

# The Japan Federation of Bar Associations' Report on the Japanese Government's 4th and 5th Report on the Convention on the Rights of the Child

(This report includes the JFBA's opinions on the Japanese Government's reports on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).)

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## Japan Federation of Bar Associations

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## Introduction

1. The Japan Federation of Bar Associations (hereinafter referred to as “Federation”) states its opinions as follows on the Japanese Government’s 4th and 5th Report concerning implementation of the Convention on the Rights of the Child (including reports on the “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography” and “Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.” The same shall apply hereinafter).

In this regard, “Paragraph X” in the text shall refer to the paragraphs of the Japanese Government’s 4th and 5th Report unless otherwise specified.

“Committee” refers to the United Nations Committee on the Rights of the Child.

“Concluding Observation” refers to the 3rd Concluding Observation of the Committee on the Japanese Government unless otherwise specified.

“3rd JFBA Report” refers to the report of the Federation on the Japanese Government’s 3rd Report.

Code of “Note” in the text refers to the number of “Footnote and Reference Materials” in Attachment 1 with respect to the matter. To the number of Note, a branch number is attached to each Chapter of the Japanese Government’s Report.

### 1. General measures to implement the provisions of the Convention (Articles 4, 42 and 44(6))

#### (1) Reservations and declarations

(Paragraph 4)

2. In the Government Report, Paragraph 4, the Japanese Government only states, “See Paragraphs 6-10 of the third periodic report.” Although repeated recommendations of the Committee to consider withdrawal of reservations, the Japanese Government maintained the same position as the 3rd Report that reserved Article 37(c). No improvement can be found.

#### (2) Measures taken to harmonize national laws and policies with the provisions of the Convention (Article 4)

(Paragraph 5 through Paragraph 10)

3. The Japanese Government’s Report indicates in Paragraph 5 through Paragraph 10

that Act on Punishment of Activities Relating to Child Prostitution and Child Pornography and the Juvenile Training School Act, etc., were partially amended. However, it does not mention problems related to discrepancies from the Convention that were indicated by the Committee such as discrimination between males and females in relation to the minimum marriage age, discrimination against children born out of wedlock, social discrimination against girls, disabled children, Amerasians, Koreans, Burakumin, Ainu and other minority group children and children of migrant workers and that children between a Japanese father and a foreign national mother who were not recognized by the father before birth and children of unauthorized migrants become stateless.

4. The problem of most concern is that the Japanese Government does not mention a “comprehensive act on the rights of the child,” which was requested by the Committee to consider its enactment. The areas concerning the rights of the child relate to almost all areas, including education, welfare and judiciary, etc. While only the Act on Promotion of Development and Support for Children and Young People (promulgated in 2009) and the amendment to the Child Welfare Act expressly incorporate the spirit of the Convention, it is extremely inadequate. Nonexistence of the basic act on the child, embracing all areas is one of the reasons why little progress has been made among coordinating organizations regarding the rights of the child, national action plan based on the rights of the child, independent monitoring organizations, proper resource allocation, appropriate collection of data, publicity, training and enlightenment, and cooperation with civil society.

(Paragraph 6)

5. Refer to 9 (4) Juvenile justice for the Juvenile Act and the Juvenile Training School Act.

(Paragraph 11 Data Collection)

6. It is extremely inadequate and the status of the rights of the child cannot be precisely understood based on the data. For example, regarding corporal punishment and suicide at schools, the data clarifying the relevancy of corporal punishment and suicide have not been collected. While data on the number of suicides exist, the statistical approach toward suicide due to troubles with teachers/staff by the Ministry of Education, Culture, Sports, Science and Technology (MEXT) does not reveal the relevancy of corporal punishment. The National Police Agency also collects data on suicides due to relationships with

teachers, however, the results differ from the survey by the MEXT and the survey method and data evaluation method are not standardized. In addition, in many areas, including the relationships between bullying and absence from school, bullying and development disorders, child poverty and school enrollment and ratio of proceeding to the next stage of education, information has not been collected from the viewpoint of improvement of the status of rights of the child.

7. The Japanese Government was the joint proposing state of the 3rd Optional Protocol to the Convention on the Rights of the Child, which provided for an individual communications procedure (hereinafter referred to as “3rd Optional Protocol”). However, the Japanese Government has not yet ratified the 3rd Optional Protocol and any explanation about the status in Japan toward ratification of the 3rd Optional Protocol has not been given in the Japanese Government’s 4th and 5th Report. Thus, it is unknown whether the Japanese Government is considering ratification of the 3rd Optional Protocol.

As the procedures provided for in the 3rd Optional Protocol, including an individual communication procedure are important tools to promote and implement the protection of rights under the Convention on the Rights of the Child in Japan, ratification of the 3rd Optional Protocol should be made promptly.

### (3) National plan of action

(Paragraph 12 and Paragraph 13)

8. Report of the Japanese Government states that under the Act on Promotion of Development and Support for Children and Young People the “Headquarters for Promotion of Development and Support for Children and Young People,” was established at the Cabinet Office and the “Outline for the Promotion of Development and Support for Children and Young People” was established, which incorporated various areas, including rehabilitation, protection and employment. However, Consultation Centers for Children and Young People, etc., which have been established in various parts of the country based on the Act and Outline, have mainly addressed delinquency measures and employment support. Therefore, it can be referred to as measures for NEET (Not in Employment, Education or Training) and social withdrawal and cannot be said to be a remedy as regards rights of support to children under the Convention on the Rights of the Child, which are necessary for children before becoming socially withdrawn or NEET. Not the Act on Promotion of Development and Support for Children and Young People, but the

comprehensive basic act on the right of the Child shall be considered for implementation. In the first place, the Outline for the Promotion of Development and Support for Children and Young People is an outline only indicating the direction of policies and not a “comprehensive national plan of action, which covers the entire scope of the Convention, based on rights to address inequality and gaps existing among children” (Concluding Observations, Paragraph 15). In the national plan of action, the measures for realization based on individual rights guaranteed by the Convention shall be indicated, but the “Outline for the Promotion of Development and Support for Children and Young People” is different in nature.

#### (4) Government authority responsible for coordinating the implementation of the Convention

(Paragraph 15)

9. Report of the Japanese Government states that it is the Cabinet Office that assumes comprehensive coordination functions for juvenile measures, but definitions of juveniles under the laws of Japan are not unified, and the Basic Policy for Promotion of Employment of Young People (Notification of the Ministry of Health, Labour and Welfare, No. 4 of 2016) defines the subject young people as “generally under 35 years old.” Measures for children and young people should be separately established and in order to establish measures for children under the Convention on the Rights of the Child, it is desirable to establish a Ministry of the Child or Child Agency.

10. Report of the Japanese Government, Paragraph 15 states that conventions and protocols are implemented by the Ministry of Foreign Affairs and comprehensive coordination of measures for juveniles is performed by the Cabinet Office. However, implementation of conventions and protocols and coordination of child measures must be conducted as united and non-severable, and such sharing of duties is inappropriate. Taking the example of data collection, it is not possible to accurately understand the status of the rights of the child. As for actual circumstances of the Cabinet Office which is responsible for coordination of measures for children and young people among ministries and agencies, citizens are not informed as to how the Cabinet Office arranges coordination or specific results by coordination. There remains doubt about the comprehensive coordination capabilities of the Cabinet Office. In addition, as for specific problems related to the rights

of the child, we should avoid confusion with problems related to young people. In order to develop the measures under the Convention effectively, it is necessary to enact a comprehensive basic act on the rights of the child and establish a Ministry of the Child or Child Agency with strong comprehensive coordinating authority.

#### (5) Allocation of resources

(Paragraph 16)

11. Report of the Japanese Government states that the budget allocated for promotion of development and support for children and young people including the measures related thereto, is about 5,000,000,000,000 Japanese Yen, which includes budget items that are difficult to separate between children and young people. However, it is necessary to individually review to ensure that the resources necessary to realize the rights of the child including child benefits, childcare expenses and medical expenses, etc., are sufficiently prepared.

#### (6) National human rights institution

(Paragraph 19)

12. The Committee recommends establishing an independent national human rights institution as soon as possible pursuant to the Paris Principle to monitor implementation of the Convention, investigate complaints and organizational infringement on the rights of the child.

In Japan, ombudsperson units for children (public third party institutions) have been established at the level of local governments. While their authorities and functions differ, such ombudsperson units for child at the level of local governments comprise only 33 units as of September 2016 (32 were established by ordinances and 1 was established by the outline). Although there is deserved admiration for local governments that have considered the remedy system for rights of the child as necessary and established such units, these units do not maintain independence of a budget or personnel affairs and the remedy authority is limited. Moreover, the authority to conduct an investigation of public agencies has not been granted and they have no policy proposal function to the national government on human rights measures. In other words, these units can never satisfy the standards provided for under the Paris Principle. Therefore, it is necessary to establish a national

human rights institution as soon as possible as a state institution pursuant to the Paris Principle.

#### (7) Publicity, Training and Awareness-raising

(Paragraph 20)

13. While focus is placed on publicity, training and awareness-raising of domestic laws on the child, publicity and awareness-raising of the Convention on the Rights of the Child are insufficient. In order to effectively promote publication, training and awareness-raising of the Convention on the Rights of the Child, enactment of the basic act on the rights of the child is required.

#### (8) Exchanges with civil society

(Paragraph 22)

14. With respect to the development of policies and programs for the rights of the child, etc., required by the Committee, there has been no progress on formation of continuous cooperative relationships with civil society organizations. The Japanese Government states that it has carried out meetings on exchanging opinion with citizens and NGOs in the process of preparation of the Government's Report. Compared to past circumstances, this is certainly a step in the right direction because opinions were exchanged with ministries and agencies, but there is still uncertainty as to what form of the outcomes will be reflected in the policies.

## 2 Definition of the Child (Article 1)

### (1) Difference between the definition of "Child" in the Convention and that under domestic laws [1] Civil Code

15. In Japan, it is provided for in the Civil Code that a person reaches the age of adulthood at 20 years of age. However, the Japanese Government is considering an amendment to the Civil Code, will lower the age of adulthood to 18 years of age.

At the present time, deliberations are required in lowering the age of adulthood under the Civil Code to 18 years of age (Refer to Note 2-1).

16. There is concern that support for young people at the age of 18 and 19 will regress as a result of lowering the age of adulthood under the Civil Code. As the Child Welfare Act, Article 4, paragraph 1 provides, “herein a child refers to a person younger than 18 years of age,” a child having reached 18 years of age cannot receive protection under the Act, for example, a child must generally move out of a children’s institution. However, in many cases, welfare support is necessary for the young people at the age of 18 and 19 in order to ensure a smooth transition in social life, and measures at children’s welfare facilities, including children’s institutions and consignment to foster parents, etc., may be extended to 20 years of age under the Child Welfare Act, Article 31, etc. In the case where the age of adulthood under the Civil Code is lowered, there is a concern such an impact as extending to 20 years of age may not be permitted in connection therewith.

(2) Difference between the definition of “Child” in the Convention and that under domestic laws [2] Juvenile Act

17. The Minister of Justice referred to the Legislative Council of the Ministry of Justice in February 2017 as to whether it is appropriate to lower the age of application to the Juvenile Act to those under the age of 18, based on the “Act on the Procedures for Amendment to the Constitution of Japan” (so-called, National Referendum Act) and amendment of the Public Offices Election Act and consideration on progress regarding the age of adulthood under the Civil Code, etc.

In considering the applicable age of adulthood, each law should be reviewed specifically and individually in consideration of the purpose and objective of legislation. It will have a negative effect on rehabilitation support and prevention of recommitment of children by lowering the “age of adulthood” under the Juvenile Act, Article 2 to 18 years of age from 20 years of age, and is problematic.

