

NGO Report on the Convention on the Right of the Child

**Additional Information from NGOs  
for the Concluding Observations  
in the light of the dialogue between  
the Committee and the delegation of Japan**

**Committee for NGO Reporting on the CRC (JAPAN)**

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June 2010

## Third report on the Convention on the Rights of the Child

The Committee for NGO Reporting on the Convention on the Rights of the Child (Japan) would like to express our sincere appreciation for the Committee's work concerning the consideration of the reports of Japan on the Convention and its Optional Protocols.

The present report has been prepared by the NGO representatives who observed the meetings, with a view to contributing to the preparation and adoption of the concluding observations by pointing out the problems in the answers of the delegation of Japan and the remaining challenges.

**While the present report does not repeat the information and recommendations contained in our previous reports as well as the issues taken up in the previous concluding observations, in order to make it as short and precise as possible, it does not mean that other issues are not important or relevant. The Committee may wish to, and indeed should, repeat and elaborate most of the previous recommendations, which have largely been ignored by the Government** (see *Table of Achievements on second CO*, annexed to our *Additional Information* [May 2010]).

### General measures of implementation

#### Legislation

While the Ministry of Foreign Affairs did not deny the possibility of adopting a comprehensive law on the rights of the child in the future, the Government has no intention to consider about it at present, as was expressly stated by the Cabinet Office. Although the Act on Promotion of Development and Support for Children and Young People refers to the Convention and its general principles, it cannot function as a fundamental law on the rights of the child (see our *Additional Information* [May 2010] on Question 2, pp.6-7).

The Committee may also wish to express concern about the amendments to the Fundamental Law on Education in December 2005, which went against the Committee's previous recommendation concerning a rights-based approach (see our *Revised Summary 7-3. Amendments to the Fundamental Law on Education goes against the purposes and provisions of the Convention*). It will serve as a justification of the recommendation for the adoption of a Fundamental Law on the Rights of the Child, along with the amendments to the Juvenile Law as well as the reluctance among judges to invoke the Convention in court rulings.

#### Child poverty

As was made clear through the dialogue, the Government does not have comprehensive policy or targets to address child poverty. A rights-based approach should also be applied to measures to deal with the issue as part of comprehensive strategies for the rights of the child. The Committee may wish to recommend specific surveys on children affected by poverty, covering those who are not in the scope of the existing assistant schemes (e.g. children who give up non-compulsory education due to poverty), which should be inform

the relevant policies and measures (see our *Additional Information* [May 2010], p.27)

#### Cooperation with civil society

The Government did not make it clear that it had never heard from NGOs in the process of preparing the initial reports on two Optional Protocols. While the delegation spoke about sporadic cooperation with civil society, including four hearings from NGOs for the preparation of the third periodic report on the Convention, such cooperation is far from permanent and systematic, as was admitted by the delegation with regard to lack of such cooperation in the relevant legislative processes.

#### Dissemination and training

Although the Government responded that it has made efforts for the dissemination of and training on the Convention or the rights of the child in different areas (see the written replies to Question 4), most of them address human rights (treaties) in general, not focusing on the Convention itself or the rights of the child. In addition, the Government has never undertaken the evaluation of “the impact of awareness-raising campaigns, training and education programmes on attitudinal change, behaviour and the treatment of children”, recommended by the Committee in the previous concluding observations (para.21(c)).

#### International assistance

The Government should improve accountability in the policy-making processes for the realization of the rights of the child, in particular in the decision-making process and bodies concerning official development assistance (ODA), by actively expanding the roles of NGOs working for the promotion of children’s rights. For this purpose, the Government should undertake comprehensive review of the relevant budgets and schemes for the involvement of NGOs.

#### **Definitions of the child**

With regard to the difference of the minimum age for marriage between boys (18) and girls (16), the delegation explained that the draft amendments to the Civil Code would be submitted to the present session of the Diet. This is most unlikely, since the present session of the Diet will come to an end on 16 June, and there is almost no possibility that the amendments be adopted even if they are indeed submitted.

