Informed Consent to be Shared with Children

281. In Japan, the relationship between the doctor and the patient is not balanced in general, with the doctor being in an authoritative position to the patient. Even if the patient is an adult, he/she will not get full explanations from the doctor on treatments being received or on their medical conditions unless he/she does not show a strong desire to know. It cannot be said that the patient has the substantial right to choose the treatment he/she is given. This is even more true with child patients. There are hardly any ways taken to ensure that child patients get explanations on the contents of the medical treatment, which are given in an easy and kind way so that they can understand what is happening and that their opinions are taken into account during the process to decide on the contents of treatment given. In most cases, child patients receive an injection or medication without any explanation as to why. There are even medical professionals who thoughtlessly state in front of a child the disease contracted, believing that the child is too young to understand anything about such a disease. It happens that children are being informed about their diseases without taking into account the serious psychological negative effects on them.

282. Doctors who believe that the identification of the actual disease should be kept secret from the children when they suffer from critical or fatal diseases are in an overwhelming majority. However, the harder the adults around the child try to conceal the truth, the more sensitive the child will become to the situation. He/she may be suspicious and hesitate to express his /her desires in front of adults. As a result, the child may be deprived of an opportunity to take a positive stance as a patient receiving treatment. It should be possible in many cases for adults, including doctors, to trust the children and share the burden of unpleasant truth without excluding them and to let them go through the treatment process as the person in the subjective role. From this point of view, there are many things for revision about the way child patients receive explanations about their disease and the aims and contents of their ensuing medical treatment.

4. Access to Information and Education on Health and Support thereto

283. Children are barely provided with the information and education necessary for their sound physical development. The children who receive education on health may be able to prevent adult diseases later on. However, children are not sufficiently given the necessary knowledge required for a healthy habits such as the dangers of tobacco, alcohol and food additives, and what foods should be part of their daily diet in order to maintain health, and thus are left without knowledge for helping them prevent diseases when becoming adults.

284. Sex education is also insufficient and there are quite a few children at puberty who

undergo abortions. Education about the danger of paint thinners, stimulant or other drugs fall far short.

B. The Rights of Disabled Children

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1. "Prohibition of discrimination because of disability" and "the basic concepts and principles for dealing with disabled children" which are provided for respectively in Article 2 and Article 23 of the Convention should expressly be stated in the School Education Law, the Child Welfare Law, etc., moreover such laws shall provide the rights of disabled children and their parents.
2. The Committee of Guidance and Examination on School Entrance should involve the child in question and his/her parents in its decision-making process on which school the disabled child will enter, guaranteeing them an opportunity for expressing their opinions. The child and his/her parents should also be guaranteed an opportunity to file an objection against a decision if they are not satisfied with it.
3. For the purpose of attaining further integrated education, the curriculum, learning and teaching methods and suitable form of assistance for disabled children attending regular classes should be reexamined. It ought to be that the disabled children will not be refused from participation in school events including swimming lessons, sports meetings, school excursions, etc., nor will they be hindered from participation by making it a condition to the participation that they should be accompanied and assisted by parent(s) the whole time of participation.

4. Schools for disabled children should be located within the neighboring areas where the children reside and the schools which disabled children attend should be decided upon in a way that disabled children would not be separated from parents against their will. In case it is decided that they have to be separated, competent judicial authorities should review the decision and parents should be given an opportunity to express their views, before any official determination.
5. The Government should consolidate conditions including the appointment of specialists in addition to teachers, such as physical therapists, speech therapists, doctors and nurses at schools with disabled children so as to properly meet diversified needs of disabled children.
6. In order to guarantee disabled children the access to upper secondary education, the Government should take such measures as improving methods of entrance examinations and increase in capacity for high schools for disabled children.
7. The Government should secure job opportunities for disabled children, while instructing companies in the private sector and national and local governing bodies to fulfill the legislated employment ratio for disabled persons .
8. The Government should ensure that disabled children are not inflicted with any form of corporal punishment, cruel treatment or violence at institutions, schools, homes and other places to which they belong, and it should prohibit any imposition of compelled training for self-relianceagainst the will of disabled children.

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1. Introduction

285. The Government Report introduces in Paragraph 166 the basic ideas of the "Fundamental Law for People with Disabilities" that was enacted in December, 1993 ; i.e. "dignity as an individual", "independence", "participation in society", etc. Although the above mentioned Law is an improved version of the previous "Fundamental Law for Measures for

Mentally and Physically Disabled Persons ", it does not provide any specific Governmental policies that should be undertaken by a specific time. Unlike the Act of Disabled Americans (ADA, 1990) of the United States, this Law is yet to be perfected in terms of provisions which enforce the abolition of discrimination against disabled people, provisions on the rights of disabled persons and provisions which ensure disabled persons' participation in the political and administrative process.

286. Despite the importance of improving the present situation where measures are inadequate, as will be discussed later, and various violations of human rights are being committed under the term of "care" and "protection", the Government Report does not make any reference at all to such a situation, reflecting the Government's lack of understanding that the Convention on the Rights of the Child respects disabled children as well as non-handicapped children as being the subjects in the exercise of their rights. Article 2 of the Convention is the first international covenant that expressly prescribes the prohibition of discrimination against disabled people. Article 23(1) prescribes, from the viewpoint of the rights of disabled children, that they shall be guaranteed the right to "enjoy a full and decent life" in conditions that ensure their "dignity as individuals", promote their "self-reliance", and facilitate their "active participation in society". Article 23(2) and Article 23(3) approve special care as the right of disabled children and provide for the principles of aid in realizing it, presenting "individual development" and "integration into society" as the means and purpose of such aid. The Government Report, however, has no mention about these prescriptions. Even worse, Paragraphs 167 - 180 of the Government Report simply present an abstract explanation that various measures are being applied over a wide range of fields covering welfare, health, medical treatment, education and employment; not making any reference to the delayed implementation of these measures. The Government Report simply explains measures for disabled people in general, giving no explanation on concrete measures for disabled children.

2. Present Situation of the Discrimination Prohibited by Article 2 of the Convention

287. The Government Report takes the stand that it is unnecessary to revise the present legislation or implement new measures to go along with the prescription of Article 2 of the Convention which for the first time states that "disabilities" should not be a reason for discrimination. The Government Report, in Paragraph 49, asserts that all forms of discrimination by the state are prohibited, by citing domestic laws such as Article 3 of the Fundamental Law for People with Disabilities and Article 3 of the Fundamental Law on Education. However, these legislations do not make a clear statement on the prohibition of discrimination on basis of disabilities. Besides, in reality, such discriminations on basis of disabilities as mentioned below have occurred and continue to do so.

288. The following are judicial precedents: In 1992, a public senior high school in Amagasaki City, Hyogo Pref., would not admit an applicant with muscular dystrophy by reason of his disability (Next year, the Kobe District Court judged that the disqualification of the applicant for reason of his disability violated the law, and thus relieved the applicant of the school's decision). In 1991, a public junior high school in Rumoi City, Hokkaido, rejected a physically handicapped first grader from entering a regular class and arranged his enrollment into a special class against his will (In 1993, the Asahikawa District Court judged against the child, supporting the school's measure). In the upper secondary course of a Kanagawa prefectural school (high school) for physically and mentally disabled children, a student who was autistic

died during swimming training. The judgement delivered in the first instance by the Yokohama District Court was a totally unacceptable one as being one of clear discrimination against the disabled child, calculating his lost earnings due to death at a very low level based on the average income when working at a publicly funded enterprise for disabled persons, that is, ¥70,000 per annum (At the appeal at the Tokyo High Court in 1994, the amount of lost earnings was raised based upon minimum standard wages of about ¥1,050,000 p.a.).

289. There is also a case in which the Japan Federation of Bar Associations issued an advisory opinion in January 1997 to the Prefectural Board of Education stating that disqualification of a candidate by reason of his disabilities is not permitted. That case is as follows: In the selection of applicants for the part-time course of a prefectural senior high school in Saitama Pref. conducted in 1991, notwithstanding the rules for selection set by the Prefectural Board of Education prescribing that disabled children shall not be treated disadvantageously by reason of their disabilities, one applicant from a school for disabled children was not admitted to the course, because there was, in the report submitted by the school he came from, a false statement that he had obtained a handicapped status certification for his mental retardation, and other descriptions that might have caused the selectors to have biases or wrong prejudices.

290. In school education, severely disabled children are sometimes too easily suspended or exempted from attending school (In 1994, the number of children exempted from entering school was 379 and number of children suspended from going to school was 1,077. Both figures were increased from 341 and 95 in 1993 respectively). There is no end to cases in which a disabled child is forced to enter a school for mentally and physically disabled children, even if wishing to go to a regular school, or cases in which a disabled child is arranged to enter special classes against his/her wishes. Even when a disabled child is accepted in a regular class at a regular school as wished, he/she is likely to face various forms of discrimination in schools, such as being refused to participate in swimming lessons, sports meetings, school excursions, etc. making it a condition to the participation that they should be accompanied and assisted by parent(s) the whole time of participation. While the ratio of regular junior high students who go on to senior high schools was as high as 97% as of March, 1995, the ratio of graduates from special classes of junior high schools who went on to senior high schools was 70.7% and the ratio of graduates from the lower secondary courses of schools (junior high schools) for the disabled children who went on to senior high schools remained at 82.7% in the same year. As for disabled children who learned in regular classes of elementary and junior high schools, the doors to senior high schools are closed to them even if they wish to enter, because special classes are not available at senior high schools and selection is made mainly based upon scholastic ability, with the discriminatory result that they are not selected.

291. Under the current entrance examination system for senior high schools and colleges, in which selection is made mainly on scholastic ability, it is necessary to give at least some special considerations to disabled applicants, such as extended test times or to be accompanied by persons who may read questions aloud or write answers on behalf of them. But, such considerations are rarely given, with disabled applicants being virtually discriminated against.

292. As regards employment, the Law for Promoting Employment of the Disabled stipulates a specific ratio of the disabled persons in the work force (1.6% for companies in private sector and 2.0% for national and local government bodies). However, under actual circumstances, where the set ratio has not fully been achieved in companies of private sector, disabled graduates

from junior high and senior high schools have difficulty in finding jobs. Even if they get luckily employed, in most cases they are not assigned to work they wish for. Disabled children are not guaranteed under the law a minimum wage.

293. There exist a number of difficulties yet to be solved for the people with disabilities to live a social life smoothly, in terms of infrastructure such as the structures of buildings and transport for commuting. Cases occur of violation of human rights against disabled people such as infanticide by parent(s), including the ones accompanied by parent(s)' suicide, abusive treatment of them by parent(s) and the staff of institutions and schools, sexual abuses on mentally disabled persons, etc.

294. In Japan, such are the circumstances surrounding disabled children, that discrimination can be found everywhere and in every aspect of society.

3. Integrated Education

295. Article 23 of the Convention holds up, as the means and purpose of assistance extended to disabled children, their "social integration" and "individual development". The social integration is one form of embodying the idea of normalization which is a principle for treating disabled persons. The principle of integration, which pursues the possibility of reciprocal cooperation and collaboration through unifying handicapped people and non-handicapped people on all available occasions, requires an integrated education in the field of education.

296. "Standard Regulations Concerning Equalization of Opportunities for Disabled People", adopted at the 48th United Nations General Assembly on December 20, 1993, lay down, as fundamentals, the provision of equal educational opportunities to the disabled people within "integrated settings" throughout the course of education from elementary to lower and upper secondary school. By "integration", the Regulations do not mean the mere integration of the place of education which is called "dumping", but they give a clear cut vision of integrated education supported by "proper assistance services" such as the preparation of proper curriculum, teaching materials of high quality, continuous training of the teaching staff, provision of substitute teachers, etc.

297. The Government still holds up separate education as a principle and is not positive in approving integrated education. However, integrated education involving elementary, junior high and senior high schools should be realized in Japan.

298. When disabled children wish to enter regular schools, the Board of Education determines whether or not the said children fall under any category in the table of disabilities by degree set out in Article 22(3) of the Enforcement Regulation of the School Education Law. If they are categorized as disabled accordingly, then they are requested to go to schools for disabled children designated by the Board of Education, against their own and their parents' will. As a result, many children and their parents feel they have been discriminated against by reason of such disabilities. Even if disabled children are admitted into regular schools, principals of these schools often force them to enroll in special classes, for the reason that they cannot achieve effective education if they allow disabled children to learn among other students with no disabilities or that installation of the required facilities costs too much; showing how much they are negative in regards to integrated education. Moreover, even if disabled children are admitted

into regular classes, they are often left without attention, with the result that they face problems such as non-advancement in scholastic abilities or being bullied. For instance, they are actually rejected from participation in such school events as swimming classes, sports meeting, school excursion, etc. or they have special conditions imposed for admission such as parents' accompanying and helping them throughout these school activities. Even if the requests for provision of educational services that meet the respective individuals' actual state of disability are made (ex. attending care, additional teachers, braille texts, etc.), these are turned down for financial reasons. In many cases, disabled children are not provided with the educational services as mentioned above which are merited. There are even cases in which principals and teachers recommend moving out to special classes or schools for disabled children, believing that disabled children are trouble to them or will disturb other children's study.

299. The guidance given by the Committee of Guidance and Examination on School Entrance under the Board of Education when determining the schools which disabled children enter, should follow the principle of "agreement and consent". To realize this, parents having full knowledge of the pupils and students who fall under special educational measures should be guaranteed an opportunity to express their opinions when necessary and the procedures through which they are able to raise an objection against the decisions made by the Committee should be clearly set out. It is also necessary to establish a system which guarantees disabled children and their parents access to the records on health examinations conducted upon entering school and on the assessment of admission.

300. The health examination conducted upon entering school under Articles 4 and 5 of the School Health Law is very likely to be utilized as a means of screening disabled children for sending them to schools for disabled children or special classes. There are schools that impose physical checkups upon disabled children as a compulsory procedure or reject students who decline to take it from entering regular classes.

301. Even when a disabled child is admitted into a regular class, no specific studies are conducted on what he/she should learn, what learning and teaching methods are to be adopted and what assistance is to be provided. It is necessary to establish and improve various measures for providing care to such children, including the assignment of assistant teachers, which is the minimum necessity; at least appropriate staff should be placed and various care should be implemented. However, under present circumstances, disabled children in regular classes are simply neglected, as reflected in the fact that the Ministry of Education has not even collated any statistics of disabled children learning in regular classes, which means the disabled children in regular class are unattended.

4. Special Education System

(1) Classes for Disabled Children

302. It is provided for, under the ordinance and for the benefit of class operation, that children with disabilities to a "light degree" are admitted into special classes. However, in reality, teachers of special classes are facing difficulties when they have to educate and instruct disabled children who differ from one another greatly in terms of learning achievement levels, life experience and behavior patterns within the same classes. There is a demand for the consolidation of the educational environment including a flexible formation of special classes, opening special classes for children "with multiple and serious disabilities", assigning a plural

number of class teachers to special classes and posting specialists other than teaching staff such as physical therapists and nurses to special classes.

303. It is so often the case that teachers in charge of special classes all change over a period of several years, or that teachers of special classes who have improved their skills and knowledge as specialists for education of disabled children are forcibly transferred to regular classes without regard to their own wishes. The school authorities routinely execute personnel changes in which the specialty of educating disabled children is extremely underrated.

304. In order to conform to the spirit of Article 3(3) of the Convention, posting qualified teachers to special classes should be given priority over routine personnel change or exchange of personnel against the teachers' wishes. For the training of teachers, it is necessary to build up an integrated cultivation and training system by establishing a total relationship of cooperation through the educational administration, colleges and special classes.

(2) Schools for Disabled Children and Other Schools for Special Education

305. As the disabilities of pupils and students being educated at schools for disabled children have recently become diversified and their extent of ability has been more serious, it is necessary to consolidate conditions, including the posting of specialists to those schools such as physical therapists, speech therapists, doctors and nurses, so that each child can individually receive a proper care with due concern to the disability.

306. Since the number of disabled children who go to schools for disabled children is small per area, the school districts for disabled children are inevitably extended with the result that many pupils and students are obliged to go to schools located quite far from their residences. Some of them are forced to go long way to school by bus or to live at a dormitory away from parents. In those cases, children's physical and mental burdens as well as their families' burden become significant, while families' economical burdens are also become heavier. Schools for disabled children and other schools for special education should be founded within the localities where the children live.

307. When children have no choice but to stay at a dormitory, they are sometimes, as a result, separated from parents against the parents' wishes. In the case that a child is advised to go to a school for disabled children or school for special education and that such a designated school results in a child being separated from parents against their will, the judicial review of the case should be guaranteed before it is finally determined and the parents should be given an opportunity to participate in the procedures and express their views in accordance with Paragraphs 1 and 2 of Article 9 of the Convention.

(3) Upper Secondary Education

308. When disabled children wish to go on to a senior high school, they are required to go through the same selective processes as non-handicapped students and get enrolled into regular classes. Therefore in many cases, disabled children, especially mentally handicapped children, have not succeeded in entering a senior high school, although the percentage of non-handicapped children who go on to a senior high school is currently as high as 97%. Even if they are successfully admitted, most of them are not allowed to go on to higher grades because of their failure in acquiring the necessary credits.

309. The senior high schools for disabled children serves as the institution for accepting disabled children wishing to receive higher education, including those currently attending regular classes and special classes of junior high schools. However, since the number of such institutions as well as their capacities are definitely insufficient, there are many applicants who do not get admitted.

310. It is strongly requested from disabled children and their parents that all physically or mentally handicapped children wishing to apply for entrance to senior high schools should be admitted to wherever they wish to go. This demand, in the light of the spirit of Article 23 and Article 28(1) (b) of the Convention, doesn't just mean a request that upper secondary education should be made "available and accessible to all children, including disabled children" but reflects a more positive and creative point of view that disabled children need even more ardently an extended education term in addition to a compulsory 9 years education; therefore, all disabled children who wish to receive upper secondary education for 3 more years should be admitted to facilities accordingly (placing this in a sub-compulsory status).

311. Disabled children should be guaranteed the right to a long-term and thorough education because they bear a handicap of disabilities.

(4) Promotion of School Attendance and Financial Assistance

312. "The Law Concerning the Promotion of Attendance of Disabled Children to Schools for Children with Visual Impairments, Schools for Children with Hearing Impairments and Schools for the Otherwise Handicapped" provides that the national and local governments shall bear part or all of the expenses for textbooks, school lunches, travel to school and home (inclusive of expenses of accompanying person), boarding accommodation, school excursions and school supplies. However, such financial assistance is not sufficient. In addition, the recipients of this educational assistance are confined to disabled children enrolled in schools for children with visual impairments, schools for children with hearing impairments and schools for the otherwise handicapped. Those who attend regular classes and special classes of regular schools are excluded from being qualified recipients.

(5) System of Special Guidance for Disabled Children Enrolled in Regular Classes

313. In 1993, the Government introduced a system which allows disabled children in regular classes to attend other special classes to receive special guidance, which is called as "Class Exchange System". However, it is a problem when the schools at which disabled children are enrolled do not have special classes, they have no choice but to go to schools with special classes a good distance away.

(6) Education through Personal Visitation

314. There is a home-visit education system available for disabled children who are not being able to go to school, under which teachers visit homes of disabled children, hospitals and other institutions where disabled children are receiving care to give them education and guidance.

However, due to the Government's appropriation of the budget such system is generally available to the home-visit education at compulsory levels only. The provision of continuous home-visit education after compulsory education is left up to the policies of respective prefectures, with the result of differing availability in respective prefecture. Most disabled children who used to receive home-visit education are not guaranteed access to education of high school level.

315. As regards the contents of the home-visit education, the lesson is only given "for 2 hours twice a week ", that is less than one seventh of the average total class hours given during the 9-year compulsory education. The rights of disabled children to education is thus violated.

(7) Preschool Children

316. Institutions admitting preschool children with mental and physical disabilities on a daily basis, which are not required to meet the same standards set by the Law concerning Arrangement of Classes and Quota of Teachers in Public Compulsory Schools, are entitled to a subsidy on

condition that they shall employ 3 staff members for every 20 children. As for institutions for nursing and medical care, there are only minimum requirements set as to the kind of the staff members to be employed, but no standard is set under any laws or regulations as to the number of the staff members. There are serious defects with these institutions as bodies with a public nature, in the light of Articles 3, 4 and 23 of the Convention. The number of institutions where preschool children with disabilities receive nursery care and rehabilitation is not sufficient and there exist differences among various areas. There are many of these institutions where extra staff for nursery care have not yet been employed. The provision of free education, health and social welfare services to infants and young children with disabilities should commence at the younger age than for non-handicapped children.

(8) Ill and Sick Children

317. It is a fact that children of school age who have been absent from school for a long time due to their maladies are left alone without actual opportunity for education. It is necessary that classes in the hospital are instituted in the pediatric wards of a certain scale and larger.

318. Ill and sick children account for more than half of the children who are suspended or exempted from attending schools by reason of disabilities. Out of those ill and sick children, those needing medical treatment are often given the opportunity for education through personal visitation. Consolidation of the integrated services in order to protect the life and health of all children who need visiting education, including those suspended and exempted from attending schools, is a problem to be promptly and successfully solved.

(9) Welfare

319. As a basic viewpoint of welfare for disabled persons, improvement on a personal level, that is "overcoming one's disabilities", is still of importance, although the necessity of "social reform" has gradually been gaining attention. As the policy for the social welfare of Japan is structured upon separatism, institutions and services are not provided to disabled persons in a way that can integrate their social life. Children who live or attend institutions for disabled children are separated from other children and the communities. In addition, the nursing time for them is shortened due to the insufficient conditions including shortage of nurses and they are hampered from participating in various events.

320. The institutions for nursery care and rehabilitation and the contents of such services differ from region to region. Nursery programs for after-school hours, public holidays and long vacations are not available with a result that many disabled children of school age have no choice but to stay home.

321. Disabled children admitted into the institutions for handicapped children have their life restricted by rules and are treated in an inhumane way by the staff through reasons of staff shortages. For example, they are not guaranteed the right to express their own views as to the execution of parental authority by the principal of institution. In institutions, the right to freedom of peaceful assembly is not recognized, nor freedom of action and rights to privacy. In some institutions, students are coerced into training for self-reliance by physical and mental violence.

(10) Occupation

322. The "Fundamental Law for People with Disabilities", which was revised from the "Fundamental Law on Measures for Mentally and Physically Disabled Persons", was enacted in December, 1993. Article 14(1) of the revised Law prescribes that for purposes of disabled persons becoming engaged in proper jobs suitable to their respective abilities, national

government and local public bodies shall take various necessary measures such as the provision of vocational guidance and training and introduction of jobs corresponding to the type and degree of each person's disability. Currently, the number of disabled persons who have access to such vocational guidance and training remains comparatively very small, because the number of institutions and their capacities are limited. Especially persons with disabilities of advanced degree and multiple disabilities, who can only be employed in small scale workshops, are often cut off from opportunities for such guidance and training.

323. The minimum employment rates set by law for persons with disabilities remain low (Japan-1.6% for private sector and 2% for public sector, Great Britain-3%, Germany-6%, France -10%) and their wages are low as well (¥2,000/day, ¥30,000 plus several thousand yen/month). There are companies in the private sector who choose to pay penalties rather than employ a quota of disabled persons and the legal employment rate for disabled persons is ignored more by large companies. Even the national and local governments have not achieved the legal employment rate (Non work-site operation -2% and work-site operation-1.9%).

The Government must secure the job opportunities for disabled persons and instruct companies in the private sector and both national and local government bodies to observe the legal employment rate for disabled persons.

5. Corporal Punishment, Bullying and Abuse

324. Article 23(1) of the Convention mentions expressly the assurance of "dignity as individuals" and promotion of "self-reliance" for mentally and physically disabled children. However, in Japan, self-reliance is still not interpreted from the viewpoint of the rights of disabled children but regarded as if it is a condition for adjusting themselves to society. Accordingly, the right of disabled children to make their own decision is often violated at institutions, schools and in homes. Imposed and enforced training for self-reliance is often conducted under the threat of corporal punishment and in the worst cases by use of force and the infliction of violent treatment. Article 19 of the Convention prohibits all forms of abuse against children. And now bullying, mental and physical harassment to specific children, can be found in schools and institutions and present a social problem (Detailed in the part on bullying). Many of victims are disabled children.

6. General Rights

325. The Convention ensures children of all kinds of rights covering all aspects. As a matter of course, children with disabilities are also ensured of their rights covering all aspects. It demands that children with disabilities shall be even more considered than non-disabled children because of their handicaps. The Government must guarantee children as being the subjects in the exercise of their rights, the rights to education, medical treatment, welfare, etc. and must consolidate conditions to such an extent that those rights can be exercised. The Government Report makes no reference to this point.

C. Social Security and Provision of Services for Child Care (Article 26 and Article 18(3))

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1. Wholly or partly subsidized medical examinations and treatment for infants and toddlers which are now available only in some prefectures should be introduced in all prefectures across Japan.
2. Provision of educational assistance to long-term patients which is now confined to tuberculosis patients, should be extended to all patients suffering over an extended period of time regardless of the type of diseases.
3. The Child Allowance Scheme should be consolidated by raising the amount and loosening conditions for qualified recipients, etc.
4. In relation to the Child Rearing Allowance Scheme, the following revisions should be made.
(1) The provision that a payment of the child rearing allowance to children born out of wedlock is discontinued upon paternal acknowledgment should be revised so that those children can continuously be provided with a child rearing allowance even after paternal acknowledgement.
(2) The provision that children of divorced parents are suspended from providing with a child rearing allowance when their father's annual income surpasses a level set by the Government should be abolished.
(3) Children of motherless households who are excluded from being qualified recipients under the existing law should be paid a child rearing allowance.
(4) The provision that the child rearing allowance shall not be provided unless the application is made within 5 years after the conditions for the provision of the child rearing allowance have been met, has no rational grounds and should be abolished.
5. In relation to day-care centers, the following improvements and revisions should be made.
(1) Children who are admitted to day-care centers should not be limited to those children both of whose parents are working during the day. The availability of day-care centers should be extended to children under other conditions, e.g. children whose mothers are suffering from mental stress due to pressure of child rearing and cannot take care of them.
(2) To improve the present situation in which many children applying for admission to day-care centers cannot gain admission because of a shortage of day-care centers, the number of day-care centers should be increased.
(3) Provision of nursery care service for newborns under the age of 1 and extended-hour nursery service programs by local governments should be promoted in order to improve the situation in which "Baby Hotels" and other facilities which are not under adequate administrative supervision are being widely employed.
(4) The ratio of subsidy borne by the Government for nursery care services for newborn babies less than one year old and extended-hour nursery service programs should be reversed to their former 80% from the current 50%. In addition to this, the standards of employing personnel that are the basis of calculation for subsidies should be reexamined to match the actual needs.
(5) Nursing fee borne by parents should be limited to costs of materials for meals and nursery care.
6. Operation of after-school child care centers, which are used as facilities to take care of children after regular school hours and during long vacations such as summer holiday, are not supported by clear legal grounds. Therefore, there exist a big differences in terms of availability and quality among the varying areas. Now that circumstances surrounding children are becoming increasingly worse in Japan, children should continually be guaranteed child rearing services under a public program after entering elementary school. In order to attain this, the after-school child care program should be recognized under law as being just as legitimate as the

day-care center program.

