

The Implementation of the ICESCR in **Japan** and the Problems of the **Japan**'s 3rd Periodic Report

For the 50th session of the CESCR

Final version

NGO Committee for the Reporting on the ICESCR

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I REPLIES TO THE LIST OF ISSUES BY JAPANESE NGOS

Issue 1 (Implementation of the ICESCR in Japan)

Main problems of the third periodic report of Japan

It is noted as positive that the Government report adopts the formalities based on the reporting process, describing the “Responses to the previous concluding observations” in the chapter I. With regard to what is written in the chapter I as well as the following descriptions on the implementation of the ICESCR, however, we must regrettably repeat what was pointed out in our previous NGO report on the second periodic report more than a decade ago.

Namely, the Government report is formalistic, only containing descriptions on the relevant legislation and institutions as well as some statistical data, without making it visible how and to what extent economic, social and cultural rights are protected as well as what challenges remain in this regard in Japanese society, where poverty and economic disparities are getting wider. The biggest reason is that the Government does not recognize these rights as legal ones and that even policy considerations are not given to the implementation of these rights. Similarly, since courts have considered that the ICESCR is not justiciable, it has hardly been used effectively in lawsuits. The public has little awareness of the ICESCR, too. On the other hand, it should be acknowledged that NGOs have not been very active in the implementation of the ICESCR compared to the cases of other human rights treaties.

The Government explains, “In the process of preparing the third periodic report, a wide range of opinions from the general public was collected through the website, and meetings with NGO members and the general public were organized for consultations to take place”. Those opportunities were one-sided, however, far from being “constructive dialogue”. NGOs do not consider that our views are reflected in the Government report. The attitude of the Government toward the implementation of the ICESCR is questioned in this regard as well.

Toward the effective implementation of the ICESCR

Since the third periodic report has those fundamental problems, additional information should be provided, generally and at the minimum, on the following issues.

- (a) The implementation of the ICESCR and challenges in the process in the aftermath of the Great East Japan Earthquake and the Fukushima Nuclear Power Plant disaster in March 2011, in particular concerning how the ICESCR has been referred to in the reconstruction processes, which should be pursued in accordance with a human rights-based approach. Particular reference should be made on the issue of exposure to radiation as well as assistance and support for especially vulnerable groups, including foreigners.
- (b) Policy changes under the new government, as is noted in the Government report itself (p.4).
- (c) Governmental institutions for and challenges in the effective and comprehensive promotion of the relevant policies.
- (d) Prospects for the establishment of structures and systems for the effective promotion and monitoring of the implementation of the ICESCR and in particular the relevant concluding observations. In this regard, specific reasons and challenges should be indicated for non-acceptance of the individual communication procedures under the main human rights treaties.

The additional information should be prepared on the basis of “constructive dialogue” with the relevant NGOs, which should be held between the preliminary consideration in May 2012 and the plenary session with the delegation. It should be substantial and brief so that the problems of the Government report would be redressed to the maximum extent possible.

Issue 3 (Article 2: Non-Discrimination)

Answers to the question

1. Based on the Opinions made by the Cabinet Council on the Dowa Special Measures in 1996, the government was to set up a responsible section within the government framework that would coordinate all governmental efforts to promote educational initiatives to eliminate Buraku discrimination after the termination of the Dowa Special Measures Law in March 2002. Nevertheless, after the termination, the government has failed to do so. The government is urged to set up such a responsible section within its framework.
2. Since 1886, Japan has maintained the family registration system, which has been one of the root causes of Buraku discrimination. While some modifications were given to the procedures of using the system, today we still see the frequent occurrence of illegal acquisition of a copy of one's family registration by a third party for the purpose of identifying one's family origin, i.e. Buraku origin, at the time of employment, marriage, and other occasions. The government is urged to take actions to eliminate Buraku discrimination resulted by the family registration system.

Background:

1. The government has used the Opinions of the Cabinet Council on the Dowa Special Measures of 1996 as guidelines for the solution of Buraku problem since the termination of the Special Measures Law in March 2002. Opinions state that the government should consider Dowa problem as most important human rights issue of the country and promote educational programs to eliminate discrimination. It also recommends the government to set up a responsible section which coordinates all such educational initiatives taken by different departments for the solution of discrimination. While the government has developed the basic plan to promote human rights education in 2002 and prepared human rights white paper every year since then, there has been no section to coordinate such governmental programs. The government is urged to create the responsible section. Also, in the white paper, it states that with the implementation of Dowa special measures, gaps between Dowa districts and others have largely improved, without showing any indicators that demonstrate such improvement statistically. The government should conduct a nation survey to find out the current socio-economic situations of Buraku districts for the first time since the last survey in 1996. With drastic changes in economic and social environment for the last decade, situations of Buraku districts have gotten worse.
2. The government has exempted personal information on the family register book from the application of the Personal Information Protection Law, allowing legal professionals to freely browse one's personal information. We have seen frequent occurrence of illegal acquisition of copy of one's family registration for the purpose of identifying the one's origin. Such illegal acquisitions are made at requests from individuals on the occasion of marriage or from private companies on the occasion of employment. Purposes of identifying one's origin apparently involve the exclusion of Buraku origins from marriage engagement or employment. The government is recommended to take solutions to eliminate Buraku discrimination caused by the Family Registration System.