(3) Difference in the minimum age of marriage between males and females

(Paragraph 27)

18. Although the Committee requested resolving differences in the minimum age of marriage between males and females, no resolution was forthwith as recognized by the Japanese Government’s Report, Paragraph 27.

Apart from lowering the age of adulthood under the Civil Code, the minimum age of marriage should be 18 years of age for both males and females.

#### (4) Minimum age to bring lawsuits

19. The Domestic Relations Case Procedure Act (enforced as of January 1, 2013) established an important provision to guarantee procedures for children.

First, general provisions for understanding the will of the child were established (Article 65, Article 258, paragraph 1).

Secondly, it has been decided that children will not only be passively heard regarding their will, but in certain cases, they will be allowed carry out domestic case procedures for themselves. While the Act generally denies the competency of a child to carry out procedures (the Act, Article 17, the Code of Civil Procedure, Article 31), it squarely gave recognition by establishing individual provisions for certain cases. As a result, children can become involved in procedures through petition for their case (provided, however, only for cases where the authority of petition was granted under a substantive law), participation of the party (Article 41) and participation of the stakeholders (Article 42).

Thirdly, a procedure agent system for of children was realized.

### 3. General principles (Articles, 2, 3, 6, and 12)

#### (1) Non-discrimination (Article 2)

(Paragraph 29)

20. The Japanese Government states, “the share of inheritance of a child born out of wedlock is equal to that as the share of a child born in wedlock” by an amendment to the Civil Code. However, discrimination remains that a child born out of wedlock (hereinafter referred to as “Extra-marital Child”) cannot bring litigation of recognition to cause the parent to recognize their child when three (3) years have passed since the death of the parent (Refer to Note 3-1, Note 3-2).

In the amendment to the Civil Code in 2013, the “Bill to Amend Part of the Family Register Act,” which was intended to abolish the Family Register Act, Article 49, paragraph 2, item 1, requiring description on whether a child was born in wedlock or not at the time of reporting of a birth, was referred to the House of Councilors as a

lawmaker-initiated legislative bill, but passage was denied. This provision was explained to be reasonable to distinguish a child between the status of marital or extra-marital as there was a difference in the share of inheritance. Therefore, since the amendment to the Civil Code for statutory inheritance was enacted, the above provision of the Family Register Act should also be amended, but the amendment has not yet been realized (Refer to Note 3-3). As stated above, for Extra-marital Child, complete resolution of discrimination was not achieved.

(Paragraph 30, Paragraph 32)

21. As it is referred to in the summary of related laws, while it is required of administrative agencies to take reasonable measures with regard to disabled children, private enterprises are only required to make a sincere effort, it means that it is not a complete prohibition against discriminatory practices.

22. Concluding Observations, Paragraph 34 (a) recommends enactment of a comprehensive anti-discrimination law. The Japanese Government's Report only refers to the amendment of the Basic Act for Persons with Disabilities and the enactment of the Act for the Promotion of Resolution of Discrimination based on Disability (Refer to Note 3-4), but no comprehensive anti-discrimination act was enacted in other areas, which has not responded to the recommendation (Refer to Note 3-5).

23. Concluding Observations, Paragraph 34 recommends taking measures necessary to reduce and prevent discriminatory practices. However, the Japanese Government's Report does not refer to the measures to reduce discriminatory practices that actually remain and has not taken any effective measures (Refer to Note 3-6).

## (2) Best interests of the child (Article 3)

(Paragraph 35 and Paragraph 48)

24. Regarding Paragraph 35, In the Japanese Government's Report, the text amending the Child Welfare Act is not included. There are no descriptions in the summary of related laws. The amendment responded to Concluding Observations, Paragraph 37, which is an important reform. It should at least have been mentioned in the summary of related laws (Refer to Note 3-7).

Paragraph 48 indicates the Child Welfare Act, Article 1, paragraph 2, but the Act, Article 1 was amended in 2016 (Refer to Note 3-8).

25. Concluding Observations, Paragraph 38 recommends continuing and strengthening efforts to realize the best interests of the child and ensure monitoring of all existing legal systems and their implementation.

Furthermore, concerning the legal system, Concluding Observations, Paragraph 11, there is no comprehensive law regarding the rights of the child, that various matters with respect to domestic laws, including juvenile justice have not yet reached compliance with the principles and provisions of the Convention and Concluding Observations, Paragraph 12 strongly recommended to take measures for complete conformance with the domestic legal system in relation to the principles (including the best interests) and provisions of the Convention.

For complete conformance, it is required to prohibit corporal punishment (Concluding Observations, Paragraph 47), review schools and the school education system, taking General Comment No. 1 into consideration (Concluding Observations, Paragraph 71) and to review the functions of the juvenile justice system, taking General Comment No.10 into consideration (Concluding Observations, Paragraph 85).

Nevertheless, non-conformance of the actual legal system and implementation has actually strengthened, which threatens the best interests of the child (For the specific contents, refer to Note 3-9 and Note 3-10).

### (3) Right to life, survival and development (Article 6)

(Paragraph 45)

26. The Convention, Article 37(a) covers not only death penalties but also life imprisonment without release. The Concluding Observations, Paragraph 54(b) recommends abolishment of life imprisonment (not limited to life imprisonment having no possibility of parole). The Juvenile Act, Article 51 only relaxes and shifts the death penalty to life imprisonment and Article 51, paragraph 2 remains for sentencing of life imprisonment for juveniles, which has not responded to the recommendation (Refer to Note 3-13).

(Paragraph 46 and Paragraph 47)

27. According to the statistics of the Ministry of Health, Labour and Welfare, suicides of

children between 10 and 14 years of age totaled 88 cases (2015) and 100 cases (2014), which ranked as the second cause of death and higher than cases involving unexpected accidents. This is far from the situation corresponding to Concluding Observations, Paragraphs 41 and 42 (Refer to Note 3-14).

(Paragraph 49 and Paragraph 50)

28. For accidents and violence against children, securing the safety of children in an environment where children live is a top priority, and cannot be prevented by criminal punishment alone. Under the indicated criminal sanctions, tragic accidents and violence against children have continued (Refer to Note 3-15).

(Paragraph 51)

29. Accidents involving children at facilities and schools under the administration of school authorities totaled 1,088,487 cases requiring medical expenses, 409 cases requiring disability consolation money and 51 cases requiring death consolation money according to the number of insurance payments by the JAPAN SPORT COUNCIL (JSC). These results cannot be said to reflect the safety of children as a top priority (Refer to Note 3-16).

30. In Japan, due to natural disasters and human disasters, many children have died, disappeared or have been deprived of parents and a development environment and are exposed to the risk of disease. In particular, the Great East Japan Earthquake and Fukushima Nuclear Power Plant accident on March 11, 2011 caused great damage to children. The Japanese Government's Report does not mention these consequences at all (Refer to Note 3-17).

31. From the Great East Japan Earthquake, 241 children became orphans and most of them are living in homes and the nurturing environments of relatives or in the foster parent system (Note 3-18).

On the other hand, in the affected regions, the number of consultations regarding child abuse has increased since the disaster (Note 3-19).

Some families have spent an excessive amount of time living the life of evacuees and the drastic changes in living environment due to the disasters has caused great amounts of stress to families.

#### (4) Respect for the views of the child (Article 12)

(The Japanese Government's Report, Paragraphs 36, 37, 38, 39, 40, 41 (157), 42 and 43)

32. The recommendation in Concluding Observations, Paragraph 43 and Paragraph 44 to strengthen measures for promoting the rights of the child to fully express their views concerning policy decision processes and all other matters has not been pursued. The Japanese Government's Report, paragraphs 36, 37, 38, 39, 40, 41 (157), 42 and 43) cannot be regarded as fully guaranteeing the right to express views, which has not responded to the Observation (Refer to Note 3-11).

(Paragraph 38)

33. The Convention, Article 12, paragraph 1 covers "all matters affecting the child" and the view of the Japanese Government that establishment of school regulations and formation of a curriculum "are not the subject of expressing views under the Convention, Article 12, paragraph 1" is incorrect (Refer to Note 3-12).

#### 4. Civil rights and freedoms (Articles 7, 8 and 13-17)

##### (1) Birth registration, name and nationality (Article 7)

(Paragraph 54)

34. Regarding birth registration, it is also important to note that there are a considerable number of persons who are not registered in the family register, although they have Japanese nationality. This problem has previously existed, but the Japanese Government's Report has not mentioned it.

35. Under the legitimacy assumption system in the Civil Code of Japan, a child born during marriage or within 300 days after resolution of marriage is assumed to be a child of the husband or the previous husband (Note 4-1) and it is so entered in the Family Register at the registration of birth. However, when the husband or the previous husband is different from the biological father, the mother may not carry out birth registration of the child in order to avoid such entry, and this is the main cause for a person without a Family Register.

36. The Japanese Government began to examine and grasp the reality of this problem in

2014. The number of persons without a Family Register recognized by the Ministry of Justice totaled 702 persons across Japan as of August 10, 2016, but this figure is apparently only the tip of the iceberg because of the nature of this problem, “not being registered.” In this regard, the above figure includes adults (out of which adults totaled 139 persons), but most of them are minors. The Japanese Government has continued to improve administrative services offered to those who do not have a Family Register, but many people without a Family Register suffer from disadvantages in such various areas as continuing education, employment, marriage, obtaining a driver’s license and insurance.

37. The Ministry of Justice has actively addressed this problem in recent years and has provided a detailed explanation about an overview to the problem and procedures for resolution and provision of administrative services offered to those who do not have a Family Register. For administrative services, the Ministry of Justice has worked with other Ministries and Agencies, including the Ministry of Education, Culture, Sports, Science and Technology and the Ministry of Internal Affairs and Communications.

A resolution to this problem often requires legal procedures including appeals and approvals to and from the courts and assistance from attorneys is necessary. For that purpose, the Japanese Government promotes legal procedures to resolve problems in cooperation with the Federation and Bar Associations in each region. The Federation conducted simultaneous telephone consultations throughout Japan in 2016 and called out to Bar Associations in each region to respond by developing a manual.

38. As stated above, the root cause for the problem is the legitimacy assumption system under the Civil Code and we consider that amendment of the Code on this point is necessary. On the other hand, as the legitimacy assumption system has a reasonable legislative objective of stable parent-child relationships, it is necessary to conduct discussions from a variety of viewpoints, including changes in the concept of the Family Register system.

39. Refer to 9. Special protection measures (1) g. “Statelessness” for statelessness.

(2) Freedom of thought, conscience and religion (Article 14)

(Freedom of expression (sovereign education))

40. Sovereign education should be provided while children exercise the right to express their views and freedom of expression, etc., in order to nurture the requirements necessary to become citizens forming a free and democratic society and constitutional democracy and it is necessary to guarantee opportunities for learning in order to acquire such requirements.

41. In June 2015, the Act amending part of the Public Offices Election Act was enacted and promulgated (enforced as of June 19, 2016). With the amendment, a person 18 years of age or older was granted the right to vote in elections of the members of the House of Representatives, the House of Councilors and members of assemblies and head of local governments (the Public Offices Election Act, Article 9).

42. With the above amendment, some high school students can exercise the right to vote, the Ministry of Education, Culture, Sports, Science and Technology issued a notification to high schools in Japan in the name of Elementary and Secondary Education Administrators (Note 4-2). It emphasizes that schools are required to be politically neutral under the Basic Act on Education, Article 14 (Note 4-3), while it states that education for political culture is necessary. Specifically, it uniformly prohibits political activities by high school students, etc., during classes and school education activities, etc. It also broadly restricts and prohibits after school or on holiday activities at or outside of schools (for example, political activities outside of schools after school or on holidays are permitted by school regulations under certain conditions such as reporting political activities to schools), which unduly restrict freedom of political expression to be guaranteed to high school students, etc.