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1. Introduction

326. With regard to national support for child rearing, the Government Report mentions that the Government provides various benefits in the fields of welfare, medical treatment, health and education under the Child Welfare Law, the Social Welfare Enterprises Law, the Child Allowance Law, the Child-Rearing Allowance Law, the Law on Provision of Special Child-Rearing Allowance and Other Allowances, the Maternal and Child Health Law, the Local Health Law, the Medical Treatment Law and the School Education Act.

2. Medical Security

(1) National Health Insurance Scheme

327. With regard to medical security, all persons living in Japan, including children, are required to join the national health insurance scheme. With some local governments, medical examinations and medical treatment of infants and toddlers are already being provided free of charge or with a subsidy from local governments responding to the requests from the residents. This program should be available in all Prefectures of Japan.

(2) Learning Assistance to Child Patients under Long-Term Medical Care

328. Presently this assistance is only provided to children suffering tuberculosis. However, taking into account that patients receiving medical treatment over an extended period of time are not limited to tuberculosis patients and that long-term patients with other diseases are currently on the increase, a system should be formulated so as to ensure support to all long-term patients without any distinction as to type of diseases.

3. Income Security

(1) Child Allowance Scheme

329. As the amount of the child allowance, ￥5,000 per month for the first and second child respectively and ￥10,000 for the third child, is too low, it should be raised considerably. Besides, as qualified children are limited to those under the age of three, the term of allowance is too short. There is also a problem that the income requirement is too severe.

(2) Child Rearing Allowance Scheme

330. Under the existing system, children born out of wedlock who are not acknowledged by their father are provided with a child rearing allowance regardless of whether their mother or a guardian is receiving money for maintenance of children from their father. However, the provision is discontinued when these children are acknowledged by their father, and it only resumes when their mother has not received maintenance for bringing up children from their father for a period of one year.

331. This is unfair when compared with children who become fatherless due to their parent's divorce because they are provided with the child rearing allowance continuously regardless of whether their mother is receiving maintenance for bringing up children from their father. Therefore, the provisions (Statement in parentheses of Article 1-2 (3) of the Enforcement

Regulation) stipulating the discontinuance of the allowance to acknowledged children born out of wedlock should be revised so that they become entitled to benefits even after they are acknowledged by their father.

332. There is a provision stipulating that children of divorced parents are provided with the child rearing allowance on condition that their father's annual income does not exceed a specific amount. However, no specific amount has been set presently and the limitation of provision depending upon father's income has not been implemented so far. If the Government sets a certain amount as a condition for the provision of allowances in the future, such provision will depend upon the father's income. However, a father earning a high income does not necessarily pay child support, and a system to ensure payments of the child support has not yet been established.

333. On these grounds, the provision stipulating the limitations of provision for the child rearing allowance dependent upon the father's income should be abolished.

334. Furthermore, motherless households are excluded from being qualified recipients. Because the child rearing allowance is provided in order to ensure children's rights to sound growth and development, children of motherless households should rightfully be included in those qualified for the child rearing allowance.

335. As regards the child rearing allowance, there is a provision setting income requirements for a mother who cares for and rears children. However, in Japan, the average income level of a female worker is only about 50% that of a male's. Although about 80% of families which are fatherless due to parent's divorce have currently fallen under the qualified recipients of the child rearing allowance, this doesn't mean that they are guaranteed a satisfactory life such as economic stability and independence. In order to solve this problem fundamentally, the women's labor issue in Japan must be approached and rectified. For the moment, however, as the Child Rearing Allowance Scheme is playing an important role in the economic independence of fatherless families after divorce, improvements, such as higher allowances, loosening of the income level requirement, revision of the system for confirmation of actual income, must be sought.

336. There is also a rule that the child rearing allowance will not be provided, in principle, if the application is not made within 5 years after the conditions for provision of the allowance have been met. There are some eligible persons who have not even been informed of the availability of this Scheme. This rule has no rational grounds and consequently should be abolished.

4. Provision of Services for Child Rearing

(1) Day-Care Centers

337. Paragraph 200 of the Government Report states that "Municipal governments are responsible for admitting children to day-care centers in cases where it is recognized that neither parents (guardians) nor other family members can take care of the child because the parents are normally at work during the day."

338. First of all, conditions for admission of children should be applied flexibly so that day-care centers are available also for children such as the child whose mother has temporarily become incompetent to give proper care because of mental stress due to child rearing.

339. Secondly, it is provided for in Article 24 of the Child Welfare Law that "the child shall be protected by other appropriate means in cases where no day-care center is available in the neighborhood or circumstances compel so" with the result that the municipal governments' responsibilities to admit children at day-care centers are lightened. Due to this situation, the

number of day-care centers is actually facing a shortage in Japan. Many children who apply for admission to day -care centers cannot be admitted (children go on to a waiting list). Their number reached 43,645 as of October 1, 1995. Among this number, infants under 1 and toddlers between the ages 1 and 2 are especially numerous, reaching 11,597 and 20,251 respectively.

340. In response to the diversified needs of working parents, day-care centers provide nursery care for new born babies less than one year old and an extended-hour nursery care service program so as to make up for the difference between the parents' working hours and the day-care centers' operating hours. In reality, however, the ratio of public day-care centers operated by municipal governments which are actually providing nursery care for new born babies and extended-hour nursery care service is very low, showing 19.2% for provision of nursery care for newborns and 2.8% for the provision of extended-hour nursery care. Because of this actual situation, "Baby Hotels" and other private facilities, which are not under adequate administrative supervision, are widely used. It cannot be said that children are guaranteed adequate assistance for sound growth and development.

341. The reasons why the child rearing services for newborns and children of a very young age are far from commensurate with child-rearing needs and why the extended-hour nursery care service has not been provided sufficiently are as follows:

The national government bears only 50% of the subsidy. Besides, as the subsidy itself is calculated based on a fewer number of personnel than actually necessary for providing an adequate child rearing service, municipal governments must bear a large financial burden trying to provide adequate services. Therefore it is necessary to reverse the percentage of national subsidy to its former 80% from present 50% and to make the staffing standards on which the subsidy is calculated commensurate with actual demand.

342. Currently, nursery fees are collected from guardians depending on their income level. The percentage of nursing fees of the household's income reached 8-10% in the case of households earning more than the average estimated annual income, giving a heavy burden to these households. The nursing fee borne by parents should be limited to costs of materials for meals and materials for nursery services.

343. The Amendment to the Child Welfare Law, which passed the Diet on June 3, 1997, is likely to make the stated problems more serious and worsen the provision of publicly-funded nursery care to children who are not receiving sufficient and proper parental care, creating a far worse situation not conforming to Article 18(2) and 18(3) of the Convention.

344. First, under the former law, it is stipulated that provision of nursery care shall be applied to all cases in which "it is recognized that children are not presently receiving sufficient and proper parental care they deserve". However, the Amendment adds one more condition that is "upon application by parents".

345. Secondly, under the former law, it is stipulated that nursery fees shall be levied "according to parents' ability to pay". However, the Amendment revises this to "the amount set in proportion with the age of the child and other factors", only mentioning that "its effect on the household economy shall be considered", with the result of lifting restrictions for increase of nursery fees which are already controversial as a heavy burden. The Amendment may restrict the use of public nursery care services and encourage the guardians' inevitable reliance on so called "Baby Hotels" which do not meet standards of health and safety.

(2) After-School Child Care

346. Paragraph 209 of the Government Report touches only briefly upon the After-School Child Care Program. In Japan, after-school child care centers have been provided for about 30 years as facilities similar to day-care centers where mainly children from the first to the third

grades of elementary school are under care during after-school hours and long vacations such as the summer break.

347. Although this program was given legal grounds by the Amendment to the Child Welfare Law, its availability and quality greatly differ from area to area. Now that the circumstances surrounding children are worsening in Japan, children after entering elementary school should continually be guaranteed child rearing services under a public program, which will also conform to the spirit of Article 11(2) (c) of the Convention on the Elimination of All Forms of Discrimination Against Women.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education and Educational System in Japan

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1. Places of education should not be limited to schools, but alternative forms of education such as home-based education should be approved.
2. Children who choose home-based education should be approved as having completed compulsory education, thus entitling these children to receive education at high school.
3. In view of the fact that the percentage of children entering senior high schools as places of upper secondary education has reached 97%, it should be considered making upper secondary education free of charge.
4. In schools of compulsory education, measures should be taken to minimize the economic burden of parents, with regard to expenses for education including supplementary learning materials and commuting to school.

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1. Introduction

348. Education in Japan is carried out by means of children attending schools, and high attendance rate and provision of physical surroundings, such as school buildings, have externally accomplished. But, children living in these surroundings are thought to be tired and listless.

349. In Japan, as the number of university graduates increased as the result of expanded educational opportunities during rapid economic growth, the "school status" or the ranking of the educational establishment one graduated from affects employment and social evaluation. Because of this, universities are being graded more and more strictly, and so are lower and upper secondary schools based on the number of students entering upper graded universities. As graduates from upper graded universities tend to be employed by major corporations and government departments, students have been studying amid at severe entrance examination conditions over a long period of time. In recent years, this entrance examination battling involves younger and younger children taking entrance examinations for junior high schools and elementary schools. Consequently, many elementary school pupils study at cram schools called "**juku**" after school until late at night; being deprived of time for play or even sleep. Under such circumstances, children are building up stress, which is considered to be one of the factors that cause bullying (this will be discussed later). Such a situation makes it difficult to implement the education as stipulated in Article 29(1) (a) of the Convention on the Rights of the Child. It also infringes upon the rights of the child to rest and leisure, cultural and artistic activities and to recreational activities as stipulated by Article 31 of the Convention.

350. The Government Report describes the situation of education in Japan in Paragraph 215 and thereafter. But, it deals with formal education at schools only. In Japan, since 1872 when the educational system was first established, places of education had been concentrated at schools and a monopoly of education by school authorities has been promoted. Such a system has not only been maintained but also strengthened under the present Constitution. Children are forced

to receive education at schools and education at non-school sites is denied. In addition, education at schools, including private schools, is required to use authorized textbooks and follow the "Guidelines of Instructions for Study" issued by the Ministry of Education. Thus, the state intervenes with the contents of education, imposing certain restrictions on freedom of education. As a result, alternative forms of education, such as home-based education, have not yet been approved, even now in Japan. On the other hand, school education has expanded, producing various ways in which the human rights of the child have been violated, as will be discussed over the following sections.

2. Non-establishment of Home-Based Education in Japan

(1) Differences between "Home Education" in the Government Report and So-called Home-Based Education

351. In Japan, when a child elects to be educated at home without attending a school nor any non-school facilities specified later (VII-D 1 (2)), such education is not yet approved as so-called home-based education.

352. Paragraphs 115 - 121 of the Government Report refer to the rearing or disciplining of the child by parents or legal guardians as "**katei kyoiku**", being educated at home, which is translated as "home-education" in the English. But, this is totally different from the so-called home-based education (home education), and therefore must be read with caution.

353. Home-based education is widely approved by many countries around the world, including Great Britain, the United States, Canada, France, Holland, Spain and Belgium; Article 29(2) of the Convention being based on this wide prevailing practice. But, in Japan, even after ratification of the said Convention, negative attitudes towards so-called home-based education, i.e. a child receiving education at home without attending school, have not changed. This is because educational administrative authorities are forcing children to receive education at schools, adhering to a position of not giving approval for any education at non-school sites, including education at home under parental guidance.

354. The Constitution of Japan guarantees children the right to education but does not impose any obligation for children to attend schools. It requires parents to ensure that their children receive general education, but does not limit the site of general education to schools. Under the Constitution, parents can fulfill the obligation of having their children receive general education not only by sending them to school but also by educating them at home or at other appropriate places. Parents are entitled to a wide freedom for education and can choose the places and methods of education so long as they meet the best interests of the child. Therefore, it should be recognized as the right of the child and parents to choose education at home besides school education.

(2) Situation of Home-Based Education in Japan and Guarantee of Opportunities for Higher Education

355. Recently in Japan, quite a number of children do not attend school but stay at home. This has been triggered by the negative aspects of school education, and the number of such home-educated children is increasing each year. Among these children, those who choose home-based education are also increasing. However, even when children and their parents have chosen home-based education, schools they should be attending are designated and school attendance is urged, whereas their achievement and development through education at home is not evaluated at all, creating pressure and distress to the children and their parents.

356. Moreover, some children who have chosen home-based education are not approved as

having completed compulsory education. In Japan, unless "compulsory education" is completed, the right to access upper secondary education is not granted. In addition, without the educational background of senior high school graduation or higher, employment opportunities are extremely limited in Japan. Children who have chosen home-based education should also be approved as having completed their compulsory education by fully receiving general education at home so that they will be able to enjoy the right of receiving upper secondary education. In addition, it is necessary to re-examine the entire current school education system which makes completion of compulsory education an absolute requirement for going on to higher education.

357. Even under the current school education system, it is stipulated that in compulsory education at elementary and lower secondary schools, the principal may give an approval for advancement to the next grade or for graduation by evaluating "daily performance" and the number of attendance days or results of tests are not specified as requirements for such approvals. Therefore, with regard to children who have chosen home-based education, the principal should give an approval for advancement to the next grade or for graduation without considering the number of school attendance days from the standpoint of the children's best interests, exercising his/her discretion in a manner that enables the children to enjoy their rights to receive higher education.

3. Free Education

358. Article 28(1) (a) of the Convention stipulates that free primary education shall be available to all and Article 28(1) (b) stipulates for secondary education that free education shall be introduced and that appropriate measures, such as the provision of financial assistance, shall be taken when necessary.

359. The Government's interpretation of this Article is that "primary education" means education at elementary schools and at elementary sections of schools for children with visual or hearing impairments or other disabilities and "free" means not taking fees for tuition. Regarding "secondary education", the government interprets that the Convention sets out the introduction of free education simply as an example of ways and does not specify the introduction of free education as the Government's obligation. And, on the grounds that lower secondary education is compulsory and free in Japan and that financial assistance (educational scholarships, scholarships for encouraging attendance, grants to ordinary expenses at private schools, reduction or exemption of tuition fees at public schools, etc.) is provided when necessary at upper secondary schools, no contradiction to the Convention is mentioned in the Government Report.
Upper secondary (High School) education is not compulsory in Japan, and tuition fees are required for attending high schools, both in private and public schools. As Paragraph 218 of the Government Report admits, the percentage of children entering high schools has reached 97% as of 1995. It is therefore safe to say that upper secondary (high school) education has become virtually compulsory and therefore, a process should be commenced for making such higher education free of charge.

360. With actual school life at elementary and junior high schools, although tuition fees are not collected, parents are obliged to spend considerable amounts of money every month as expenses for school lunches, learning materials, etc. Even at public elementary and junior high schools, where education is supposed to be provided free of charge, expenses for education borne by parents are quite huge, putting severe pressure on family finances. Even some items which should be covered as public expenses are paid for by parents.

361. For example, although textbooks are provided without charge at elementary and junior high schools, constituting compulsory education, students need writing implements, notebooks, etc. when attending classes. In Japan, however, even these indispensable basic items have to be bought by the students. Instruments for music classes, materials for art classes, school-specified for physical education, school-specified slippers, and uniforms (costing hundreds of dollars) which are demanded and specified by almost all junior high schools forming part of compulsory education - all of these expenses have to be borne by the families of pupils and students. If a student does not purchase the specified uniform and footwear and chooses to wear personal items, this constitutes a violation of school rules for which the student may be subjected to disciplinary actions.

362. In addition, in Japan, few schools conduct classes solely using textbooks, and pupils and students are required to buy various supplementary learning materials, such as quiz books and reference books. Classes are carried out using these supplementary learning materials and performance evaluation is made on the assumption that they are being used. Therefore, pupils and students have no choice but to purchase them.

363. The School Education Law provides that "useful and appropriate" supplementary learning materials "may be used" in schools, including elementary schools (Articles 21, 40, 51 and 76), but in practice all schools with no exceptions use such learning materials.

364. According to the questionnaire survey on parents in Tokyo, conducted by the Administrative and Finance Survey Team in the Educational Information Section of the Tokyo Metropolitan Government's Education Bureau, education expenses at public schools borne by parents are as follows (in the academic year of 1996):

a. Annual expenses for education (expenses for school education, supplementary learning and private lessons)

High school	¥457,375
Junior high school	¥532,390
Elementary school	¥343,212

b. Annual expenses for school education (tuition fees at high schools, various membership fees, expenses for school lunches at elementary and junior high schools, and expenses for learning materials, commuting, items needed for commuting and school supplies)

High school	¥276,389
Junior high school	¥146,785
Elementary school	¥92,759

c. Payments to schools (tuition fees at high schools, various membership fees, expenses for school lunches at elementary and junior high schools, expenses for learning materials and reserves)

High school	¥160,736
Junior high school	¥80,959
Elementary school	¥58,301

365. Regarding the above costs, parents felt as follows:

366. For high schools, 11.5% of the respondents felt (a) seriously burdened, and 33.1%

(b) slightly burdened. For junior high schools, the percentages were 29.2% and 38.6% for (a) and (b) respectively, and for elementary schools they are 12.3% and 41.8%for (a) and (b) respectively.

367. Items which are felt as heavy burdens are, for high schools , "temporary expenses such as entrance fee" (37.4%) and "payments to school" (59.7%). For junior high schools, "expenses for cram schools, tutors, and correspondence lessons" were at the top, accounting for 64.6%, followed by "payments to school" (30.8%). For elementary schools, "tuition fees for private lessons" accounted for 58.2% and as many as 13.9% of the parents felt that payments to schools pose a severe burden.

B. Corporal Punishment

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1. An public system should be established under which children and parents can report cases of corporal punishment and request a remedy.
2. The Government should take concrete measures for enlightenment and guidance to eradicate the prevailing mentality of condoning corporal punishment which still exists among parents and teachers.
3. Children and their parents should be guaranteed a right to demand disclosure of information and demand corrections in regard to any corporal punishment given to the children.
4. Concrete measures should be formulated to make teachers inflicting corporal punishment subject to strict disciplinary action and criminal punishments appropriate for such acts and impose on them civil liabilities for damages

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1. Corporal Punishment at Schools in Japan

(1) Introduction

368. Corporal punishment originally means disciplinary punishment given to children when in violation of school rules or breach of teachers' instructions. In Japan, however, it is a commonly observed that teachers use violent actions against children whether or not reasons for such discipline exist.

369. In Japan, corporal punishment is prohibited by law under Article 11 of the School Education Law. But, corporal punishment which is illegal is rampant, and no effective measures are being taken against it.

(2) Incidents of Corporal Punishment Reported by the Ministry of Education

370. The Ministry of Education releases, every year, a document entitled "Present Situation of Various Problems Related to Student Guidance and Measures by the Ministry of Education". This document contains the number and types of corporal punishment incidents reported by principals to their respective Boards of Education as cases of corporal punishment. However, whether to report a case of corporal punishment to the Board of Education is left to the discretion of individual principals, with no specific standards to follow. As reports by principals are the only source, even when corporal punishment is carried out, principals often do not report this unless the student suffers serious injuries or unless the student or his/her parents make a complaint. In addition, the figures released by the Ministry of Education only contains cases for public schools, and excludes cases at private schools, and therefore these figures must only represent the tip of an iceberg.

371. In 1994, the number of teachers who were sanctioned under the Public Servant Law for their involvement in corporal punishment was the largest over the past 16 years, with 70 teachers being subject to disciplinary actions and 316 teachers to admonition, etc. In the same year, 865 corporal punishment cases took place at elementary, junior high and high schools in Japan, victimizing as many as 1,472 children. It is noteworthy that about 30% of these children were elementary school pupils under 12 years of age. Regarding the form of corporal punishment, "slapping or striking with an open hand" was the greatest, accounting for 60.1%, "beating and kicking" accounting for 20.3%, "hitting with a stick or other weapons" for 6.3% and "throwing

down or causing to fall down violently" at 1.3%. Dangerous punishments were often inflicted. As for injuries suffered, although 60% of the cases did not involve injury, 18.3% caused apparent injuries, such as damaged bones, sprained limbs, damaged eardrums and surface wounds.

(3) NHK Survey in 1985

372. In 1985, NHK (public service broadcaster) conducted a questionnaire survey on corporal punishment to teachers at public junior high schools all over Japan. According to the results, 62% of the teachers answered that they had carried out corporal punishment during the previous year. Out of these, 77% believed that the corporal punishment they had given was justified. In addition, teachers who were positive about corporal punishment, i.e. those who believed that it was necessary or that it was sometimes better to use it, were as many as 48% of the total. Even when corporal punishment resulted in injury of the student, 70% of the teachers took no action. The survey results also revealed that only 36% of the teachers thought that they might be subject to disciplinary actions by the Board of Education when they inflicted corporal punishment.

(4) Survey on Corporal Punishment Conducted by the Prefectural Office and the Teachers Union in Fukuoka Prefecture

373. Triggered by a student's death due to corporal punishment at a girls high school attached to Kinki University, which is detailed below, the Education Promotion Bureau for Private Schools in Fukuoka Prefecture conducted a survey, in early August 1995, on corporal punishment during academic years 1993 and 1994 to 87 private schools in the Prefecture. In 17 of the schools out of 61 senior high schools, 29 cases of corporal punishment were reported. This means that 28% of the private senior high schools in Fukuoka Prefecture experienced corporal punishment more than once during these two years. The Fukuoka Prefecture Senior High School Teachers Union had also conducted a survey on corporal punishment to 167 public senior high schools in the Prefecture by March 1996. They had responses from 138 schools and published the results showing that corporal punishment had been inflicted at 61% of the senior high schools, with 6 schools answering that corporal punishment was a daily occurrence and as many as 71 schools replying that it was inflicted at times. As reasons for corporal punishment, half of the schools said it was "for discipline or to establish basic living habits of the students."

(5) Cases of Death as a Result of Corporal Punishment After the Adoption of the Convention

374. After November 1989, when the Convention was adopted in the United Nations, 3 cases of death as a result of corporal punishment at Japanese schools were reported by the media, which will be described below. Students' deaths resulting from corporal punishment had also been reported by newspapers at a rate of one every 2 or 3 years from the end of the World War II, 1945, to 1989.

375. On July 6, 1990, a freshman girl at a Hyogo Prefectural high school, who was rushing towards a school gate within the very last minute of school starting time, was crushed between the gate post and the gate which a teacher slammed with full force and died two hours later. (Kobe Takatsuka Senior High School Case).

376. In June 1992, a freshman boy at a Nagasaki Prefectural senior high school was caught at night when he was playing in a girl students' room during an overnight study course. He received more than a dozen blows from a teacher and was seriously injured; his 3 molar teeth were broken and a wound on his chin had to be sewn up with three stitches. He died of acute cardiac insufficiency 8 days later. Whether or not a causal sequence existed between his death and the corporal punishment meted out is being contested in court, but this is a grave case in

which a student was seriously injured by corporal punishment and died afterwards (Iki Senior High School Corporal Punishment Case).

377. On July 17, 1995, a junior student at a private girls senior high school in Fukuoka Prefecture was fiercely beaten by a teacher on the grounds of a minor violation of school rules and showing a defiant attitude. She hit her head hard against an iron window frame and a concrete column, suffered brain death and died the following day (Corporal Punishment Case of Girls Senior High School attached to Kinki University).

(6) Cases of Suicide Caused by Corporal Punishment

378. Not only direct suffering caused by corporal punishment, such as injuries and deaths, but also suicides by students due to mental suffering caused by corporal punishment have often been occurring. In a recent case, in October 1993, a boy student in the third grade of a Mogi Municipal junior high school in Tochigi Prefecture hung himself, leaving a suicide note stating that: "I don't want to have a teacher who uses violence." The Tochigi Bar Association investigated this case, acknowledging that the suicide was committed due to fear of corporal punishment, and issued a public statement to the entire citizens of the Prefecture calling for a major effort to eradicate corporal punishment.

379. Also in September 1994, a sixth-grade boy at a Tatsuno Municipal elementary school in Hyogo Prefecture received corporal punishment and was slapped by the class teacher. The student hung himself on a hill behind his home several hours later.

(7) Cases Recognized by the Bar Associations

<1> Corporal punishment on children who left school lunch unfinished

380. In April 1987, a third-grade pupil at a public elementary school in Chiba Prefecture was slapped on the cheek and knocked down by the class teacher for the reason that he did not eat up the bread at the school lunch. He was also kicked on the back and waist several times and suffered injuries, such as a skull fracture, which took 4 weeks to heal completely. Regarding this case, the Chiba Bar Association issued a warning.

<2> Non-attendance caused by corporal punishment

381. A third-grade pupil at a public elementary school in Tokyo received corporal punishment in the classroom from the class teacher in May 1993, and because of this he would not go back to school for more than 1 year. Regarding this case, the Tokyo Bar Association issued a request to the principal of the elementary school, asking for an eradication of violence and all possible measures to enable the pupil to return to school.

<3> Corporal Punishment inflicted by the entire school

382. At a public junior high school in Kanagawa Prefecture, three teachers had been inflicting corporal punishment daily upon many students, including girl students, between 1983 and 1985, and the entire school had accepted it. The Yokohama Bar Association issued a warning in this case because abnormal violence was being inflicted, such as kicking a student in the face causing him injury to eye during a school trip, more than one of the teachers giving persistent houndings of corporal punishment upon one student, and making students beat other students in acts of retaliation.

<4> Extremely degrading corporal punishment

383. At a public junior high school in Okayama Prefecture, a strict investigation had been conducted to discover violations against clothing or hairstyle regulations, and a teacher in charge of student guidance had been habitually beating students violating the rules, which was accepted without question by the entire school. The Okayama Bar Association issued a warning in the case in September 1994, because the teacher had extremely degraded students' dignity, in such

ways as making two students, who had violated the clothing rules, take off their entire uniforms down to trunks only and stand in the corridor in front of the teachers' room, subjecting them to violence such as double-slapping the face and striking them in the chest with fists.

(8) Summary

384. Even in the report by the Ministry of Education, which shows only the tip of an iceberg, 865 cases of corporal punishment with 1,472 victims were reported for 1994. Although the number of cases reported varies according to the year, it is on the increase over recent years.

385. It was more than 10 years ago that NHK conducted the nationwide survey. The survey to private schools and public senior high schools in Fukuoka Prefecture, which was conducted in 1995, i.e. 10 years later, revealed that corporal punishment was still rampant in schools at a considerably high rate. There was no sign at all of improvement to the situation, even after 10 years. These survey results show that in spite of prohibition of corporal punishment by law, it is still widely inflicted at schools and that an attitude of approval for corporal punishment is deeply rooted among teachers.

2. Physical Violence and Provisions of the Convention

386. The term "school discipline" in Article 28(2) of the Convention is interpreted as including not only general discipline, such as regulations or school rules and guidance based upon them, but also the actual disciplinary actions. The term "school discipline" has the meaning of training, discipline, teaching manners and disciplinary actions as its basis, and there is also the background to this paragraph of Article 28 that the original amendment proposal, submitted by Poland, provided that "any methods which are mentally or physically cruel or degrading shall be prohibited", but that this sentence was deleted and that the present phrase "in conformity with the present Convention" was inserted, instead. Further, in the first sentence of Article 37 (a) of the Convention, there is a statement that "No child shall be subjected to .... inhuman or degrading treatment" along with the prohibition of specific forms of punishments. "In conformity with the present Convention" in Article 28(2) is understood to cover the provision within Article 37 (a) as well. In addition, the provision of Article 37 (a) is exactly the same, except for the subject, as the first sentence of Article 7 of the International Covenant on Civil and Political Rights, and this provision of the Covenant is interpreted by the Human Rights Committee to cover corporal punishment at schools. Therefore, judging from the provisions in Article 28(2), Article 37 (a), etc., the Convention may be clearly interpreted as having a firm intent to prohibit corporal punishment at schools.

