

NGO Report on the Second Periodic Report of Japan Advanced Summary

July 2003

Committee for NGO Reporting on the Convention on the Rights of the Child (Japan)

Secretariat: Federation for the Protection of Children's Human Rights

Coordinator: Yuji Hirano (Kamori)

Chiyoda-ku Sarugaku-cho 2-3-1-401, Tokyo 101-0064 Japan

Tel. & Fax. (+81 3) 5281 3455 yujihirano@nifty.com

Introduction

Preparation of the NGO Report

This report to the U.N. Committee on the Rights of the Child (hereafter referred to as "the U.N. Committee") has been prepared by the Committee for NGO Reporting on the Convention on the Rights of the Child (Japan), a coalition of some forty NGOs and individual experts. The present version is an advanced summary of the full NGO report, which will be submitted to the pre-sessional working group of the U.N. Committee in October 2003.

The NGO report builds on the previous one, *The Convention on the Rights of the Child: 95 Issues to be Solved in Japan*, which was coordinated by Federation for the Protection of Children's Human Rights, the secretariat of the present Committee for NGO Reporting, and International Movement Against All Forms of Discrimination And Racism - Japan Committee (IMADR-JC). The first NGO report was highly appreciated by the U.N. Committee, some members of which explicitly advised the Government of Japan to take into consideration its ninety-five issues in the implementation of the Convention on the Rights of the Child (hereafter referred to as "the CRC").

After the consideration of Japan's initial report by the U.N. Committee, Federation for the Protection of Children's Human Rights has made tremendous efforts to follow up the U.N. Committee's recommendations. Together with IMADR-JC, it published a book, *The Future of the Convention on the Rights of the Child: Making Use of the Recommendations of the U.N. Committee on the Rights of the Child*, providing detailed analysis of the U.N. Committee's concluding observations as well as the transcripts of the dialogue between the U.N. Committee and the delegation of Japan. It also served as the secretariat for NGO reporting to the U.N. Committee on Economic, Social and Cultural Rights, which considered Japan's second periodic report in August 2001. It has continued to send Yuji Hirano (Kamori), co-director of the organization and one of the principal coordinator for the present report, to each session of the U.N. Committee in order to follow and benefit from its work. Its work includes translation of all the general comments adopted by the U.N. Committee as well as recommendations from the general discussions.

The present summary aims to provide an overview of the implementation of the CRC and the U.N. Committee's recommendations after the initial report. The unabridged version, which will be submitted in October 2003, contains more detailed information and available

statistics on each topic, together with recommendations to the Government.

General Assessment of the Implementation of the CRC in Japan

After the consideration of Japan's initial report by the U.N. Committee, there has indeed been some progress in the implementation of the CRC, namely in the field of protection of children. This is particularly evident in the measures taken to protect children against **commercial sexual exploitation** (see p.10) and **child abuse** (see p.7). Also, Japan has expressed its commitment to the protection of children's rights by ratifying the Convention against Torture, ILO Conventions No.138 and No.182 and by participating in the United Nations Special Assembly on Children.

In general, however, sufficient efforts have not been made to ensure all the rights of all children under the jurisdiction of Japan in a holistic manner in accordance with the provisions of the CRC. In some fields, especially in the field of **education** (see pp.8-9) and **juvenile justice** (see pp.10-11), retrogressive measures have been taken in defiance of the spirit of the CRC and contrary to the U.N. Committee's recommendations. Little attention has been paid to the CRC and the U.N. Committee's recommendations during major reforms in these areas. Moreover, punitive and moralistic approaches have been emphasized in most fields instead of creating a supportive, enabling and empowering environment.

The Government Report itself indicates the unwillingness on the part of the Government to implement the provisions of the CRC and the U.N. Committee's recommendations in a sincere and holistic manner. While the Government Report was prepared more in line with the U.N. Committee's reporting guidelines than in the first time, it is still too legalistic and defensive rather than being analytical, frank and self-critical. It refers to the U.N. Committee's recommendations less than ten times in the whole report, showing lack of accountability to the international community.