Recommendations:

1. For the elimination of Buraku discrimination, the Government of Japan should immediately enact the law to restrict the personal background investigative activities on the occasions of marriage or recruitment, and the discriminatory land research.
2. In accordance with the 1996 opinions made by the Regional Improvement Council and recommendations made by the CESCR, the Government should include Buraku problem in the "measures for the socially vulnerable." The Government is required to have a responsible section to address Buraku problem, and to set up a council on the problem with participation of Buraku representatives and experts. It is also required to conduct a nationwide survey to find out actual conditions of Buraku, and develop policies and programs toward the solution of the problem.

3. The Government should immediately conduct a survey on the employment situation of Buraku and develop policies and strategies to secure stable employment.
4. The Government should immediately enact a law to restrict the production and sale of Buraku List and the conduct of personal background investigation against Buraku. It is also urged to revise the Family Registration Law to introduce a notice procedure to a principal when whose family registration is copied.
5. The Government should disclose actual situation of investigative activities to identify Buraku location in the real estate industry, and introduce a law to ban on such activities.
6. The Government should conduct a national survey to find out peoples' attitude toward Buraku, and include Buraku problem in the school education curriculum, social education program and civil awareness-raising program.
7. The Government should conduct a survey into the illiteracy problem in Buraku, and start literacy classes or support such initiatives. Also, it should conduct a survey to find how many Buraku children go to high schools and colleges, and take necessary steps to encourage them to have higher education.

Issue 5 (Article 3: Equal rights of men and women on Employment)

In detail see "ICESCR GENDER REPORT PROJECT / JAPAN"

I. The number of contingent workers is increasing

The percentage of contingent workers is 54.7% of total women workers, and 19.9% of men workers according to the "Labor Force Survey 2011" of the Ministry of Internal Affairs and Communications (excluding Iwate, Miyagi, and Fukushima prefectures). The percentage of female contingent workers has increased, with 42.1% who are part timers, and 12.6% dispatch workers and others. 70% of contingent workers are women, so the issue of contingent work is also a women's issue. Only in the age-group from 25 to 34 years old is the percentage of female contingent workers less than 50%, at 41%. In all other age-groups, more than 50% of female workers are contingent workers.

II. The gender wage gap and poverty

1. Full time female employees' wages were 70.6% that of full time male employees' in 2011 (69.3% in 2010). Among permanent female employees, wages rose to 73.3% that of men (72.1% in 2010), but the drop in wages for men was one of the factors for this.
2. Regarding the gap in predetermined hourly wages, women earn 70.6% of a full time male employee's hourly wages ; a male part timer's hourly wages are 55.5% that of a full time male employee; and a female part timer's hourly wages are 50.3% that of a full time male employee.
3. 42.7% of women and 9.8% of men earn less than 2 million yen annually, and 66.2% of women and 23.4% of men earn less than 3 million yen annually. (from National Tax Agency "Private Enterprise Salary Results Statistics Investigation" 2010).
4. This situation was caused by the fact that the deterioration of employment opportunities and wages negatively impacted women more seriously than men. Regarding revisions of the Part-time Employment Law, a proposal that ensures consistency with The Labor Contract Law was submitted last June by the Labor Policy Council, but a bill for these revisions has not yet been presented. The Part-time Employment Law, Article 8, imposes three

requirements on part-time workers in order to be applicable for the prohibition of discriminatory treatment. Among those three, transfer of work positions and indefinite period of contract should be deleted. Equal treatment should be applied when the contents of work are equal or the same level as those of regular workers. Equal treatment should be applied when the contents of work are equal to or the same level as those of regular workers.

III. The Equal Employment Opportunity Law must be revised

Discussion to review the Equal Employment Opportunity Law is currently being held at the Equal Employment Opportunity Committee of the Labor Policy Council of the Ministry of Health, Labor and Welfare. However, the management side has taken a stance that no revision is necessary. Regarding the Equal Employment Opportunity Law, the ILO demanded a review of the enforcement regulations regarding indirect discrimination, and CEDAW expressed concern about clarification of the definitions of discrimination and "the employment management category" in the administrative guidelines. In order to correct the gender gap in Japan, it is necessary to have sufficient deliberation regarding the revision of the law and to actively revise the law.