387. Article 19(1) stipulates that the state should take appropriate legislative, administrative, social and educational measures to protect the child from physical or mental violence, injury or abuse by parents. Parents are recognized as having the primary responsibility for the upbringing and development of the child (Article 18(1)). But even for these parents, the Convention obliges the state to take appropriate measures for protecting the child from physical or mental violence. Judging from this spirit, the Japanese Government has not taken adequate concrete measures to protect the child from mental or physical violence by teachers at educational institutions established under the national policies, except for prohibition by law, even though the Government is obliged to undertake appropriate administrative, social and educational measures.

3. Verbal Abuse

388. What should be noted is that, in Japan, although physical corporal punishment is prohibited by law, disciplining students by mental cruelty or degrading approaches, i.e. so-called verbal abuse, is not legally prohibited, but that the Convention prohibits verbal abuse as well as corporal punishment. At schools in Japan, in addition to corporal punishment, teachers' unjustifiable verbal assaults, which are commonly called "verbal violence", are rampant. One report says that such phrases as "Can't you answer such an easy question? Stupid!", "You can do well at nothing. Go to hell!", "Don't come to school any more!" and "You're not worthy to live" are habitually used by teachers during classes ("Educational Reform from the Side of Children"; Council for Promotion of Educational Reform of Teachers Union in Iwate Prefecture).

389. Abusive words directed to children's mentality and psychology hurt children's minds, which lead to non-attendance or, in quite a few cases, bullying. The Government Report does not make any reference at all to the fact that such violations of Article 28(2) and Article 37 of the Convention are being carried out at schools, nor does it present any measures for reducing such "verbal violence".

4. Attitude of the Ministry of Education and Other Educational Administrative Agencies towards the Issue of Corporal Punishment

(1) The Government Report

390. Paragraph 227 of the Government Report states that "In Japan, corporal punishment is prohibited under Article 11 of the School Education Law. The Government has been issuing instructions to educational institutions in order to realize the principle of the provision ..... at every possible opportunity", and adds that "Civil liberties organs at the Ministry of Justice" respond to the reports about corporal punishment, if they receive such reports, and that the number of cases they dealt with in 1994 and 1995 were "89 and 111 respectively".

391. According to this report by the Government, corporal punishment is strictly prohibited by law in Japan, the Ministry of Education is making efforts to effect this, civil liberties organs at the Ministry of Justice also respond if they receive reports about corporal punishment, and the number of cases they deal with is around 100 a year. This is an insufficient and improper report in that it misguides concerned parties to wrongly assume the following; that the problems are limited or being controlled because corporal punishment is acknowledged as being legally prohibited and also because the educational administration is said to be dealing with these issues and that the incidence of corporal punishment is restricted to some 100 cases a year.

(2) Description on Corporal Punishment in the "Educational Policy in Japan" (so called 'White Paper on Education') by the Ministry of Education

392. There is a description which differs from that in the Government Report as a report published domestically by the Ministry of Education; i.e. the 1995 edition (published in February 1996) of the "Educational Policy in Japan" (White Paper on Education) states that "even though corporal punishment is strictly prohibited by the School Education Law, it is quite regrettable that it continues to be repeated. The Ministry of Education has been giving instructions, through various notices and meetings, to root out corporal punishment, and will continue to strive to make this thoroughly understood" (p 213). Stating "it is quite regrettable that it continues to be repeated," the White Paper admits here that the situation of the corporal punishment issue in Japan is serious.

393. But the White Paper on Education itself considerably retreated from any posture for coping with corporal punishment in the 1995 edition compared to the 1994 edition when Japan

ratified the Convention. The 1994 edition states regarding corporal punishment as follows (p 163): It first presents a recognition of the situation that "corporal punishment inflicted on children still continues to be repeated", cites as its reasons "teachers' belief that it is necessary to use force in some cases and their easygoing attitude that a certain degree of corporal punishment is permissible for educational purposes" and "some parental belief that corporal punishment is evidence of educational keenness", then states that "corporal punishment is prohibited by law" and that "corporal punishment cannot be allowed also from the viewpoint with respect to human rights for pupils and students", and points out that "on the whole, no educational benefits are expected of it". Lastly, it presents the resolution "to continue to make efforts ..... for ensuring thorough understanding ..... of the prohibition of corporal punishment". The 1994 edition presents causes of rampant corporal punishment and clearly states that this cannot be permitted from both the viewpoints of human rights and educational benefits, in order to ensure that the spirit of its prohibition by law be thoroughly understood. It could be valued as the first tentative step towards presenting concrete measures for eradicating corporal punishment.

394. The 1995 edition of the White Paper on Education, however, has deleted the recognition of the situation and the analysis of the causes, and simply states that "it is quite regrettable that it continues to be repeated", with any posture for coping with corporal punishment having disappeared completely.

395. The Government Report of May 1995 goes even further backwards, by presenting a description that would mislead readers to wrongly assume that there is hardly any problem of corporal punishment at elementary and secondary schools in Japan. It must be apparent to concerned observers that the Government has no serious intentions of making efforts to drastically reduce corporal punishment.

(3) Attitude of the Boards of Education of Individual Municipalities

396. In addition, it is quite questionable whether the Boards of Education in individual municipalities, which are under guidance from the Ministry of Education, are taking the necessary and appropriate measures to make the legal prohibition of corporal punishment thoroughly understood. When a case of corporal punishment is publicized because of a child's injury, etc., it is often pointed out that the teacher had been using corporal punishment as a matter of course, which means that schools had not taken any measures to make such teachers fully comprehend the prohibition of corporal punishment, nor had the Board of Education taken any appropriate measures. On the contrary, corporal punishment is approved at "disturbed" junior high schools, etc., in order to restrict children by force and in some cases "forceful" teachers are appointed to such schools in expectation of playing such disciplinary roles. Such an attitude from the Board of Education is an important background factor that allows corporal punishment to continue.

397. Article 4 of the Convention obliges States Parties to take all appropriate measures to realize the rights recognized by the Convention. It is absolutely impossible to say that the Japanese Government is taking sufficient and appropriate measures to ensure the prohibition of corporal punishment becomes thoroughly understood, which seems to be a breach of implementation obligations under Article 4 as well as a violation of Article 28(2).

5. Measures to be Taken by Educational Administrative Agencies to Drastically Reduce Corporal Punishment

(1) Establishment of a System for Recognition of the Actual Situation of Corporal Punishment

398. The standard under which principals should report corporal punishment to the Board of Education has not been established, and this hinders the recognition of the actual situation which should be a precondition of adopting correct measures. Therefore, it is necessary to create a system under which the Board of Education receives reports of corporal punishment from children and their parents and ensures that principals submit reports in such cases. In Kagoshima City and Kawasaki City, a system has been established under which the Board of Education immediately requests the principal to submit a report when receiving a report of corporal punishment from children or their parents, and when the principal fails to submit such a report or when the content of the report is incomplete, a representative from the Board of Education should visit the school to investigate the case.

399. As effective measures for preventing recurrences can be taken by studying the reports which tell of the whole situation, principals should be obligated to prepare reports based upon an accurate recognition of the facts. The current reports are based and prepared exclusively on perceptions of teachers responsible for the infliction of corporal punishment. It should be made mandatory to hear the victims' side and include such explanations in the reports. It is also necessary to give the victims' side an opportunity to examine reports before they are submitted to the Board of Education, thus ensuring accuracy. Regarding access from the victims' side to information after its presentation to the Board, although this is made possible for those public entities having an Ordinance for Information Disclosure, it is still generally limited. The right for access to such information should be guaranteed at all public entities.

(2) Establishment of a System for Victims Filing a Complaint

400. It is necessary to establish the system where the Board of Education upon receiving complaints regarding corporal punishment, investigate to discover the facts, asking principals to submit corporal punishment reports when discovering such acts of punishment. And a specific section for contact to file a complaint and other systems to this end should be established. In such cases, it is essential to guarantee that filing a complaint does not cause any disadvantages upon victims.

(3) Establishment of Penalties to Teachers Inflicting Corporal Punishment

401. As the 1994 edition of the White Paper on Education presents, one of the reasons why corporal punishment prevails without decrease is a prevailing attitude of approval for corporal punishment among the public and teachers; they believe that corporal punishment is unavoidable in some cases to strictly discipline children. But, this should be rectified. It is necessary for the Ministry of Education and other educational administrative agencies to seriously make efforts for enlightenment and guidance on such points. For teachers inflicting corporal punishment in violation of the prohibition, it is necessary to take strict disciplinary actions commensurate with the act as current disciplinary actions are too lenient. In addition, with respect to criminal punishment, a trial is not demanded for cases of corporal punishment except for cases involving death or very serious injury. Even in the case of serious injury, a teacher can get away with it by simply paying a fine of ¥300,000 maximum imposed by summary order. If the injuries are not serious, the indictments are suspended and no criminal penalties are imposed in most cases.
Even when a civil suit for damages is filed, a judicial precedent has been established that teachers at national and public schools are not liable to pay damages directly to victims. This denial of direct liability results that teachers inflicting corporal punishment become exempt from responsibility for their conduct. The fact that disciplinary actions by the Board of Education and

criminal punishment are lenient, as well as the practice and the judicial precedents which exempt teachers as public servants from civil liabilities, form the background for rampant corporal punishment. Administrative, legislative and judicial institutions should urgently formulate concrete measures to counter this situation. In addition, they should urgently establish specific programs for the training of teachers and for the enlightenment of the public towards the eradication of corporal punishment.

C. BULLYING

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1. It should be properly recognized that bullying is a violation of human rights, and education capable of stimulating a correct understanding of human rights should be implemented.
2. It is necessary to face up to the social, domestic and school situations which give rise to bullying and to convince people of the need for eradicating the abuse of children's rights by adults.
3. In order to save not only the victims but also the perpetrators and onlookers from bullying, measures should be devised aimed at listening to children's calls of distress and restoring their dignity.
4. Schools should overcome their insularity and develop support systems for children, together with parents, people associated with youth and children's issues in localities, counselors and specialists such as lawyers.

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1. The Current State of Bullying

402. Bullying among pupils and students at school is a serious social issue in Japan at present. In November 1994, a junior high school student in Nishio City in Aichi Prefecture, harassed by bullying from classmates, left a note and committed suicide. In November 1995, a junior high school student in Joetsu City in Niigata Prefecture did the same thing. As a result of these incidents, interest in the problem has increased amongst those associated with education, especially the Ministry of Education and the media, but suicides due to bullying have not ceased.

403. It is shown by Ministry of Education statistics that cases of bullying in 1994 exceeded 56,000 nationally, and that this number was more than double that of the previous year. However, since the way that teachers define bullying has been changing, it is not necessarily the case that there has been a sudden doubling in the incidences of bullying.

404. The Government Report also states in Paragraph 225 that "Recently, bullying has become a serious problem in Japan and the situation is grave where a number of suicides presumably caused by bullying have occurred". The report goes on to list the countermeasures which have been taken by the Ministry of Education, the Ministry of Justice and the police. Ministry of Education policies include the following:

<1> Clearly recognizing that "bullying the weaker shall never be allowed", the Ministry guides the Boards of Education to thoroughly work on this issue at schools.

<2> Promotion of education which will respect each and every child and bring out each child's individuality.

<3> Improvement of the aptitude and ability of teachers.

<4> Establishment of a system to offer educational counseling by such means as posting outside well-qualified experts in schools.

<5> Promotion of cooperation among families, schools and local communities.

<6> Instillation of the spirit of respect for human rights, including the right to life, into children through all educational activities.

405. Furthermore, a July 1996 report from the "Collaborators Council", a body advising the Ministry of Education, suggested that as an emergency measure, children who are bullied should be permitted to stay away from school or to change schools; and that schools should be administered with the children's viewpoint in mind. For example, overly-detailed school rules should be reconsidered. In August of the same year, the Ministry of Education announced such measures as doubling the number of school counselors placed in elementary and junior high schools throughout the country; increasing the number from 500 to 1,000.

406. However, the problem of bullying surfaced as a serious issue over 10 years ago. In 1986, a junior high school student in Nakano Ward in Tokyo, harassed by bullying, left a note and committed suicide. The case was widely reported, and the Ministry of Education on this occasion announced the same sort of measures, urging the Boards of Education and schools to give thorough guidance to students. At one time after this case, the Ministry of Education made an announcement to the effect that bullying appeared to have abated, but in doing so the Ministry was merely seizing on the fact that violence at school by students, which had become an issue at junior high schools throughout the country, had seemingly lessened on the surface. In reality, bullying was becoming less and less noticeable to adults, and at the same time becoming more and more sinister in character.

407. Group violence and intimidation and other visible forms of bullying have not disappeared, but children are also suffering from other sinister forms of bullying in which the perpetrator cannot be identified and where there are no means of resistance. Specifically, things like malicious gossip systematically targetting a particular victim, ostracism, hiding possessions, and acting as though the child was unclean, when practiced over a long period of time, can seriously wound a child's self-confidence and pride. The victims begin to think that the cause and responsibility for such acts of bullying might lie within themselves, and they start to have doubts about themselves. Many children are trapped by the fact that they have no choice but to continue going to school, becoming convinced that suicide is their only means of escape from the daily torment of bullying.

408. One male junior high school student who attempted suicide but was rescued said the following: "I was not at all afraid of dying. Living through hell every day was much more painful. I did briefly think that if I died my parents would probably be sad, but then I thought that if I was dead I wouldn't have to see their sadness. When I was thinking of suicide, what made me most angry were the comments of irresponsible adults, like 'If you have the courage to die, then stand up against bullying' and 'You should value your life'".

409. As for cases which have come to court, in the case mentioned above of the junior high school student from Nakano Ward, the Tokyo High Court, recognizing the causal relationship between bullying and suicide, found that in addition to the perpetrators, the school was responsible because it took no preventive measures even though it could have foreseen the incidences of bullying (Decision of May 20, 1994; Hanrei Jiho (Case Review), No. 1495, page 42). Another court judgement similarly found the school responsible in a case where a junior high school student suffered serious injuries, including the rupture of internal organs, as a result of group violence by classmates, even though no specific reports on bullying had been made to the school by the child or his guardians (Osaka District Court, decision of March 24, 1995; Hanrei Jiho (Case Review), No. 1546, page 60).

2. The Background to Cases of Bullying

410. In response to this situation, the Bar Associations and citizens and researchers advocating the protection of children's human rights pointed out from an early stage that factors such as the particular nature of the Japanese society that emphasizes uniformity, systematic education aiming at standardization and the "examination war" form the background to bullying; and that the whole society and the whole school form one large "bullying structure", of which bullying among children is just a reflection. They called for an end to such school practices as systematic education and corporal punishment by teachers. And, taking the view that it is a mistake to seek the causes of bullying from the victim, they have criticized the Ministry of Education's position, insisting on the right of children to stay away from school or change schools as an emergency measure. Moreover, they have pointed out that the background and causes should be treated seriously in relation to children who bully as well, and have indicated the danger of insisting on needlessly severe treatment for such children.

411. For example, the Osaka Bar Association has made a submission in relation to the suicide in February 1986 of a pupil in the sixth year of an elementary school in Osaka City, calling for improvement in the conduct of the teacher in charge of the pupil's class and of the principal of the school, on the basis of an investigation showing the background to the case in question in which bullying by the victim's classmates had been a frequent occurrence and that neither the teacher in charge nor the school had taken measures to stop it or to communicate with the parents.

412. Furthermore, in relation to a case in which a pupil in the first year of an elementary school in Kobe City was continuously subjected to violence from classmates from about July 1990 onwards, and had ceased to attend school, the Kobe Bar Association pointed out to the principal of the school that not only was the school failing to discharge its duty in ensuring the safety of pupils, but its assistance to the victim was also remarkably insensitive; this amounting to a serious violation of pupil's human rights. The Association warned the principal that a system going beyond the classroom should be established to deal with future cases of bullying, and that school staff should listen sympathetically to complaints from bullied pupils, thus preventing the recurrence of acts violating human rights.

413. In addition, in the case of the above-mentioned suicide of a junior high school student in Nishio City, Aichi Prefecture, the President of the Japan Federation of Bar Associations, citing Article 6-2 of the Convention on the Rights of the Child, acknowledged that bullying threatens the survival and development and violates the human rights of children, including the bullies and those who stand idly by. He expressed regret at a trend among government figures and some sections of the public that failed to take necessary radical steps in addressing the true causes and underlying structures of bullying, placing responsibility for the problem solely on the children involved and their parents. The statement indicated that Bar Associations throughout the country would expand their facilities for providing redress for cases of violation of children's human rights, making every possible effort in an urgent bid to put a stop to and provide redress for bullying.

3. Measures to Counteract Bullying

414. Although belatedly, the Government has proposed allowing on a flexible basis an

absence from school or a change of school as an emergency measure in order to stop bullying. Regardless of the pros and cons of putting this into practice, the Government can be given a certain amount of credit for the proposal, and it is also possible to discern a degree of rethinking about the rigidity of systematic education, in the proposal to review school rules, for example.

415. However, it is undeniable that there are fundamental flaws in the "anti-bullying measures" that in practice have so far been implemented in schools under the supervision of the Ministry of Education and the Boards of Education. Those fundamental flaws are failure to base policy on the fact that it is not always the weak who are bullied; failure in recognizing the need to consider the children who bully; unwillingness to radically reform the system of school education itself which effects such bullying; and a persistent belief that bullying is an abnormal phenomenon that happens among children and that this problem can be solved by adult leadership and the creation of countermeasures solely through discussion and study by adults.

416. The things that are truly necessary in schools are:
<1> clearly to recognize that bullying is a violation of human rights;
<2> to face up to the "bullying structures" in society, homes and schools that form the background to bullying, and to acknowledge the necessity of eliminating the violation by adults of the human rights of children;
<3> to listen sensitively to children harassed by bullying, and to have confidence in their inherent strength in order to eradicate the problem of bullying;
<4> to overcome the insularity of schools and build support systems for children through the cooperation of parents, the local community and specialists in order to help victims and provide care for perpetrators and bystanders.
Support and dissemination of these initiatives must become the policy of the Ministry of Education and the Boards of Education and of all adults; not just those associated with education, but parents as well. These matters are treated in more detail below.

(1) Recognition that Bullying is a Violation of Human Rights

417. In relation to what constitutes bullying, there are still quite a few teachers who think of it as children playing or having fun which sometimes can go a bit too far. Furthermore, perhaps there is even a majority of teachers unable to free themselves from the notion that part of the problem lies in the children being bullied themselves. However, this kind of thinking not only fails to contribute to a solution to the problem; it can even exacerbate it.

418. It is important to realize that for the victim, bullying is a harmful thing that wounds self-confidence and dignity, destroys pride if experienced over a long period of time and can even rob a child of the will to live. No human being is without faults or some problems and such faults and problems of a child must not become the excuse to justify the act of bullying him/her.

419. For such recognition of the problem, a correct understanding of human rights is the vital premise. "Human rights" means humans deciding by their own choice how to live their own lives; and that they have enough resolve to undertake responsibility for such decisions. As such, it means that one respects oneself and others equally. Bullying is an act completely violating this concept of human rights.

420. In current bullying behavior, neither the bullies nor the bullied conform to any set pattern. Any type of child can be the perpetrator or the victim. Moreover, the relationship between bully and bullied is very difficult for adults to discern between. It often happens that a child who appears to adults as being able and strong may be suffering from sinister forms of

bullying like ostracism or alienation, nor is it unusual to find that a child who behaves well in front of adults is in fact a bully. It is no solution at all just to tell children, "Don't bully the weak!". It is absolutely vital for adults themselves to deepen their understanding of true human rights and recognize succinctly that bullying violates human rights.

421. In Japanese education, the need for human rights education in the true sense is not appreciated, and methodology and research are still lacking. The Government should take the initiative in urgently developing policies to move towards and to disseminate in schools a more ideal human rights education which includes not only a theoretical knowledge of human rights but also practical topics such as the factors behind day-to-day relationships between teachers and pupils and the way that pupils relate to each other must all be based on a mutual respect for human rights.

(2) Recognition of the Structures and Background Factors Producing Bullying

422. Both those professionally associated with education and parents need to face up to the structures and background factors which lead to bullying. The distinctive features of Japanese society, which does not respect individuality but emphasizes uniformity, are seen everywhere throughout the nation, producing bullying and discrimination in adult society. In school education, the same phenomenon exists in a more concentrated form.

423. The system of delivering one-sided lessons in which teachers implant knowledge in rote fashion to pupils, all based on the Guidelines of Instructions for Study set by the Ministry of Education using authorized textbooks, really is representative of enforced standardization. Furthermore, the teacher's enormous power to evaluate pupils, which is backed by the entrance examination system which is directly related to school reports, restricts children's spontaneous learning and independent activities and determines children's rankings according to examination scores ignoring individuality. In addition, through school rules and corporal punishment, adult values are enforced, children are controlled and free thought and free choice are not available.

424. In homes as well, in accordance with the same values as at school, children are controlled, repressed, physically punished, insulted, overprotected and interfered with. There are also children who are mistreated or left to their own devices because their parents are only concerned with their own convenience. There has been a great increase in parent-child relationships in which children are not free to be themselves, and in homes which do not provide children with peace of mind or spiritual respite.

425. Children are the victims of these kinds of violations of human rights by adults. Because these victims, whose dignity as human beings has been continuously undermined, are not permitted to retaliate against the adults who are oppressing them, they seek out victims and violate their human rights as an outlet for their own stress; in other words, they bully as a matter of revenge. An appreciation of the fact that bullying by children results from adults' violation and repression of their human rights is absolutely essential.

426. Unless adults are prepared to do whatever they can to rectify any infringements of human rights in society, schools and homes, the eradication of bullying among children is unlikely. There is a need for a radical change of thinking based on consideration of what sort of education would result if the child's right to education is to be guaranteed, as is clearly stated in Articles 28 and 29 of the Convention, and on an appreciation of the fact that the present school system in Japan does not truly guarantee children's rights. Serious consideration should also be given as to what constitutes the parent-child relationship which guarantees the child's right to be cared for by his or her parents, as stated in Article 7 of the Convention. In order to establish this sort of parent-child relationship, it is essential to change the attitude of parents who seem convinced that children are their personal possessions or subordinates.

427. It is when their own dignity is shown respect that children can first perceive the importance of human rights and learn the importance of protecting them. The Government and those associated with education should devise responses based on the acknowledgement that specific infringements of the human rights of children occur in schools and homes as a background to outbreaks of bullying, and that unless these problems are resolved, bullying will not be eradicated.

(3) Giving Scope to Children's Independent Capacities

428. In relation to resolving the problem of bullying, policies should be developed which will give scope to the independent capacities of children.

429. Firstly in relation to the discovery of bullying, even if adults unilaterally resolve to detect bullying through the closer supervision of children, they will not be able to see the real situation. We must accept humbly the fact that children, especially many of the children in early adolescence, spanning the later years of elementary school to junior high school, do not think of discussing the hurt of being bullied with teachers or parents. It is necessary to examine carefully the reasons why children can neither depend on teachers nor appeal to parents. Children do not believe that the situation can improve through discussion with adults, because in our relations with children in the past, we have not openly accepted children's complaints, shared their pain and sympathized with their suffering.

430. Adults must not rush in to solve these problems. What children are primarily seeking is for adults to appreciate their pain and suffering. Adults should treat the child as an individual personality, an equal partner, someone desperately wanting to recover dignity, and respond to him or her with respect and sincerity.

431. And as the first step to recovering human dignity, the child must be able to choose whatever solution on his or her own behalf. Adults should not choose the method of resolution but rather advise the child so that he or she can make an appropriate choice, devoting themselves instead to providing the support being asked of them. If adults take the lead in deciding how to solve the problem, it could constitute a fresh violation of human rights, in the sense that the child get deprived of the right to make an independent choice in relation to his or her own life.

432. In relation to the anti-bullying measures taken by the Government and those associated with education, it must be brought home to teachers and parents that these types of ideas are indispensable for helping children who are suffering from bullying. And as for the educational administration setting policies to combat bullying, children's opinions should always be heard and adequately reflected in any ensuing policy.

(4) Co-operation among Parents, Local Society and Professionals

433. As outlined above, in order to rescue children from bullying, it is necessary to sincerely listen to the anguish of the victim and aid the recovery of the child's human dignity; while severely denouncing bullying to the perpetrators and onlookers as a violation of human rights, to probe deeply into the specific backgrounds of those children which have produced bullying behaviour and to eventually eliminate the problem. However, in the actual school practices, it is very difficult for teachers to do all this by themselves, due to lack of required capabilities and expertise.

434. Schools should work to overcome their own insularity and to develop a support structure for children through co-operation among parents, people associated with youth and children's issues in the local area, counselors, lawyers and other professionals.

435. In this sense, the fact that the Ministry of Education has introduced school counselors and advocated the provision of opportunities for discussion of the problem of bullying in local

communities can be said to be significant. However, with the current poor level of adult awareness of human rights, the lack of understanding about children's human rights will not change. If this is the case, and if the importance of children's own power to solve the problem continues to be ignored in the discussion of remedies for bullying, significant improvement will be unlikely.

436. Meaningful policies to combat bullying will only become possible when dissemination of the genuine idea of human rights and acknowledgment of the need to guarantee the human rights of children can combine with children's independent participation in devising remedies for bullying and the opening up of schools. It is hoped that the Government, local public bodies and those associated with education will look anew at the current anti-bullying measures from this point of view, and take appropriate educational administrative measures to assist meaningful anti-bullying efforts and to eliminate "bullying structures".

D. Non-attendance at School and Dropping out

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1. The educational administrative authorities should stop regarding non-attendance at school negatively, i. e. as something that children should overcome, and should not take measures that children who stay away from school should come back to school.
2. School principals of elementary and junior high schools should evaluate children properly from the viewpoint of aiding their progress, and authorize their graduation regardless the number of days of school attendance, even in the case of children who stay away from school and do not attend any extracurricular classes outside schools, private institutions or free schools. They should ensure that such children can enjoy the right of access to high school education.
3. The system of choosing the high schools, based on deviation values (judging students only by the percentile they rank in according to their examination scores) should be changed, and the system of high school education should be implemented which accords maximum respect to children's choices and opinions and accepts school dropouts to receive education whenever they wish.

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1. Encouragement of Regular School Attendance and the Increase in Non-Attendance

(1) The situation and the increase of non-attendance

437. In Japan, the school system for compulsory education is established formally, and the authorities designate schools for individual children to attend according to the areas they live in, obliging guardians to send their children to school. In cases where a child's school attendance is unsatisfactory, guardians are warned to let him/her attend.

438. In spite of this, in Japan, the number of children who do not attend (refuse to attend) school because they "dislike school" is increasing year after year. According to the survey made by the Ministry of Education, the numbers of children absent from elementary and junior high schools for 30 days or more because of "dislike of school" are as follows.