It also requires the use of “Guidance Materials,” that is the use of “Future of Japan We will Develop,” sub-educational materials prepared by the Ministry of Education, Culture, Sports, Science and Technology and the Ministry of Internal Affairs and Communications and issued a notification that use of other sub-educational materials shall be required to report to or obtain the approval of the board of education (Note 4-4).

These series of notifications, however, may restrict the discretion of teachers whose expertise is a source of education and infringe on the freedom of thought of children guaranteed under the Convention of the Right of the Child, Article 14. It also infringes on the right to learn required for children to grow and develop. It is desirable to provide sovereign education at schools according to the stage of development of the child.

### (3) Protection of privacy and protection of the image (Article 16)

(Paragraph 58)

43. The following circumstances were not improved; in interrogations of juvenile suspects, witnessing of guardians are not permitted contrary to the Notification of the Deputy Director of the National Police Agency of 2007, “Matters of Note for Promoting Juvenile Police Activities” (Note 4-5) and inspection of personal belongings, intervention of personal communications among children by facility staff, infringement on privacy of children who are suspected of having committed an offense or who are victims of crimes through reporting by mass media, etc. The Japanese Government should make efforts to deepen understanding with respect to the right of privacy of the child through development and reinforcement of the implementation of guidelines for proper handling.

(4) Access to information from a diversity of sources and protection from material harmful to a child’s well-being (Article 17)

(Paragraph 59)

44. As over emphasis has been placed on the protection of the child from damaging information, guarantees of access by the child to “information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health” is inadequate. It is necessary to consider a reasonable restriction method that fully respects the rights of the child.

5. Violence against children (Articles 19, 24(3), 28(2), 34, 37(a) and 39)

(1) Abuse and neglect (Article 19)

(Paragraph 60)

45. It is not adequately guaranteed in preparation and implementation of temporary protection and care plans thereafter to hear views of the child and explain the policy, etc., for the child in an easily understandable manner. It is an urgent task to construct the institution and system in which views of the child are duly respected (Convention Article 9, paragraph 2, General Comments, No. 8, Paragraph 41).

There is also a problem that efforts for restoration of parent-child relationships after

separation of the child from the parent are inadequate and the same institution conducts both separation of the child from the parent and restoration of the parent-child relationship. The system requires a review so that separate institutions handle the above matters and more strenuous efforts are made for the latter, including family group conferences, etc.

(Paragraph 67)

46. Ministry of Health, Labour and Welfare states that corporal punishment is inappropriate in the “Guide for Response to Child Abuse” amended in 2013 (Note 5-1) and prepared a leaflet to prevent corporal punishment (Note 5-3) upon an additional resolution to the amendment of the Child Welfare Act in 2016 (Note 5-2) and a section head of the Ministry of Health, Labour and Welfare indicates the importance of an approach to the entire group without limiting the subject (population approach) (Note 5-4). However, these initiatives are not thoroughly known to each family. A campaign should be strengthened, which enlightens the legal prohibition against corporal punishment and adverse effects of inappropriate rearing including corporal punishment and proactive discipline and child rearing methods, etc., replacing the former.

(2) Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (Articles 37(a) and 28(2))

(Paragraph 71 and Paragraph 72)

47. According to various surveys, about 40% to 60% of adults admit to corporal punishment (Note 5-5) and corporal punishment and any other cruel or degrading form of punishment (hereinafter referred to as “Corporal Punishment, etc.”) are not expressly prohibited at home.

The Japanese Government reported in the Japanese Government’s 2nd Report for Universal and Periodic Review (UPR) by the UN Human Rights Council (2012) that discipline under the Civil Code, Article 822 does not allow for corporal punishment (Note 5-6). However, in deliberations in the Diet in 2017, the Ministry of Justice maintained the same response from the year 2000 that discipline under the Civil Code included corporal punishment and presented a negative view of prohibition against corporal punishment (Note 5-7). However, the School Education Act, Article 11 expressly prohibits corporal punishment while the provision of disciplinary authority is provided for (Note 5-8), and in

child welfare facilities, corporal punishment is (although not expressly prohibited) interpreted to be prohibited, however, directors of facilities have disciplinary authority (Note 5-9). Disciplinary authority provision of the Civil Code should be interpreted as not permitting corporal punishment at home and express prohibition should be realized as soon as possible.

In this regard, in deliberations of the amendment of the Child Welfare Act in 2016, an additional resolution, “the government should make efforts to understand the circumstances surrounding present day families and review how disciplinary authority of the guardian should be based on trends of discussions, etc., in the international community” was adopted (Note 5-2). The Japanese Government was requested in the 2nd Concluding Observations of UPR in 2013 and in the 2nd Concluding Observations of the UN Torture Prohibition Committee to expressly prohibit corporal punishment (Note 5-10) and in 2016, the Ministry of Health, Labour and Welfare, Social Welfare Council proposed express prohibition against corporal punishment (Note 5-11), but this has not yet been realized.

(Paragraph 73)

48. In December 2012, a suicide incident of a high school student occurred as a result of corporal punishment and in a nationwide survey conducted immediately after the incident, the number of teachers who were subject to disciplinary actions due to corporal punishment at public schools significantly increased to 2,752 from 404 in the previous year (number of occurrence was 5,415 cases) while the number decreased thereafter but corporal punishment had not been completely eliminated. Disciplinary actions of teachers who committed corporal punishment only cautioned orally (reprimand, etc.,) which is extremely light (Note 5-12). Measures corresponding to the causes for corporal punishment have not been taken, such as anger management, improvement of knowledge and skills of positive education instruction method, which is recognized as scientifically effective, review of child control oriented response and in particular, review of win-at-all-costs in sport club activities (Note 5-13).

In a survey of the actual conditions related to corporal punishment annually conducted by the Ministry of Education, Culture, Sports, Science and Technology, the actual number of occurrences was not recognized as only the number of teachers subject to dispositions at public schools was reported, except for the 2nd Report in 2013. As conducting questionnaires with the respondents being children would contribute to awareness-raising of children, teachers and guardians, the Ministry of Education, Culture,

Sports, Science and Technology should make efforts in order to understand the correct number of corporal punishment cases by presenting the investigation methods requiring questionnaires to children.

(Paragraph 77 through Paragraph 79)

49. In the Juvenile Classification Office Act and the Juvenile Training School Act, no provision exists, which provides for the rights of the child including the right of the child to exist and develop and the approach based on the rights of the child, emphasized in General Comments No. 13 (Paragraph 53, Paragraph 59, etc.,) was not squarely adopted. Therefore, it is far from the realization of express prohibition against corporal punishment.

(3) Measures to promote physical and psychological recovery and social reintegration of child victims (Article 39)

(Paragraph 80)

50. Circumstances should be improved, in which a system that enables carrying out effective psychological treatment is absolutely inadequate and almost all of the children in need of social care are not offered opportunities for receiving appropriate and enhanced trauma care.

6. Family environment and alternative care (Article 5, Articles 9 through 11, Article 18 (1) (2), Articles 20, 21, 25 and Article 27 (4))

(1) Family environment and parental direction and guidance (Article 5)

(Paragraph 83)

51. The Child Welfare Act was amended in 2016 and specified support to family care by national and local governments (the Act, Article 3-2, Note 6-1).

However, the Japanese Government's Report does not mention that social service institutions shall put priority on responding to children and families placed in disadvantageous positions and provide appropriate monetary, social and psychological support in order to prevent treatment of children at institutions (Concluding Observations, Paragraph 51), and in fact they are scarcely provided.

(2) Parent's common responsibilities, assistance to parents and provision of child care services (Article 18)

52. For preschool children, nursery facilities, corresponding to the number of children in need of care are inadequate and a large number of litigation cases insisting illegality of rejection of nursing care have been instituted. There is no prospect for resolution of the inadequate number of nursery facilities (Note 6-2).

(3) Separation from parents (Article 9)

(Paragraph 87)

53. By the amendment of the Child Welfare Act in 2017, where temporary protection exceeds two (2) months and when continuation of protection is contrary to the will of the guardian, judicial review is required (Note 6-3).

While it is progress that judicial review is required for separation of the child from the parent, prompt judicial review after separation is desired in light of the purpose of the Convention, Article 9, paragraph 1. In this regard, as an inadequate personnel system in the courts and child guidance centers are obstacles to prompt realization of judicial review, improvement of the system is required as a precondition (Note 6-4).

(4) Children deprived of their family environment (Article 20)

(Paragraph 92 (b))

54. Although caring guidelines for foster parents were established, periodic audits are not conducted.

Although the minimum standards for child welfare facilities were reviewed, the physical and personnel environments are still inadequate (Note 6-5).

The protected child is rarely allowed to select from options of alternative rearing environments such as living at the foster parent's home or at a facility because of inadequate foster parent support and matching system. Under the current circumstances, consignment to foster parents is limited.

(Paragraph 92 (c))

55. Provisions of prevention of abuse of children subject to protection measures and its

response, etc. were incorporated into the amended Child Welfare Act of 2008. Regarding the status of abuse of children subject to protection measures, the Ministry of Health, Labour and Welfare has not published the number of responses after 2015. In 2014, which was published, it is stated that reports of 220 cases were accepted during the year in Japan, but child-to-child violence, child-to-child sexual violence are not reported as neglect and hidden cases seem to be considerable in number (Note 6-6, Note 6-7).

This is partly because in the definitions of abuse of the children subject to protection measures. It is defined, “neglect of abuse by other children who are living together and significant failure in the care or duties by facility staff” (Child Welfare Act, Article 33-10, item 3) and such wide concepts as “neglect” “significant failure” are not clarified.

For the method of petition for abuse, etc., it is inadequate to ensure the external communication and consultation means of the children subject to protection measures (Note 6-8).

(Paragraph 92 (d) (e))

56. The Japanese Government’s Report states promotion of consignment to foster parents, but consignment of socially protected children to foster parents are now only less than 20% as of 2016. For new born babies, the percentage of consignment to foster parents is only less than 15% as of 2014 and the rest are raised at infant homes (Note 6-9).

57. On the other hand, at present, abuse cases of children subject to protection measures occurred at foster homes and the system to support foster parents, including training of the right of the child and childcare and consultation and response in case of emergency, differs depending on local governments but are generally poor (Note 6-10).

Efforts toward support of family reunification are inadequate. For example, according to the research results published in March 2014, the child guidance centers in Japan answered that support related to reunification of the family is conducted by referencing the guidelines, etc., issued by the Ministry of Health, Labour and Welfare (accounted for 36.2% (Note 6-11)).

#### (5) Periodic review of placement (Article 25)

(Paragraph 93)

58. The Japanese Government’s Report only states operation of juvenile training schools

and juvenile prisons, but it does not report operation of child psychological treatment facilities and child independence support facilities.

#### (6) Adoption national and inter-country (Article 21)

(Paragraph 94 and Paragraph 95)

59. After the Japanese Government's 3<sup>rd</sup> Report, adoption system has not been improved and some adoptions are not reviewed by family courts and not all adoptions are conducted in the interest of the child.

The circumstances are the same for international adoptions and supervision to check whether inappropriate adoptions are made is not conducted.

#### 7. Disability, basic health and welfare (Articles 6, 18(3), 23, 24, 26, 27(1)-(3), and 33)

##### (1) Children with disabilities (Article 23)

(Paragraph 32, Paragraph 102)

60. Japanese Government's Report states with respect to school education of disabled children that "Special Needs Education" is provided, which provides proper guidance and necessary support upon understanding of the educational needs of each child in order to construct an inclusive educational system.