IV. Gender-specific statistics are necessary

The former government set a goal that 40% of businesses would take positive action by 2014, and considered requiring that businesses must include in their asset securities report information about females on the Board of Directors and information regarding all women employees, so that the status of women in that company could be "visualized". However, these proposals were rejected due to the objections of management. If there were a return to the asset securities report of companies as formatted until 1999, which included information regarding employees by gender (the number of people, the average age, length of service, average wages), and information about the number of management classes by gender (department and section managers) were also required, this would provide gender statistics to draw on. There are currently 3,742 listed companies that are obliged to submit asset securities reports.

V. Gender-based Wage Discrimination Court Cases

Currently, the cases below are pending.

1. Chugoku Electric Power Company Wage Discrimination Case, appeal court : Hiroshima High Court, one plaintiff

This case is about a disparity in wages and classification between male and female staff as a result of an ability ranking system. The female plaintiff is asking for recognition of the classification she was due had she been male, and for payment of the wage difference. The district court ruling held that the wage disparity was unavoidable due to the differences in the length of service and attitudes toward work of female and male workers, and that there were rational grounds for the disparity in classification. Such judgment itself is gender discrimination, so the plaintiff has appealed the ruling. Although the wage disparity is obvious in this case, the focus of the High Court's ruling is whether it will acknowledge the presence of gender discrimination in the disparity of classification and the resulting wage difference, and how it will decide on the correction of disparity in classification and wages.

2. Fuji Star Wage Discrimination Case: Tokyo District Court, one plaintiff

This is a case in which a female designer is suing for wage discrimination based on Article 4 of the Labor Standards Law. She was employed by an apparel company, Fuji Star, in 1986 and contends that there is a wage disparity of 110,000 to 120,000 yen in monthly wages and more than 2 million yen in annual bonuses with a male sales person with the same length of service. A designer job is a female job there, but there are some male

designers. The male designers are getting higher wages than their female counterparts and are paid the same as male sales people, with a few exceptions. The company explains that the wage disparity between the female designers and male sales personnel is due to career tracks and that the job of a designer is to supplement the job of a sales person. But the plaintiff in the case has submitted a written expert's opinion stating that the job of a designer has a higher rating than that of a sales person, according to a gender-neutral job evaluation. The focus of public attention is whether the court acknowledges gender wage discrimination and orders a correction of wage differences.

3. Towa Kogyo Co. Wage Discrimination Case: Kanazawa District Court, one plaintiff Towa Kogyo Co. is a company dealing with designing, construction and distribution of aggregate plants. After being transferred to the planning section, a female employee acquired the qualification of second class architect and was doing the same job as her male counterparts. But she was paid less than male co-workers, so she challenged her low wages and asked repeatedly for correction. Then the company introduced a career track system in 2002. As a result, she was relegated to general worker status with low wages, even though she had 12 years' experience as an architect and lost her architect's allowance. In 2011, she filed suit asking for payment of wage differences with male employees in the main career track and payment of damages. The case highlights the fundamental question of the effectiveness of the equal employment legal system. By taking advantage of the fact that the Equal Employment Opportunity Law only addresses and corrects disparate treatment between men and women in the same employment management category, the company introduced a career track system to make the correction of gender wage discrimination impossible and thus was able to lower wages.

Issue 6 (Article 3: On the issue of Gender Stereotypes)

In detail see "ICESCR GENDER REPORT PROJECT / JAPAN"