	Elementary school	Junior high school
School year 1991	12,637 (0.14% of total no. of pupils)	54,112 (1.04% of total no. of students)
School year 1992	13,702 (0.15%)	58,363 (1.16%)
School year 1993	14,763 (0.17%)	59,993 (1.24%)
School year 1994	15,773 (0.18%)	61,627 (1.32%)
School year 1995	16,566 (0.20%)	64,996 (1.42%)

439. In the past, the Ministry of Education investigated absences of 50 days or more caused by "dislike of school", but it was pointed out that there was a need for response before such absences become long-term affairs, and from 1991 the Ministry began to investigate absences of 30 days or over. However, despite the fact that the total number of pupils and students is decreasing, even in the case of absences of 50 days or over, the comparison between the figures of 1984 and 1994 shows more than a trebling of the number of elementary-school pupils and approximately a doubling of the number of junior-high-school students who have been

staying away from school. Thus, there is a great increase in younger children's absence from school.

As for junior high school students, regardless the period of the absence, the number amounts to more than four times of those in elementary schools, and every year this situation is becoming more serious.

440. Moreover, already in 1991 approximately 80,000 children were absent for long periods because of "illness". In view of the fact that the variety of names of "illnesses" are given for the non-attendance at school, it must be doubted whether the figures shown by the Ministry of Education accurately reflect the true situation. Furthermore, it is supposed that there are many children who do attend but mentally turn their backs on school. Some experts point out that physiologically and medically, non-attendance at school provides the evidence of the "overtaxing " nature of school life.

(2) Changes in attitudes to non-attendance at school and simple measures to encourage attendance

441. Concerning the reasons for the increase in the numbers of children who "dislike school", for a long time, the Ministry of Education has took the attitude that it was a matter of "idiosyncratic behaviour by idiosyncratic children", citing reasons such as "personality of the pupil himself/herself", "laziness" and "overprotective parents"; but in March 1992, the Ministry changed its attitude, acknowledging that "it is not a problem of specific children only, but rather a matter related to the ways in which schools, homes and the whole society operate, and the problem can occur with any child". However, among the reasons given by children to explain why they could no longer go to school, according to the results of a December 1988 survey on "the current situation concerning children not attending school" by the Bureau for the Protection of Human Rights, Ministry of Justice, the main one was relationships with fellow pupils/students at school, mostly concerned with bullying; next came matters relating to study and marks and matters relating to teachers and the school. These factors far outweighed matters relating to the family (According to a 1990 Ministry of Education survey, the direct cause for non-attendance at school came out of school life in 37% of the cases, personal problems in 27% and the family life in 26%).

442. Thus, to a considerable extent, the causes that make children "dislike school" are to be found within schools, and accordingly the school itself must first be re-examined. However, the education administrative authorities, from the Ministry of Education down, still treat non-attendance at school as something that children should overcome, and take a simple measure just to encourage such children to attend school. Thus, the Boards of Education, without adequately ascertaining the true situation concerning the child or the school's response to it, issue reminders to parents about attendance, mentioning that "parents' duty to sending their child to school is being neglected", and in some cases even give them the warning at that time of penalties under the School Education Law, putting hard pressure on children and parents as a result (For example, according to the Asahi Shimbun newspaper of March 25, 1994, the Board of Education in Ebina City, Kanagawa Prefecture, sent a reminder to parents of children who were not attending school stating that "if you do not send them to school, the legal penalties will be applied". The parents pointed out that this constituted intimidation, and the prefectural Board of Education also told the municipal Board of Education that the action was "inappropriate".).

443. Furthermore, in September 1992, the Ministry of Education, having changed its stance to recognize that non-attendance at school "can occur with any child", issued a notice regarding cases of children attending extracurricular classes outside schools, or private institutions, free schools etc. that meet certain standards; permitting school principals to regard such children as

"attending schools" on conditions that school principals specify on the Permanent Record on Instructions at which facility the child receives instruction and that parents are in adequate contact and constantly discuss the matter with the school. Of course, this does not constitute a measure for encouraging school attendance, and the Ministry says that it is only an expedient measure until the child returns to school.

444. As shown above, the Ministry of Education has not retreated from the position that "returning to school is the major premise of the compulsory education system", although it admits the necessity of responses in accordance with the situation of each child not attending school. Thus, because children who are attending neither school nor any of the other facilities outside school are not treated as "attending school", they may find it impossible to move up their grade or to graduate, which puts pressure on and distresses children and parents.

445. However, under the current legislation relating to compulsory education in elementary and junior high schools, the school principals can authorize promotion to the upper grade and the graduation on the basis of "daily performance", and the number of days attended or the test scores are not the requirements for them. Therefore, school principals should authorize promotion to the next grade and graduation regardless the number of days of attendance, and exercise their discretionary right so as to ensure that these children can enjoy the right of access to education at upper-level schools.

(3) Expansion of the Examination System Authorizing Completion of Junior High School Education and Associated Problems

446. As explained above, in Japan, children who choose home-based education and other children not attending school may be denied recognition of completion of compulsory education. As a result these children may be unable to receive further education at the high school.

447. Up until now, the Ministry of Education has administered an "examination system authorizing completion of junior high school education", whereby those who have been permitted to defer or have been exempted from obligations to attend school because of illness etc., may be recognized as having graduated if they undergo and pass the examination. Recently, the Ministry announced that the right to sit for this examination would be extended to children not attending school. This policy seeks to extend the "examination system authorizing completion of junior high school education" and provide a bypass system allowing children who have been treated as absent because of non-attendance at school, and have not been authorized by the principals to graduate, to enroll in high school by means of such examination.

448. However, as a school principal is already entitled to authorize graduation of a child not attending school on the basis of a proper evaluation of the child's progress, it could be said that there is no need to wait for the expansion of the examination system. In addition, the priority should first be given to reconsidering the entire existing system of school education that absolutely requires children to finish the compulsory education for access to the high school education. Furthermore, in relation to the expansion of the examination system, the Ministry of Education has not changed its persistent negative stance that non-attendance at school is something to be overcome by the child himself/herself. Unless the Ministry radically changes this negative attitude to non-attendance at school, it will only worsen the worrying situation being experienced by those children not attending and their parents.

2. The Increase of Dropouts from High School and the Guarantee of High School Education

(1) Facts about dropouts from senior high school

449. In Japan, 97% of children who complete compulsory education go on to high school. In high schools, however, there is a considerable number of students who, "failing to adjust themselves to school life or to their studies", drop out because they cannot get used to school life.

450. According to the investigations by the Ministry of Education, the number of dropouts in 1995 was 98,179, which was 1,778 more than the previous year's total of 96,401. The dropout rate to the total number of students is 2.0%. The peak year was 1990 when about 124,000 students dropped out, and the peak dropout rate was 2.4% in 1983, so there has been a slight decrease, but even so, every year almost 100,000 senior-high-school students still drop out.

451. The biggest reason for dropping out, at 43.3%, is "change of plans", covering students who wished to get jobs, to change schools or to enroll in professional schools. 28.6% "failed to adjust to school life or schoolwork", losing their will to go to school because they could not get used to school life or to their studies, 7.9% left because of "poor academic results", 5.4% because of family reasons and 4.7% because of "problematic behaviour".

452. Further, while many of these dropouts appear to have left of their own free will, there are also quite a few who, while officially labeled as "voluntary departures", were in fact forced to leave, and this cannot be overlooked from the point of view of guaranteeing the access to high school education.

(2) Measures aimed at reducing dropout rate and guaranteeing access to high school education

453. In response to the fact that almost 100,000 children drop out of high school every year, the Ministry of Education has taken steps outlined in Paragraph 224 of the Government Report, but in general they amount to no more than temporary treatment, and cannot be expected to provide effective solutions to the problem. On the contrary, the government strategies to make high school education system more flexible by "positively accepting the transfer of students (to new schools, courses and classes) to allow a student to change his /her course" are in reality used as grounds for permitting the discard of students.

454. As is shown by the fact that the primary reason given for dropping out is "change of plans", when Japanese children reach the stage of choosing a senior high school, under the system of so-called "deviation value", which is backed by competition and academic record (school variance), they are compelled to choose automatically the high school to go, on the basis of their examination scores only; it is difficult for them to decide about a school on the basis of their own choice and/or views. Because a large number of children are compelled to start high school as "reluctant entrants", they fail from the beginning to adjust themselves to school life and request permission to "change their plans", choosing of their own free will to leave school without graduating (One indication of this is the fact that, in 1994, 54.3% of the total dropouts, and 54.5% in 1993, were first-grade students).

455. The first priority is that children should be able to decide where they will go after completion of compulsory education on the basis of their own choice and/or views; for this, there should be a radical reconsideration of the present system of selection for high school whereby the high school a child applies for is determined automatically on the basis of "deviation value".

The Government Report states in Paragraph 224 that the Government is promoting "diversified, flexible and individual-oriented education" in high schools, but so long as society continues to emphasize educational background, this will lead on the contrary to even stricter sorting and ranking of students into differing strata, without producing any decrease in the number of dropouts. It is necessary to reform high school education from the standpoint of children, on the basis of the maximum respect for the choices and views of children. Moreover, in order to provide a sufficient guarantee of access to high school education, the system should be changed so that those who have dropped out can easily receive school education whenever they wish to

do so again.

E. Disciplinary Punishment at School

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1. Regarding disciplinary punishment at school, clear and concrete rules should be established which define disciplinary measures proportionate to behavior and the due process by which these disciplinary measures should be taken.
2. Concrete measures should be taken to eradicate **de facto** disciplinary measures which do not comply with the above proposed regulations and/or which deny children's dignity as human beings.

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456. Although Paragraphs 226 and 69 of the Government Report state that the Government has sent notices to educational institutions on points to be taken into consideration concerning disciplinary punishment, this notice is very general and abstract. (See attached Paragraph 6 of the Notice from the Administrative Vice Minister)

457. In reality, disciplinary punishment is regarded as a form of educational instruction and it is within the discretion of schools in the application of disciplinary punishment. And in practice, enough educational consideration is not given to students when imposing disciplinary punishment on them, and the disciplinary punishment is often imposed much more severe than it should be, without proper due process.

458. For example, a student who was found while smoking for the second time was requested to voluntarily leave school and when the student did not, the student was expelled from the school. In another case, a student who was caught for shoplifting (on one occasion only) outside of school, received a notice, on the same day the incident was discovered, requesting him to voluntarily leave school. This student was also forced into leaving school. (In both of these cases, the Bar Association received appeals for rectifying the violation of the rights of these students, and issued advisory opinions to the school or the principal involved.)

459. Moreover, **de facto** disciplinary measures which are not provided by the law and/or regulations are often taken. Instead of expulsion or suspension from school of which the school must report to the Board of Education, recommendation to voluntarily leave school (this is acknowledged by judicial precedents as being virtually the same disciplinary measure as expulsion from school) or confinement of the student at home, which are virtually the same disciplinary measures as expulsion or suspension from school but need not be reported to the Board of Education, are used in quite a few cases. For example, in one case a student was told by the principal to leave school and "follow a different path" (In this case the Bar Association issued an advisory opinion to the school). In another case, a student was told by the principal that his "school attendance was terminated", which is not a legal phrase. When the student continued to attend school ignoring the principal's words, he was told, "Why are you here? This is not a place for you to come anymore", and was placed in a separate room without being allowed to attend regular classes. This situation continued for some time (In this case, the Bar Association presented requests to the principal and other authorities of that school).

460. Moreover, students are often reprimanded with violent and/or abusive words or forced

to do humiliating things as disciplinary punishment. These types of punishment in themselves clearly trample down children's dignity as human beings.

461. Disciplinary punishment is often used in association with school rules (see F) as a means of carrying out so-called "control-oriented education", which is even acknowledged by the courts. A typical example is the case of a third-year high school student who was ordered to come to school early in the morning for a certain period because he had obtained a driver's license without permission from his school. During the period of this disciplinary punishment, the student had his hair permed, and this was used by the school as a reason for recommending him to voluntarily leave school. This incident occurred less than two months prior to his graduation and in the end the student was forced to abide by the recommendation (Although obtaining a driver's license and perming one's hair are both legal actions, they were expressly forbidden according to his school's rules). This student later appealed that his voluntary departure from school forced by illegal recommendation to voluntarily leave school was invalid and requested certification of graduation and compensation for damages, these appeals were rejected at both the first and second court judgement, and in the Supreme Court.

462. As is shown by the above examples, it is completely inadequate that the Ministry of Education simply sends a general notice on the use of disciplinary punishment to the schools which have wide ranging authority to use disciplinary punishment under the guise of educational measures. The Government should set up regulations which clearly and comprehensively define the disciplinary measures appropriate to the behavior in question and ensure that set procedures are undertaken, for all schools, whether national, public or private. The Government should also take concrete measures to eradicate de facto disciplinary measures that do not abide by these regulations and/or deny children's dignity as human beings.

F. School Rules

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1. Drastic measures should be taken to ensure that the content of school rules, when they are to be established, will be limited to truly necessary matters.
2. When school rules are to be established, a system allowing students and parents to participate in compilation, revision and abolishment of these rules should be established.
3. Disciplinary punishment or other disadvantageous measures imposed on students because they have disobeyed school rules that do not meet the above two requirements should be prohibited.

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1. Problems Concerning the Content of School Rules and the Procedures for Establishing Them

463. The Government Report states in Paragraphs 226 and 84 that the Government has sent notices to educational institutions to continue to improve school rules taking into consideration the actual situation of students, the views of guardians, etc. In practice however, students' rights are not guaranteed either in the content of school rules nor in the procedures for their establishment, revision or abolishment.

(1) Content of School Rules

464. Essentially, school rules should be limited to covering only those items necessary for guaranteeing the right of children to receive education in a place which provides group education, namely the school. However many of the school rules in Japan deviate from their original purposes and infringe upon the rights of students (and parents) by restricting expressive activities, specifying hairstyles, clothing and personal effects and regulating students' personal lives outside of school.

465. For example, students in Japan are issued "student notebooks" which often describe in detail various rules, such as the style of trousers, how socks should be folded down, the length of skirts and how ribbons should be tied, and the students are forced to abide by these rules. Some schools even have rules which go as far as describing how to walk, bow, raise one's hand or eat the school lunch. There are also rules concerning behavior outside of school, which by right should be issues decided upon by the student's family. For example, specifying places where students are prohibited to go, regulating clothing students can wear when they go out and prohibiting activities like obtaining a driver's license, doing part-time work and attending rock concerts.

466. The Bar Associations are actively working on these types of problems as well. In many cases, the Bar Associations have been requested to defend the rights of students concerning rules dealing with hairstyles (there are still quite a few schools which insist on close-cropped hair for boys) and clothing, and have presented recommendations to school authorities. In some cases the problems have been improved through the process of investigation or adjustment by the Bar Associations that were requested to defend students' human rights.

467. The Ministry of Education has issued several notices calling for a revision of school rules. For example, the final report of the Ministry's " Council of Researchers on Problem Behavior of Students" (July 16, 1996) pointed out the need to review school rules which are at present far too detailed. The fact that such notices have been issued over and over again, apparently reveals that there has been no actual revision of the content of school rules.

(2) Procedures for School Rules

468. The participation of students in the process of establishing, revising or abolishing school rules is an important educational experience for promoting intdependence and self-reliance in students. This is also pointed out in a report consigned by the Ministry of Education and complied by the National Association of Junior High School Principals and the National Association of Senior High School Principals, "Report on Investigative Study into Everyday Activities for Student Guidance" (March 20, 1991). However, in most cases in Japan, the establishment, revision or abolishment of school rules is undertaken unilaterally by school authorities.

469. The above-mentioned notices by the Ministry of Education, which are referred to in the Government Report, do not make any recommendation either, for students' (and parents') participation in the process. Instead the Ministry quotes the provisions in Articles 12 to 16 of the Convention and states that "(these provisions) stipulate on the rights ....., but of course schools may give guidance and instructions to pupils and students and establish school rules for them to observe, within a reasonable range necessary to achieve educational purposes". That is, the Ministry states that schools may choose to enforce school rules which are restricting the rights of children as stated in the Convention.

2. Breaking School Rules and Disadvantageous Measures

470. As well as all the various problems concerning school rules mentioned above, another important issue is the fact that breaking a school rule often leads to disciplinary punishment or some other disadvantageous measures. For example, at one school, teachers carried out clothing checks at the entrance gate of the school monitoring the clothing and hairstyles of students (infringing upon the right of students to make personal decisions), and students alleged to be breaking the rules were sent home. Daily supervision like this is very common. There was one very sad case of a student being crushed to death as the gates were shut on her while she was attempting to slip through the gates which were being closed by a teacher to prevent late students from entering.

471. The courts also accept unilateral establishment of school rules by school authorities, judging that schools have an autonomous and comprehensive authority to set up rules on the necessary issues to carry out the functions for which they were established. Furthermore, courts tend to avoid stepping into the content of school rules on the ground that it is not appropriate to subject an internal matter to judicial hearings, and as a result ratify school rules which involve various problems including the ones mentioned above.

472. Rather than repeatedly issuing notices superficially requesting a review of school rules, the Government needs to take more drastic measures to rectify the situation.

G. Educational Information on Individual Students

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1. A system which guarantees the rights of students and parents to control personal data on education should be established immediately in all of the three aspects of collection, content and use.
2. The mistaken understanding that fair and objective evaluations may be hindered if access to personal data is allowed should be corrected and concrete measures for promoting understanding that disclosure of such information will encourage genuine mutual trust between students and schools should be undertaken.
3. In establishing the system described in above 1, concrete measures should be taken to ensure that the information contained in the documents that may be disclosed will not be virtually meaningless.

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473. Much of the vast amounts of various information concerning individual students which is stored at schools is the students' own personal information, and students concerned and their parents should have the right to access to and control of this information. However, in practice, the guarantee of these rights is very inadequate. The situation in which this issue was not even brought up in the Government Report is in itself a condemnable factor.

474. One major issue is the problem of how information is collected. Often personal information is collected without the clear consent of the students involved. There are cases in which information is collected without students being aware of this happening and other cases where students' mental information is collected through personality tests that are carried out during class time, which makes it virtually impossible for students to refuse taking the tests.

475. Furthermore, there are problems concerning the actual content of information. Often information is compiled based on subjective views of the school or unilateral assertions made by others without confirming the facts with the students involved. In addition, as the information is not disclosed to the students, it cannot be checked as to whether it is correct or not. Even if the information is made available to the students, the school usually refuses to make any corrections to the information even if requested to do so, and thus incorrect information remains.

476. There are also problems relating to the use of information stored at schools. Sometimes it is used for purposes other than those for which it was collected, and at times it is made available to third parties.

477. As we have seen, the right of students to control their own personal information concerning their education, is infringed upon in many ways in any of the three aspects.

478. In particular, there are many problems relating to summary reports of educational instruction, confidential reports (survey reports) and school accident reports.

479. <1> Summary Reports of Educational Instruction

"Summary Reports of Educational Instruction" are the original documents that record the scholastic performance and health record of individual students. They are used internally as

guidance material and externally as the source records for certification. Sections concerning scholastic achievement and health are stored for five years. Not only are copies of these records passed on to the school that an individual student goes on to, but copies or details of the contents may be passed on to the police and Family Courts if so requested. As these records are used for such important purposes, if there are any mistakes in the data recorded, or if the data has been recorded in an erratic or biased way, then there is a possibility that such records may have disadvantageous consequences for the student when the student goes on to another school, or if the student becomes involved with the police or a Family Court.

480. <2> Confidential Reports (Survey Reports)

"Confidential Reports (Survey Reports)" are prepared to report evaluations on daily scholastic ability and behavior of students and submitted to the schools which the students apply to enter, to be used as part of the data from which selection of applicants is made. These reports give a considerable weight when deciding whether a student will be accepted or not by a certain school. However, at present, there is no system guaranteeing that students or parents can check the data recorded. Moreover, there are no clear standards regarding which items are to be recorded, so that sometimes the report depends upon the arbitrary judgement of a teacher. Also behavior may be ranked as A, B or C according to the subjective judgement of a teacher. There have been cases reported of students who were not allowed to sit for entrance examinations to public high schools because of data recorded on their records, such as the reasons for being absent from school, the student's record of illness, "problem" behavior and a bad attitude towards school club activities.

Because of the existence of these confidential reports (survey reports), in Japanese schools where the rights of children are not at all sufficiently guaranteed, students cannot voice their opinions against their school or teachers even if they have valid and legitimate points, nor can they protest about illegal corporal punishment, as they are afraid of having disadvantageous data recorded on their confidential reports based on the subjective judgements of school authorities.

In these ways, confidential reports restrain students from exercising their rights in schools. But, teachers accept this situation, and there are even some teachers who take advantage of this situation to prevent students from exercising their rights.

481.<3> Reports on School Accidents and other Incidents

Schools prepare and store reports on accidents on the premises and incidents such as corporal punishment and bullying. These reports are passed on to the Board of Education. In many cases, these reports are compiled by the school without confirming the facts with the student(s) involved. Often only facts which are convenient for the school are reported, and in many cases the content of the reports relieve the schools of responsibility. As these reports are not shown to the students involved, the data cannot be checked as to whether it is correct or not. Even if the data is made available, requests for correction of data are ignored. Consequently, incorrect information remains on record which may be disadvantageous to the student.

482. Recently, however, there have been some moves towards disclosure. Some local governments have set up systems which allow, to a certain degree, access to personal information on education. There have also been cases where the "Personal Information Security Law" and the "Information Disclosure Law" have been applied for obtaining access to information. There was also one case where damages were awarded when a school did not allow access to data concerning a student's scholastic achievements (a section of a survey report) prior to the time that the student had to hand in an application for entrance into a senior high school.

483. Although we can see some changes towards allowing students' access to their own personal data on education, in general there is still major resistance to this on the part of schools. For example, although a council issued a report saying that there should be access to all data

included on Summary Reports of Educational Instruction, some Boards of Education have only made certain parts available. In another case, a mother sued a school for refusing to make available the principal's report on an incidence of corporal punishment and although the court concluded that this report should be made available to the mother at the initial hearing, the Board of Education concerned appealed against this. Some schools even stress the opinion that allowing access to personal information on education would result in preventing important information from being recorded on the documents. When it was reported that Osaka Prefecture was considering allowing students' access to all the information in their own confidential reports from October 1996 in reply to a claim that confidential reports should be made available in accordance with the Personal Information Security Law, the following comment by the Upper Secondary School Division of the Ministry of Education was also reported at the same time: "Concerning the subject of access to confidential reports and summary reports of educational instruction, there is a concern that if these documents are compiled on the premise that they may be made public, then there is also a danger that a fair and objective evaluation will not be carried out."

484. Due to this tendency of schools not to disclose information, the right of students and of parents to have control over their own personal information is infringed upon, and this is one of the reasons why students feel they can not trust schools. The Government should immediately develop a system which will ensure the rights of students and their parents concerning the collection, content and use of personal data on education.

H. The Content of School Education

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1. The present school curriculums, which are biased towards study based on rote retention, should be overhauled and curriculums consistent with Article 29-1 of the Convention should be introduced.
2. The school education curriculum should be revised into a curriculum that gives children ample leeway in various ways.
3. The standard number of students per school class should be reduced.
4. The prevailing view on scholastic abilities, which tends to lead to evaluations based on the emotional or subjective judgements of teachers, should be rectified.
5. Concrete measures should be taken to make halt the tendency in Japanese society that places too much importance on educational background and the notion of school supremacy.

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485. The Guidelines of Instruction for Study are the "standards for education curriculum" announced by the Minister of Education (Article 25 of the Enforcement Regulations for the School Education Law, etc.), and the Ministry of Education takes the position that these guidelines have a legal binding force. In addition, schools are required to use the textbooks officially approved by the Ministry of Education. The amount of material covered in the Guidelines of Instruction for Study and in the authorized textbooks is enormous, and the study tends to be oriented towards memorizing knowledge rather than encouraging children to develop their respective abilities of thinking. Thus, this type of study has been referred to as "cram-education".

486. It is considered a teacher's duty to teach lessons as outlined in the above-mentioned Guidelines using the authorized textbooks, and is a teacher does not do so he/she is considered not to be carrying out his/her duty. Consequently, students are forced to take classes within these specified guidelines.

487. As classes are large in numbers (in public elementary, junior high and high schools the standard number of students per class is 40), and teachers must go forward rapidly following the Guidelines, many students cannot keep up with their lessons and lose their wills to learn. In Japanese society, where social rank tends to be determined by educational level, and often a person's value is judged by his/her school grades, students who are not able to keep up with their lessons develop intense frustration.

488. In 1989, the Guidelines of Instruction for Study was revised, outlining a new outlook for study which placed emphasis on "interest, motivation and attitude" rather than "knowledge, understanding and skills". However, because this new outlook puts priority on "attitude", which may be judged as either bad or good depending upon emotional or subjective evaluations, there is a concern that this new approach may lead to even greater administrative control.

489. Although the Ministry of Education introduced a five-day school week twice a month, and set up "leisure periods" within the school curriculum, in practice, the school day is now even longer to make up for the reduced classes thereby, and often the time set aside for "leisure" is

used for ordinary study classes. So in fact there has been no real improvement.

490. The initial report prepared by the 15th session of the Central Council for Education submitted to the Minister of Education in July 1996, stressed the need for a more relaxed schooling system and recommended the general introduction of a five-day school week. The report also stressed the need to ease the present situation of escalating competitiveness in entrance examinations. In August of the same year, the Minister of Education inquired about the possibility of a comprehensive revision of the content of material taught in schools, in the light of the introduction of a five-day school week. However, some claim that unless the society, of which entrance examinations form part, changes, the result could merely mean greater benefits for concerns supported by the entrance examination system. Another claim is that although the Council for Education Curriculums, which proposed the revision of the Guidelines of Instruction for Study in 1977, also recommended that the number of hours of classes should be reduced by 10% in order to make schooling more relaxed, in reality nothing has really changed at all. (Note 23)

491. Education should be as stated in Article 29-1 (a) of the Convention on the Rights of the Child, that "education of the child shall be directed to: the development of the child's personality, talents and mental and physical abilities to their fullest potential". However it is not possible to achieve this by merely revising a curriculum; we need to question the deeply rooted tendency in Japanese society which places too much importance on educational background, and the notion that schools are superior.

I. Infringement on the Freedom of Thought, Conscience and Religion of Students and Parents

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1. Virtual compulsion of the use of "Kimigayo" as the national anthem and "Hinomaru" as the national flag at school ceremonies should cease.
2. Schools should be prohibited from imposing disadvantageous measures for the behavior of students or parents based upon religious instructions.

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1. The National Anthem and the Japanese Flag

492. Although the Japanese people are divided in opinion concerning the issues of the national anthem and the Japanese flag, by insisting on "Kimigayo" as the national anthem and "Hinomaru" (the sun flag) as the Japanese flag and by practically making it compulsory to sing this song and raise this flag on ceremonial occasions at schools, the Ministry of Education is infringing upon the right to freedom of thought and conscience of children who do not accept these as being the national anthem and the national flag.

2. Disadvantageous Measures taken by Schools Regarding Behavior based on Religious Instructions

493. There are various examples of how the right of religious freedom for students and their parents are infringed upon by schools. For example, a student was treated as being absent from school because the student did not attend a special Father's participation class held on a Sunday morning, as the student went to the church for Morning Service instead. Another example is of a student who did not participate in compulsory **Kendo** (Japanese fencing) lessons because fighting was prohibited according to his religious beliefs. This student was forced to repeat the year and finally was forced to leave school (Although the Supreme Court ruled that this action was illegal, it took a long time for the matter to be settled).