As a result of this indifference to the dialogue with the U.N. Committee, **most of the U.N. Committee's recommendations have not been implemented at all**. The overall situation of children's rights in Japan can be summarized as "**one step forward, two steps backwards**".

I. General Measures of Implementation

Legislative Measures and Policies

Little effort has been made to improve the normative status of the CRC, which is indicated by the Government's intention to maintain **the reservation to and the declarations** on its provisions without providing persuasive reasons. **Courts** have also been reluctant to apply the provisions of the CRC, partly because the Government representatives have argued for restrictive interpretations of them. While some legislative measures have been taken, little attention has been paid to the provisions of the CRC as well as the U.N. Committee's recommendations to Japan, its general comments and its conclusions after the general discussions.

In spite of the U.N. Committee's recommendation (para.30), there is **no comprehensive policy** on the rights of the child. The policies mentioned in the Government

Report are neither comprehensive nor rights-based, and most of them lack specific time-bound targets and indicators. Due to lack of impact assessment and inadequate evaluation of the relevant legislation and policies, it is difficult to pursue effective policies for children.

Institutional Arrangements

In spite of the U.N. Committee's recommendation (para.30), the Government has not taken measures to strengthen **coordination** of the implementation of the CRC. Ignoring the U.N. Committee's explicit indication (para.8) that the U.N. Committee for the Promotion of Youth Policy is not an effective body for coordination, the Government Report (para.19) still presents the said Committee as a coordinating body for the implementation of the CRC. Although **coordination and cooperation with NGOs** has gradually been improved, it is not systematic and institutionalized yet.

The Government has also ignored the U.N. Committee's recommendation (para.32) concerning **independent monitoring** of children's rights, taking no measures to strengthen the existing system of Volunteers for Children's Rights Protection (translated as Civil Liberties Commissioners for the Rights of the Child in the initial report) and rejecting the possibility of establishing an ombudsman for children (Government Report para.28).

The system of **data collection** remains inadequate. There are many areas where little or no data exist, including on children with disabilities who go to regular classes/schools. Even when considerable data exist, the Government Report does not submit them in some important areas, such as corporal punishment at school (para.162) as well as bullying (para.263) and non-attendance at school (para.268).

Resource Allocation

Because of the "structural reform with no sanctuaries" in response to the long-standing economic recession, child-related sectors are also under strict financial control. In many fields, including education and protection of children, **financial and human resources** are not ensured adequately enough to meet the needs of children. The present economic situation gives adverse effects on the situation of children, indicated by, for example, the increase of students who are forced to drop out of high school due to "economic reasons". There is no institutionalized mechanism to ensure **the best interests of children in the preparation of the budgets**.

Awareness of the CRC and the U.N. Committee's Recommendations

As is clear from the Government Report (paras.41-43), new measures have hardly been taken at the national level to keep and improve **the level of awareness of the CRC** among children and the general public. No measures have been taken, either, to know "the degree of public understanding of the CRC" (Government Report para.42). As for **the results of the consideration of the initial report**, the Ministry of Foreign Affairs did not go further than making the U.N. Committee's concluding observations on its website, and the publication of what was discussed in the dialogue was left to NGOs.

Training of professionals working for/with children is not sufficient and systematic. Little measures have been taken to know the awareness of the CRC among professionals or to

integrate its provisions and principles into their codes of conduct, making it difficult to assess the impact of the CRC and the U.N. Committee's recommendations on their daily work for/with children. Many professionals are still resistant to the notion of "the child as a full subject of rights" (the U.N. Committee's recommendation, para.33).

II. Definition of the Child

The age at which criminal procedures can be applied were lowered from 16 to 14 years of age by the revised Juvenile Law, making it possible to treat juveniles who are 14 and 15 years of age as prisoners (see also pp.10-11). In the meantime, **different minimum ages for boys and girls** (18 and 16 years of age respectively) have not been modified in spite of the U.N. Committee's recommendation (para.35). There are other ages which deserve further review, including the high age at which a child is entitled to speak in family proceedings (15 years) and the low age of sexual consent (13 years).