I. Measures and Policies taken by Government

The Japanese Government replied that the measures include holding symposiums, making case study books, having training sessions, providing information, and enlightenment activities. However, the number of people influenced by these measures is very limited, and they lack effectiveness to change myths. In other words, it seems that the government ignores basic countermeasures to review laws and social systems that are not gender neutral and maintain stereotypes; instead, they try to wiggle out of their responsibility with cheap tricks for an alibi. By continuing with its current measures, the government will not achieve any changes in conventional wisdom, nor will it illuminate the effectiveness of trying to find aggressive means of change or the obstacles to achieving results. As for revising the Civil Code as recommended by the Legislative Council of the Ministry of Justice in 1996, those revisions have been proposed as a bill by members of the Diet seven times in the House of Representatives, and 14 times in the House of Councilors. However all these bills were rejected and no bill to revise The Civil Law has been proposed at all since 2009. The Japanese Government has shown no interest in revision since 1997. Regarding the selective separate surname (the right of a married couple to choose if they will have the same or separate surnames) for a married couple, a civil action was brought in 2011 claiming an unconstitutional omission by the Diet," and violation of the Convention on the Elimination of All Forms of Discrimination against Women; the Tokyo District Court is going to hand down their opinion in May. Since there has been no change in the legal system that has the current legal marriage system as preconditions, the formation of any form of non-traditional free couple continues to be obstructed and diverse ways of life continue to be hampered with a substantial disadvantage being maintained and without winning equality under the law. So, the nation's expectation continues to be betrayed. The new cabinet which was formed at the end of last year set a national goal of economic revitalization as a top priority problem, but took a backward-looking posture toward substantive reform to realize equality in outcomes. Although the government advocates women's advance and participation everywhere, reform of the male-oriented, stereotypical income model system is as slow as a snail. Please refer to the separate entry regarding women's problems at the work site. Furthermore, regarding education

to change awareness about the established gender division of labor, in 2006 when the present Prime Minister formed his first cabinet, the government forcibly revised the Fundamental Law of Education by deleting the text which established coeducation to guarantee gender equality in education. Judging from compliance with Articles 3 and 13 of the International regulations concerning the International Covenant on Economic, Social and Cultural Rights, and Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, that was a serious retreat. We would like to call attention to our sense of impending crisis as an NGO. Furthermore, the Prime Minister played a central role in actions which interfered with educational contents and confiscated teaching materials which had been professionally researched and developed, by claiming that sex education in schools was excessive. It is a well-known fact that the Prime Minister aims to cultivate a traditional sense of morality such as one that idealizes a stereotypical family image. The Board of Education system started with a public election system with democratization after World War II, but it has retreated to an appointment system that has required local government Assembly agreement for a long time. The Prime Minister has pledged to strengthen administration participation to infringe on the independence of the Board of Education even more, and to intervene in education. Concern increases that intervention by the administration in education, to bring a return to an old sense of values and moral education by screening textbooks, will tend to reverse progress that has been made in countering traditional stereotypes.

II. Court Cases

The judiciary has repeatedly made rulings which suggest only that the judiciary plays a role in strengthening stereotypes based on gender. For example, a male assailant whose body strength was significantly superior to a female victim served her a lot of alcohol, then forced her to have sexual intercourse by pinning her down in a car with the doors closed and impregnated her. Later, she also suffered physical injury from having a forced abortion. The court did not recognize the liability of the assailant for compensation for damages. The judgment acknowledged that there was no consent by the victim until just before the violent act of sexual aggression, and that the victim became pregnant and was forced to have an abortion. From the viewpoint of women's health and self-determination of her own life, it is not likely for a woman to agree to have sex without protection against pregnancy with a man whose name she doesn't even know. Despite that, the court declined her lawsuit because the assailant had no "intention" of sexual violence; in other words, he had no recognition of the unwillingness of the victim. Such a judgment is remarkably unfair because it is based on "a male standard". The Japanese judiciary applies without hesitation a criterion that refusal is within the scope of agreement, or the assailants' standard that "I thought consent was provided" when "agreement" is connected with a sexual matter. However, this criterion regarding such sexual assault is clearly wrong when compared even with the essential requirements as a justifiable cause regarding medical treatments and the criterion for "agreement" by a patient regarding the need for medication ("a sincere agreement based on the explanation" is required). Since acts of sexual aggression are always accompanied by danger (of sexually transmitted disease and pregnancy), women's health is violated unlike with the aggressive use of medicine for the purpose of the recovery of good health. Therefore, there should be a criterion that is consistent with an individual's self-determination about sex and enforces a right to sex and reproduction that allows women to make a clear, assertive decision. Yet the courts still judge that acts of sexual aggression are consensual (agreement by silence) based on the coping actions of the victim in the face of the assailant's violence. However, this violates an international regulation concerning Economic, Social and Cultural Rights guaranteeing women's rights to decriminalize such acts of "mental and physical injury."

Issue 7 (Article 3: On the issue of "comfort women")

In spite of the previous recommendations by the ICESCR Committee and other UN human rights bodies, the government has not taken measures to fulfill the economic, social and cultural rights of the women who had been forced to become "comfort women". Significant retrogression has been observed in the field of education, in particular. The relevant descriptions were deleted from the history

textbooks used in compulsory education; no refutations have been made by the government to the remarks denying historical facts, made by the Diet members or local mayors who have not been subject to social sanctions neither. The follow-up by the Asia Women's Fund (AWF), presented by the government in the written replies, has not been recognized as effective measures by the UN bodies. Questions should be raised what kind of new measures are envisaged to ensure the victims' rights.