494. For details of these cases, see section IV-D.

J. Education of Non-Japanese Children

495. See VIII-C-1.

K. Accidents at School

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1. Concerning the school environment, including school facilities and equipment, adequate minimum safety standards should be defined by law .
2. The teaching staff should undergo a thorough education on safety aspects.
3. Children should also be given safety education which teaches them how to avoid dangers themselves.
4. Revisions should be made to allow adequate compensation to be paid out from the Japan Physical Education/School Health Center, and procedures for claims should be simplified.
5. A Non-Negligence Accident Compensation Scheme should be established for accidents at school.

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496. According to a survey by the Japan Physical Education/School Health Center, the number of cases in 1993, for which it paid out accident insurance for accidents that occurred under school supervision, was over 1.11 million; 166 of these cases involving loss of life. (Note 24) As the number of children and students covered by this accident insurance was slightly over 21 million, this means that about 5% of the students covered were involved in accidents for which they claimed insurance, assuming that no students made more than one claim. We can also presume that many students were involved in accidents that they were not able to claim for, that is, accidents involving medical costs of less than three thousand yen.

497. Many accidents are caused through factors relating to the school environment, such as faults in school facilities, lack of teacher supervision, and corporal punishment by teachers. Many accidents are also caused through fights between students and bullying, which could be avoided with more adequate supervision from teachers.

498. Firstly, concerning school facilities, although there is a need to legally define adequate minimum safety standards and a need to provide teaching staff with a thorough education on safety aspects, in practice little is being done to meet these needs.

499. Concerning safety education for children, up until recently schools have been putting an emphasis on physically isolating students from object or situations what are regarded dangerous by schools, however there is also a need for safety education that teaches children how to avoid dangers by themselves.

500. As an *ex post facto* relief for accidents at school, compensation is paid out by the Japan Physical Education/School Health Center. However, the compensation is inadequate in some cases because there is a limit as to how much may be paid and the time period during which compensation may be paid out. There are also problems concerning the procedures; all claims must be made via the principal of the school and the right to claim compensation is only valid for two years.

501. In cases where the amount of damages claimed is greater than the amount paid out, it takes a long time for decisions to be reached. In addition, in the case of death or loss of

working capacity, loss of earnings is calculated based on the Wage Census meaning that the amount of loss awarded is extremely small. Moreover, the awarded amount is often partially offset because of comparative negligence, ensuring that the compensation is quite inadequate. In order to provide some solution to these problems, the Japan Federation of Bar Associations proposed the establishment of a "Non-Negligence Accident Compensation Scheme" in 1977, but as yet this has not been established.

L. Rest, Leisure, Play, Cultural and Artistic Activity (Article 31)

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1. Concrete measures should be taken to ensure that children have ample free time.
2. Spaces and facilities that enable children to play safely on a daily basis should be secured.
3. Adequate conditions that allow children to enjoy cultural and artistic activities should be ensured, including the establishment of more facilities, and budget adjustment should be made to achieve this.

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1. Lack of Time

502. As mentioned in section H, because school education in Japan tends to be "cram education" covering too much material, and pupils are given a lot of homework, children spend a lot of their time out of school following school curriculum which places too much importance on absorbing information. Furthermore, it is common knowledge that schools are ranked in level based on the deviation value, and many children attend private preparatory schools ("*juku*") after school because their parents and teachers want them to go on to high ranking schools or universities.

503. According to surveys carried out by the Ministry of Education, in 1985 the percentage of students attending preparatory schools was 16.5% for elementary schools and 44.5% for junior high schools. These percentages had risen considerably in 1993 to 23.6% for elementary schools and 59.5% for junior high schools.

504. With the implementation of the five-day school week (twice a month), the Ministry of Education carried out a survey in 1995 asking students how they spent their time when they had Saturday off from school. Students were asked to select the activity they did from among the choices, such as "play or sport", "study" and "watching television". For nearly all age groups from kindergarten through high school, the number of children who selected "resting" was the largest or the second largest. This indicates that school children are tired, and that the introduction of the five-day week has had the opposite effect of making weekdays even more of a burden for children.

505. There is a lot of pressure on junior high school and high school students to take part in club activities. Many students belong to sports clubs (three out of four students for junior high schools, and one out of two students for high schools) which take up a lot of leisure time including Sundays, public holidays and long vacations. On October 8, 1996, the Asahi Shimbun newspaper reported that about 70% of students answered that their clubs had activities six or seven days a week, and that students voiced grievances such as "we're always tired", "we don't have enough holidays", and "we never have time to play or study".

506. In this way, children are not sufficiently guaranteed the right to rest and leisure in Japan. As a result, not nearly enough time is ensured for children to play, enjoy recreation, or take part in cultural or artistic activities.

507. However, the paragraphs of the Government Report which discuss issues relating to Article 31 of the Convention (Paragraphs 232 to 248), make no mention of the above issues.

2. Lack of Needed Play Fields for Children

508. The amount of natural play fields close to the homes of children is gradually diminishing while the amount of traffic is increasing, creating an increasingly dangerous environment for children. Consequently there is a definite lack of safe play areas and facilities for children.

509. Recently, children tend to play indoors more often, with games like video games, than outdoors. One of the main reasons for this, especially in urban areas, is probably the disappearance of parks and everyday play fields for children.

510. Although the Government Report mentions several kinds of "recreational facilities" in Paragraphs 233 to 242, these facilities include the ones which play an extremely minor role in the recreational lives of children, and few of them can be used by children on a daily basis. In terms of everyday play fields, they are absolutely inadequate.

511. Paragraph 243 of the Government Report refers to the implementation of the "Program to Build Towns Friendly to Children". However, as the program itself is hardly known to the general public and its planning document makes no reference to the necessity of taking children's opinions into consideration, there is no guarantee that this program will secure the type of play fields that children really need.

3. Lack of Accessible Facilities for Cultural and Artistic Activities

512. For children's participation in cultural and artistic activities, neither the conditions, including facilities, nor the budget measures are sufficient.

513. For example, even though places such as art galleries, theaters, concert halls and movie theaters have child admission rates, these are still unaffordable for children. In general there are few such places that children can visit casually.

514. There is a need to make admission for children free or almost free, as well as a need for more facilities exclusively for children and more specialized staffs.

515. As described above, children are forced to live in an unnatural environment, time-wise, place-wise, and from the point of view of making friends and relationships. This hinders them from fully enjoying a healthy development.

VIII. SPECIAL PROTECTION MEASURES

A. Juvenile Justice

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1. For juveniles who are generally unable to defend themselves as well as lacking financial ability, a realizable system should be pursued to provide an appointed defence counsel/attendant at public expense, in order to guarantee the right of self defence of juveniles needing legal assistance throughout procedures from investigation of crime to the disposition at a Family Court.
2. Regardless of the nature of the case or the place of physical restraint and the dates of interviews, free and sufficient interviews for the juvenile with a lawyer or an attendant should be guaranteed.
3. It is necessary to confirm the basic principle that physical restraint of a juvenile shall be a measure of last resort, to rectify situations in which arrest, detention and protective custody is unnecessarily carried out too easily, and to consider alternative measures.
4. It is important to confirm the basic principle that the period of physical restraint of a juvenile should be kept to minimum and rectify prevailing situation allowing the extension of detention or protective custody, which runs contrary to the purport of domestic legal provisions as well.
5. To secure gap-filling measures for physical restraint in 3 and 4, the juvenile's lawyer shall be allowed to be present and state opinions during the questioning procedures for detention and procedures for protective custody.
6. Regarding arrest at suspect stage and physical restraint due to protective custody decision made after the case has been sent to a Family Court, for which juveniles' right to file a complaint are not guaranteed under the current legislation, such procedures for filing complaints should be legally stipulated.
7. Regarding temporary protection as an administrative procedure under the Child Welfare Law, the period of physical restraint should be limited and procedures for filing a complaint should be legally stipulated, as well as the right to the assistance of counsel should be guaranteed for a child subject to investigation or physical restraint under the Child Welfare Law.
8. Detention of juveniles in the "daiyo kangoku" (substitute prison), which is a detention facility within a police station, whose agency is also responsible for investigation, should be stopped immediately and substitute prisons should be abolished as soon as possible.
9. The Government should accurately grasp any situation regarding investigation activities which may degrade the personality and dignity of a juvenile, such as abuse of the authority to arrest and illegal interrogation using violence and intimidation, and establish concrete measures, such as guidance and supervision over the police, to eliminate such types of investigations.
10. Regarding the investigative stage for juveniles, a special law should be enacted conforming to the rules set out by the United Nations, with due consideration to special nature of juveniles.
11. To guarantee the right of juveniles to defend themselves and
have access to the investigative information, the right of juveniles to be their counsel present at interrogation should be given. The principle should be established that if an investigative agency carries out questioning without allowing the presence of the counsel, despite a request for such representation, the evidence obtained from such interrogation shall not be valid and shall be excluded, .
12. The Japanese Government should withdraw its reservation for Article 37 (c) of the Convention stipulating separation of juveniles from adults and should ensure separation in

detention facilities and police vehicles where complete separation is not in practice at present, in order to implement separation of juveniles and adults under physical restraint, allowing due consideration to the personality and dignity of juveniles. In addition, the Government should immediately withdraw the ongoing Kitakyusyu Correction Center Plan, which is a plan to integrate facilities for adults with those for juveniles.

13. Regarding juveniles under arrest, the rights of their families to visit them should be respected. In addition, regarding those who are under physical restraint due to detention, protective custody, etc., adequate time should be secured for their families to visit them and their visits during weekends and public holidays and out of office hours（in early morning, at night） should be allowed.

14. It should be confirmed that the presumption of innocence shall be a principle in procedures of juvenile cases as well, and notification of rights to juveniles and their parents as well as public relations activities to promote understanding of the juvenile justice system should be conducted.

15. Regarding the right of suspect juveniles to the notice of the charge, the right to remain silent and the right to counsel, a written explanation shall be issued to juveniles and their parents in addition to oral notification, in order to assist juveniles' understanding and guarantee the right to substantially effective defence.

16. In order to realize fair hearings for juveniles, the right of juveniles to file a motion of challenge against judges who may conduct biased hearings, which is not stipulated under existing legislation, should be legally stipulated.

17. In many cases, investigation agencies carry out supplementary investigations after the commencement of hearings at a Family Court, despite the principle that hearings at a Family Court should be started only after investigations are completed. Because such activities may create a danger of unjustifiable violation of juveniles' rights in receiving a fair hearing at the court, such investigation should be prohibited in principle.

18. Application of procedures should be improved so that juveniles' rights to examination and cross-examination of witnesses will be substantially guaranteed, and at the same time these rights should be explicitly stipulated by legislation.

19. Article 31 of the Juvenile Law which provides that costs for interpreting services may be claimed from the juvenile, should be revised.

20. The Government should take it more profoundly that juvenile legislation in Japan treats persons under 20 years of age as "juveniles", and should prohibit capital punishment for juveniles who were under 20 when they committed such a crime.

21. Regarding referrals to public prosecutor on the grounds that a case merits criminal punishment under Article 20 of the Juvenile Law and the decision of discharge after hearing with finding the juvenile committed the delinquent act, the right to file an appeal should be granted to the juvenile.

22. Regarding the decision of protective measures by a Family Court, while the court is not required to prepare and issue a document of the decision, an appeal must be filed within 2 weeks, specifying points of the appeal, which makes it extremely difficult for juveniles to file such an appeal. These problems should be rectified and procedures should be established so that the juveniles' right to appeal will be substantially guaranteed.

23. To substantially guarantee juveniles' rights to appeal, the principle of prohibition of disadvantageous changes at appeal courts or courts inn case of new hearing, should be clearly applied, and the current situation where practices against this principle exist should be rectified.

24. To guarantee juveniles' rights to receiving hearings at an independent court and to protect the best interests of juveniles, the basic principle that prohibition of double jeopardy shall apply with regard to decisions of discharge after hearing for juveniles at a Family Court should be confirmed,

and the practice of prosecuting juveniles in a Criminal Court for a case which has already decided as to discharge at a Family Court, should be immediately stopped. The prosecution of so called "Chofu Case" in which a juveniles were prosecuted after discharge at a Family Court should be dismisses.
25. Rules covering review of decision of protective measures on juveniles should be expressly defined and improvements be made so that juveniles will be allowed application for review on the reason of innocence even after the completion of the protective measures.
26. In order to establish a system of varied treatments, a wide variety of programs should be provided to meet the needs of individual juveniles. Especially, non-custodial treatments within society should be consolidated, and institutional treatments should be improved so that detention will be for the shortest possible period of time as a measure of the last resort.
27. Regarding juveniles accommodated at juvenile training schools, the following problems of treatment should be urgently solved, in light of the provisions of "UN Rules for the Protection of Juveniles Deprived of Liberty".
<1> They are not given information on the rights granted to juveniles in such schools or on their rights to file complaint.
<2> They are prohibited from possessing necessary personal items.
<3> They are not given any choice as to the work they perform nor receive adequate compensation for it.
<4> They are not guaranteed adequate visits and communications from their families and friends.
<5> They are sometimes placed in a facility similar to solitary confinement as a disciplinary measure.
<6> They are not given any opportunity to file complaints with regard to evaluation of their performance, etc.
28. The Government should confirm that the privacy of children who are subjected to the procedures of juvenile justice shall be protected and should establish and implement effective measures, such as making it clear that the reporting practices on the part of the media, which discloses juveniles' names in a sensational manner, may permanently damage the rights of children to be accepted back in society and such practices must not be permissible.

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1. Current Situation of Juvenile Justice in Japan and Its Problems

516. The Juvenile Law in Japan provides that a juvenile means all people below the age of 20 and that, if juveniles commit crimes, their cases should be all sent to a Family Court for hearing according to the juvenile hearing procedures differing from the criminal procedures for adults. The objective of the Juvenile Law is to ensure the sound growth and development of juveniles, rather than punishing them. To achieve this objective, the Juvenile Law precludes the involvement of public prosecutors, who would take a position of accusing juveniles and elucidating their criminal liabilities, in the procedures of juvenile hearings at Family Courts.

517. If a Family Court decides, for juveniles who have reached 16 years of age, that criminal punishments are necessary in the light of the nature of their crimes and the circumstances, their cases may be sent to public prosecutors for hearing at a Criminal Court, where they become subject to criminal punishments. Such cases, however, account for 0.7% of the general juvenile cases.

518. The rules on the juvenile hearing procedures are extremely simple, only providing that

"juvenile hearings shall be conducted in a mild atmosphere, with emphasis upon kindliness" and be held in camera. There is no provision that guarantees due process for juveniles. For example, although the rules allow a juvenile to appoint an attendant, they do not prescribe that the attendant must be a lawyer, nor do they stipulate a public attendant system which substantially guarantees the right to appoint an attendant. In addition, the rules do not provide for the rights to examine witnesses or to cross-examine witnesses, etc., as will be detailed later.

519. The Code of Criminal Procedure, which applies to the adult criminal procedures, provides for a public defence counsel system, the right to examine and cross-examine witnesses, the right to be informed in writing of the facts pertinent to the prosecution, etc. However, such rights are not guaranteed to juveniles. Juveniles' rights are not so assured as those of adults.

520. Paragraphs 264, 267, etc. of the Government Report describe the criminal procedures and the juvenile hearing procedures, giving the same weight to both. It should be noted, however, that the juvenile hearing procedures apply to most juveniles as mentioned earlier, not the criminal procedures, and that this entails poorer guarantee of rights compared with the guarantee for adults.

521. Regarding the present juvenile hearing procedures, it is called upon to maintain the philosophy of sound upbringing of juveniles and guarantee due process with a view to realizing the best interests of children and to attaching importance on their right to express views in accordance with international standing rules such as the Convention on the Rights of the Child, the UN Rules on Minimum Standards for the Administration of Juvenile Justice (The Beijing Rules).

522. However, the present situation of administration of the juvenile hearing procedures and the general direction of amendments to the Juvenile Law being proposed by incumbent judiciary, etc. is disregarding the Convention and in fact is running counter to it:

523. Firstly, the Supreme Court ruled in favor of administration that violates juveniles' rights.

524. For example, in the Japanese juvenile hearing procedures, the principle that the investigating authorities must send all the investigative materials to the Family Court after completing investigation and must not conduct any supplementary investigation after that had been abided by for a long period of time as an essential practice for the sound development of juveniles. However, since the 1980's, cases where such supplementary investigation was conducted on juveniles denying charges according to the instruction by the Family Court or independently by the concerned investigating authorities, have been taking place. There was even a case where on the day following testimony by a witness pertaining to a juvenile accused's alibi at a court hearing, the witness was taken to a police station and urged to retract the said testimony. These practices run counter to the philosophy of the Juvenile Law that cases should be heard for the purpose of promoting sound development of juveniles by maintaining such cases separate from the investigating authorities, once they have been sent to the Family Court. However, the Supreme Court approved such supplementary investigation by investigating authorities on October 24, 1990 by ruling that such a practice is not unlawful.

525. Further, though it was a dictum, the Supreme Court presented its judgment on March 29, 1991 that, even if the Family Court examined facts and made a decision of discharge, judging that there had been no delinquency, the prohibition against double jeopardy would not apply to

the decision. This decision implies a possibility that, even if juveniles are given discharge decisions after having claimed innocence and substantiated such claims to the best of their ability at the Family Court, they may be prosecuted in a Criminal Court when coming of age. This decision is extremely unreasonable in the sense that it plunges juveniles into insecure positions in which they are likely to be faced with criminal prosecution once again. After that, a case where a juvenile who actually received discharge decision in the Family Court was prosecuted in the Criminal Court occurred (the Chofu case).

526. Secondly, some of the mass media often conduct a campaign to the effect that "the present Juvenile Law is too soft. The juvenile also deserves a severe punishment," once an offense of a serious nature was committed by juveniles. As if the Courts were responding to such public temper, they passed judgment on juveniles by attaching importance to social security, maintenance of social order, the injured party's sentiments, etc. rather than being concerned with the sound development of juveniles. For example, the Tokyo High Court held on July 12, 1991 that "in cases where the contents of a crime is so grave and brutal that a severe punishment is called upon with a view to maintaining safety under law and social order, taking into account a wholesome sense of justice held by the population at large and, into the bargain, if the victimized person strongly wishes that the accused will receive severe punishment and if such a wish is deemed not arbitrary but to be thoroughly convincing, imposing a penalty proportionate to such factors is the way to realize social justice."

527. Furthermore, those who were 18 years or over but under 20 years at the time when they committed crimes have been sentenced to death on the grounds of similar judgments as mentioned above, as shown later.

528. Thirdly, a recent proposed amendment of the Juvenile Law by incumbent judges not only allow public prosecutors to take part in juvenile hearings but also allows them to appeal to a higher court, which is not permitted under the present law. The proponents of the said proposal explain that such an amendment is for the purpose of "making appropriate fact finding realizable." In reality, however, public prosecutors will work on the case as persons in authority accusing juveniles and elucidating their criminal liabilities, which is apparently contrary to the philosophy of sound development of juveniles.

529. The investigation is an important stage in a juvenile case along with the juvenile hearing. In particular, in Japan, a juvenile arrested or detained by the police is allowed to be placed under physical restraint for a maximum term of 23 days, with the result that during this period his/her rights are often seriously infringed upon.

530. Juveniles do not have adequate abilities for defending themselves and are likely to end up making false confessions more easily than adults when subjected to leading questions, threatening acts or violence by investigators. Therefore, special consideration for juveniles at the investigation stage is as necessary as that at the hearing stage. However, at the investigation stage, special laws applicable to juveniles are not made available and thus the Code of Criminal Procedure, which is applicable to adults, will apply to juveniles too. Paragraphs 275 and 277 of the Government Report make reference to the availability of provisions stating that special consideration must be given during the police investigation to the characteristics of juveniles under the Standards of Criminal Investigation, the Guidelines for Police Activities on Juvenile Crimes, etc. However, these are nothing more but internal guidelines for the police, which,

additionally, are not generally understood by policemen in the field and are not put to practical use at all when conducting actual criminal investigations.

531. Furthermore, it should be borne in mind that, under the Code of Criminal Procedure, neither adults nor juveniles whose cases are at the investigative stages are entitled to the public defence counsel system.

2. Objectives of Juvenile Justice, Sound Development of Juveniles and Their Right to Social Reintegration (Article 40(1))

532. As mentioned earlier, the primary objective of the Juvenile Law of Japan is to secure sound development of juveniles and thus the Law attaches importance to their rights for social reintegration, however, a proposal to amend the said Law, running counter to such objectives, has been made.

533. The Juvenile Law prohibits news coverage which may identify the criminals with regard to the crimes committed by juveniles. This is a provision to serve the purpose of promoting social reintegration for such juveniles and such a prohibition has been observed in many cases. However, the Ayase case of 1989, in which a senior high school girl student was murdered by juveniles and a murder case of 1993 in Chiba Prefecture, etc., the mass media reported the names of such juveniles asserting that "the brutes are not entitled to human rights." Such news coverage is contrary to the protection of privacy under Article 40(2)(b)(vii) of the Convention, and results in the deprivation of the right of such juveniles to their desired social reintegration.

534. As mentioned earlier, as a rule, the criminal investigation for juvenile suspects is conducted under the Code of Criminal Procedure, which is applicable to adults, without due consideration to the distinctive characteristics of juveniles. On the contrary, juvenile suspects are subjected to illegal criminal investigations such as being compelled to make a confession, etc. as is stated later in detail.

3. Juvenile's Right to Access to defence Counsel and/or Attendant (Article 37 (d) & Article 40-2 (b))

535. In Japan, the right of juvenile suspects to retain a lawyer as a defence counsel/attendant is ensured under the Constitution (Articles 31, 34 and 37) and under laws (Article 30 of the Code of Criminal Procedure and Article 10 of the Juvenile Law).

536. However, it cannot be maintained that the said right is substantially guaranteed at any stages during the period of physical restraint, because the right to have a defence counsel/attendant at public expense is not ensured for juveniles either at the investigative stage or the hearing stage. In order to guarantee substantially the said right for juveniles, who in general do not have sufficient means to pay for legal assistance, a system wherein a juvenile may have an appointed defence counsel/attendant at public expense is essential. Paragraphs 264 and 279 of the Government Report state that juvenile suspects and their guardians have the right to retain a defence counsel/attendant but makes no reference to the necessity of urgent amendment of the present system to enable this right to be substantiated. Therefore, contents of the Report in this respect are deemed to be extremely insufficient.

537. The Japan Federation of Bar Associations initiated in 1990 the Duty Lawyer System under which a lawyer on duty provides a free interview service once to suspects, including juvenile suspects, mainly at the investigation stage, if they so request. This system was established at every Bar Association throughout Japan by October 1992, to facilitate easier access to lawyers. Furthermore, in order to substantially secure for a person who cannot afford to pay for legal assistance the right to appoint a defence counsel/attendant, this system is linked with "the Defence Aid System for Criminal Suspects" for suspects during investigation stages and "the Attendant Aid System for Juvenile Protection Cases" for juveniles at the Family Court under which lawyer's fees, etc. are paid through the legal aid program of the Legal Aid Association.

538. Through these devised systems, the percentage of general juvenile cases, excluding the road-traffic offenses, where an attendant was appointed at a Family Court increased to about 1.2% of the total cases in 1995 from about 0.34% in 1977 (data to be quoted hereinafter in this section is from the Annual Report on Judicial Statistics compiled by the General Secretariat of the Supreme Court). The said percentage over the last few years has been rising steadily.

539. Still, however, the percentage of cases where an attendant is appointed remains extremely low compared to the total cases coming before the Family Court. Especially, it is a matter of grave concern that the percentage of attendants being used is less than 20% even for cases in which juveniles are placed under physical restraint at Juvenile Classification Homes, i.e. cases in which the assistance of such attendants is imperative. The percentages of cases where a lawyer attendant is employed for different types of delinquency are as follows: about 61% for murder, about 53% for injury resulting in death, about 19% for robbery resulting in injury, about 52% for rape in course of robbery, about 14% for robbery, about 9% for arson, etc. Such percentages for serious crimes committed by juveniles, in which defence counsels would have been appointed in adult criminal trials as being cases requiring the presence of defence counsel, are extremely low. Therefore, it can hardly be stated that juveniles are being fully assisted by lawyers.

540. As mentioned earlier, there is a provision requiring to appoint a defence counsel in order to initiate a criminal trial for those accused of committing serious crimes (Article 289 of the Code of Criminal Procedure). For those accused of committing other than serious crimes, there is also a provision stating that a defence counsel should be appointed at public expense if they are without sufficient means to pay for legal assistance, as long as they do not waive such rights (Article 37(3) of the Constitution). The present situation where even the right to court appointed defence counsel, which is guaranteed to adults at the trial stage, is not ensured for juveniles who require assistance of defence counsels/attendants even more, as juveniles have a poor ability to defend themselves and generally they do not have sufficient means to pay for legal assistance is extremely unreasonable and should be rectified as a matter of course.

541. On November 4, 1993, the United Nations' Human Rights Committee made a recommendation to the Japanese Government that "in particular, all the guarantees relating to the facilities for the preparation of the defence should be observed." This recommendation was taken, irrespective of applying to adults or juveniles. As far as juveniles are concerned, however, it is interpreted that the recommendation wished to achieve a realization of a public defence counsel/attendant system for the purpose of securing the right of juveniles to a defence during all stages of proceedings from the time of first investigation to the time when the Family Court

gives final decisions, and to secure financial support in order to realize such a system.

542. Article 37(d) of the Convention provides that "every child deprived of his or her liberty has the right to prompt access to legal and other appropriate assistance," while Article 40(2)(b) of the Convention stipulates that "every child alleged as or accused of having infringed the penal law has at least the following guarantees ..... to have legal or other appropriate assistance in the preparation and presentation of his or her defence." In addition to this, Article 7.1 of the Beijing Rules as the international standing rules being quoted in the Preamble to the Convention, provides that "the right to defence shall be guaranteed at all stages of the proceedings." When the spirit of the said Rules is taken into account, these provisions call upon realization of a public defence counsel/attendant system to guarantee the right of juveniles to be defended over all stages starting from the initial investigation to the time when the Family Court announces its decisions.

543. For juveniles, the Japanese Government should establish without delay a system guaranteeing the right to appoint defence counsels/attendants at public expense at least for all stages of the proceedings after juveniles are placed under physical restraint.

4. Rights of Juveniles Deprived of Liberty (at the Stages of Criminal Investigation and/or Hearing)

544.(1) The Right of Defence Counsels/Attendants to Have Interviews with Juveniles Deprived of Liberty (Article 37(d) & Article 40(2)(b))

The right of defence counsels/attendants to have interviews with juveniles placed under physical restraint is also assured as being central to the rights of appointing a defence counsel/attendant here in Japan under Article 34 of the Constitution, Article 39 of the Code of Criminal Procedure and Article 39 of the Rules on Juvenile Classification Homes.

545. However, as shown in the following, in practice, the said right is not fully ensured.

546. Furthermore, as stated before, the UN Human Rights Committee made a recommendation to the Japanese Government that all the guarantees relating to the facilities for the preparation of the defence should be observed. As a matter of course, the "facilities for the preparation of the defence" include the guarantee of the right to interview.