#### **General principles**

##### Discrimination against children born out of wedlock

Although the delegation explained that the draft amendments to the Civil Code would be submitted to the present session of the Diet, with a view to eliminating discrimination against children born out of wedlock in the field of inheritance, this is most unlikely as has been mentioned above.

Furthermore, the Government has made little effort to change the public attitude against children born out of wedlock, contrary to the explanations made in the written replies to Question 8. Rather, it has justified the legal discrimination (“distinction”) by referring to the public polls reflecting discriminatory attitudes among the public against children born out of wedlock.

With regard to privacy of children born out of wedlock, the representative of the Ministry of Justice referred to the amendments to the Enforcement Regulations of the Family Registration Law in 2004 (see para.219 of the Government report). The Government has, however, maintained the position that the status of children born out of wedlock should be recorded in the family register “in an obvious manner that can be easily understood”. Thus the status of paternal recognition is recorded on the family register, making it possible for those who look into it to know whether or not a person is a child born out of wedlock. Similarly, children born out of wedlock should make their status open in the notification of marriage, because it is required to register the relationship with their parents.

#### Discrimination against Korean children

The explanations provided by the Ministry of Education cannot be justifications to exclude Korean schools from the high school tuitions waiver scheme, since they have been socially recognized as educational institutions comparable to average Japanese schools. The Government should also ensure adequate funding of Korean schools, by providing State subsidies and applying the same tax privileges to the donors to Korean schools, and recognize the diplomas of Korean schools as the university entrance qualifications.

In addition, the Committee may wish to recommend more decisive and effective measures to eliminate incidents of verbal and physical violence against Korean schoolchildren, following the recommendations by the CERD Committee in March 2010 (see the written replies to Question 8).

#### Discrimination against other disadvantaged children

In addition to the groups listed in the previous concluding observations, the Committee may wish to refer to children living in poverty, especially children in single-mother households, LGBT (lesbian, gay, bisexual and transgender) children and children in Okinawa who are disproportionately affected by the presence of the US military bases.

With regard to migrant children, the Committee is also referred to the press release by Mr. Jorge A. Bustamante, Special Rapporteur on the rights of migrants, published on 31 March 2010 (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9951&LangID=E>).

#### Best interests of the child

The delegation responded that the principle of the best interests of the child is reflected in the Child Welfare Law, which is not accurate. The Law was adopted in 1947, and the concept of the best interests of the child has not been incorporated expressly in the Law or

other relevant legislation as a legal principle (see our *Additional Information* [May 2010] on Question 9, p.13).

In addition, the Government did not provide answers to the Committee's Question 9 on the application of the principle in decisions in immigration and refugee cases. In many cases, especially when they concern undocumented immigrants, the framework of the immigration control system is usually given a priority over the best interests of the child concerned. In this regard, the Committee is referred to the Noriko Calderon case (see our *Revised Summary 5-1. Separation of Child from Parents against the Best Interest of the Child*; and A/HRC/11/8/Add.1, pp.23-28).

#### Respect for the views of the child and child participation

Unfortunately, sufficient attention was not paid to respect for the views of the child and child participation, which is among the most important challenges in the protection and promotion of children's rights in Japan, in the consideration of the third periodic report of Japan. The previous recommendations in this regard have hardly been implemented, illustrating that children are not regarded as subjects of rights in Japan.

In this regard, the Government explains that children "can participate in decision-making processes" through class/homeroom activities and student body activities (written replies to Question 15). Such participation is limited to the activities of children themselves and is never intended to affect the administration of schools. The Committee is also referred to the Government's restrictive understanding of Article 12: "Aspects such as the formulation of school regulations and organization of curricula do not personally involve individual children and are not considered to be subject to the right [under Art.12]" (para.205 of the Government report).