In the Concluding Observation, the Committee recommends promoting inclusive education to the Japanese Government and providing schools with accommodations necessary for inclusive education (Paragraph 59 (b) (c) (e)). Nevertheless, the Japanese Government's Report only refers to system construction as relates to inclusive education, while citing the Concluding Observation, and disregards that it is the inherent right of disabled children and shifted the focus on the promotion of Special Needs Education. Special Needs Education is different from education for children without disabilities, which assumes separation from children without disabilities. Special Needs Education is not an inclusive education in which both children with and without disabilities can learn together.

61. Although it is recommended in the Concluding Observation that disabled children shall be able to choose a desired school (Paragraph 59 (e)), the amendment of the School

Education Act, Enforcement Ordinances of 2013 only changed to comprehensive determination from the general separation principle for determination of the school for the disabled child to be enrolled and even the right of selection is not specified at all.

In fact, as of May 2014, the number of children who enrolled at regular elementary or junior high schools at the same time of receiving education in a special needs class was 83,750, the number of children who enrolled in a special needs class at the elementary and junior high school level was 187,100 and the number of pre-school and children enrolled in a special needs school (from kindergarten to high school) was 135,617, which means that the majority of children are learning at separate schools. These circumstances are contrary to inclusion.

Concluding Observations recommends taking necessary measures, including human rights education to reduce and prevent discrimination (Paragraph 34(b)), but in the guidance manual of regular classes, exchange education is proposed and inclusive education is not mentioned at all. Exchange education is exchange with a limited amount of time and opportunities upon separation, where disabled children are temporary “guests” and sense of peer consciousness cannot be fostered and on the contrary, a sense of discrimination is actually strengthened. In order to reduce and prevent discrimination, regular classes must be inclusive.

(Paragraph 100 and Paragraph 101)

62. The Japanese Government’s Report refers to the ratification of the Convention on the Rights of Persons with Disabilities and the amendment of the Basic Act for Persons with Disabilities, but it does not refer to enactment of the Act for Resolution of Discrimination for Persons with Disabilities in the text and only describes it as related laws.

Act for Resolution of Discrimination for Persons with Disabilities enacted in 2013 prohibits direct discrimination based on disability and defines that non-provision of reasonable care is also a discriminatory practice. There is no exception in the field of education. For example, it is a discriminatory practice to exclude or separate from regular curriculums or placement in a special needs school against the will of children and guardians. Regarding reasonable care, it is not thoroughly published that it is essential to resolve discriminatory practices and there is even confusion with special needs. Reasonable care must be provided throughout an entire student’s school life and not only for classroom subjects, which is an urgent task.

63. The number of guardians, etc., who attend to the needs of children with disabilities daily at public elementary or junior high schools is 1,897. Mobility support under the Act for Comprehensive Support for Persons with Disabilities cannot generally be used for going to school. Therefore, many children with disabilities unable to go to school by themselves must depend on the transportation support from their guardians.

(Paragraph 104)

64. The Japanese Government's Report states that it is committed to enhancing the system so that persons with disabilities can receive adequate support in their local area, but in actuality, it does not function effectively. From a legal standpoint, facilities may be used according to the purpose of use, regardless of the type of disability. However, in fact, the facilities having previously accepted children with severe disabilities generally accept children who cannot move independently because they do not have the know-how of accepting children who can move by themselves or cannot respond to risks exposed by children that move around. Also, for example, facilities having previously accepted children with development disorders continue to accept such children because they do not have the know-how to accept children with severe disabilities and children in need of medical care. As a result, there is a problem that there are no facilities that accept children in need of medical care who can move by themselves.

65. A proposal by NGOs, including a group instituting litigation with regard to the unconstitutionality of the Services and Supports for Persons with Disabilities Act was made that use fees for disability welfare and the child welfare system for children with disabilities should be determined based on the income of children and not the income of parents and use fees for children without income should not be collected from children and guardians. Operation should be improved in conjunction with the proposal in light of the purpose of the Convention of the Rights of the Child.

## (2) Health and health services (Article 24)

(Paragraph 106)

66. The Japanese Government's Report states, "The government is considering establishing a system to implement third party evaluation of temporary child protection facilities operated by child guidance centers."

However, the above system does not require the temporary child protection facilities to receive a third party evaluation and the central government only grants subsidies to temporary child protection facilities that have received such evaluation. Therefore, there is a possibility that temporary child protection facilities will not receive third party evaluation.

In order to implement third party evaluation, it is one of the factors to determine whether facilities satisfy the appropriate standards, but the standards for allocation of facility equipment and furnishings and personnel of temporary child protection facilities are the same as those of children's institutions (Note 7-1) and there are no independent standards for temporary child protection facilities. Temporary child protection facilities, however, treats children with various problems together such as abused children, delinquent children, children with disabilities. In addition, the number of children moving in and out of facilities is large and frequent. As a result, facility equipment and furnishings and expertise of personnel required differ from children's institutions. Therefore, independent standards for appropriate facility equipment and furnishings and personnel are required for temporary child protection facilities.

Based on the above, the government should establish standards for the allocation of facility equipment and furnishings and personnel of temporary child protection facilities and require all temporary child protection facilities to receive third party evaluations and bear all expenses necessary for receiving evaluations.

(Paragraph 107)

67. The Japanese Government states that child and adolescent mental care professional training programs are provided to doctors, nurses, social workers, mental health social workers and other relevant workers in mental health and welfare centers, public health centers, child guidance centers and other relevant institutions.

However, training attendance is not required and we assume that a number of medical professions do not receive any training at all.

As children cannot easily visit the above facilities for consultation, these activities are not effective for early discovery and early resolution of problems surrounding children. In order to provide effective support, it is necessary for those who are closer to children to have professional knowledge.

Accordingly, the Japanese Government should provide training for children's nurses and teachers, etc., who spend long hours with children and are in an easier position to get in touch with children easier so that they can obtain the minimum knowledge of the

psychology of children and require children's nurses and teachers to receive training. Further, the Japanese Government should require assignment of school social workers and school counselors with greater professional knowledge as full-time staff at every school in order to improve the environment in which children can consult in an easy manner.

### (3) Reproductive health rights

(Paragraph 112)

68. Although the abortion rate for teens as a whole has declined, the number of abortions of those who are under the age of 15 has not significantly changed (while the number of children is decreasing) (Note 7-2). Guidance on sexual issues at school mainly focuses on the general idea of contraception and prevention of sexually transmitted diseases, which has a certain significance in prevention of unwanted pregnancies of healthy children who are attending school and are still sexually developing. However, it is necessary to examine guidance on sexual issues completely different from the above to address measures regarding unwanted pregnancies and sexually transmitted diseases of children under the age of 15, in which critical problems such as sexual exploitation and victimization as a result of sex crimes can be assumed. Guidance on sexual issues based on such problem awareness has not yet been established.

Today, guidance on sexual issues provided at schools mainly focuses on individual knowledge and measures regarding contraception and prevention of sexually transmitted diseases and reproductive health are only mentioned just in passing. In addition, we must say that the problem awareness for the necessity to provide education, including reproductive health is lacking.

In particular, awareness-raising of encouraging educational materials on health and physical education for high school, amended by the Ministry of Education, Culture, Sports, Science and Technology in August 2015, published an incorrect graph which indicated that it becomes difficult for women to become parent after 22 years of age and the ability to become pregnant diminishes rapidly in conjunction with aging (it was revised thereafter). It has also been pointed out that educational materials are problematic because materials may have the intention of encouraging female students to become pregnant and give birth at younger ages.

### (4) Drug abuse (Article 33)

(Paragraph 113)

69. Number of juveniles arrested for drug abuse has been decreasing over the last several years, but in 2015 and 2016, the number of arrest for possession of stimulants, hemp and other drugs, etc., increased. In particular, in 2016, the number of arrests for possession of hemp reached 2.6 times as that in 2014 (Note 7-3). Analysis of the causes and countermeasures that go beyond conventional measures are urgently required.

(5) Social security and childcare services and facilities (Article 26, Article 18 (3))

(Paragraph 115)

70. Regarding childcare after school, under the so-called “Child and Child-Raising Support System,” which had been maintained and operated by various business types in each municipality across Japan, a national uniform standard has been established, including establishment of national standards, enactment of charters for the standards by each municipality and requirement of preparation of business plans. An assessment has been conducted indicating that the children covered by the new system have expanded and standards regarding facility area, assignment of children support staff (instructor) after school and size has been clarified and a certain framework to ensure the quality of childcare after schools has been set.

Operators and sizes differ by local government, however, and realities also differ according to each local government. In connection with an increase in users due to an increase in double income families and expansion of target ages, the number of after-school childcare increased significantly, but measures to counter these needs have not been met. There are circumstances in which it is difficult to secure instructors and salaries of most staff are low and most of instructors are non-regular staff. While the Japanese Government promotes enhancement of alternative plans by using schools during afterschool hours through utilization of the “Afterschool Child General Plan,” afterschool care for children should be the “second home” for children which should be another place to stay for children different from schools and their own homes. Today, as opportunities for children to contact a variety of people are being lost as a result of the continuation of the low birth rate and trend toward nuclear families, afterschool care for children where children can spend time in various relationships has importance in the growth and development of children. It is not a desirable direction to implement measures for children on waiting lists

by promoting “Afterschool Child General Plan,” which is based on the extension of school life for children. The Japanese Government must actively formulate a budget for establishment and repair of facility equipment and furnishing in order to improve the quality of afterschool care for children without depending on measures and a budget for each local government. In addition, the government must make efforts to improve working conditions for instructors. There is also no national uniform standard for use fees and burdens of users are differs in each region. Therefore, the Japanese Government is required to improve the current circumstances so that poor families can use the service without financial burden.

#### (6) Standard of living (Article 27(1) through (3))

(Paragraph 14 and Paragraph 116)

71. Relative poverty rates of children have improved slightly, but the percentage of children locked in poverty is one out of seven, which is high compared with international standards. While the “Act on Promotion of Policy on Poverty among Children” was enacted in 2013, the Japanese Government has not formulated a budget for realization of measures, and has not established specific numerical targets.

(Paragraph 117 and Paragraph 118)

72. Regarding childcare allowances, additional allowances for second and third children were increased in August 2016. The increase was groundbreaking as it reversed the previous trend of reducing the childcare allowance, but as the benefits are inadequate to lift the poverty levels of single parents, a large increase is necessary and income standards as a scope to determine eligibility for allowances should also be raised. In addition, there remains the provision of suspending part of payment after five years of payment (Note 7-4). Child allowances and childcare allowances are paid for four months at one time three times a year. While it is an allowance in kind to support the household budget of a child-rearing family, however, household budget management is inherently more complicated by lump sum payment. Therefore, when the Childcare Allowance Act was amended in May 2016, an additional resolution requiring future review of improvements in payment times was adopted (Note 7-5). Accordingly, the Japanese Government should take prompt actions to ensure specific reviews.

(Paragraph 119)

73. Regarding nursery care, the Japanese Government established the “Child and Child-Raising Support System” (enforced in 2015) and as measures for children on waiting lists for nursery schools, various childcare operators in a variety of businesses forms were included in licensed business, such as regional childcare business and certified children center system and the Government also promoted consignment of public nursery schools to private management. Prior to that, by the enactment of the Regional Sovereignty Reform Package Act, the minimum standards of child welfare facilities, including nursery schools can be determined by local ordinances and in general, various deregulations were made under the name of measures for children on waiting lists for nursery schools. That is, the Government promoted policies that reduce the level of childcare. Further, the following “reforms” were promoted; in order to resolve the on-going shortage of children’s nurses, the standards for allocation of qualified persons were deregulated and by establishment of childcare support staff system, it made it possible for nonqualified persons to become involved in various childcare services such as childcare support staff after attending certain training sessions. The Government continued to promote policies disregarding quality in order to secure childcare staff numbers, and such circumstances continue, in which the right of the child to exist and develop safely and securely is threatened.