III. General Principles

Non-Discrimination

The Government has declined to take pro-active measures to address various forms of *de jure* and *de facto* discrimination. While efforts have been made to promote **equality between men and women**, backlash against such efforts have also been reinforced partly because the issue is not addressed from a human rights perspective. Further efforts are also required to eliminate discrimination against **children from Buraku communities**, still being discriminated socially on the basis of a kind of caste system established in the 17th century, as well as **children with disabilities** who should be fully included in school and society (see p.9 for more information on children with disabilities).

Due to the Government's indifference to discrimination issues, **children belonging to minority groups** are placed in especially difficult circumstances. In particular, **foreign children, including children of undocumented immigrants**, are sometimes deprived of essential services such as health care and education. **Education of foreign children** has also been concerns for other treaty bodies, since they are not the subjects of compulsory education and, even when they go to public schools, not entitled to receive education in their mother tongue. Lack of sensitivity to ethnic, linguistic and cultural backgrounds in education also applies to other minority children, including children whose (grand-)parents had come back from China after the World War II, children of the indigenous Ainu people and children living in Okinawa, the southern part of Japan.

Particularly worrisome is the fact that the Government Report does not contain any explicit mention to **children of Korean origin**, in spite of the fact that their situation was one of the most focused issues in the consideration of the initial report. In spite of the recommendations by the U.N. Committee (paras.13 and 35) and other treaty bodies, **the graduates of Korean schools, maintained by Korean residents themselves, are still not able to sit for entrance examinations of many universities unless they are qualified in other ways.**

This also applies to graduates of other schools for students of Asian origin, while graduates of so-called international schools are likely to be qualified for university entrance examinations soon. Children of Korean origin have been subject to harassment and violence, too, reflecting tensions between Japan and People's Democratic Republic of Korea.

In the light of these situations, it is urgently necessary for Japan to have **comprehensive legislation against all forms of discrimination**, which covers all the grounds enumerated in Article 2 of the CRC. The need for such legislation was indicated by the U.N. Committee (para.14), which indicated the need to protect children from discrimination on the basis of "birth, language and disability". The need for anti-discrimination law was also indicated by other treaty bodies. In addition, **discrimination against children born out of wedlock** has been maintained in law, contrary to the strong recommendations by the U.N. Committee (para.35) and other treaty bodies.

Best Interests of the Child

In spite of the recommendation by the U.N. Committee (para.35), **the principle of the best interests of the child has not been incorporated in any pieces of legislation** and is not fully ensured in legislative, administrative and judicial procedures, including budget preparations. There are no formal procedures to consider the best interests of the child in legislative and administrative decision-making, leading to the enactment or proposal of **some laws which goes against the best interests of the child**. Typical examples include the revised Juvenile Law (see pp.10-11), criminalization of children who offered themselves for commercial sexual exploitation (see p.10) and the proposal to amend the Fundamental Law on Education (see p.8). Courts are also reluctant to apply the principle fully, for example, in cases concerning deportation of children of undocumented immigrants (see also p.9).

Right to Life, Survival and Development

The right of the child to life, survival and development has been compromised in various forms, including accidents at school and on the road, suicide, child abuse and stress in the education system. **Inadequate standards for play facilities and lack of supervision of unlicensed nursery care institutions** have led to cases of serious injury or death of young children. In spite of the U.N. Committee's recommendation (para.43) and that of the Committee on Economic, Social and Cultural Rights (August 2001, para.58), adequate measures have not been taken to alleviate **excessive stress in the highly competitive education system**, which has resulted in the continuous rise of the incidence of non-attendance at school (see also p.8-9).

Life, survival and development of **children in Okinawa**, the southern part of Japan, are highly affected by the concentration of the United States armed forces there. Many children have become victims of rape, violence and accidents caused by the U.S. military personnel. The exposure to noises caused by their military training has brought about negative consequences for education and health of children in Okinawa.

Respect for the View of the Child

Little progress has been achieved in strengthening the right of the child to express their views freely in all matters concerning them and to have them taken into consideration.