The government has not accepted legal responsibility for the "comfort women" system, established and operated by the Army of Japan during the World War II, leaving the older victims pass away without receiving redress. The government continues to aggravate the victims' sufferings and violate their human rights by having failed to apologize in a manner that the victims can accept, to take legislative and administrative measures for providing compensations for the victims, to keep the term "comfort women" in the history textbooks used in compulsory education, to prosecute perpetrators and to take measures against the denial of facts as well as slanders by politicians and mass media.

(Articles 2(2) and 3 of the Covenant; General Comment No.3 on the obligations of States Parties; para.53 of the State Party's report; paras.26 and 53 of the 2001 concluding observations)

(1) History and background of the problem

Twenty years have passed since Korean women identified themselves as victims of the "comfort women" system and called the government of Japan to account in 1991. The "comfort" brothels were established in almost all the aggression areas of Japan; the nationalities or places of origin of the victims, who had identified themselves by 2012, include ten countries and territories: the Republic of Korea (ROK), Democratic People's Republic of Korea (DPRK) and Chinese Taipei as well as China, the Philippines, Malaysia, Indonesia, the Netherlands, Timor-Lest and Japan.

In 1993, the government of Japan issued a statement on the basis of the official research findings, acknowledging the involvement of the Army in and the involuntary nature of the "comfort women" system (the Kono statement). However, the government took the position that the issue of legal responsibility had been settled with the peace treaties and the bilateral treaties and, in order to fulfill its "moral responsibility", established the National Fund for Peace in Asia for Women (Asia Women's Fund, AWF) in 1995. The AWF raised funds from the public and provided "atonement money" to the victims; its projects for medical and welfare support were financed by the government.¹ The victims criticized these projects, however, arguing that the state responsibility was evaded. The governments of the ROK and Chinese Taipei took measures to support the victims who opposed the projects, and a number of UN human rights bodies recommended that the government should acknowledge its legal responsibility, pointing out that the projects of the AWF would not settle the problem. While the AWF finished the operation in March 2007, the government has not acknowledged its responsibility thereafter, having taken no measures for restitution. Meanwhile, a number of the victims passed away without having recovered their dignity, making the resolution of the problem even more urgent.

(2) Responses by the government to the concluding observations and what is written in the State Party's report

Following the consideration of Japan's periodic report in 2001, the ICESCR Committee expressed concern that the measures taken by the AWF, which is primarily financed through private funding, has not been deemed an acceptable measure by the victims and strongly recommended that the State party find an appropriate arrangement in consultation with the organizations representing the "comfort women" before it is too late to do so.

¹ The projects of the AWF only covered some countries and territories; "atonement money" was only provided in the ROK, Chinese Taipei and the Philippines, while other schemes were implemented in the Netherlands and Indonesia. The victims of China, DPRK, Malaysia, Timor-Leste and Japan were not covered.

In response to the concluding observations, the Association of Lawyers Calling for Compensation Legislation for Former “Comfort Women”, composed of some sixty lawyers representing the victims in the compensation lawsuits, called on the government to be involved in consultation for the solution of the problem in August 2003. The government, however, made no responses to the offer. In November 2002, the government issued its comments on the concluding observations (E/C.12/2002/12), reaffirming its position that the measures by the AWF were sufficient.

What is written in the third periodic report of Japan is similar to the explanations in the reports to other human treaty bodies, only describing the projects undertaken by the AWF, which came to an end in March 2007. It makes no reference to what efforts had been made for restitution measures that would be accepted by the victims, as was recommended by the previous concluding observations. Although the government argues that it has taken follow-up measures for the victims, they are no more than exchanges through NGOs with the victims who had accepted “atonement money” offered by the AWF; even factual investigations have not been conducted with regard to the victims who refused to do so or who are in countries or territories that were not covered by the AWF.²

(3) More recommendations by the UN bodies and foreign parliaments

Since 2001, voices calling for the resolution of the “comfort women” issue have steadily spread over the world. The major human rights treaty bodies, including the CEDAW (2003 and 2009), the HRC (2003) and the CAT (2007) pointed out the responsibility of the government of Japan on this issue in their respective concluding observations, and the issue was raised in the universal periodic review of the UN Human Rights Council (2008). The Special Rapporteur on violence against women, its causes and consequences as well as the Special Rapporteur on systemic rape, sexual slavery and slave-like practices during armed conflict took up the issue in their case studies, making comprehensive reports and recommendations on the measures that should be taken by the government of Japan. With regard to the ILO Convention No.29 (Forced Labour), ratified by Japan in 1932, the ILO Committee of Experts on the Application of Conventions and Recommendations issued the relevant recommendations eleven times, pointing out that the “comfort women” system had been incompatible with the Convention.