<1> Problems in the Notice Case System

547. For interviews by defence counsels with suspects placed under physical restraint during the investigation stage, the Ministry of Justice formerly employed a so-called "General Designation System", under which the Ministry uniformly prohibited defence counsels' interviews with suspects by issuing general designations and removed the prohibition only by specific designations issued at the request of defence counsels for interviews (Interview Ticket System).

548. As the General Designation System constitutes a serious infringement on the right of free access to lawyers, the Japan Federation of Bar Associations repeatedly discussed with the Ministry of Justice ways to abolish this system, which was finally replaced by the Notice Case System in which a "notice to the effect that interviews may be designated" is issued.

549. Also under this System, however, if a case is designated as being a specific notice case, a defence counsel's application for interview is accepted only after it is checked with the public prosecutor whether the power of specific designation is exercised. That is to say, the system remains unchanged in actual practice: as a general rule, defence counsels are not allowed to

engage in free interviews with suspects deprived of liberty except in exceptional circumstances where an interview is granted on individual merits.

550. Therefore, the Notice Case System currently employed by the Ministry of Justice infringes upon the right of juvenile suspects to prompt access to a defence counsel and should be rectified without delay.

<2> Necessity to Secure Free Choice of Date & Time for Interview

551. In principle, interviewing on public holidays and before or after office hours (night-time or early in the morning) is not allowed in actual practice for reason of interference with the administration of the institution, in particular in a Juvenile Classification Home or in a detention center. Therefore, depending on cases, it may become very difficult for a defence counsel to secure a suitable date and time for an interview. Such restrictive operations which infringe the right of a juvenile for prompt access to a defence counsel/attendant should be rectified without delay.

552. Further, when a defence counsel interviews a juvenile at a Juvenile Training School, the presence of a staff from the institution had been required in principle in actual practice. Recently in February 1996, a notice issued by the Ministry of Justice specified that no observer should be present at such interviews provided that the interview is relevant to the exercising the right to appeal or that protection on a separate charge is pending. However, as a defence counsel's interview at a Juvenile Training School may involve various other factors than the above activities, the right of the defence counsel to have a free and private interview without the presence of an observer should be generally ensured at the Juvenile Training Schools as well.

(2) Gap-filling measures for physical restraint of juveniles and the principle of detention for shortest period of time (Article 37 (b))

553. Based on the spirit of the Convention on the Rights of the Child, the UN Rules on Minimum Standards for Administration of Juvenile Justice (The Beijing Rules), other international standing rules and domestic laws, the Japanese Government should improve the following practices without delay to ensure that physical restraint is used as a measure of last resort and that the means and period of time which will impose the minimum burden on juveniles are selected.

<1> Issues in Exercise of the Power to Arrest

554. Paragraph 275 of the Government Report invoking the provisions of the Standards of Criminal Investigation and the Guidelines for Police Activities on Juvenile Crimes, which are the internal regulations of the investigative authorities, states that "the power to arrest a juvenile is exercised in consideration of the juvenile suspect's age, character, criminal record and circumstances of the crime."

555. In reality, however, the actual state of exercising power of arrest presents many problems. The cases, including those stated in the following, have been reported to the respective Bar Associations: cases where a juvenile was forced into going to the facility of the investigating authorities without a warrant issued by the Court and without informing the juvenile or the parents of the reason by telling a lie that they had obtained the juvenile's consent (Illegal Investigation Case at Tsuruoka Police Station & Violence Case by Policemen at Iwade Police Station); cases where juvenile suspects were arrested by warrants when their guardians were absent despite the lack of necessity for so doing; and cases where the investigating authorities requested a warrant with a false reason that "the juvenile suspect's whereabout is unknown and he is likely to run away" and arrested the juvenile without informing his parents, even though the

parents had promised to make the juvenile turn up at the police and the juvenile had continued to attend the school (Juvenile Arrest Case at Machida Police Station). Such abusive exercise of the power of arrest creates a situation where the personality and dignity of the juvenile is seriously impaired.

556. Therefore, the Government should make the actual process of the investigation public and guide the investigating authorities exhaustively so that the exercise of power to arrest will be in conformity with Rules 7 and 10 of the Beijing Rules as well as the aforesaid Standards of Criminal Investigation and the Guidelines for Police Activities on Juvenile Crimes.

<2> Gap-filling measures for physical restraint

557. The present period of time and practices concerning physical restraint measure such as jail detention, protective detention substituted for jail detention (before a case is sent to a Family Court) and protective detention (after a case is sent to a Family Court) run counter to the objective of Article 37(b) of the Convention, "the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time."

558. In the light of Rule 13. 2 of the Beijing Rules and Rules 2 and 17 of the UN Rules for the Protection of Juveniles Deprived of Liberty, "as a measure of last resort" under the said paragraph of the Convention means that when judging whether a juvenile should be placed under physical restraint, it should be considered whether alternative measures such as careful supervision, intensive care, restraint to own home, and accommodation in an educational institution are available and whether it is difficult to hold a hearing if such means are used for the juvenile in question.

559. However, in Japan, such alternatives to arrest are not made available systematically. With regard to jail detention, i.e. physical restraint that follows arrest (the term of detention is 10 days in principle, and a further detention is granted for an additional 10 days when it is inevitable), protective detention substituted for jail detention, in which juveniles are detained at a Juvenile Classification Home, is only an alternative. Although it is better for juveniles than jail detention because they are separated from investigative authority, it is rarely chosen. In addition, when the Court makes a judgment as to whether a juvenile should be detained, public prosecutors do not assert or explain the circumstances under which it is difficult to resort to alternative means and thus a juvenile is detained too easily simply through examination as to whether or not the case meets the requirements almost identical to those for adults. Also in the provisions of the Japanese Juvenile Law, the necessity of "efforts to secure alternative means" has hardly been taken into consideration so far, though the Law stipulates that no juveniles shall be detained "unless absolutely necessary." (Article 43 of the Juvenile Law).

560. As a result, a considerable number of juveniles are detained in practice, although Paragraph 276 of the Government Report does not make any reference to the fact. Meanwhile, protective detention substituted for jail detention is hardly ever applied.

561. Even when a decision is made that a juvenile must be detained, protective detention substituted for jail detention should be applied more often. As for the jail detention, a stricter practice should be exercised requiring that unless the required "efforts to secure alternative means" is not satisfied, the decision to detain a juvenile "by absolute necessity" shall not be made. Also for protective detention substituted for jail detention, the traditional interpretation/administration has been that the same requirements may be applied as those for adults. However, other less restrictive means, such as careful supervision and intensive care, should be adopted. Here too, a stricter interpretation must be employed.

562. Also, in regard to the place of detention, considering the spirit of "accommodation to an educational institution or a Home", the provision of the Juvenile Law that "a Juvenile

Classification Home can be used as a place of detention" must be utilized. In practice, however, children are rarely detained at a Juvenile Classification Home as most of them are detained at a "daiyo kangoku" (substitute prison) where it is difficult to separate them from adults, as discussed later. (see (6))

563. Therefore, in order to make requirements authorizing detention stricter, a defence counsel's rights to be present and to state opinions at the questioning for detention of a juvenile, which are not allowed under the current legislation, should be allowed (Article 37(d) & Article 40(2)(b) of the Convention).

564. With regard to protective detention, the requirements for determining protective detention are quite vague and, in the actual application, juveniles being placed under physical restraint when their cases are being sent to the Family Court are decided in principle to be subject to protective detention. Questions to juveniles when deciding protective detention are mere formalities and substantial requirements for protective detention have not been considered.

565. Furthermore, at present practically 100% of those children decided as being subject to protective detention are sent to a Juvenile Classification Home under Article 17(1)② of the Juvenile Law to be placed under protective detention there, with the result that protective detention at home under an Family Court Probation Officer's supervision under Article 17(1)① remains nothing more than a scrap of paper. The present situation in which the said system which is equivalent to "careful supervision" as defined in the Beijing Rules is completely disregarded, which means alternative measures have not been carefully considered, runs counter to the spirit of the Convention.

566. Here too, as in the case of jail detention, in order to make requirements authorizing protective detention stricter, a defence counsel's rights to be present and to state opinions during the procedure to decide whether a juvenile should be subject to protective detention should be established institutionally. These rights are currently left to the discretion of a judge and are often denied in practice.

<3> Principle of Shortest Period of Time for Physical Restraint

567. In regard to the provision stating that physical restraint "...of a child...shall be used...for the shortest appropriate period of time," the present period of time and actual situation of detention and protective detention here in Japan should be called into question.

568. The period of detention cannot be extended, "unless absolutely necessary", even for adults. As far as juveniles are concerned, whether detention should be extended must be more strictly judged. In reality, however, the extension of detention even for juveniles is too easily allowed for reasons of a serious case or a complicity case entailing a lengthy investigation.

569. With regard to protective detention in a Juvenile Classification Home, the Juvenile Law stipulates that in principle detention should not exceed 2 weeks (the first sentence of Article 17 (3)) apart from exceptional circumstances when an additional 2 weeks may be granted as extension just once "if continuation is specially required" (the second sentence of Article 17(3)).

In practice, however, renewal of a term of protective detention has become a general rule. In 1994, cases where the term of protective detention ended within 2 weeks accounted for a low 20% of the total cases against about 80% of the cases where detention exceeded 2 weeks, of which over 65% exceeded 3 weeks. On the other hand, there are only a few cases where the decision of protective detention is rescinded *ex officio* by judges.

570. The present situation mentioned above runs counter to the spirit of Article 37 (b) of the Convention and the international standing rules stating that physical restraint on a juvenile should be used for the shortest possible period of time. It is therefore of urgent necessity for requirements authorizing the term extension of protective detention to become stricter in actual

practice.

(3) Deficiency of the Procedures to File a Complaint against Physical Restraint (Article 37 (d))

<1> Non-Existence of Procedures for Filing a Complaint (Quasi-Appeal) against Arrest

571. The arrest is the first phase of physical restraint in criminal investigation procedures based on suspicion of a crime being committed and it is allowable for juveniles 14 years of age or older to be placed under physical restraint for a maximum of 72 hours.

572. However, procedures to challenge the legality of arrest for suspects during the time of being arrested has not been established independently under the Code of Criminal Procedure. In addition, the Supreme Court disapproved in a precedent case applying the provision of quasi-appeal, which is the procedure for filing an appeal against the decision of jail detention, to arrest. Paragraph 280 of the Government Report avoids making reference to this important defect of legal procedure.

573. The non-existence of any procedure for appeal against arrest is manifestly in breach of Article 37 (d) of the Convention under which "the right to challenge the legality of the deprivation of his/her liberty..." is ensured. The fact that suspects including juveniles are not allowed to challenge illegality and/or unreasonableness of physical restraint up to the maximum 72 hours runs counter to the rights of the juvenile to a great extent. The Government should promptly enact provisions on the procedure to ensure the right to quasi-appeal against arrest.

<2> Non-Existence of Procedures for Quasi-Appeal against Protective Detention

574. A juvenile whose alleged delinquency has been investigated is sent to the Family Court where his/her delinquency, temperament and environmental circumstances are examined. If the Family Court makes a judgment that classification of his/her temperament by a Juvenile Classification Home is necessary for determining the , the disposition, Court then decides to make him/her subject to protective detention for the maximum term of 4 weeks with the result that he/she is placed under physical restraint and is accommodated at a Juvenile Classification Home.

575. However, the present law does not provide for any procedure to file an appeal against the said decision, which means that a juvenile's right to challenge the legality of deprivation of his/her liberty is infringed. Against such a deficiency in procedures, Paragraph 267 of the Government Report merely states that a judge can rescind or change such decisions *ex officio*, without admitting any deficiency of procedures. However, such an *ex officio* rescission or change is not ensured as a juvenile's right to file a complaint, as the Government also admits. Therefore, even if the juvenile in question requests a rescission of a decision of protective detention, as his request is not assured as a legal right, the Court is allowed not to make judgment on such a request. In addition, even if a judge decides not to rescind his decision, a juvenile cannot appeal to a higher court to challenge the legality of such a decision. Actually, even if juveniles request judges to rescind such a decision, judges do not make any decision, simply ignoring the requests in many cases. Besides, the decision is seldom rescinded *ex officio*.

576. Therefore, a situation in which the right to file a complaint against the decision for protective detention is not allowed, clearly infringes upon the child's "right to challenge the legality of the deprivation of his/her liberty" recognized in the Convention. It is necessary to promptly enact the provision on the procedures to ensure the right to file a complaint against the decision for protective detention.

<3> Deficiency of the Right to File a Complaint against Physical Restraint under the Child

Welfare Law and the Right to Counsel

577. Juveniles under 18 years of age, from among those deemed liable to commit future crimes according to certain grounds, or those who have not reached 14 years of age, that is, the penally responsible age, and whose acts violate penal statutes can be put under physical restraint by the director of the Child Guidance Center as an "interim-protection" measure as an administrative procedure under Article 33 of the Child Welfare Law. The points at issue are that the period of time for this "interim-protection" measure is not strictly specified and, in addition, there is substantially no procedure for filing a complaint against physical restraint as an "interim-protection" measure. Furthermore, the right to access to legal assistance at public expense is not guaranteed to juveniles under this procedure.

578. In this way, as physical restraint under the Child Welfare Law entails many problems in connection with ensuring the due process of law, it is necessary to adjust this procedure.

(4) Problems of Substitute Prison (Article 37 (a) & (c))

579. It is of grave concern that a high proportion of juveniles (about 80% - 90%) detained during the investigative stages of juvenile cases are confined at a so-called "daiyo kangoku" (substitute prison), a custody cell within the facility of a police station where police officers acting as the investigating authorities belong to.

580. Here in Japan, the majority of suspects, who should be detained at the detention centers under the control of the Ministry of Justice, are confined to police cells within police stations to which investigating police officers belong, mainly for the convenience of the investigation; a practice which had been initiated as a temporary alternative measure but has now become a general practice.

581. Furthermore, as the police personnel in charge of substitute prisons and those in charge of investigation are under the authority of the same top officer at the police station, there always exists a risk that, in the pursuit for convenience of investigation, the nature of the organization and friendly feelings between colleagues can lead to arbitrary management of the custody cells, inducing types of investigation which may infringe the detainee's human rights.

582. It was disclosed through judicial precedents or numerous reports made to the Bar Associations that using a substitute prison was allowing the police to carry out interrogations which impaired the human dignity of suspects such as long interrogations for over 8 hours per day, late at night and interrogations by unlawful means such as threats, violence and tricks.

583. Regarding the fact that the system of substitute prison entails a probability of infringing human rights, as stated above, the UN Human Rights Committee pointed out to the Japanese Government on November 4, 1993 as "a principal subject of concern" that substitute prisons were not under the control of a government agency separate from the police who are in charge of investigation and recommended that the system of substitute prison should be abolished or reformed so that it would be compatible with Article 10 of the International Covenant on Civil and Political Rights. Regrettably, however, the Japanese Government has shown any move towards this direction.

584. The Japanese Government should seriously take heed of the comments by the UN Human Rights Committee and promptly abolish the system of substitute prison.

585. As a temporary measure until such proposed abolishment, a system under which juveniles who are less able to defend themselves compared to adults are not placed in substitute prisons should be established and put into practice forthwith as soon as possible, in line with Article 37(a) and (c) of the Convention which requires state governments to ensure treatment securing the human dignity of juveniles deprived of liberty, because the "daiyo kangoku" entails a probability of seriously infringing upon the rights of detainees.

(5) Torture or Other Cruel, Inhumane or Degrading Treatment for Juveniles (Article 37 (a) & (c))

<1> Actual Practices of Interrogation by Investigative Authorities

586. Paragraphs 107 to 109 of the Government Report describe simply the general principles of domestic laws without making any reference to the problems in the actual practices of investigation, resulting in the statements being quite insufficient.

587. Certainly, it is a basic principle of the Constitution of Japan (Articles 31, 34, 36, etc.) that torture or other inhumane treatment or cruel punishments should not be allowed in juvenile judicial procedures.

588. Furthermore, the prohibition of such treatment is confirmed by the principle of the criminal procedures that confessions made under duress, torture or threat are not admissible as evidence (Article 319 of the Code of Criminal Procedure).

589. In Japan, as previously mentioned, apart from procedures for criminal cases committed by adults, the juvenile hearing procedures have been established for juveniles below the age of 20 years who have committed crimes, under the Juvenile Law whose basic philosophy is the principle of juvenile protection with a view to securing their sound development. It is construed, as a matter of course, that also under these juvenile hearing procedures, the same prohibitions as those stated in the said criminal procedures are applicable to juveniles in question in the spirit of protection of the due process of law as specified in the Constitution.

590. In reality, however, a great number of court precedents and complaints filed with the Bar Associations asking for rectification of human right violation disclosed the fact that unlawful investigations or interrogations of juvenile suspects through violence, threats, tricks or other means that disregard suspects' rights were conducted by investigating authorities mainly by taking advantage of detention in a substitute prison within a police facility, as stated above.

591. Recent cases in which complaints were filed with the Bar Associations asking for rectification of human right violation are; a case of unlawful interrogation involving tricks, threats and disturbance of counsel's activity carried out in 1994 by a policeman in charge of investigation in Komatsu Police Station of the Ishikawa Prefectural Police Headquarters, who said to a juvenile (17 years of age), "Sign your statement and I'll correct it later," "You're making a fool of me, you shit head!," "Don't believe in what a defence counsel states!," etc., and another case of unlawful investigation involving violence and threats carried out in 1993 by a policeman in charge of investigation in Tsuruoka Police Station of the Yamagata Prefectural Police Headquarters, who shouted at a juvenile (6th grade of elementary school), "You must've done it. Own up to it," etc., and violently beat the back of his head.

592. Before the Convention was adopted, complaints asking for rectification of human right violation had been filed against the following cases, for example. In 1988, two policemen were violent to a boy (17 years old) at a police box in the precinct of the Itabashi Police Station of the Metropolitan Police Department. In the same year, investigators at Tomioka Police Station of the Gunma Prefectural Police Headquarters showed violence to a boy (17 years old) in turns during the interrogation, by knocking the back of his head against the wall, stomping their heels on him and hitting him with a chair. In response to these complaints, the Bar Associations issued advisory opinions or warnings to the respective investigating authorities to carry out fair investigation.

593. Regrettably, however, the present situation under which illegal investigations are still being conducted has yet to be rectified.

<2> The Right of Defence Counsels to be Present at Interrogations

594. There are cases where a defence counsel applies to be present at the interrogation of a juvenile suspect as a way to supplement the juvenile's poor ability to defend himself/herself and also to control any unlawful interrogations by the investigating authorities. Article 9 (3) of the Guidance for Police Activities on Juvenile Crimes, as the internal rules of investigating authorities, specifies that "except for a compelling reason (an interview with a juvenile) shall be conducted with the presence of his/her guardian accompanying him/her or any other person considered to be proper." Nevertheless, there are numerous cases where a demand by a defence counsel to be present is refused by investigating authorities. It should be considered that the interrogation conducted on a juvenile suspect without the presence of a defence counsel, at which the defence counsel had requested to be present, constitutes an illegal act that is inconsistent with Article 37(d) and Article 40(2)(b) of the Convention and thus any investigative data obtained during such an interrogation should be deemed inadmissible as evidence.

<3> Actual Practices of Investigation and Problems of the Government Report

595. As pointed out in the sections of this report concerning the "daiyo-kangoku" system and the gap-filling measures for physical restraint, the practice of investigations giving scant regard or respect to human dignity or welfare of a juvenile, which are in breach of Article 37(a) and (c) of the Convention, should be rectified without delay.

596. The Government Report closes its eyes to the actual situation where illegal investigations are being conducted and neither is any report made nor any reformative measures referred to. As the Government is obliged to implement the Convention and make sure independent and fair investigations, always with a view to protecting juveniles and securing their well-balanced development, the Government's stance as stated above must be severely criticized.

(6) Principle of Separating Juveniles under Physical Restraint from Adults (Article 37(c))

597. With regard to the second sentence of Article 37 (c) of the Convention that "...every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...," the Japanese Government has reserved the right not to be bound by the provision on the grounds that in Japan, any person less than 20 years of age deprived of liberty is to be separated from persons 20 years or older under domestic law (the unreasonableness of this reservation was pointed out in an earlier section).

598. However, in Japan, this principle of separation is not implemented sufficiently. At substitute prisons within the police station being used as a place of detention during the investigative stages as mentioned previously, although detention rooms are separate for formality's sake, only a few of these detention rooms are designated for juveniles, which are adjacent to those for adults within the same building. In addition, in many cases, such a series of rooms, including those for juveniles, are laid out in a comb-like or fan-like shape, so that, because of such building lay-outs, it follows logically that detained juveniles will be exposed to adult inmates or witness their activities. Furthermore, when they have to appear at the Court or at the Public Prosecutor's Office, sometimes juvenile and adult inmates are transported in the same prison van.

599. In addition, at the detention center too, as juveniles and adults are in the same building or place, similar issues arise.

600. However, the Japanese Government announced the Kitakyushu Correctional Center Plan in February 1995 that a prison for adults, a medical prison, a detention center for confining unconvicted detainees and a Juvenile Classification Home, which had been on different sites so far under the jurisdiction of the Fukuoka Regional Correction Headquarters of the Ministry of Justice, would be put together within the same building. Such a plan, being in breach of the

Convention on the Rights of the Child and the principle of separation set forth in the said International Covenant on Civil and Political Rights, is a measure that disregards any respect for the dignity of juveniles as human beings. The Japan Federation of Bar Associations has been calling for a withdrawal of such a plan against the concerned authorities, including the Ministry of Justice. After the plan was made public, opposition against it became more active through activities by the Bar Associations, citizens' movements as well as news coverage by the mass media that called the issue into question. As a result, the issue of this plan has become a subject for discussion at the Standing Committee on Judicial Affairs, etc. of the National Diet. Therefore, at present, the Government has been driven into a corner where there is no alternative but to change the initial plan for housing a detention facility for adults and a Juvenile Classification Home within the same building.

601. In this way, the Japanese Government does not fully understand the principle of separating juveniles deprived of liberty from adults. The Government should confirm the spirit of this principle once again and should immediately rectify measures that are inconsistent with juveniles' welfare and interests.

(7) Right of Family to Have Visits/Access to Juveniles under Physical Restraint (Article 37 (d) and Article 9-3)

602. Paragraph 128 of the Government Report simply outlines the current system but does not touch upon the current practices as stated below. The Report overlooks the fact that the current practices are in breach of Article 37 (d) and Article 9 (3) of the Convention ensuring the right of the child to be in contact with his/her family from the viewpoint of securing his/her survival and development and realizing his/her best interests, 15.2 of the Beijing Rules and 60 of the UN Rules for the Protection of Juveniles Deprived of Liberty.

<1> Family Visits with Arrested Juvenile

603. In principle, visiting an arrested juvenile is prohibited in actual practice. Therefore, his/her family cannot realize at all his/her situation at the initial stage of physical restraint. A juvenile arrested is left in a situation where he/she cannot have access to appropriate assistance from his/her family up to 72 hours. Such actual practices being allowed at present should be rectified without delay.

<2> Family Visits with a Detained Juvenile

604. Even if a juvenile in question can be visited by his/her family, in most cases the length of visit is limited to about 10 to 20 minutes. It is too short for maintaining sufficient contact with his/her family. Furthermore, a visit during weekends and national holidays or before/after office hours is not allowed with the result that working parents find it difficult to visit. Such actual practices should be rectified without delay.

<3> Family Visits with Juveniles Detained at a Juvenile Classification Home

605. Under the Juvenile Classification Home Treatment Regulations, a visit from a juvenile's family during the period of detention at a Home for protective detention is allowed when he/she so applies (Article 38) and his/her communication with his/her family is granted unless it violates the internal rules (Article 40). In reality, however, at the Tokyo Juvenile Classification Home, for example, inmates are given guidance that it is appropriate to have one interview per week, exclusive of weekends, national holidays or before/after office hours, and the length of visit is limited to about 20 minutes. During this critical period of time, before the Family Court decides the disposition of a juvenile, he/she is not allowed to have sufficient contact with his/her

family. Such guidance should be rectified without delay.

5. Rights of Children Deprived of Liberty (at the Stages under Correctional Treatment at a Juvenile Training School)

606. There are some problematic practices in Juvenile Training Schools in Japan in view of the UN Rules for the Protection of Juveniles Deprived of Liberty:

607.(1) Rule 24 of the Rule provides the right of juveniles "to have a distributed set of rules and/or written instructions on their rights and obligations and to be informed with the name and address of a public office for appeal and those of a body enabling access to legal assistance at the time when a juvenile is accommodated." It seems that regarding the obligations they should observe, guidebooks are distributed and explanations are given at the time of accommodation, but the rights of juveniles accommodated in such a School or procedures of appeal are hardly informed to the juveniles.

608.(2) Rule 35 of the Rules provides for respecting the right to "have their personal effects." However, the point at issue is that for reasons of securing equality among juvenile inmates, putting effective correctional treatment into practice and maintaining security, in general the right to have their personal effects is not granted, excepting eyeglasses and study materials. Furthermore, with regard to ensuring the right to wear private clothes as much as possible, as set forth in Rule 36 of the Rules, no private clothes, including underwear, are permitted save in special circumstances when he/she is granted leave from the institution or when his/her discharge is close at hand.

609.(3) With regard to "the right to select a type of work" set forth in Rule 43 of the Rules, although it appears that not a few institutions inquire the wishes of juvenile inmates, "the right to select a type of work" is not granted.

610.(4) With regard to "the right to receive compensation for work" set forth in Rule 46 of the Rules, apart from working for a company outside of the institution, compensation for work done inside is paid at between ¥289 and ¥398 (US$2-3) per month according to the Regulations on Vocational Guidance Bonus Calculation. According to a questionnaire conducted on those discharged from Juvenile Training Schools, in most cases their compensation seems to have been ¥10 per day in principle but ¥20 per day for exceptional cases, such as laundry work. Most of juvenile inmates consider that they are working but not receiving vocational training. A daily allowance equal to a hundredth of the minimum wage for a general Japanese worker seems to be too little in view of the juvenile's understanding and the actual conditions of such work.

611.(5) Rule 60 of the Rules provides for the right to be visited by his/her family regularly and frequently (in principle once per week and once per month at least) and the right to maintain communication without any conditions or limitations. A juvenile sent to a Juvenile Training School is granted to have visits or correspond with his/her family except in circumstances which would be obstructive to correctional education (Articles 52 and 55 of the Juvenile Training School Treatment Regulations). In reality, however, in many cases a notification in writing is sent to his/her guardian from the Superintendent of the Juvenile Training School stating that it is proper to have a visit around once per month in general. Furthermore, a visit during weekends and national holidays and before/after office hours can be restricted and in

most cases the length of visit is recommended to be about 30 minutes. Under such circumstances, a juvenile inmate cannot keep sufficient contact with his/her family.

612. Furthermore, Rule 61 of the Rules provides the right of a juvenile inmate to communicate either in writing or over the telephone with a person selected by himself/herself at least twice a week, unless it is not restricted legally. However, it rarely happens that a juvenile inmate is granted to have a visit or correspond with a friend of his/hers other than his/her family and is prohibited from doing so in principle. Such guidance should be rectified without delay.