### Civil rights and freedoms

#### Corporal punishment

Although corporal punishment at school is prohibited by law, as has been explained by the Government, it is widely used in practice. The Government has not implemented the Committee's recommendations in its initial and second concluding observations. In fact, the Ministry of Education issued a notice in February 2007 and virtually tolerated some forms of corporal punishment, stating that the school authorities and teachers can exercise physical force for disciplinary purposes, which may be permitted as being different from corporal punishment prohibited by law (see our *Revised Summary 4-5. Measures against violence at schools are going against the Convention rather than just being insufficient*).

Corporal punishment at home is not explicitly prohibited by law, although the delegation attempted to make it vague. Measures have not been taken to implement the Committee's previous recommendations concerning public education campaigns and the promotion of positive, non-violent forms of discipline.

## Family environment and alternative care

### Children in poverty in single-mother households

While the extension of the child-rearing allowance to single-father households (the written replies to Question 12, page 11) is a positive development, children in single-mother households are more likely to be living in poverty (66.4%) compared to those in single-father households (18.8%). It is obvious that the feminization of poverty greatly affects children of single mothers, 84.5% of whom are employed but earn less. Comprehensive support for single mothers is required in the fields of employment, child-rearing, housing and income, along with support for children in single-mother households to escape poverty.

### Day-care

Although the capacity of day-care centers has been increased, there are still some 20,000 children who are waiting to be admitted into day-care centers, especially in urban areas. The number of day-care centers should urgently be increased, while ensuring the conditions conducive to children's development at the same time.

### Children in social care

In spite of the delegation's explanation concerning foster care, the overwhelming majority of children in alternative care are placed in residential institutions (see the chart shown in the written replies, p.23). While an increasing number of children are separated from their parents due to the development of protective measures in the field of child abuse and neglect, sufficient measures have not been taken to secure the interests of children living in residential institutions, including the improvement of their living conditions and the quantitative and qualitative aspects of the staffing.

Although the exercise of disciplinary powers in institutions has been restricted, cases of corporal punishment or child abuse continue to occur because sufficient measures have not been taken to prevent such cases, including through the establishment and introduction of independent ombudspersons for children in institutions. The materials to inform them of their rights and complaint procedures, generally called *Children's Rights Notebook*, are prepared and distributed only in a half of the municipalities, reflecting the inadequate nature of the efforts made by the central government.

### Children guidance centers

While some members of the Committee appeared to have some misunderstandings about the roles of the Child Guidance Centers, they have played important functions to protect children from abuse, neglect and other forms of maltreatment, which can be compared to the functions of child protective agencies/services in other countries. One of the challenges faced by the centers is insufficient allocation of financial and human resources in spite of the increasing workload of the expert staff, especially in urban areas.

## Basic health and welfare

### Children with disabilities

While the delegation explained that local boards of education hear from the guardians before deciding in which school children with disabilities should be enrolled, this does not mean that the guardians' views are respected. In addition, it is not easy for the guardians to choose regular schools, because the Government does not make budgetary allocations for reasonable accommodations to include children with disabilities in regular classes/schools and, consequently, the guardians are often forced to accompany and support their children at school (see our *Additional Information* [May 2010], pp.31-33).

Furthermore, the measures introduced since 2007 to support children with developmental disabilities have led to the increase of the number of children segregated from regular education.

## Education, leisure and cultural activities

### Competitive nature of education

Although the delegation referred to the amendments to the Course of Study as a measure to ameliorate the competitive nature of education (see also the written replies to Question 15), the excessively competitive nature of entrance examinations remains the same. The educational reform has widened discrepancies among high schools, especially between elitist schools and other schools, making the competition fiercer among children who wish to go to high-level schools.

Furthermore, it is not the case that all the students who so wish are admitted into high school, even if there are more places because of the decrease in the number of children, contrary to the explanations by the delegation. In fact, the reorganization of high schools (upper secondary schools) has been in progress in many areas of the country along with the decrease in the number of children, which has led to the closure of night schools as well as small schools in depopulated areas. Consequently, it has become harder for children who cannot feel comfortable in general schools (victims of bullying, school refusing children or children with disabilities) to find schools fit for their needs and wishes.