74. The number of children on waiting-lists for nursery schools has continued to increase and in 2015, it reached as many as 23,167 persons. The personnel allocation standards for children’s nurses are determined as one staff member for every three children less than one year of age, one staff member for every six children one to two years of age, one staff member for every twenty children three years of age, and one staff member for every thirty children four years of age and older. The standards for one staff member for every twenty children three years of age and one staff member for every thirty children four years of age or older are maintained, which are much lower than the standards in Europe and the United States. Under circumstances of increasing the number of children on waiting lists for nursery schools, uncertified nursery schools which are not required to satisfy the standards are increasing.

75. Under such conditions, many accidents occurred in the facilities. During one year in 2015, 14 accidents causing death were reported to local governments, out of which accidents at noncertified facilities accounted for 10. The Government, not only making

efforts to increase in quantity the number of childcare facilities through deregulation, must also aim at increasing licensed nursery schools at a level of secured quality as a basic objective through active formulation of the national budget. It must also review allocation standards for children's nurses and further take measures to prevent accidents during childcare. As for children's nurses who carry out childcare, the Government should place priority on improvement of their working conditions. In addition, the Government should make efforts to realize free childcare fees throughout Japan as social welfare of children.

76. Regarding welfare benefit standards, the standards for livelihood aid assistance were reduced in August 2013 and in July 2015, housing aid assistance standards and in October 2015, winter supplements were respectively reduced. By lowering the standards, the amounts paid to families receiving welfare benefits were reduced and therefore, the standard of living, including clothing and food for children for the families receiving welfare benefits were also reduced. By reducing housing aid assistance standards, housing supplements for children for families receiving welfare benefits led to difficulties in securing sufficient living space and sufficient convenience at an equivalent level as previous housing. Because a reduction in winter supplements forced the families receiving welfare benefits to save on heating expenses during winter, it is apparent that specific infringements occurred on the right to a reasonable standard of living for physical, mental, moral and social development of children. Therefore, the Government should withdraw a series of previous reductions in welfare benefit standards and consider increases to secure reasonable standards of living for truly sound development of children. Welfare benefit supplements for mothers and children should be maintained and reductions in standards for aid assistance to families with children should not be made.

77. Temporary child protection facilities of child guidance centers are public shelters, but the number of temporary child protection facilities is small and many temporary child protection facilities exceed their acceptance capacity and these facilities cannot provide sufficient response to children. In some regions, responses by independent support homes are not well-developed. For children who would not fit in the environment of temporary child protection facilities, such private organizations as NPOs maintain and operate shelters, but public financial assistance is inadequate and they are operated by private donations, etc.

The Government is responsible for providing the country's children who cannot

receive parental care due to particular circumstances with clothing, food and housing. It should enhance temporary child protection facilities of child guidance centers and independent support homes promptly and also enhance public financial support for various private shelters for children.

## 8. Education, leisure and cultural activities (Articles 28-31)

### (1) Rights to education (including vocational training and guidance) (Article 28)

(Paragraph 36)

78. The Japanese Government established “youth reporters” as an initiative to reflect opinions of children and youth to reflect their views to the formulation and implementation of the government, but this scheme only conducts questionnaires of 500 people four times a year and only offers a forum for exchanging opinions twice a year. Junior and high school students who directly participated in 2016 totaled only six on two occasions (Note 8-1).

(Paragraph 38)

79. The understanding of the Government that formulation of school rules, etc., is “not considered items related to individual children” and does not come under the scope of rights for expressing their views is apparently an incorrect interpretation of the Convention (Note 8-2).

80. Regarding corporal punishment at school, refer to the Chapter 5. “Violence against Children.”

(Paragraph 120)

81. The Japanese Government reports responses of the police in the case of bullying. However, the basic response to the bullied children is focused on care and support of children who encountered problems, constituting the background of bullying. The direction of response to bullying by the Japanese Government emphasizes severe punishment, including response by the police, which is not suitable for resolution of bullying (Note 8-3).

(Paragraph 121)

82. In principle, the scholarships of the Japan Student Services Organization are basically

loans, which become a burden to students after graduation and claims collection by servicers in the case of nonpayment has become a social problem (Note 8-4).

83. As study support at the high school level other than scholarships, school fees of public high schools, etc., has been free and the system of paying study support money to private high schools, etc., has been in place since 2010. However, the system was changed in 2014 and an income limit was established under which study support money is paid up to an amount equal to the school fees of public schools, etc., to a household whose income is below a certain level and a supplement is paid according to household income.

However, to continue education, although expenses related to education other than school fees (about ¥120,000 a year) are required (for example, according to the education expenses survey in 2014 by the Ministry of Education, Culture, Sports, Science and Technology, for school education expenses, including books, school supplies, etc., and transportation costs and school payments, etc., other than school fees, ¥230,000 was spent a year and for expenses for activities outside of schools, including private tutorial and home teachers, ¥170,000 was spent a year, in total ¥400,000), support is not given to such expenses. In other words, support from the Government is inadequate considering education related expenses other than school fees (Note 8-5).

(Paragraph 122)

84. During the period from 2006 to 2015, the figures on the upper limit of teachers and staff had improved, but the number of children per class in Japan is at the lowest level (the largest or next to largest class size) among OECD member countries (Note 8-6).

85. Improvement of the upper limit during the above period was mainly achieved by an increase in non-regular teachers and it has been pointed out that as a result, the burden of regular teachers increased and the overall quality of education decreased. Significant phenomena include a large increase in overtime hours by teachers and the large number of teachers and staff who take leaves of absence due to mental illness (Note 8-7, Note 8-8).

(Paragraph 123)

86. Meanwhile high school reforms have been characterized by a hierarchical structure among preparatory schools and non-preparatory schools and admission competition starts at still lower ages. This means that whether students can apply for preparatory school is

determined based on academic achievement in the three years at junior high school before entrance exams for high school.

87. For example, in Tokyo, the metropolitan government has continued to push for consolidation and elimination of evening high schools, which further erodes opportunities for students to learn while working (Note 8-9).

88. Establishment of integrated public junior and high schools, which had been introduced in 1998, has expanded and admission competition starts at still lower ages than at the time of previous report (Note 8-9, Note 8-10).

89. Expansion of “Competition in Education” by the National Academic Performance Survey, etc.

The National Academic Performance Survey (national examination), which resumed in 2007, once adopted the sampling method, but returned to the total survey in 2013. In 2014, the Ministry of Education, Culture, Sports, Science and Technology permitted publication of the results by schools at the discretion of local governments and schools. Therefore, publication of survey results by school expanded and competition among schools has grown increasingly more severe.

Local governments have begun to conduct independent academic performance surveys and some local governments have started to reflect the results of academic performance surveys in evaluation materials for entrance exams of public high schools. These trends make competition among junior high schools increasingly more severe. Under such circumstances, the cases of “placing burdens on children by preparation exercises of repeating questions in the previous academic performance surveys and kanji (Chinese characters used in Japan) drills in preparation for the coming academic performance survey” have been reported and such problems are being indicated as education sites are being driven by point competition (Note 8-12).

90. Actual Increase in Non-attendance at School

Comparing the number of pupils and students who do not attend school in 2015 with that of 2003, it has actually increased (Note 8-13, Note 8-14).

(Paragraph 124)

91. Act for Promoting Bullying Prevention Measures does not refer to a response such as a stressful environment for children such as competition and managerially-oriented schools, which are indicated as the background for bullying and basic environmental factors of bullying have not improved.

92. Act for Promoting Bullying Prevention Measures provides for the obligation of schools to respond to bullying, but working conditions of teachers who address them have been deteriorating (Refer to the above comment on Paragraph 122) and therefore, actual early discovery and response are difficult.

93. As a result, after the enforcement of the Act for Promoting Bullying Prevention Measures, the number of bullying cases has not decreased and the number of child/student suicide cases have continually risen (Note 8-15, Note 8-16).

(Paragraphs 125 through 127)

94. Refer to the Chapter 9 “Special protection measures (f. education for foreign national children)”

(Paragraph 128)

95. As a result of amendment of the textbook authorization standards by the Government in 2014, it is required to specify non-existence of dominant reviews “when describing figures, etc. for which no dominant views exist” in social science textbooks, and when there are “unified views of the government indicated by decisions of the Cabinet and any other means,” it is required to prepare descriptions “based on such unified views,” etc. Accordingly, from history textbooks, etc., the specific description of the number of Chinese victims massacred in the Nanjing Incident during the Sino-Japanese War and the percentage of descriptions of views different from those of the Government has been reduced concerning controversial matters related to neighboring countries such as the comfort women issue and territorial issues (Note 8-17).

## (2) Aims of Education (Article 29)

(Paragraph 130)

96. Amended Basic Act on Education provides as the objectives of education “to respect

tradition and culture” and “nurture an attitude of love for Japan and your hometown,” etc., which would enable providing education related to the minds of children such as patriotic-themed education. The provision that education shall not be subjected to “unjust control” was changed to “(education) shall be provided in accordance with laws,” which raises concerns about impairment of independence and autonomy of education through laws.

(Paragraph 131)

97. The Japanese Government indicates “teaching methods of human rights education ...” as an effort toward human rights education, but as it is precisely revealed in the fact that the Government does not respect the right of children to express views and freedom of expression at school (refer to comments on Paragraph 38 above), the basic direction of education promoted by the Japanese Government does not strengthen the human rights awareness of children.

9. Special protection measures (Articles 22, 30, 32, 33, 35, 36, 37(b)-(d), and 38-40)

(1) Loss of nationality, application for asylum, deportation, separation of children from foreign national parents, education of foreign national children and statelessness

a Loss of nationality

98. A child who was born in a foreign country and acquired a foreign nationality by birth shall retroactively lose Japanese Nationality at the time of birth unless notification is made to retain Japanese Nationality within three (3) months of the date of birth (Nationality Act, Article 12). A child who lost Japanese Nationality without making notification to retain Japanese Nationality may acquire Japanese Nationality as of the date of notification by notifying the Minister of Justice while the child is under 20 years of age and has a domicile in Japan (Nationality Act, Article 17).

99. On March 10, 2015, the Supreme Court held that the Nationality Act, Article 12 was constitutional (it did not indicate any specific determination regarding the Nationality Act,

Article 17). It is a discriminatory practice, however, that the requirement of having a domicile in Japan under the Nationality Act, Article 17 for reacquisition of Japanese Nationality after losing Japanese Nationality of a child born from through marriage has no reasonable grounds for different treatment compared to a child who was recognized after birth may acquire Japanese Nationality by notification without having a domicile in Japan when the person is under 20 years of age (Nationality Act, Article 3). As the fact that birth of a child who lost Nationality is not described in the Family Register of the Japanese parent, the child may not be recognized as an heir at the time of inheritance.

## b Application for asylum

(Paragraph 139 and Paragraph 140)

100. Functions of refugee recognition of Japan have been ineffective because the number of persons recognized as refugees totaled 28 while the number of persons who submitted new applications as refugees in 2016 totaled 10,901 (the number of children under the age of 18 is unknown, and the number of children under the age of 18 among applicants in 2015 was 361). Unlike the description in the Japanese Government's Report (Paragraph 140), most of the courts and the Japanese Government take the attitude that it is not a problem to not adopt the views of the UNHCR as they have no binding legal effect, and in fact, the views of the UNHCR are not at all respected or even considered. As a result, many asylum seekers, including children who should be protected as refugees were not recognized as refugees and as they cannot return to their countries because of fear for persecution, they are in an extremely precarious position.

101. In Japan, when a person submits an application for refugee status while the person has resident status, the person is granted resident status during the application process for refugee status, but mere application for refugee status does not warrant resident status. Where applications are made at airports, the majority are not granted regular resident status. There is a system of temporary stay permission, which permits admission to health insurance, although it is not a regular resident status, but in many cases it is not recognized by reason of no fixed residence in Japan. On the other hand, it becomes a problem that procedures for application for refugee status takes a longer time and persons, including children, other than those who submitted an application for refugee status while they have resident status, are in a precarious position for a long time during the application period.