In 2007, the Lower Houses of the United States, the Netherlands and Canada Parliaments as well as the EU Parliament adopted the resolutions, recognizing the issue as a universal human rights issue and calling on the government of Japan to take appropriate measures, including making apologies and compensations. The parliaments of the ROK and Chinese Taipei followed suit in 2008. In Japan, 37 local parliaments have adopted statements that called for sincere measures by the central government concerning the “comfort women” issue (as of January 2012).

Furthermore, the Constitutional Court of the ROK decided, on 30 August 2011, that it is unconstitutional for the ROK government not to make diplomatic efforts for the resolution of the “comfort women” issue, stating that the failure violates fundamental rights of the victims. In response, the ROK government had proposed bilateral talks to the Japanese government several times since September 2011 and, in December, President Lee Myung-bak met with Prime Minister Noda and called on him to make efforts for the resolution of the issue. The government of Japan has not accepted the offers, stating that the issue had been resolved through the 1965 Agreement concerning the settlement of problems in regard to property and claims.

(4) Deletion of the descriptions about “comfort women” from textbooks and the failure by the Supreme Court to provide redress for the victims

Many victims hope that the historical facts are communicated to the next generations, so that the same mistakes would never occur. Although there were descriptions about “comfort women” in all the history textbooks used in compulsory education in 1997, the number of such textbooks had

² The comments on the factual matters described in the State Party’s report are contained in the Appendix.

decreased in 2002 and 2008 and, finally, the term “comfort women” disappeared from all the history textbooks put to use since April 2012. The National Museum of Japanese History and other public institutions for social education do not display the facts about the “comfort women” system, neither.

In addition, the Supreme Court dismissed all the claims made by the victimized “comfort women” in ten lawsuits, in which they had demanded the government of Japan to make apologies and compensations, by 2010. This means that judicial means for remedies were exhausted in Japan. Twenty years have passed since the first victims filed lawsuits against the government in 1991; many victims passed away, and the surviving victims have little time left.³

Unless the government takes legislative or administrative measures, the restitution for the victims will not be achieved and education on this issue will not be provided. The government will establish an unfavorable precedent on the prevention of sexual violence during wartime and the remedies for victims of such violence, by failing to fulfill its international obligations under the ICESCR and other human rights treaties and leaving the problem unsolved.

Recommendations

The State Party should make apologies in a manner that the majority of the victims of the “comfort women” can accept; take prompt and effective legislative and administrative measures to provide compensations for all the victims; prosecute surviving perpetrators; and provide education on the historical facts of the “comfort women” system in compulsory education as well as museums and other social education institutions.

Issue 8 (Article 6: Right to Work)

The unemployment rate, which was 4.0% in September 2008 when the Lehman bankruptcy had severe impact on the world economy, rose to 5.4% in September 2009. It has gradually dropped to 4.1% in November 2012. However, the unemployment rate among the age group 15-24 has remained extremely high, exceeding 10% in 2009 and 2011 and being 4.9% as of November 2012.

Due to the higher unemployment rate among youth, an increasing number of young people are now receiving public assistance. The number of persons on public assistance has grown 2.7 times higher than fifteen years ago, from 67,465 in 1995 to 182,391 in 2010.

While the government has extended the period of coverage of the unemployment insurance after the Lehman economic crisis, the extended period is only 60 days in principle and its impact is limited. The number of persons who have been unemployed for more than a year is 1.21 million in 2010, amounting to 36.2% of the number of the unemployed.

Under the unemployment system in Japan, the period of coverage varies in accordance with the applicant’s age, period of insurance and reasons for leaving the job. The period of coverage is generally short, particularly for young people who can only receive the benefits for 90 days in principle. In particular, those who left the job for personal reasons must have been insured for more than a year to receive the unemployment benefit and, furthermore, cannot receive the benefit for three months after having left the job. Therefore workers are in a very difficult situation, being unable to leave the job unless they have certain amounts of savings.

³ For example, only 63 of the 234 self-identified victims in the ROK and 10 of the 58 self-identified victims are still alive as of January 2012.

In order to address the unemployment problem, which has become increasingly serious in the situation of economic crisis, the government started the “job-seekers support system” in October 2011. It is a system placed between the unemployment insurance scheme and the public assistance scheme, targeted at unemployment persons who are not eligible for the unemployment benefit, giving them JPY 100,000 per month on the condition that they receive vocational training. The support system has not been applied adequately to the workers in need, because the requirements for the provision of the benefit are strict. Only 94,496 workers have been covered by the system for the first eleven months; it is expected that the number will be far below the plan, which is to cover 390,000 workers by the end of 2013. On the other hand, more than 70% of the workers who received vocational training could have found a job, which shows that this particular element has been effective to some extent.