### Other problems in the field of education

Other problems in the field of education, pointed out in the Committee's previous concluding observations as well as our NGO reports, have not been resolved. A rights-based approach is particularly lacking in this field. The low level of public expenditure on education (3.4% of GDP) and the hard working conditions of the teachers have made it difficult to protect and promote children's rights in education (see, for example, our *Revised Summary 7-4. Development of educational condition falls behind the needs of children, Worsening working condition of teachers/staff*).

In addition, the Government has been insistent on taking measures aimed bringing school refusing children back to school without listening to their voices, reflected in the

*Declaration on the Rights of School Refusing Children*, for example (see our *Revised Summary Annex 1*). It is necessary to recognize alternative and right-based forms of education (See our *Revised Summary 7-8. Measures against non-attendance persist in bringing children back to schools* and *7-9. Alternative Forms of Education Should Be Recognized as a Way to Ensure the Right to Education in an Appropriate Manner*; our *Additional Information* [May 2010], pp.18-19).

## Special protection measures

### Sexual abuse and exploitation

Many gaps remain in the penal legislation in this field, including the narrow definition of rape as an act of penetration committed by a male against a female as well as non-criminalization of incest. Sexual abuse by teachers and others in the position of authority often goes unpunished. The ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, encouraged by different members of the Committee, will contribute to the improvement in this field.

Children belonging to sexual minorities (lesbian, gay, bisexual and transgender) also face difficulties, including different forms of discrimination as well as lack of sexuality education tailored to their needs (see our *Additional Information* [May 2010], p.28).

### Juvenile Justice

As we have pointed out in our NGO reports, including our *Additional Information* [May 2010] (pp.34-36), the amendments to the Juvenile Law on three occasions have led to incompatibility with the Convention (deprivation of liberty, judicial action against children below the age of 14, etc.), weakened the welfare functions of the family court and other institutions and contributed to tougher responses to children in conflict with the law. The responses of the delegation, however, revealed that the Government has hardly considered about these problems, illustrating that their understanding of juvenile crime/delinquency as well as the relevant international standards is very problematic.

The Government should be recommended, therefore, to undertake legislative reform, in accordance with the Convention, the Riyadh Guidelines, the Beijing Rules and other international standards as well as the original philosophies of the Juvenile Law, on the basis of scientific research undertaken in and outside the country. It is imperative, in particular, to get the Juvenile Law back to the status before the series of amendments and to disseminate the philosophies and spirits of the Convention and the Juvenile Law among the public.

### Follow-up to the concluding observations

In order to prevent non-implementation of the third concluding observations of the Committee, the Committee should recommend the establishment of institutional arrangements for systematic follow-up to the Committee's recommendations, involving the Diet, the Government and the NGOs concerned.

# Initial report on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

## General measures of implementation

The Government should be encouraged, in particular:

- (a) to consider ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- (b) to establish effective structures for collaboration with civil society in the implementation of the comprehensive national plan of action against child pornography and other measures; and,
- (c) to pass the amendments to the Act on Child Prostitution and Child Pornography, which have been on agenda for a long time.

## Treatment of victims

Although the delegation explained that prostitutes themselves are not punished for the involvement in prostitution, this does not apply if they solicit customers in public (Art.5 of the Prostitution Prevention Law).

In addition, children may be punished in accordance with the provisions of the Act on Child Prostitution and Child Pornography, for example, if they solicit customers (Art.6) or if they provide child pornography of their own (Art.7), because they are not exempted from criminal sanctions. This is also the case under the Online Dating Sites Regulation Act (see our *Revised Summary SA-2. Victims of Sexual Exploitation Are Treated as “Delinquents”*). They may be treated as status offenders as well.