613.(6) Rule 67 of the Rules provides that "solitary confinement of a juvenile inmate in an isolation cell as a disciplinary measure is strictly prohibited." However, as far as Juvenile Training Schools here are concerned, Article 8(1)③ of the Juvenile Training School Law stipulates that a juvenile inmate in breach of rules may be "confined to a solitary room which is sanitary, for a period of time not exceeding 20 days" with the result that such a juvenile is confined to a solitary room as a form of disciplinary measure for a term not exceeding 20 days. While confined to the solitary room, in principle, he eats and excretes within it. He is kept alone all day and is not allowed to contact with other juvenile inmates, only having contact with the staff of the institution in charge. As this room is construed to be a form of isolation cell, it is suspected that this is a breach of the said Rule.

614.(7) Rule 75 of the Rules provides that "the right to submit a request or to file a complaint to the head of the institution in which a juvenile inmate is confined must be granted." The results of a juvenile inmate's performance assessment should be informed to him/her individually, as stated in the Notice on June 1, 1991 issued by the Director of Correction Bureau of the Ministry of Justice, but no opportunity for filing a complaint against such an assessment is made available.

6. Prohibition of Sentencing Juveniles to Capital Punishment and Life Imprisonment (Article 6 & Article 37 (a))

615. The Juvenile Law of Japan prohibits imposing the death penalty on juveniles who were under 18 years of age at the time of committing the offence (Article 51). Besides, there is no provision imposing life imprisonment without a possibility of release. As a result, the situation appears not to be in breach of the provisions of the Convention.

616. However, 17.2 of the Beijing Rules provides that a juvenile cannot be sentenced to capital punishment for whatever reason. As mentioned earlier, the Japanese legislation clearly distinguishes juveniles under 20 years of age from adults of 20 years or older and treats them differently in a protective manner. The Convention on the Rights of the Child, recognizing the inherent right of the child to life, ensures respect for life of the child (Article 6) and embodies that capital punishment shall not be imposed for offenses committed by persons in the process of developing his/her personality who should be treated protectively (Article 37 (a)). When this spirit of the Convention is taken into consideration, in Japan capital punishment should not be imposed for offenses committed by juveniles below 20 years of age at least.

617. In recent Japanese practice, however, capital punishment has been sentenced to a juvenile below 20 years of age at the time of committing the offense (for example, the Tokyo High Court sentenced to death on July 2, 1996 on a male juvenile who was 19 years and 1 month of age at the time of committing his offense).

618. Therefore, the Japanese Government should expressly provide under law that capital punishment shall not be imposed for offenses committed by persons below 20 years of age at the time of committing the offense.

619. The Government should recall the UN Human Rights Committee recommended on November 4, 1993 that the Japanese Government make a move to abolish capital punishment as a general direction.

7. Ensuring the Due Process of Law (Article 37 & Article 40(2))

620. Article 40(2) of the Convention provides for "having regard to the relevant provisions of international instruments", and the subject matter should be examined with a view to implementing international standing rules including the Beijing Rules.

(1) Presumption of Innocence (Article 40(2)(b) (i))

621. Presumption of innocence is considered to be an undoubted principle in adult criminal trial procedures and it has become an established principle that priority is given to the guarantee of due process of law over the pursuit of a substantive truth.

622. Recently, however, incumbent judges at the Family Court have been asserting that the attitude of fact-finding in the direction of proving guilty is necessary in regard to protecting/educating juveniles in question. Based on such an assertion, it is being discussed that judges can request supplementary investigations in order to prove guilt. Such an assertion arises from the point of view that "in a case that he/she committed a delinquent act, it is not educational to overlook it." However, the Family Court as a place for pursuing substantive truth positively will endanger a presumption of innocence for juveniles and run counter to the spirit of Article 40 (2) of the Convention.

623. Paragraph 263 of the Government Report asserts that presumption of innocence is ensured under the juvenile hearing procedures as well, on the ground that a juvenile shall not be put under protective measures unless his/her guilt is proven to such extent that will not allow any reasonable doubt, but a judge's act of directing the investigation in an attempt to prove guilt is in breach of the principle of presumption of innocence.

624. In juvenile hearing procedures too, the presumption of innocence should be carried through and the attitude of fact-finding in the direction of proving not guilty should be pursued.

(2) Right to Be Informed Promptly and Directly of Charges and Right to Have Legal or Other Appropriate Assistance (Article 40-2 (b) (ii))

625.<1> A juvenile is informed of the alleged offense or delinquency verbally at the time of questioning to decide whether he/she should be subject to detention, at a time of decision as to protective detention and at the time of a hearing, respectively. In the adult criminal procedures, a written indictment or information is issued to the accused after he is prosecuted, whereas, under the juvenile hearing procedures, such an written statement is not issued. Even if he/she is informed of the alleged delinquency verbally, it is difficult to understand fully the nature of the information and to act in defence against it. In order to ensure substantially the right of the juvenile to defend himself/herself, which is the objective of the Convention, juveniles should be provided with more extensive guarantee than adults and it is necessary to give them information in writing at respective stages of the proceedings.

626.<2> Paragraph 246 of the Government Report states that "the Juvenile Law allows the child

and his/her guardian to appoint an attendant." However, in most juvenile hearing cases, an attendant has not been appointed. The percentage of juvenile hearing cases where an attendant is appointed at the Family Court, though it is showing a tendency of increase, remains as low as about 1.2%, or 2,423 out of the general protection cases of 203,217 in 1994. Such a percentage is as low as 62.2% for murder cases, only 35.6% for rape cases and 18.4% for robbery cases. The recent trend for increases in these percentages has been achieved through the expansion of the Attendant Aid System for Juvenile Protection Cases by the Legal Aid Association and through the efforts by the Japan Federation of Bar Associations to consolidate attendant activities. More fundamentally, it is necessary to introduce a public defence counsel/attendant system, which as yet is to be realized.

(3) The Right to have Matters Determined by an Independent and Impartial Authority or Judicial Body at a Fair Hearing According to Law (Art. 40(2)(b) (iii))

627.<1> At present, it is widely allowed for the Family Court to call on the police and/or Public Prosecutors Office to conduct a supplementary investigation after the case has been sent to the Court. As a result, cases giving an impression that the Family Court is in collusion with the investigating authorities have continually occurred: the Ayase case, where a mother and her child were murdered, the Sawara case in Fukuoka Prefecture, the Meirin Junior High School case in Yamagata Prefecture, the Chofu case, etc. These cases present a serious problem as to the right of having matters determined by an impartial authority at a fair hearing.

628.<2> With regard to the decision of no penalty made by the Family Court, the Supreme Court presented its judgment that the prohibition of double jeopardy does not apply, though it was stated as a dictum (decided at the Third Petty Bench of the Supreme Court on March 29, 1991). After that, a case actually happened where a juvenile who was given a decision of discharge by the Family court was then prosecuted at a Criminal Court (the Chofu case). Such a case implies that the Family Court is not deemed an independent court. If such a case is permissible, it means that juveniles are being deprived of the right to have matters determined by an independent authority at a fair hearing.

629. In the Chofu case, with regard to five juveniles arrested because of a bodily injury case and sent to the Family Court in 1993, the Hachioji Branch of the Tokyo Family Court decided disposition to send them to a Middle Juvenile Training School. However, when these juveniles appealed to the higher court, the Tokyo High Court annulled the said decision and referred it back to the Family Court, implying that the lower court should judge these juveniles not guilty by examining evidence. However, the judge hearing the case referred back decided for one of them not delinquent and gave him a decision of discharge, but for the remaining four juveniles, he sent them to the public prosecutor, saying that three of them should be subjected to criminal punishment after a large volume of material was obtained through supplementary investigation, and that one of them had already come of age. And, the prosecutor has prosecuted all the five juveniles, including one already given a decision of discharge, to the Criminal Court. These juveniles are challenging the legality of such an prosecution which they believe is in breach of the principle of prohibition of double jeopardy guaranteed under Article 39 of the Constitution of Japan and Article 14(7) of the International Covenant on Civil and Political Rights and deprives them of the guarantee of special procedures for juveniles.

630.<3> The Juvenile Law does not have a specific provision for challenging a judge. The Code of Criminal Procedure provides for the accused's right to make a motion for challenge, whereas for juveniles there is only a provision that the judge should refrain from the case in the Rules of Juvenile Proceedings. Some court precedents show that these Rules allow juveniles the right to make a motion for refrainment of judge. However, as the said right is closely linked to and

inseparable from "the right to have the matter determined by a competent, independent and impartial judicial body at a fair hearing," a more specific provision is necessary in the same way as for adults.

(4) Not Compelled to Give Testimony or Confess Guilt (Article 40(2)(b)(iv))

631. The right not to be compelled in giving statement or confessing guilt is guaranteed under the Constitution. In practice, however, as the police attach great importance to confessions of guilt made during the investigative stages, there are many cases where juveniles are compelled to confess their guilt at the investigative stages (such examples are as stated earlier).

632. With regard to this point, Paragraph 109 of the Government Report describes that in ascertaining the facts of a delinquency, "it is established in practice that...any confession admitting the fact of misconduct, which is suspected not to have been made voluntarily, is to be excluded from evidence." However, in adult criminal procedures, if testimony admitting to charges is suspected not to have been made voluntarily, the admissibility of such evidence is denied and such testimony is precluded from evidences for ascertaining criminal facts. However, in the juvenile hearing procedures, there has hardly been any instance where the Court denies admissibility of such evidence.

633. Furthermore, in spite of the fact that, as pointed out earlier, interrogations during the investigative stages are carried out with little consideration being paid to the poor ability of juveniles to defend themselves, judges in the Family Court are prone to accept written statements given before an investigator without due consideration and not to give credence to explanations made by juveniles.

634. The said description in the Government Report is definitely contrary to the facts.

(5) Guarantee of the Rights to Examine and Cross-Examine Witnesses (Article 40(2)(b)(iv))

635. There is no specific provision guaranteeing the rights to examine and cross-examine witnesses. The Supreme Court ruled that the scope, limitation and methods of examination of evidence could be decided under the reasonable discretion of the Family Court (at the Third Petty Bench of the Supreme Court on October 26, 1983). In practice, however, there are cases in which examination of evidence requested by juveniles is not carried out and witnesses are questioned without the presence of juveniles. It can hardly be stated that these rights are ensured.

(6) The Right to Appeal (Article 40(2)(b)(v))

636.<1> Against the decision made by the Family Court to send juvenile cases to the public prosecutors under Article 20 of the Juvenile Law, it is not allowed to appeal. Furthermore, the right to appeal against a decision of discharge after hearing with finding the juvenile committed the delinquent act is not allowed either. This manifestly breaches the Convention which ensures the right to appeal "when judged to have infringed the penal law."

637.<2> With regard to the decision of protective measures by the Family Court, the Court is not obliged to prepare and serve a document of the decision, whereas a juvenile who wishes to appeal must do so within 2 weeks from the decision, specifying points of his/her appeal (Article 43(2) of the Rules of Juvenile Proceedings), and therefore he/she may find it extremely difficult to make an appeal. Furthermore, it seldom happens that a substantive hearing is conducted in the appellate court. In fact, the percentage of juvenile cases appealing to a higher court is extremely low: it accounts for as low as 0.7% of the total cases judged to apply protective measures and it is as low as 9.6% of the cases judged to be sent to Juvenile Training Schools in 1994. Such percentages are extremely lower compared to adult cases being appealed to a higher court, which reflects the fact that it is more difficult for juveniles to appeal.

638.<3> Furthermore, if such juveniles appeal against rulings of protective measures to a higher court, the appeal does not have effect to suspend the execution of protective measures. Therefore, such juveniles are heard at an appeal court while being accommodated at a Juvenile Training School.
639.<4> With regard to the aforementioned Chofu case, the judgment initially made at the Family Court had been for applying protective measures, but after the High Court had decided to refer back the case to the Family Court, the Family Court decided to refer the case to a public prosecutor, having a possibility of criminal punishment. After the decision of referral of the case to a public prosecutor, the juveniles were prosecuted. The ruling at the first trial (June 20, 1995) at the Criminal Court dismissed the prosecution for one of the juveniles who was prosecuted while he was still below 20 years of age, on the ground that the decision of referral of the case to a public prosecutor, per se, runs counter to the principle of prohibition of changes to disadvantageous sentence for the appellant, stipulated to ensure the right of the accused to appeal to a higher court. However, the public prosecutor appealed against the ruling and the appellate court accepted this appeal (July 5, 1996) on the ground that the prosecution was not illegal because the referral of the case to a public prosecutor, per se, was not the final judgment and thus could not be compared with the former ruling to determine which was advantageous or disadvantageous. If such decisions of referral of cases to a public prosecutor are allowed, there is a great possibility that juveniles who are subject to protective measures will hesitate to appeal. Therefore, this prosecution and the ruling by the appeal court violate the right of the accused to appeal to a higher court and thus are in breach of the Convention.

(7) Guarantee to Have the Free Assistance of an Interpreter (Article 40(2)(b)(vi))
640. The present law does not include any provision stating the free assistance of an interpreter. On the contrary, it provides that a juvenile in question can be charged for interpretation fees (Article 31 of the Juvenile Law).
641. It is true that there are cases where the said fees are funded as a legal aid by the Legal Aid Association. However, the Convention on the Rights of the Child requests in the first place a guarantee of free assistance from an interpreter. Therefore, the provision of Article 31 of the said Law shall be amended in order to comply with the Convention.

(8) Respect for Privacy (Article 40(2)(b) (vii))
642. In addition to this provision, Rule 8 of the Beijing Rules lays stress upon the protection of a juveniles' privacy and states that "any information that may lead to the identification of a juvenile should not be announced." However, in addition to cases where juveniles' real names received news coverage as mentioned above, there are many cases where, even if juveniles retain their anonymity in the media, details of the case affecting their privacy are reported.
643. In one of such cases, a photograph from which identification was practical was carried in a weekly magazine, etc. but the case proved to be a false charge, resulting in irrevocable damages to the innocent party (the Ayase case where a mother and a child were murdered).

8. Establishment of Laws, Procedures, Authorities and Institutions Specifically Applicable to Juveniles (Article 40(3))

644.(1) As stated earlier, there is hardly any special protection taking into account the distinctive characteristics of juveniles at investigative stages, and such protection should be established as soon as possible.
645.(2) If a juvenile under 14 years of age has conducted an act that violates any criminal law,

this will not constitute an offense but he/she as a juvenile violator of the law can be subjected to judgment by the Family Court, resulting in a possibility of being subject to protective measures. In such cases, he/she is not allowed to be investigated under the Code of Criminal Procedure. In practice, however, the police and/or the Child Guidance Center investigate the facts. With regard to such a stage of investigation, there is no provision stating protection under the due process of law for such juveniles and actually such protection is not secured.

(3) Guarantee of Measures for Dealing with Juveniles without Resort to Judicial Proceedings (Article 40-3 (b))

646. In Japan, when juveniles commit crimes, their cases are all sent to a Family Court and thus, in principle, all cases of juvenile offenses are treated through such judicial authorities. This is because importance is attached to casework function and various professional information rendered by the Family Court and it is considered that a sound upbringing of juveniles is ensured through such proceedings.

647. Instances where a case is not sent to the Family Court on the police's own judgment (cases to be handled exclusively within the police station) or the summary cases where a series of minor cases put together is summarily sent or reported to the Family Court and examined perfunctorily should be called into question when judging from the principle of all cases being sent to the Family Court. Such handling presents a question in light of the Convention requiring that "human rights and legal safeguards should be fully respected."

648. Therefore, as a diversion program under the Juvenile Law, efforts should be made to increase the tentative probationary supervision after cases have been sent to the Family Court and to introduce a variety of programs into the system.

649. Under the existing situation, however, the number of cases treated under tentative probationary supervision among the case of general protection is decreasing from 4,563 cases (3.1%) in 1980 to 2,490 (1.6)% in 1994 and, in addition to this, the period of supervision is getting shorter regardless of the circumstances of individual cases.

9. Establishment of Diversified Dispositions (Article 40-4)

650. A variety of dispositions in Japan involves diversified programs at institutions. The report submitted in 1977 by the Legislative Council of the Ministry of Justice proposed introducing short-term probation, admission to a Juvenile Training School or an open institution for a short term respectively so that protective measures become diverse and flexible, in addition to the conventional probation, admission to a Juvenile Training School or a Juvenile Training and Education Home. After that, a short-term program, a long-term program and a special short-term program have been introduced into the decision of admission to a Juvenile Training School, with no amendments made to the legislation. These programs however, entail an aspect of a possible expansion of physical restraint in the form that the juveniles in question, who formerly would not have been sent to a Juvenile Training School, are sent there under a short-term program. Such treatment is contrary to the spirit of physical restraint as a measure of last resort as set forth in Article 37(b) of the Convention.

On the other hand, diversified programs for non-restrictive treatment have hardly been made available.

10. Guarantee of Reopening Proceedings (Article 39 of the Convention)

651. Article 39 of the Convention provides that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim

of any form of ...punishment." It should be construed that this provision urges States Parties to ensure a reopening of a case for a juvenile against whom a guilty judgment has been rendered or who was decided as being subject to protective measures through a miscarriage of justice.

652. In Japan, the Code of Criminal Procedure provides that, even after a guilty judgment is passed after the accused tried all the possible means of appeal, the accused can claim a retrial provided that new evidence proving innocence is forthcoming, whereas the Juvenile Law has no provision equivalent to this. The Supreme Court judges that the provision in Article 27(2) of the Juvenile Law stating the rescission of protective measures can substantially allow reopening of the case. However, those who are entitled to that provision are limited to juveniles who are actually under protective measures, which is extremely restrictive compared with the provision on retrial for adults who are entitled to claim retrial even after the completion of sentence or posthumously.

653. Therefore, also for juveniles, the provision on reopening of the case that can be applied without any time limitation as that for adults should be established.

B. Children Belonging to an Ethnic Minority or of Indigenous Origin (Article 30)

The Government should admit that people of indigenous origin, such as the Ainus, exist in Japan, and withdraw assimilation-oriented education from schools, guarantee opportunities for learning the Ainu language and the history and culture of the Ainus and establish and implement respect for this culture as an educational objective for all children.

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654. Paragraph 306 of the Government Report makes simply a general and abstract statement that the Constitution of Japan prohibits discrimination on the grounds of race, etc. and also it guarantees freedom of expression, thought, conscience and religion with a result that in regard to all children belonging to an ethnic minority or an indigenous group, referred to in Article 30 of the Convention, all rights recognized under the said Article are also guaranteed in Japan. Such a statement, however, is for the purpose of covering up the fact that the Ainu (about 25,000 people in Hokkaido according to the 1986 survey and the estimated number of the Ainu nationwide is 50,000 to 100,000) and the Orokko (it is said that about 30 Orokkos live in Hokkaido) exist in Japan as an ethnic minority or an indigenous group, including their children.

655. In particular, the Japanese Government has adopted a policy of assimilating the Ainu over the past century by prohibiting their own culture and customs, encouraging the learning of the Japanese language and compelling the use of Japanese family names, etc. Such "Japanization" of the Ainu has been enforced mainly through school education under the name of the assimilation program. As a result, the Ainu language and culture as the essence of their racial identity were rapidly depleted and their life style became almost the same as that of the Japanese. A harsh reality, however, is that, even if they use Japanese language and follow the Japanese way of life, there still remains racial discrimination or a discriminative mentality against the Ainu. According to the "Survey on Life of Utaris (Ainu word meaning fellow people) in Hokkaido" conducted in 1993, with regard to entrance to schools of higher level, 87.4% of the total Ainu graduates from junior high schools went on to senior high schools, 11.8% of the total Ainu graduates of senior high schools went to colleges (including junior colleges) compared to 96.3% and 27.5% respectively of the total graduates in Hokkaido, which shows a big gap between these two groupings. Since 1988, Hokkaido Prefecture has consolidated the scholarship program for facilitating these students going on to senior high schools, colleges, etc. as a welfare measure for Ainus and has taken a great interest in closing such an educational gap. However, the result of such efforts has not been made public.

656. In order for the Ainu to enjoy "the right to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language" guaranteed under Article 30 of the Convention, it is necessary not only to stop assimilation programs in school education, but to respect the dignity of the Ainu and the originality of their culture in each class and to ensure positively opportunities for learning the Ainu language and the history of the Ainus. It is also necessary to establish and implement "the development of respect for.... civilizations different from his or her own"(Article 29(1)(c) of the Convention) as an objective of education for all children.

On May 8, 1997, the "Ainu Culture Promotion Law" was established aiming to "promote

the Ainu culture and advance measures to disseminate knowledge and enhance awareness among the Japanese people about the tradition and culture of the Ainus." It is necessary to closely watch how these objectives will be put into practice in the field of education in the future.

C. Rights of Non-Japanese Children

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1. Regarding school education for non-Japanese children, an education system that would realize Article 29(1)(c) should be established.
2. Requirements for application of the Child Allowance Program and the National Health Insurance Scheme should be revised so that non-Japanese children will be able to receive the same medical treatment and welfare services as Japanese children, and public relations and information service for non-Japanese residents should be consolidated.
3. The Aliens Registration Law should be revised, with the cessation of the obligation of fingerprinting at the time of alien registration, the obligation of always carrying an alien registration card, and the penalties for violation of these obligations.
4. Regarding the ethnic schools established by Korean permanent residents, with having respect for their ethnic education, these schools should be treated as same as those schools defined in Article 1 of the School Education Law; i.e. discrimination against them with regard to qualification for entering universities, the provision of education assistance, etc. should be eliminated.
5. The Government itself should seek improvement by making a comprehensive examination in all areas of legislation, administration and judiciary to eliminate discrimination against non-Japanese residents and should undertake education and public relation activities for eliminating Japanese discriminatory attitudes towards non-Japanese residents and to establish human rights for non-Japanese residents.

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1. School Education for Non-Japanese Children

657. Article 29(1)(c) of the Convention provides that the education of the child shall be directed at "the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own," thus guaranteeing the identities of foreign residents, such as respect for their native tongue and ethnic values. In addition, Article 29(1)(d) states that the education of the child shall also be directed to "the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin," thus advocating the necessity of education for co-existence between minorities and majorities.

658. Only when these two types of education are realized, the aims of education as stipulated in Article 29(1)(a) and (b) can be achieved and the society in which each individual is respected can be established. In reality, however, there is no system in Japanese schools that guarantees such an educational approach. As a result, discrimination and bullying against non-Japanese children who belong to a minority group is not declining, which obliges an assimilation to Japanese ways, thus endangering their cultural identities.

659. The Central Education Council's report on "Education in Japan towards the 21st Century" submitted in August 1996, does not make any reference either to such an educational approach as set out in Article 29(1)(c) and (d) of the Convention, presenting only the methods of "teaching Japanese language" as specific measures, although it states that "it is necessary for

schools in Japan to be more open to foreign cultures and languages and establish flexible systems for accepting non-Japanese students."

660. According to a survey conducted in January 1995 by the Ministry of Education, the number of public elementary, junior and senior high schools where foreign students were registered and found it necessary to learn Japanese amounted to 3,921, with 11,806 such foreign pupils and students. From among such elementary and junior high schools with foreign pupils and students finding it necessary to learn Japanese, 80% were with 1 to 5 such pupils and students, with a majority of schools having only 1 such pupil or student. About one quarter of such pupils and students were not provided with any special consideration for learning Japanese and as little as around 10% were found to be individually guided by a teacher of Japanese employed by the school. In this way, in Japan, special measures towards foreign pupils and students in school education lags far behind. As nationwide measures, it was not before 1992 that a short-term training course for teachers at elementary and junior high schools on how to teach Japanese to foreign pupils/students was started, along with the assignment of additional teachers and the distribution of teaching materials. The reality is that faced with the necessity of coping with foreign pupils/students who are actually there, individual schools are tackling this issue with makeshift measures.

661. In addition, regarding the guarantee of school education, although non-Japanese children are allowed to enroll either from the beginning or from the mid-term in schools of compulsory education (primary and lower secondary education), there are hardly any measures for guaranteeing upper secondary or higher education. It is problematic that although the percentage of enrollment in upper secondary schools (senior high schools) has exceeded 95% for children born and brought up in Japan, making upper secondary education quasi-compulsory, not any special consideration is given to children from abroad. Children must pass entrance examinations in order to receive upper secondary education. If non-Japanese children are required to take the same examination as that for Japanese children, it is difficult for them to pass due to their inability of using the Japanese language or because of academic attainment. Some municipalities have introduced a special quota for non-Japanese children, but such municipalities are still quite limited. As Article 28(1)(b) of the Convention calls for the guarantee of upper secondary education, measures should be taken by the entire state to guarantee upper secondary education to children from abroad as well.

2. Health, Medical Treatment and Welfare for Non-Japanese Children

662. In terms of the Japanese legislation, the nationality clauses in the National Pension Law, various laws relating to child allowance, the Enforcement Regulations for the National Health Insurance Law, the Enforcement Regulations for the National Pension Law, etc. were deleted when Japan ratified the "Convention relating to the Status of Refugees" in 1981. However, as the requirement to authorize benefits to foreigners is that they must have resided in Japan for a specific period of time, there are still some foreigners who are not entitled to such benefits. In addition to this, neither are such benefits publicized to foreigners nor are special considerations made for accepting applications for such benefits from them. For reasons mentioned above, in actual practice, it is difficult to maintain that foreigners are being covered under the above laws of Japan.

663. With regard to foreigners working without proper visas or overstaying, even if they want

to be covered by such pension or health insurance schemes, they cannot apply because they are afraid of being deported. Furthermore, in Japan, medical examination and treatment outside of the health insurance scheme is confined to special cases, such as traffic accidents, and foreigners who do not have medical insurance cards are refused in many cases even if they seek medical examination and treatment outside of the health insurance scheme. Consequently, children of those foreigners without medical insurance cards cannot receive medical treatment and welfare services. This prevailing condition is far from the ideal provided in Articles 2 and 24 of the Convention.

3. Discrimination against Non-Japanese Children in Japan

(1) Fingerprinting System and Obligation of Carrying Alien Registration Cards at All Times

664. The Aliens Registration Law imposes an obligation to register fingerprints when a person, 16 years of age or older, registers as a new foreigner (Article 14) and if he/she is in violation of this provision, then he/she is either convicted to imprisonment for no more than 1 year or fined up to ¥200,000 (Article 18). Furthermore, the said Law imposes an obligation on a foreigner 16 years or older to carry an Alien registration card at all times and to show it upon demand of a public official in certain categories (Article 13) and stipulates penalties for violation of these provisions (Article).

665. These provisions impose remarkably heavy obligations on foreigners in Japan compared to other countries. At the same time, this system lacks necessity and rationality and unreasonably discriminates against foreigners in comparison to the Japanese. Therefore, these provisions should be deleted in the light of Article 2 of the Convention.

(2) Discrimination against Korean Permanent Residents (III-A-2)

666. After the World War II, the Japanese Government has consistently taken the policy of assimilating Koreans into Japanese ways and of denying their ethnic education. With a Notice in 1965, while these Korean children were granted the right to attend Japanese public and private schools as well as the rights to free textbooks and free tuition, the Government presented the policy that ethnic schools established by Korean residents in Japan should not be approved as schools under Article 1 of the School Education Law nor even as "miscellaneous" schools (However, as the authority to approve "miscellaneous" schools is vested with Prefectural Governors, Korean ethnic schools in various Prefectures were approved as "miscellaneous" schools).