Payment of protection expenses to those who are in danger of life among refugee applicants is inadequate in terms of target and amount. Also, there are such procedural problems as it takes too much time until payment. It is expected that the speed of procedures will be accelerated in the future, but there was a case of a child in which it took more than 5 years to a decision was made as to recognition of refugee status and who was not granted resident status for most of that period.

102. Under the procedures for refugee recognition of Japan, witnesses other than the applicant were not permitted, but in 2017, trial witnessing by doctors and attorneys, etc., if necessary, was permitted for a child under the age of 16 unaccompanied by a parent. However, witnessing of a child over the 16 years of age is not permitted despite requests from supporters.

#### c Refugee

(Paragraph 138)

103. As stated above, refugee status recognition is hardly ever successful, so there are very few children who can receive the Japanese language education program stated in the Japanese Government's Report. Even when a child is recognized as having refugee status, the time of admission to schools is limited to only twice a year and depending on the time of recognition, the person must wait for a long time to start language education. Therefore, some refugees have had to give up participating in the language education program. That means, the current system is not effective in ensuring prompt settlement in Japan.

#### d Deportation

104. As Japan adopts *jus sanguinis*, with very few exceptions, Japanese Nationality is not warranted by birth in Japan. It is administrative practice and court precedent that permission of residence is granted as privilege at the discretion of the Government even if a person was born in Japan or came to Japan while young and was raised in Japan. The Government does not have a particular train of thought in determining the residence of a child independently in determination of permission, permission of residence of a child basically depends on the status of entry and residence of parents. For children reaching a certain age, in many cases, deportation of parents are imposed in fact as conditions for

permission of residence of the child. As a result, for a child of 14 years old who was born and raised in Japan and has not committed any illegal acts other than illegal stay, deportation has been ordered and courts have confirmed this. The concept, “constitutional guarantee of fundamental human rights for foreigners is only granted in the framework of the foreign residence system” (Decision of the Supreme Court, Large Bench as of October 3, 1978) is in effect until today. Therefore, in practice, the Convention which was adopted and to which Japan became a Signatory to thereafter has been treated outside the scope of application in the same way as the case of constitutional guarantee of rights and the majority of court precedents have confirmed them.

Regarding procedures, it is a general rule that where a child has a guardian, the child is not directly interviewed and only the guardian is interviewed in deportation procedures, which means there is no system of reflecting the views of children or considering the best interests of the child.

#### e Separation of a child from foreign national parents

105. In the case where a foreigner is divorced in a relatively short period of time since marriage, who was granted resident status in Japan because of the marriage to the person who resides in Japan as the status of permanent resident or fixed domicile resident, change of resident status or renewal of resident period may not be permitted after the divorce. Therefore, among children who were born in Japan between a foreign father and a foreign mother, there are cases where the child will not be permitted to renew the resident period in the case where the change of resident status or renewal of the guardian parent was not permitted or the child may be separated from the non-guardian parent across national borders because the change or renewal of the resident status of a non-guardian parent was not permitted.

#### f Education of foreign national children

(Paragraph 125)

106. The Japanese Government argues that [1] preferential tax treatment and subsidies are given to schools for foreign nationals designated as “schools in the miscellaneous category, etc.,” among schools for foreigners and [2] students who attend certain high schools for foreign nationals designated under laws and regulations are entitled to receive financial

support for school tuition under High School Tuition Support Fund System, but North Korean Schools (Chosengakko) fall under the following.

On March 29, 2016, the Minister of Education, Culture, Sports, Science and Technology sent a notification titled, “Matters of Note concerning Granting Subsidies to North Korean Schools” to 28 Governors of Prefectures where North Korean Schools are operated and upon indicating its recognition that North Korean Schools are “closely tied to the personnel affairs and finance by Chosen Soren, an organization that maintains a close relationship with North Korea and regards education as important,” and it asked, “to fully review public benefit and effect, etc., of education promotion by granting subsidies and ensure proper and transparent execution of subsidies based on purpose and objective of subsidies upon consideration of the above nature related to operation of North Korean Schools,” which in fact requested suspension of subsidies to North Korean Schools. Also, Korean High Schools are excluded from schools eligible to receive tuition support. In the lawsuit in which “Osaka Chosen Gakuen” (hereinafter referred to as “School”) petitioned to revoke the decision not to grant subsidies to the School designating Osaka Prefecture and Osaka City as defendants, on January 26, 2017, the Osaka District Court dismissed the claim of the School that it was within administrative discretion. On the other hand, in the lawsuit in which the School asked to revoke the disposition of excluding the School from eligibility to receive tuition support designating the Japanese Government as defendant, on July 28, 2017, Osaka District Court determined the above disposition of the Japanese Government as illegal.

The above measures for North Korean Schools were implemented from a political standpoint and due to consideration that North Korean Schools’ relationship with affiliated organizations and North Korea as a whole as a problem, and it does not mean that school curriculums were objectively considered to be a problem. By such measures, the right of children attending North Korean Schools was unduly infringed and they were under circumstances of unjust discrimination as compared with children enrolled at other foreign schools and ethnic schools.

(Paragraph 126)

107. Regarding the qualification of graduates of foreign schools for admission to universities, the Report argues that access to the university entrance exam is not discriminatory, based on that students who graduated from [1] a school for foreigners designated by the government as a school equivalent to a high school in any foreign

country, and [2] a school for foreigners authorized by an international authorizing organization have qualification for admission to universities equivalent to those who graduated Japanese high schools and students who do not fall under [1] or [2] have qualification for admission to universities when each university recognizes the qualification by an individual qualification review.

North Korean Schools are not designated as [1] above, however, and children who received education at North Korean Schools must receive an individual qualification review by the university which students would like to enter before the university entrance exam. On the other hand, Chinese and South Korean ethnic schools are designated to [1] above, only children attending North Korean Schools are under unjust discrimination in authorization of qualification for admission to university.

(Paragraph 127)

108. The Japanese Government explains that opportunities for compulsory education are offered to foreign nationals who reside in Japan and desire to receive compulsory education in Japan at the same level as Japanese citizens, but there are the following problems in the guarantee of opportunities for education of foreign national children.

By the amendment of the Immigration Control and Refugee Recognition Act (hereinafter referred to as “Immigration Control Act”) in 2009 and repeal of the Alien Registration Act, as there is no means for unauthorized foreign nationals to register with municipalities, it become a problem as to how to deliver information regarding school enrollment to children of unauthorized foreign nationals. Among unauthorized foreign nationals in Japan, information regarding school enrollment, etc., is sent to those who have received permission of provisional release, but if unauthorized foreign national parents are not interested in education, the children will not be able to receive compulsory education.

At the procedures for school enrollment, for confirmation of residence, etc., schools ask those who desire to be enrolled to present a certificate of residence or resident status card or certificate of special permanent resident, etc., but children of unauthorized foreign nationals in Japan do not have official documents to certify their addresses. Immediately after the amendment of the Immigration Control Act, several cases of refusal for enrollment of children of unauthorized foreign nationals in Japan were reported. Recently, a case in which the Board of Education tried to expel a foreign national child without resident registration has been reported.

Among foreign national children, some children need Japanese language instruction,

but sufficient Japanese language education is not provided. The percentage of foreign national pupils and students continuing study at higher education programs is much lower than that of Japanese pupils and students.

## g Statelessness

109. According to Japanese law and regulations, the definition of a “stateless person” does not exist and there is no protection system to recognize stateless persons uniformly and grant resident permission.

In Resident Foreigners Statistics at the end of 2016 published by the Ministry of Justice, there were 626 persons who were registered as “stateless” and out of which, children under 18 years of age totaled 164. However, as the definition of “stateless” cannot be said to be clearly defined as stated above, we cannot say “stateless persons” in the statistics conform to the definition of a stateless person under international law. In fact, descriptions of incorrect nationalities are frequently found in the “Nationality and Region” column of resident cards (for example, as the Republic of Paraguay adopts strict jus soli principle, a child born to Paraguayan parents in Japan does not acquire Paraguayan nationality or Japanese nationality and is born stateless. However, it is reported that there are a considerable number of cases which are stated “Paraguay” in the “Nationality and Region” column of resident cards). As unauthorized stateless persons are not included in the statistics, anyway, we cannot consider that the Japanese Government recognizes the real number of stateless persons in Japan.

110. Looking at the current related laws and regulations, the Nationality Act, Article 2, item 3, permits acquisition of Japanese Nationality of a child born in Japan whose parents are unknown or stateless in order to prevent statelessness and in terms of reducing statelessness, there is the Nationality Act, Article 8, item 4, which permits a child born in Japan to apply for simplified naturalization. However, these provisions alone cannot prevent the occurrence of statelessness completely, where cases have been reported that reporting of a child born in Japan cannot succeed to the nationality of the parent like the cases of Paraguay, which does not satisfy the standards under the Convention on the Reduction of Statelessness, Article 1, paragraph 1. Even in the cases of actual implementation, a birth by a stateless mother was not accepted by a municipal office and the Nationality Act, Article 2, item 3 was not applied at the reporting stage or that

application for simplified naturalization could not be made smoothly because the officer in charge did not understand the Nationality Act, Article 8, item 4 at the time of consultation on naturalization at a Legal Affairs Bureau, which means there is a concern that these provisions are not being properly implemented.

## (2) Children belonging to a minority or an indigenous group

111. In the Concluding Observation 86 and 87, it is stated, “While noting the measures taken by the State party to improve the situation of the Ainu people, the Committee is concerned that children of Ainu, Korean, Burakumin origin and other minorities continue to experience social and economic marginalisation” and “the Committee urges the State party to take the necessary legislative or other measures to eliminate discrimination against children belonging to ethnic minorities in all spheres of life and ensure their equal access to all services and assistance provided for under the Convention.”

As compared with the 1st and 2nd Concluding Observations of the Committee, in relation to Ainu people, we may say that evaluation to a certain extent has taken place that efforts to guarantee the rights of Ainu continues, including establishment of the Council for Ainu Policy Promotion.

112. On the other hand, the Japanese Government’s Report only makes abstract statements in Paragraph 141 as “in accordance with the principles of the Constitution and the Basic Act on Education, the government provides opportunities for every child to receive an education” and in Paragraph 142, it also states in abstraction that “to protect the human rights of children belonging to minorities or indigenous groups, the human rights bodies of MOJ have set “Protect Children’s Rights”, “Respect for the Rights of Foreign Nationals” and “Deepen Understanding of the Ainu People” as priority targets of activities for human rights awareness-raising, and conduct various awareness-raising activities, such as holding lectures and workshops and distributing promotional brochures and leaflets.”

We have to say that the Japanese Government’s Report intentionally does not answer at all the indications of social and economic marginalisation.

113. In fact, according to the latest survey results (Note 9-1), regarding Ainu people, there is a significant difference on the percentage of enrollment of Ainu people at high schools and universities from those of the residential area average. We must say an education gap

quite conspicuous. Hokkaido has been strengthening scholarships to encourage enrollment of Ainu children at high schools and universities as part of Utari Welfare Measures since 1988, but they have not yet resolved the education gap. Therefore, further continuation and strengthening of measures is required in the future. Regarding economic conditions, there is a significant difference in welfare benefit rates and we must say that the economic gap has not been resolved. In this regard, according to the above surveys, regarding discrimination against the Ainu people, reducing cases of discrimination can be observed, which means advancement in the elimination of discriminatory practices against the Ainu have progressed, but careful observation will also be needed in the future.

114. As stated above, social and economic marginalisation is a problem to be conquered even today and it is a future task to advance efforts and to formulate budgets for resolution of gaps. It is necessary to examine the effect of present efforts, including scholarship programs above, and implementation of more effective measures is required based on the examination.