Recommendations

1. The government should expand the terms of the benefit under the unemployment insurance scheme in terms of the period, amounts and timely payment of the benefit. In addition, the requirements for the provision of the benefit should be eased, so that unemployed persons can seek and find appropriate jobs with security.
2. In order to secure employment for young people, the government should implement policies to improve vocational training, to expand support measures for finding jobs and to assist NEETs (young people not in education, employment or training) in achieving independence. A support system for finding jobs should also be established for those on public assistance to enable them to find employment and lead self-sufficient lives.

Issue 9 (Article 6: Right to Work)

No legal limitations are imposed on fixed-term labour contracts; labour dispatching is widely permitted, and there are many part-time workers. Consequently the number of irregular workers amounted to 18 million (35% of the workforce) in 2012.

After the Lehman economic crisis in the autumn of 2008, the problem of homelessness among dispatched workers in the manufacturing industry whose contracts were terminated emerged as a major social issue. Those workers had been placed in extremely precarious conditions, many of them having concluded daily labour contracts (daily dispatching). While the amendments to the relevant legislation finally passed the Diet in 2012 and came into force in October 2012, labour dispatching in the manufacturing industry was not prohibited. Although the conclusion of dispatching contracts shorter than 30 days is now prohibited to deter daily dispatching, the prohibition is not effective because of the permission of a wide range of exceptions.

The 2012 amendments to the Labour Contract Act now provides for certain protection for workers whose fixed-term labour contracts have been renewed several times. When a fixed-term labour contract has been renewed several times, the employer cannot terminate the contract on the ground of the expiry of term, unless the employer has objectively reasonable reasons to do so; and, when the contract has been renewed for more than five years, the worker can demand the employer to make the contract indeterminate if he/she so wishes. Furthermore it is now prohibited to impose unreasonably different working conditions on the ground of the fixed term of the contract.

It remains to be seen to what extent these amendments lead to the improvement of treatment of fixed-term contract workers. The amendments do not prohibit the conclusion of fixed-term labour contracts itself, however. Therefore such contracts will continue to be used widely, and the workers who

seek for the renewal of their contracts will continue to be forced to accept unfavorable working conditions in the context of the overwhelmingly disparities of power between them and their employers.

The number of part-time workers amounts to 1.2 million. The expansion of the social insurance schemes (the employees' pension insurance and health insurance schemes) to these workers was decided in 2012, which is to be implemented in October 2016. Workers have had to work for more than thirty hours per week in order to join the social insurance schemes; under the amendments, the schemes are to be applied to the part-time workers who work more than twenty hours per week for companies with more than 500 employees and who earns more than 88,000 yen per month. Since the requirements concerning the scale of companies and workers' earnings are strict, however, the number of the workers who will actually benefit from the amendments will be very limited (some 250,000 workers).

Recommendations

1. Given the precarious nature of dispatched labour, dispatching through registration (labour contracts exist only when there are workplaces) should be prohibited, allowing only continuous contracts between workers and dispatchers. Labour dispatching should be restricted to workers with expertise who are expected to have negotiating powers vis-à-vis employers.
2. Fixed-term labour contracts should be permitted only when such contracts are specifically required temporarily and in short terms, instead of allowing them in general terms.
3. Since many part-time workers earn less, standard minimum wages should be introduced all over the country. Differences in treatment should be permitted only when they are proportionate to working hours. Tax and social insurance schemes should also be improved for part-time workers.

Issue 9 (Article 6: Right to Work of Non-Regular Workers with Short-term Contacts)

< Summary of the issue >

In Japan, there are no legal restrictions on the conclusion of fixed-term contracts. Workers are dispatched widely, and there are many workers with short-term contracts. As a result, the number of non-regular workers in 2012 amounts to about eighteen millions, 35% of the whole workers.

After Lehman's fall in autumn in 2008, many dispatched workers in the manufacturing industry lost their jobs and became homeless, which was regarded as a serious social problem. Many of the concerned workers were employed on a daily basis, and their employment contracts were the most precarious. The Revised Worker Dispatching Act was enacted in March in 2012 and enforced in October of the same year. However, dispatching to the manufacturing industry is not prohibited, and with regard to day worker dispatching, dispatching workers employed for a fixed term of 30 days or less is prohibited, but the Act has very many exceptions of prohibition and is not effective.