667. Due to such a background and discrimination in Japanese society, over 95% of Korean residents in Japan use Japanese aliases and over 80% of their children attend Japanese schools, with no opportunity for receiving ethnic education. On the other hand, in spite of the fact that Korean ethnic schools educate students with almost the same curriculum as that in Japanese schools, they are subjected to various discriminatory treatments in respect to qualifications for entering universities, educational assistance, commuting passes, tax-exempt measures for donations, etc.

668. In addition, when any political incident breaks out in the Korean Peninsular, disgraceful attacks are carried out on female students of Korean senior high schools commuting to school in their ethnic costume called chima chogori; cutting these garments with a knife in a train, etc. often occurs.

D. Drug Abuse (Article 33)

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1. Judicial, correctional and medical institutions should work in tight cooperation with each other to take measures to prevent drug abuse.
2. Medical system should be consolidated by measures such as increasing hospitals specialize in mental disorders caused by drug abuse.
3. Public financial support should be given to facilities which support self-help groups of addicts and their family.

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669. The Government Report states in paragraphs 290 and 291 that Japan has concluded various treaties on narcotic drugs and psychotropic substances and is making an active effort to prevent drug abuse and illicit trafficking at the international level, and that it regulates drug crimes effectively and prevents the domestic distribution of drugs to children by the proper application of the so-called 5 drug-related laws. In paragraph 292, however, the Report admits that in reality there is a high incidence of delinquency involving, such as the abuse of stimulants and cannabis as well as the abuse of organic solvents such as paint thinners, and that the Japanese organized crime aggravates delinquency by smuggling drugs for juvenile drug abusers to acquire funds for their activities. And paragraphs 293 and 294 describe various measures taken by the police, public relations activities implemented by Prefectural Promoters for the Prevention of Stimulant Abuse and guidance and instructions given in school education.

670. As the Government Report points out, despite the efforts to crack down on drug abuse through the promotion of international cooperation and the proper application of laws, there is a high incidence of children's delinquency involving drug abuse and abuse of organic solvents such as paint thinners. Drug abuse among children has become a serious problem.

671. The analysis of the number of juveniles arrested for drug abuse in 1995, as shown in the Government Report, reveals that 1,079 juveniles guided for stimulant abuse represent a 30.5% increase from the previous year, that 68.3% of those arrested for cannabis abuse were young people below 30 years of age and that 5,456 juveniles arrested for paint thinner abuse accounted for 68.1% of the total. These statistics clearly show the reality that drug abuse has been widely spreading among juveniles. Moreover, among the juveniles arrested for stimulant abuse, the percentage of girls has exceeded 50% since 1990, and there is also a tendency that younger and younger children are becoming involved with such misconduct.

672. However, Government measures to prevent drug abuse among juveniles have not been carried out effectively, because attempts in carrying out these measures are being made independently by judicial institutions such as the police, the public prosecutors office and the courts of justice, correctional institutions such as prisons, juvenile training schools and probation houses and medical institutions such as mental hospitals, with little liaison or cooperation between these institutions from the standpoint of preventing repeated drug abuse.

673. Considering the fact that more than 60% of those found guilty of stimulant abuse had been convicted of similar crimes before, for those juveniles who have become addicted to drugs after repeated drug use, there is a limit to what judicial measures alone can achieve and treatments by medical institutions are necessary. However, there are very few hospitals which

specialize in mental disorders caused by drug abuse and the system for effective medical treatment of drug addicts is far from being established.

674. To rehabilitate drug addicts, <1> the use of group meetings organized by self-help groups of addicts, <2> support and help to the families of drug addicts from the standpoint of medical treatment and <3> establishment of rehabilitation facilities for drug addicts are necessary and effective.

675. However, support and help to self-help groups or to the families are virtually non-existent, and there are no rehabilitation facilities for drug abusers established by the state or local public bodies. There are only private Drug Addiction Rehabilitation Centers (DARC) established by rehabilitated addicts and citizens, but these centers are currently facing financial difficulties in their management and maintenance, and public support and subsidies are needed.

676. In addition, although there is a description about the danger of drug abuse in the textbooks used for health and physical education at schools, it is often the case that the topic is not given serious treatment as it is not required for entrance examinations for higher schools or due to the lack of teaching time

E. Sexual Exploitation and Sexual Abuse

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1. In all fields of family education, school education and social education, education on sex should be provided as an essential part of human rights education to ensure that sex is rightly positioned as being associated with human dignity and education should be provided enabling children to realize that abuse of sex through power or money impairs upon human dignity.
2. A system should be established in which appropriate care by specialists will be provided to children who have been victimized in sexual crimes.
3. To eliminate sexual exploitation and sexual abuse against non-Japanese children, the following measures should be taken.
<1> To promote education and enlightenment activities to prevent sex crimes against children being committed outside of Japan.
<2> To strengthen cooperation in investigations for punishing crimes committed outside of Japan and to make necessary amendments to existing legislation.
<3> To strengthen the inspection system at immigration control to prevent exploitation and abuse within Japan and to make necessary amendments to existing legislation.

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1. Introduction

677. Paragraphs 295 to 300 of the Government Report deal with "Sexual Exploitation and Sexual Abuse (Article 34)." From among these, Paragraphs 295, 296 and 298 take up the matters of Japanese children, while Paragraphs 297, 299 and 300 touch upon matters pertaining to foreign children both within and outside of Japan.

678. Furthermore, Paragraphs 303 to 305 are concerned with "Sale, Trafficking and Abduction (Article 35).

2. Japanese Children within Japan

679. First, Paragraph 295 covering Japanese children within Japanese territory enumerates the various laws and regulations designed to protect children from sexual exploitation and sexual abuse, and Paragraph 296 describes activities by the police to such effect. As far as these statements go, it appears that Japanese children are fully protected by law and the police activities and that there are not any particular problems in this regard. Only Paragraph 298 touches on telephone clubs, two-shot dialing, etc. that function by using phone lines for communications between unspecified women and men and points out that "there has been a high incidence of girls suffering from sexual damage as a result of making phone calls simply out of their curiosity." However, it goes on to state that "measures are being taken", mentioning the reinforcement of control by the police, the enforcement of regulations under the Ordinances and activities for improving regional environment, as if there were not any special issues in this respect either.

680. With regard to Japanese children too, however, there are continual acts by adults depriving or distorting the right of a child to sexual self-determination through coercion by violence or authority or with money.

681. Firstly, there are cases where adults perform sexual act against a child by direct violence or threat. According to the White Paper on the Police in 1996, out of the crimes arising in 1995, 2,424 were cases where a minor was victimized through sexual assaults, while 513 minors were victims of crimes violating the Prostitution Prevention Law, and it is not rare that such victims end up being killed. Among these crimes, the ones committed by U.S. soldiers in Okinawa Prefecture are included.

682. Secondly, it is often reported by the mass media that those who are in a position of protecting children (parents, teachers, officials at institutions, etc.) took advantage of their positions and enforced sexual acts. In such cases, these acts are often repeated and thus the psychological damage being inflicted upon victimized children cannot be overlooked either.

683. Furthermore, cases where a child on the way to school is victimized by an act of indecency conducted in crowded trains, etc., are reported in great numbers and many children state that "I cried for help but no one dared reach out to help me."

684. Among the cases of sexual acts using money, a high proportion of the victims are foreign children, in particular those from Asian countries, as stated later, in cases of simple forms of buying sexual services. However, within Japanese territory too, sexual services are being bought in various other forms such as private bath houses (so called "soap lands"), massage parlors, dating clubs, etc. In addition to these, a great number of children are used for pornographic performances for VCR films. With regard to the performance of such sexual acts involving money, some people maintain that children are performing voluntarily for money. However, it cannot be denied that adults making sexual approaches to children with large sums of easy money is an act that greatly distorts the children's right for their sexual self-determination.

685. In this way, despite the existence of the laws and regulations, including the Penal Code, enumerated by the Government, it is recognized that sexual exploitation and sexual abuse against children is not on the decrease but rather on the increase.

686. The reasons are indifference or disregard toward the child's personality and dignity, as in the cases of violation of other human rights, and contempt for Asian countries (regarding such exploitation or abuse against the child in Asian countries). In addition, there are other even greater reasons, such as the facts that in Japan, generally speaking, people lack a concept of respect for sexuality as being part and parcel of human dignity and that the idea of men's superiority over women still lingers everywhere.

687. Furthermore, with regard to punishments imposed on sexual victimizers of children, the following issues have been pointed out:

688. Rape and indecency through compulsion are considered as crimes indictable upon a complaint and thus the perpetrator is not punished unless a complaint is filed by victims or their legal representatives. This is for the purpose of protecting the victim's privacy. However, the period of complaint is too short (6 months).

689. Furthermore, police officers who are obliged to execute the law do not treat victimized children properly as victims during the course of the investigation but, on the contrary, deal with them as if they are to be blamed for the cause with a result that some victims are doubly

victimized. In particular, in case of victimized children who are mentally handicapped, such a tendency is even higher.

690. Therefore, on the part of the Japanese Government, the following measures should be taken:

691. Through all available opportunities in home education, school education, social education, etc., education on sex should be provided as an essential part of human right education to ensure that sex is rightly positioned as being associated with the personality or the dignity of a human being. It should be confirmed that obtaining sexual acts by force or with money is detrimental in respect to the dignity of the human beings for both parties.

692. Appropriate aftercare by specialists should be provided to children who have been victimized in sexual crimes. Paragraphs 296 and 298 of the Government Report makes reference to the aftercare by the police, but what is needed are educational and medical aftercare facilities.

3. Sexual Exploitation/Sexual Abuse and Trafficking in Foreign Children within or outside of Japanese Territory

693. Most of the foreigners who are victims of sexual exploitation or sexual abuse within Japanese territory are Asian people sent here as victims of trafficking in people, as are children. Furthermore, the destinations of sex tours by the Japanese for the purpose of sexual exploitation or sexual abuse in foreign countries are mainly in Asian countries and the children exploited as such victims are increasing in number.

694. With regard to sexual exploitation or sexual abuse through sex tourism in Asian countries, it has been reported many times by the media that there are large numbers of Japanese men buying children in the Philippines, Thailand, etc. in order to have sexual intercourse or to perform indecent acts against them. Actually, there are quite a few cases where Japanese men were arrested by the local police which have been reported by the mass media there. In such cases, because the children are irresistible and those men have contempt for Asian people, they commit conducts to sexually enslave the children, which is unimaginable in buying sexual service within Japan.

695. The Japanese market is flooded with publications and VCR films stimulating buying of sexual services overseas. For example, a book called "A Book on Prostitution in Thailand" providing information on prostitution in Thailand and encouraging people into hiring prostitutes is still on sale despite protests by citizens' groups.

696. Paragraph 297 of the Government Report makes reference to the law providing for illegal employment of children from Asian countries for harmful work, and Paragraph 299 states that "Japan is also concerned about children throughout the world who are sent to sex industries and suffering from sexual damage as a result" and mentions the provision covering crimes, including rape, committed by Japanese nationals outside of Japanese territory as well as the Government's cooperation in investigating such crimes. In addition to this, Paragraph 300 describes a provision of the Travel Agency Law for the purpose of "preventing so-called sex tourism by Japanese tourists in foreign countries."

697. Furthermore, Paragraphs 303, 304 and 305 make reference to provisions on buying and selling of a child and handing over of a child to another person, as well as to immigration and emigration control and cooperation for investigations.

698. Although it is noteworthy that the Report states that the Government is "concerned", most statements in the Report do not go any further than the descriptions of laws and regulations.

699. In reality, the Government is extremely reluctant in tackling these issues. The Penal Code of Japan provides that sexual conducts with children under 13 years of age are subject to punishment as sexual assault or rape, irrespective of the presence of violence or threats and irrespective of the involvement of money, and it also stipulates that such crimes committed by Japanese nationals outside of Japanese territory are punishable in the same way as in Japan.

700. However, the Japanese police has not investigated any sexual offenses against Asian children committed outside of Japanese territorial jurisdiction so far, even if such offenses were reported by the mass media in Japan. Paragraph 299 of the Government Report states that after having referred to crimes, including rape, committed outside of Japanese territory, "with regard to crimes similar to these unlawful offenses, the Government is giving assistance in investigation, judicial assistance and information exchange with foreign countries." However, with regard to sexual exploitation or sexual abuse against foreign children, there have been no cases so far on which the Government cooperated with the local police in investigation and prosecuted offenders. As recently as August 1996, Japanese lawyers, as legal representative, filed a complaint with the Kanagawa Prefectural Police Headquarters against a Japanese man for his indecency through compulsion against a girl of 12 years of age in the Philippines. The complaint was accepted and the investigation started. This case is the first instance in which an investigation was started. After that, with regard to the case where a girl of 12 years of age was raped in November 1996 in Thailand, a complaint was filed with the Chiba Prefectural Police Headquarters as a second instance and this complaint too was accepted.

701. In order to indict crimes of rape or sexual assault under the Penal Code, a victim is required to file a complaint against the perpetrator within 6 months after the day of the crime being committed. However, as it is almost impossible for a child living in a foreign country to make a complaint within 6 months, such a law should be amended so as to extend the period for filing a complaint. Furthermore, with regard to cooperation in investigations designed to control buying sexual services in foreign countries or carrying out sex tourism, bilateral or multinational agreements or conventions should be concluded. Regarding sex tourism, because of excessive publicity by travel agencies, the Travel Agency Law was amended with the result that, when the agent solicits or facilitate these sexual crimes, the name of the travel agent shall be made public. However, as no criminal punishments are provided under this law, disclosing the name of the travel agent is insignificant as a form of punishment. Furthermore, posting notices at the airport, etc. warning against buying and selling sexual services has just started recently.

702. With regard to sexual exploitation or sexual abuse against children from Asian countries committed within the Japanese territory, such victims are supposed to be treated in the same way as their Japanese counterparts; i.e. if such facts are exposed, employers or brokers are subject to criminal sanctions and the children in question are protected. However, while Japanese counterparts are entitled to a certain aftercare, being accommodated at child care institutions, for example, foreign children are simply deported, as most of them are staying here

illegally.

703. Furthermore, it is vital in protecting such children to check their entry into Japan as possible victims of trafficking of people. However, the system of checking the entry of such children remains insufficient, even though the problem has been pointed out repeatedly.

704. Article 1 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others mentioned in Paragraph 299 of the Government Report provides that "States Parties agree to the punishment of anyone soliciting, inviting or kidnapping others for the purpose of prostitution" irrespective of transporting them abroad or into Japan. Nevertheless, the Penal Code, as the domestic law commensurate with such provisions, only punishes transporting abroad under the provision of prohibition of "kidnapping and transporting others abroad and buying and selling others," which must be deemed insufficient.

705. Therefore, in order to discontinue sexual exploitation/sexual abuse against foreign children, it is necessary: <1> to promote educational or enlightenment activities to prevent crimes committed outside of Japanese territory, <2> to reinforce cooperation with investigations in order to punish crimes committed outside of Japanese territory and to amend the legislation accordingly and <3> to tighten the system for checking controls at immigration for the purpose of preventing the exploitation and abuse within Japanese territory and to amend the legislation accordingly.

4. Child Pornography

706. Paragraph 295 of the Government Report states that producing, marketing, possessing, etc. of publications of child pornography are prohibited by either the Child Welfare Law or the Penal Code, and describes as if these laws were being administered according to their purports. In reality, however, publications of child pornography flood onto the Japanese market to the extent inconceivable in any other country. Furthermore, at the first International Conference against Sexual Exploitation of Children held in August 1996, Japan was pointed out as being one of the major countries which were exporting such publications. In addition, the distribution of child pornography through the Internet computer network has become a major subject of discussion.

707. According to a survey conducted by a citizens' group, it was reported that about 97% of some 110 convenience stores in 32 municipalities all over Japan were marketing publications of such pornography. Such children who are used in pornographic material consist of both Japanese and other Asian children. It is said that no country has such ease of access to child pornography as Japan.

708. The Japanese Government should reconsider this matter not from the point of view whether child pornography constitutes obscene material, but from the point that the human rights of children who are used in pornographic material will be violated seriously for the rest of their lives. The Japanese Government should have the existing legislation fulfill its functions after having examined the present situation where child pornography is flooding the market, and should amend the existing legislation for the areas where it cannot fully cover, with a view to securing the rights of the child.

ANNEX

NOTICE BY THE ADMINISTRATIVE VICE-MINISTER OF EDUCATION

Issued on May 20, 1994

Re: "Convention on the Rights of the Child"

The "Convention on the Rights of the Child (hereinafter referred to as the Convention)" was promulgated on May 16, 1994 as Convention Number 2 and was put into effect on May 22, 1994. The summary of the Convention and its text in full are hereto attached.

Recognizing that, many children (in application of the Convention, a child is defined as anyone who is below the age of eighteen years) in the world continue to suffer from difficult conditions such as poverty and starvation today, the Convention aims at promoting respect for and protection of the rights of the child.

The present Convention is in line with the Constitution of Japan, whose basic principle is to respect fundamental human rights, the Fundamental Law on Education (Law Number 25; March 31, 1947), the International Covenant on Economic, Social and Cultural Rights (Covenant Number 6; August 4, 1979) and the International Covenant on Civil and Political Rights (Covenant Number 7; August 4, 1979), Japan being one of the States Parties of the latter two Covenants. Therefore, the effectuation of the Convention does not call for any special need in amending or revising the existing legislation on education. It is essential that education is provided in such a way as to respect the individuality of each child, paying full consideration to his/her human rights, and with the effectuation of the Convention, it is hoped that further efforts will be made to improve and enrich education. It is important that not only people working in primary and secondary education but also the general public will become familiar with the Convention and deepen their understanding about it.

Please note that in relation with the Convention, the following consideration must be made concerning education .

Prefectural Boards of Education are required to make sure that the spirit of the Convention is communicated to all the local Boards of Education and other institutions concerned in their prefecture. Governors of Prefectures are required to do the same to all private schools and other educational institutions under their authority and the Presidents of National Universities to schools under their authority.

1. It is necessary to heighten the spirit of respect for the fundamental human rights of people through school and social education and to make greater efforts so that people will be able to deepen their understanding about the importance of respecting each child as a human being in support of the principle of the Convention.

In this respect, at schools (meaning elementary schools, junior high schools, senior high schools, technical colleges, schools for children with visual impairments, schools for children with hearing impairments, schools for children with other disabilities and kindergartens; the same applies hereinafter), in view of the principles of the Convention, the Constitution of Japan and the Fundamental Law on Education, it is important to try to root the spirit of respect for fundamental human rights more deeply to everyone throughout educational activities.

Of course, it is essential for schools to ensure that pupils and students have a proper understanding of both the rights and the duties. Schools should provide appropriate guidance on this matter as well throughout educational activities, in accordance with the principles of the

Constitution of Japan and the Fundamental Law on Education.

2. Bullying and violence at schools are serious problems which might have a grave impact on children's minds and bodies. In view of the spirit of the Convention, schools should work closely with children's families and communities to tackle these problems seriously.

Furthermore, at schools, teachers should be more keenly aware about such issues as children refusing to come to school or dropping out and should make further efforts to deepen understanding about individual children, respect their individuality and provide appropriate guidance.

3. Corporal punishments are strictly prohibited by Article 11 of the School Education Law. Further efforts must be made to ensure a thorough understanding of the prohibition of corporal punishment.

4. Provisions in Articles 12 to 16 of the present Convention stipulate on the rights of children, including the right to express views and the right to freedom of expression, but of course, schools may give guidance and instructions to pupils and students and establish school rules for them to observe, within a reasonable range necessary to achieve educational purposes.

School rules are designed to help children spend a sound school life and attain better growth and development. They should be established under the responsibility and judgment of individual schools .

School rules are closely tied in with day-to-day educational guidance and schools should continue their efforts to make them more appropriate by taking into account the actual situation of pupils and students, the views of their guardians and the circumstances of the community.

5. With regard to Article 12-1 of the present Convention, which provides for the right to express views , it is a general prescription of the principle that the expressed views of the child should be given due weight in accordance with the age and maturity of the child, and does not require that their views are always reflected.

At schools, it is necessary to fully understand the actual situation of the pupils or students and provide even more detailed appropriate educational guidance in accordance with the pupil's or student's level of development.

6. Disciplinary actions at schools, such as expelling or suspending a child from school and admonishing a child, must be undertaken carefully and properly with genuine educational considerations. In doing so, it is necessary to pay full consideration to the circumstances of the pupil or student, having an opportunity to hear the circumstances and opinions from him/her, so that such disciplinary measures will have genuine educational effects, instead of being merely sanctions.

When suspension of attendance under Article 26 of the School Education Law is applied, consideration should be made to ensure an opportunity for listening to the views of pupils or students as well as to the opinions of their guardians.

7. Guidance on the national flag and anthem at schools is aimed at ensuring that pupils and students understand the meaning of the national flag and anthem of their country, develop respect for them both in mind and in behavior, and learn to show equal respect to the national flags and anthems of all countries. Such guidance is provided to help pupils and students understand the basic things that are required of them as Japanese nationals and not as restrictions on their

thoughts or conscience. It is important to make continued efforts to further improve guidance on the national flag and anthem.

8. In providing educational guidance on the present Convention, not only the formal term 'JIDO (children)" but also the normal term "KODOMO (children)" may be used discretionary.

Notice by the Vice-Minister of Education

Re: "Convention on the Rights of the Child"

The "Convention on the Rights of the Child (hereinafter referred to as the present Convention)" was officially announced on May 16, 1994 as Convention Number 2 and was put into effect on May 22, 1994. The summary of the Convention and its text in full are hereto attached.

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Please note that in relation with the present Convention, the following consideration must be made concerning education .

Prefectural Boards of Education are required to make sure that the spirit of the present Convention is communicated to all the local Boards of Education and other institutions concerned under their jurisdiction. Governors of Prefectures are required do the same to all private schools and other educational institutions under their jurisdiction and the Presidents of National Universities to schools under their jurisdiction.

1. It is necessary to heighten the spirit of respect for the fundamental human rights of people through school and social education and to make greater efforts so that people will be able to deepen their understanding about the importance of respecting each child as a human being in support of the principle of the present Convention.

In this respect, at schools (meaning elementary schools, junior high schools, senior high schools, technical colleges, schools for children with visual impairments, schools for children with hearing impairments, schools for children with other disabilities and kindergartens; the same applies hereinafter), in view of the principles of the present Convention, the Constitution of Japan and the Fundamental Law on Education, it is important to try to root the spirit of respect for fundamental human rights more deeply to everyone throughout educational activities.

Of course, it is essential for schools to ensure that pupils and students have a proper understanding of both the rights and the duties. Schools should provide appropriate guidance on this matter as well throughout educational activities, in accordance with the principles of the Constitution of Japan and the Fundamental Law on Education.

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Furthermore, at schools, teachers should be more keenly aware about such issues as children refusing to come to school or dropping out and should make further efforts to deepen understanding about individual children, respect their individuality and provide appropriate guidance.

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School rules are designed to help children spend a sound school life and attain better growth and development. They should be established under the responsibility and judgement of individual schools .

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5. With regard to Article 12-1 of the present Convention, which provides for the right to express views , it is a general prescription of the principle that the expressed views of the child should be given due weight in accordance with the age and maturity of the child, and does not require that their views are always reflected.

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8. In providing educational guidance on the present Convention, not only the formal term 'JIDO (children)" but also the normal term "KODOMO (children)" may be used discretionary.

Note 1: Case of suicide due to corporal punishment at the Mogi Public Junior High School in Tochigi Prefecture (No.18 on the List of Relief Cases of Human Rights of the Child)
Note 2: Case of corporal punishment at the Miyanogi Public Elementary School in Chiba City (No.20 on the List of Relief Cases of Human Rights of the Child)
Note 3: Case of corporal punishment and non-attendance at the Kumekawa Public Elementary School in Higashi Murayama City, Tokyo (No.38. on the List of Relief Cases of Human Rights of the Child)
Note 4: Case of corporal punishment at the Shimoseya Junior High School (No.40 on the List of Relief Cases of Human Rights of the Child)
Note 5: Case of corporal punishment at the Asahi Higashi Public Junior High School in Okayama City (No. 75 on the List of Relief Cases of Human Rights of the Child)
Note 6: See "Eight Viewpoints and 4 Proposals for the Eradication of Corporal Punishment"; the Nagoya Bar Association; July, 1995

Notes:
(*1) Paragraph 6 of the Notice regarding the "Convention on the Rights of the Child ", Notice by the Ministry of Education No. 149 (May 20, 1994)
(*2) Incident involving the expulsion from a private senior high school in Shizuoka Prefecture (Manual for the Rights of the Child, List of Human Right Relief Cases, No. 31)
(*3) Part A of the incident involving the recommendation to leave school, Akigawa Senior High School (Manual for the Rights of the Child, List of Human Right Relief Cases, No. 37)
(*4) Incident involving many students being forced to leave school, Asa-Kita Senior High School (Manual for the Rights of the Child, List of Human Right Relief Cases, No. 76)
(*5) Incident involving the isolation of a student, a public junior high school in Yotsukaido City (Manual for the Rights of the Child, List of Human Right Relief Cases, No. 25)
(*6) Law suit concerning the expulsion of a Shutoku Senior High student who permed his hair (Supreme Court judgement on July 18, 1996)
(*7) Incident concerning the system of transportation tickets for commuting by bicycle, etc., Kokubunji Town A Junior High School (Manual for the Rights of the Child, List of Human Right Relief Cases, No. 15); and the Shinagawa Senior High School case (The Tokyo Bar Association - claim canceled as problem was solved)
(*8) Paragraph 4 of the Notice regarding the "Convention on the Rights of the Child ", Notice by the Ministry of Education No. 149 (May 20, 1994)
(*9) Incident involving measures instructing students to return home, Nanyo Senior High School, Kyoto Prefecture (Manual for the Rights of the Child, List of Human Right Relief Cases, No. 51)
(*10) Case of a student being crushed to death by a school gate, Takatsuka Senior High School, Hyogo Prefecture, July 6, 1990
(*11) On February 22, 1996, the Supreme Court rejected a case demanding confirmation that school rules imposing close-cropped hair and school uniform were invalid. Although disadvantageous measures, such as daily harassment, cold treatment from teachers and disadvantageous comments on confidential reports could well be predicted if these rules were disobeyed, the Court refused to provide relief, saying that these school rules did not have a legal binding force.
(*12) Incident concerning demand to reverse actions taken for non-disclosure of confidential report, Takatsuki City (Osaka District Court judgement on December 20, 1994) (Osaka High Court judgement on September 27, 1996)

(*13) The fifth incident in Adachi Ward, Tokyo; Asahi Newspaper, May 22, 1996
(*14) Shinagawa Ward; Asahi Newspaper, May 24, 1996
(*15) Asahi Newspaper (morning edition), September 10, 1996
(*16) According to the report by the Asahi Newspaper (July 25, 1995), etc., the Ministry of Education and the Japan Teacher's Union, mutually confirmed that the Guidelines of Instruction for Study were "fundamental standards for compiling education curricula" and on the basis of this understanding, the Ministry of Education agreed to positively acknowledge "creative approaches by teachers actually engaged in teaching".
(*17) Asahi Newspaper (evening edition), August 26, 1996
(*18) As payment is on a monthly basis, the number of payments was about 1.6 million for both 1993 and 1994.
(*19) "A Handbook for Creating Environments for Children (1996 Edition)" pg. 57 supervised by the Child Care Environment Division of the Children and Families Bureau, Ministry of Health and Welfare