115. As not only Ainu but also South/North Korean and Burakumin people are expressly mentioned in the Concluding Observation, it is necessary to conduct surveys on education and economic gaps and take measures to conquer problems as with the case of Ainu people. However, we cannot find any evidence that the Government has implemented any particular measures.

Rather, the current measures of the Government are likely to expand the education gap of South/North Korean children, indicated by exclusion of North Korean Schools from tuition support programs (Note 9-2) and actual interference with local governments concerning payment of subsidies to North Korean Schools, about which we must express serious concern.

### (3) Children under circumstances of exploitation

#### a Economic exploitation

(Paragraph 144)

116. The Labor Standards Act, etc., stipulates the provisions of protection of children under the age of 18, including restrictions on working hours and prohibition against

midnight working hours, etc., other than those stated in the Japanese Government's Report. However, responses are not sufficient as evidenced by cases in which owners have been arrested by violating the Labor Standards Act because an owner caused children under 18 years of age to work at taverns in underwear. In connection with a decrease in overall workforce (Note 9-3), there is a concern that protection of juvenile workers will be insufficient in the future.

## b Trafficking and abduction of children

(Paragraph 145 and Paragraph 146)

117. Trafficking has been on an upward trend in recent years. In particular, there has been a significant increase in the number of Japanese victims which was virtually zero just ten (10) years ago. Among child victims, 12 persons out of 13 victims were Japanese in 2016 (Note 9-4). According to the Japanese Government, victimization of Japanese is characterized by forced prostitution after meeting on dating site (Note 9-5), and victimization due to community sites have seen rapid increases over the last ten years (Note 9-6). In Japan where most junior and senior high school students own smartphones (Note 9-7), it is an urgent task to prevent victimization via smartphones and we cannot say that effective monitoring of measures to address trafficking in children is ensured (the Concluding Observation, Paragraph 80(a)).

118. Refer to Chapter 10 below for other matters.

## (4) Juvenile justice

### (a) Administration of juvenile justice (Article 40)

(Paragraph 154)

119. Regarding the Juvenile Act, Article 60 (Application of laws and regulations concerning personal qualifications), in the suspension of voting rights and eligibility rights of juveniles who committed violations of the Public Offices Election Act, the Juvenile Act, Article 60 was determined not to be applied (Note 9-8).

120. There were cases where the privacy of juveniles was infringed as a result of

publication by a third party individual on the Internet of information identifying the juvenile who committed a crime. The Government cannot take effective measures therefor.

(Paragraph 155)

121. With the amendment of the Juvenile Act in 2014, the long-term upper limit of indeterminate sentence was increased to 15 years from 10 years and short-term upper limit indeterminate sentence was increased to 10 years from 5 years (Note 9-9) and the upper limit of the determinate sentence, mitigating life imprisonment was increased to 20 years from 15 years (Note 9-10). This was conducted to further strengthen the punitive approach of the amendment of the Juvenile Act in 2000.

122. Because the minimum age for criminal punishment was lowered to 14 years of age with the amendment of the Juvenile Act in 2000, young juveniles at 14 and 15 years of age are charged with a crime before criminal courts and are now subject to trial by citizen judges (Note 9-11).

In September 2015, a juvenile, who was 15 years and 8 months of age when he committed a crime, was charged with murdering his grandmother and mother and until a decision was rendered to send the case to a family court by trial by citizen judges in June 2016, he was detained at the detention center for nine (9) months (Note 9-12).

This places a significant burden on juveniles, particularly younger juveniles, who are immature both mentally and physically, to be tried by citizen judges in a same manner as adults.

123. Under Article 20, paragraph 2 of the amendment of Juvenile Act in 2000, juveniles older than 16 years of age who have killed victims by intentional criminal acts would generally be sent to a prosecutor and tried by criminal trial. Among eligible cases, 62.5% were determined to be sent to prosecutors in 2015 (Note 9-13).

In this regard, these cases were subject to trial by citizen judges.

124. In trials by citizen judges, priority is placed on reducing the burden on ordinary citizens who participate in trials and evidence such as results of investigation by a family court, and results of expert opinions of psychiatrists and psychologists, which should be examined, are not reviewed or in some cases, are only oversimplified reviews.

In the case of indictment for murder of two persons by a juvenile who was 18 years

and 7 months of age at the time of committing the alleged act, although a death sentence was passed down to the juvenile, only conclusions of the investigation results of the family court were read, such treatment was inadequate (Note 9-14).

125. In the case of vehicular homicide by a juvenile who was 17 years of age at the time of committing the alleged act, as for a decision to send to a prosecutor by the family court under the Juvenile Act, Article 20, paragraph 2, in a trial by citizen judges at a district court, the case was transferred to a family court under the Juvenile Act, Article 55, deciding that protective disposition was reasonable. However, the transferred family court again decided to send the case to a prosecutor, although there were no underlying changes and the juvenile was subject to trial by citizen judges after all (Note 9-15).

Because of the above treatment, the juvenile was subject to physical restraint for as long as 1 year and a half without determining disposition.

126. By causing juvenile cases to be subjected to trials by citizen judges, investigation results of family courts, which are specialized courts for juveniles, cannot be utilized and the physical restraint period would be prolonged.

(Paragraph 156)

127. Juveniles under the minimum age of criminal responsibility are subject to investigation by the police when they are suspected of violating laws and in some cases, they will be under actual physical restraint in the form of temporary protection by a child guidance center. Thereafter, they will be sent to a family court and may be subject to protective measures similar to juveniles over the age of 14 who have committed crimes.

(Paragraph 157)

128. By the amendment of the Juvenile Act in 2014, the scope of cases in which court-appointed attendants (in most of cases, lawyers) can be appointed was expanded. However, it is up to the discretion of family courts whether to appoint court-appointed attendants and there are many cases where court-appointed attendants have not been appointed, although juveniles were placed under physical restraint.

The percentage of court-appointed attendants is only 21.7% of the total number of juvenile cases and after the amendment of the Juvenile Act in 2014, it has only increased by 1%. In all cases where attendants were appointed, the percentage of court-appointed

attendants remained at only 44.8% in 2015 (Note 9-16)

In cases where such serious dispositions as sending to juvenile training schools were made, many cases have been reported, where family courts did not appoint court-appointed attendants.

129. Even a juvenile under the minimum age of criminal responsibility is subject to investigation by the police and when he/she is suspected of violating laws and is temporarily protected by a child guidance center, the juvenile is not entitled to have the right to appoint a court-appointed attendant.

(Paragraph 170)

130. As stated above, the death sentence was finalized on the juvenile who was 18 years and 7 months at the time of commitment (Note 9-17). Since 2009, 4 death sentences have been handed down to juveniles who were under 20 years of age at the time of committing crimes (Note 9-18). In the reasons for the decision by the Supreme Court, which passed the death sentence on a juvenile who was 18 years and 1 month of age at the time of committing a criminal act, it states that the fact that the defendant was a minor slightly over 18 years of age at the time of committing the crime “remains to be just one factor to be compared with and comprehensively considered, the criminal nature, motivation, manner, the seriousness of the results and sense of victimization of the bereaved family” and it is concerned that it would expand the standards for applying death sentences to juveniles.

In the Japanese Government’s Report, it is stated, “in Japan, there is no sentence comprising life imprisonment without parole. For any life imprisonment sentence, parole is applicable after ten years of imprisonment,” but we must take note that in actual implementation, parole of life imprisonment has become life imprisonment without parole or as close as can be.

(b) Children deprived of their liberties (Article 37(b) through (d))

b-1 Treatment in society

131. In the Concluding Observation, Paragraph 85(a), it is recommended to take preventive measures, such as supporting the role of families and communities in order to help eliminate the social conditions leading children to enter into contact with the criminal

justice system, and take all possible measures to avoid subsequent stigmatization, but there is no change under circumstances in which appropriate programs provided for juveniles and families in society are insufficient after the child had previous records of cases pending before family courts when the child is over 14 years old. It is evaluated that probation programs are provided as part of treatment within society, but as the level of professionalism of volunteer probation officers are insufficient, there is no system to provide professional counseling, etc.

132. The Japanese Government's Report, Attachment 2, Paragraph 72 states that probation system is carried out with supervision and assistance by probation officers to ensure that the juveniles on probation comply with conditions and provide support in need, but as indicated in the 3rd Report of the Federation (Paragraph 384), probation officers who conduct probation programs are comprised of only private volunteers and are not paid salaries. Aging probation officers has become a problem and the inability to communicate with juveniles has also been pointed out. In order to secure effectiveness, probation officers should be paid salaries and organizationally be strengthened.

133. Alternative means for cases where delinquent juveniles cannot live in their homes are insufficient. As the facilities that accept juveniles, there are independent support homes and private shelters, but there are only 139 independent support homes (capacity 910 persons) in Japan (Note 9-20) and many facilities do not accept juveniles with delinquent tendencies. Shelters for juveniles who cannot return home are now increasing as a result of private efforts, mainly by lawyers, and in 2016, there were 16 shelters (capacity 131 persons) in Japan (Note 9-21). As the capacity of these facilities is insufficient, services are not furnished to all juveniles in need. As a result, there are many cases where the choice is to send juveniles to training schools. Nevertheless, operation of these facilities is difficult due to insufficient budgets and some of facilities are not currently operated. In order to utilize and improve these facilities, proper budgeting should be made (Beijing Rules, Article 29, Riyadh Guidelines, Article 34). There are also rehabilitation protection facilities for adults and independent preparation homes operated by private NPOs registered with probation centers, but these are facilities for adults and the number of accepted juveniles is extremely small. There is also a problem that accepted juveniles must live together with paroled adults without any physical separation.

## **b-2 Training school**

134. In principle, meeting with family is limited to once a month and an exchange of letters is limited to four times a month, which is contrary to the purpose of the Havana Rules, Chapter 4, J60. Meeting and exchanging letters with friends and trivial, etc., other than family is rarely permitted and it is also contrary to the Rules, Chapter 4, J61.

135. During classroom settings in training schools, tearing a page from a notebook is not permitted and use of a pencil sharpener is restricted. These unnecessary rules are imposed and learning opportunities for juveniles is limited. In addition, other unreasonable subtle rules are strictly imposed, but administration of such rules should be changed to ensure freedom of juveniles.

136. In 2015, third party inspection committees were established for training schools and juvenile classification offices, but unlike prison inspection committees, holding of meetings is limited to four to five times a year and many committee members throughout Japan pointed out that they could not carry out sufficient activities. Thereafter, a slight increase in the number of meetings was implemented, but operation of the inspection committee should be improved along with revision of budgets.

## **b-3 Juvenile Prison**

137. Federation pointed out in its 3rd Report as follows: inadequate individual treatment exists (Paragraph 371), prison term does not link with a child's necessity for education (Paragraph 372), external communications are restricted in a similar manner to that of training schools (Paragraph 373 through Paragraph 376), male convicts are compelled to have their hair cropped short and clothing is also restricted (Paragraph 377), during the confinement, external communication with families is not permitted (Paragraph 378), and female juvenile convicts are placed in the same prison with adult convicts and treated in the same way. It means that female juvenile convicts could not get enough education and care suitable for juveniles (Paragraph 379), but there has been no improvement thereafter.

## **b-4 False Charge of Juveniles**

(Paragraph 169)

138. The Japanese Government states in the Government's Report that "There are no cases of a child who has been deprived of liberty unlawfully or arbitrarily." (Paragraph 169). However, there are many cases where trials were not commenced as there were no facts of delinquency were found even after commencement of investigations as ordinary protection cases and cases where no disposition was taken as there were no facts of delinquency even after commencement of a trial (Note 9-22).

139. We explain a well-known case after the previous Japanese Government's Report. In the so-called "PC remote control case," a juvenile whose PC was remotely operated by an offender was arrested in July 2012. According to the news report, the juvenile first denied the charge, but thereafter confessed and was subject to probation during a juvenile trial in August 2012. Thereafter, the offender was arrested, and it was proved that the juvenile was mistakenly arrested. Probation against the juvenile was an apparent false charge and the probation was revoked.

The causes for false charges of juveniles have always been the same: [1] the police have not changed their attitude of overdependence of confessions, [2] easily detaining children in a substitute prison (police cell), [3] sufficient care is not paid to the nature of juveniles who are easily induced and illegal interrogation is conducted by easily inducing, [4] disregarding physical evidence and modern day forensic evidence, prospective investigations are conducted and evidence not conforming to the initial prospects are not well examined, [5] even when a policeman has committed illegal investigations, the policeman may be indicted for assault and cruelty by special public officers, but except for the above penalty, as the policeman is not generally held accountable, it is extremely inadequate for preventing illegal acts of policemen, [6] procedural guarantees of assistance for lawyers, etc., for juveniles who have committed illegal acts are inadequate, these are the breeding ground issues for causing forced confessions and illegal investigations.

140. In order to prevent the occurrence of juvenile false charges and eliminate illegal investigations, the following matters are essential.

- i) Visualization provision shall be established so that when a child is interrogated by the police, the entire process is recorded by video. Amendment to the Code of Criminal Procedure as of May 24, 2016 introduced the visualization only for serious crimes and the cases which are independently investigated by prosecutors. However, considering

the nature of children who are still in the process of development and easily induced, the entire process of interrogations of children should be visualized at the time of investigation.

- ii) Regarding juveniles who have committed crimes and violated laws, the police, prosecutors and courts should actually guarantee the right to remain silent, right to examine witnesses, cross examination and the right to receive support of lawyers paid fully by government funds (system of appointing court-appointed lawyers and attendants) of juveniles as soon as possible and the express provisions of these rights shall be provided. It is necessary for child guidance centers to notify the protected juveniles who violated laws the right to appoint attendants. As a result of an amendment to the Juvenile Act in April 2014, the scope of cases in which court-appointed attendants are applicable have been expanded. In case of adults, lawyers are appointed at the request of suspects and defendants for the subject cases, but for attendants to juveniles, appointment of court-appointed attendants is at the discretion of judges. As compared with adults, procedural guarantee for juveniles still in the process of development is apparently inadequate. Therefore, appointment of court-appointed attendants shall be made mandatory and not at the discretion of judges. Under the amended Code of Criminal Procedure as of May 24, 2016, the scope of cases in which court-appointed lawyers of suspects are applicable has been expanded and court-appointed lawyers of suspects should be appointed in all cases accompanying detention. Therefore, gaps again are existent in cases where court-appointed lawyers are appointed. Appointment of court-appointed attendants should at least be required in all cases for the juveniles under custody.
- iii) A special act shall be enacted in compliance with international rules, considering the nature of investigation of juvenile cases.
- iv) Right to defense of juveniles and the right to witnessing interrogation by lawyers should be recognized. For cases where investigation authorities did not allow witnessing of lawyers even filing such a request, the exclusionary rule shall be established so that evidence obtained in the above interrogations without attorneys cannot be accepted (Note 9-23). The right of lawyers to conduct confidential interviews with children who have violated laws under temporary protection should be guaranteed.
- v) The Japanese Government should abolish substitute prisons (police cell, detention facilities administered by the police) as stated in the Concluding Observation of the

United Nations Human Rights (Civil and Political Rights) Committee, Paragraph 18 (October 2008) and it should be expressly provided that juveniles shall not be detained in substitute prisons.

- vi) Human rights education shall be thoroughly provided for policemen, prosecutors, judges, child guidance center staff and lawyers. United Nations Human Rights (Civil and Political Rights) Committee stated in the Concluding Observation in October 2008 that “the State party should ensure that the application and interpretation of the Covenant form part of the professional training for judges, prosecutors and lawyers and that information about the Covenant is disseminated at all levels of the judiciary, including the lower courts.” Legal and human rights education should be provided at the stage of compulsory education to contribute to the protection of the current rights of children and the generation having firmly received such education shall contribute to the protection of rights of children in the future when they reach the age of adulthood.

## 10. Follow-up to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)

### (1) Child pornography

(Paragraph 184 and Paragraph 185)

141. The Japanese Government’s Report states in Paragraph 184 and Paragraph 185 that the police use the Child Pornography Advanced Searching System (CPASS) for investigations of child pornography crimes to achieve efficient and effective investigations of child pornography crimes. The police also implement crackdown efforts in order to prevent distribution and viewing of child pornography via its cyber patrol, etc.

It is true that the police are strengthening crackdown efforts, but these implementations are not sufficient and efforts are limited.

142. Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children of Japan (Child Prostitution and Child Pornography Prohibition Act), Article 2, paragraph 3 defines the Child Pornography as follows:

1. Any pose of a child engaged in sexual intercourse or any conduct similar to sexual

intercourse with or by a child;

2. Any pose of a child having his or her genital organs touched by another person or of a child touching another person's genital organs, which arouses or stimulates the viewer's sexual desire;
3. Any pose of a child wholly or partially naked, and the sexual parts of a child (refers to genital organs, etc., or surrounding parts, buttocks or breast) are particularly exposed or emphasized, which arouses or stimulates the viewer's sexual desire.

Out of them, while the Government has strengthened crackdown efforts for item 1 and item 2 above, child pornography under item 3 (so-called "Item 3 Pornography") is still distributed and widely sold for commercial purposes and the Government cannot take effective measures. Pornography falling under Item 3 Pornography is now largely sold as image videos of junior idols, called "chakuero" (erotic imagery in clothing). Photos and moving images of idols under 18 years of age, which blatantly emphasize sexual parts in clothing and swim-wear are left unchecked and sold at shops and on the Internet. Although these products are defined as Item 3 above and subject to indictment and punishment, actual indictment and punishment are rarely conducted. Private operators have also implemented blocking measures for item 1 and item 2 above, but effective measures have not been implemented for Item 3 Pornography.

## (2) Child Prostitution

(Paragraph 194 and Paragraph 195)

143. The so-called "JK business" conducted across Japan in which high school girls (Joshi Kousei), etc., provide men with services, takes various forms such as "JK reflexology," in which a person claiming to be a high school girl provides customers with massages, "JK strolling," in which a high school girl strolls, goes shopping or dines with customers, "JK communication," in which a high school girl talks with customers and "photo-taking meetings." Although these various forms of service escape charges of child prostitution, in fact, sexual services are included back of the menu options, which are a hotbed for teenage girl prostitution.

In 2017, the Japanese Government established policy measures in relation to the JK business. Based on the above measures, crackdowns, publicity and awareness-raising activities, etc., were implemented, but no comprehensive measures to control JK business

were enacted. The Government has been reported to support the enactment of ordinances for control of the JK business by each Prefecture.

For example, Tokyo enacted “Customer Service Restriction Ordinance” on July 1, 2017 and shops which provide a visualized image of high school girls offering services are now required to file business operations with the administrative authority, and are required to prepare a list of employees and prohibits entry of boys and girls under 18 years of age to work or enter shop as customers. When a shop violates the above regulations, the Tokyo Metropolitan Public Safety Commission may order suspension of business. This can correspond to the business form with shops, but there is a concern that business operators may transfer the business to a non-shop type to avoid charges. Therefore, it is necessary to promote comprehensive responses, including business operators that are non-shop types.

144. Prior to the enactment of aforementioned “Customer Service Restriction Ordinance” in April 2017, the Metropolitan Police Department adopted punitive approaches to children by simultaneously taking girls soliciting guests in Tokyo into custody, but on the other hand, responses to those who buy services from girls are not sufficient.

Regarding the protection of rights of the victimized children, the Japanese Government’s Report, Paragraph 195 states that the Government has provided such support as meticulous environmental adjustments based on the unique characteristics of each juvenile, but it is far from the reality. For minors, approaches based on the protection of rights, including education and protection should be adopted.

145. By the amendment to the Penal Code (enacted June 16, 2017 and enforced as of July 13, 2017), crimes involving sexual intercourse by a guardian were enacted and offenses involving sexual crimes became indictable without complaints. Regarding hearings from children who were victims of sexual crimes (hereinafter referred to as “Victimized Child”), joint interviews by the child guidance center, prosecutor’s office and the police (judicial interview) have been conducted to reduce the burden on the Victimized Child to some extent.

A Victimized Child is deeply damaged both physically and mentally and some of children require long-term mental care. Private counseling costs are high, but economic support has been scarcely given and the Victimized Child cannot receive adequate psychological care until recovery. Paragraph 195 states counseling is conducted for children victimized by welfare crimes, including child prostitution. However, it has not

been thoroughly published and cannot be evaluated as functioning as general care of the Victimized Child.

Maintaining living conditions when separating the Victimized Child from the family, etc., that is, economic support in maintaining enrollment at school and continuation of study and placement activities, etc., has not been provided. Therefore, the Victimized Child may hesitate to reveal his/her experience because of being afraid of changes in his/her life. Japanese Government's Report, Attachment 2, Paragraph 63 states, "Grant-type scholarships not requiring repayment and loan-type scholarships are available for educational expenses other than tuition." However, the benefit scholarships have not been sufficiently prepared, and it is not a system easily used by the Victimized Child.

The Japanese Government's Report, Paragraph 194 states, the Victimized Child is not criminalized, but it is necessary to construct a system sufficiently providing the aforementioned mental and economic care.

As stated above, the current status is not sufficient to provide the victims of sexual exploitation with counseling and other recovery support (Concluding Observation, Paragraph 82).

146. It is apparent that there is child poverty, abuse and the existence of many children who do not receive proper care by family and schools, being deprived of a place to stay in the background of the JK business and child prostitution. However, there are almost no social escape valves for a child who has lost a place to stay and is wandering without a place to sleep. Child guidance centers do not accept consultations at night and we cannot say that temporary protection facilities and child care facilities provide proper support suitable for children. As a result, children must depend on those who operate the JK business.

At present, only the police offer 24-hour consultations, but children involved in a JK business find it difficult to consult with the police because they are afraid of detention and punishment.

Operation is still under 'consideration' with respect to establishment of a consultation system and secured places for children by the Cabinet Office and the Ministry of Health, Labour and Welfare.

The Government should promptly construct a proper 24-hour child support system and strive to establish shelters, etc., suitable for children who have no place to go. It is also necessary to cope with problems such as child poverty and abuse as background issues.

## 11. Follow-up to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)

147. The Committee adopted in 2001 “Guidelines for the Initial Report of the State party on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict” (hereinafter referred to as “Committee Guidelines”) (Note 11-1). These are guidelines for submission of an initial report after becoming a State party to the Optional Protocol. However, comprehensive and useful information for preparation of reports are described, so it should also be referenced for submission of the 2nd reports and thereafter.

148. In particular, regarding Article 4, the Committee Guidelines request provision of the information with respect to adoption of legal means and related judicial decisions that prohibits and criminalizes the recruitment or use in hostilities of children under 18 years of age by armed groups (Concluding Observations, Paragraph 11).

Nevertheless, as the Federation’s Report indicated during a review of the previous Government’s Report, as for laws related thereto, circumstances have not changed, in which there are only violations of the Child Welfare Act, Article 34, paragraph 9 (the statutory maximum sentence is imprisonment of not more than three (3) years or fines not more than ¥1,000,000 yen or both (the Act, Article 60, paragraph 2) and violation of the Labor Standards Act, Article 62 (the statutory maximum sentence is imprisonment not more than six (6) months or fines not more than ¥300,000 (the Act, Article 119, paragraph 1).