As the Revised Labor Contract Act was enacted in 2012, definite legal protections are given to workers who repeatedly renew a fixed-term labor contract. For instance, dismissing workers who have repeatedly renewed a fixed-term contract only because their contract is terminated is deemed invalid if the dismissal lacks objectively rational grounds. The Revised Act also enables workers who have repeatedly renewed a fixed-term labor contract for a period exceeding five years to convert the fixed-term contract into a labor contract without term if they apply for one. In addition, the Act stipulates that unreasonable working conditions are prohibited only because the labor contracts concerned are fixed-term ones.

Currently it is uncertain how the Act will contribute to improving working conditions for workers with fixed-term contracts. However, the Revised Labor Contract Act does not regulate the very conclusion of fixed-term labor contracts. As a result, the current precarious employment situations, in which fixed-term contracts are concluded on a large scale and workers who want to renew a fixed-term contract will have to accept unreasonable working conditions because of the great imbalance in power between the concerned workers and their employers, remain the same.

Because of the Act, contrary to the belief of the Government of Japan “that stable employment and fair treatment of workers have been secured based on this Act” stated in their reply to paragraph 9 in List of issues in connection with the consideration of the third periodic report of Japan concerning articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights, many universities such as Osaka University, Kobe University and Waseda University have decided to take preemptive measures to prevent tens of thousands of workers with fixed-term contracts with them including the part-time university lecturers without contract limits from applying for a contract without term: these universities are going to introduce five-year contract limits for the concerned workers in April 2013, many of whom have repeatedly renewed a fixed-term contract for a period exceeding five years. In November 2012, Osaka University notified about a thousand part-time university lecturers with “disguised labor contracts” as well as thousands of workers with fixed-term contracts of the introduction of five-year contract limits to renewals of their contracts.

In Japan there are as many as twelve million workers with short-term contracts, and in 2012 the Government of Japan enacted a “Comprehensive Reform of Social Security and Tax” to expand the application of social insurance (employees’ pension insurance and health insurance) to workers with short-term contracts, and this application is going to be enforced in October 2016. Currently, the social insurance system entitlement is linked to more than thirty hours of work a week in principle, and through this reform, the workers who earn more than JPY 88,000 working at businesses with more than five hundred full-time employees and for more than twenty hours a week are to be entitled to social insurance.

However, this requirement as to the scale of businesses and income is so strict that the estimated number of workers to whom the application of social insurance is to be expanded is about two hundred and fifty thousands.

< Proposal of recommendations >

With regard to the precarious employment contracts of worker dispatching, registration type worker dispatching, in which workers are able to conclude a labor contract only when they have a client, must be prohibited. Only dispatching workers who conclude a labor contract without term with dispatching business operators has to be permitted. In addition, dispatched workers must be limited to workers with specialist capabilities who are able to negotiate with dispatching business operators.

Concluding fixed-term labor contracts on a large scale has to be regulated, and fixed-term contracts must be permitted only when they are needed especially temporarily.

With regard to the Revised Labor Contract Act, introducing contract limits to renewals of fixed-term contracts must be prohibited. Otherwise, tens of thousands of workers at the universities concerned are going to lose their jobs by the end of the academic year 2017.

Workers with short-term contracts tend to accept low wages, and improving working conditions of the concerned workers is urgent. For that purpose, not only the minimum wage system has to be improved, but unreasonable working conditions other than proportionality to hours of work must be prohibited. In addition, the application of social security and tax to workers with short-term contracts has to be improved.

Issue 10 (Article 7: Right to fair and favorable working conditions)

On average, regular workers (except part-time workers) continue to work for more than 2,000 hours per year; they worked for 2,006 hours in 2011, compared to 2,017 hours in 2001. In the long term, there has been little progress in the reduction of working hours. The rate of obtaining annual paid holidays has been below 50% since 2001, being 48.1% in 2011. Measures to promote obtaining annual paid holidays, such as planned holidays or paid rest on hourly terms, have not been effective. While both men and women can take parental leave, the proportion of the eligible fathers who actually took the leave was only 2.63% in 2011/2012, compared to 87.8% of the eligible mothers.

Long working hours being still prevalent, cases of death from overwork keep occurring. In 2011/2012, claims for injury compensations for brain or heart diseases were admitted in 310 cases, of which 121 were death cases. By comparison to the numbers in 2002/2003 (317 and 160 cases respectively), little progress has been observed for the last decade.

The prevalence of long working hours is due to the ineffectiveness of the working hour regulations under the Labour Standards Act, under which 40 working hours per week are the rule; extension should be provided in labour-management agreements. Extra-legal working hours are not to exceed 15 hours per week, 45 hours per month and 360 hours per year; exceptions can be made by way of “labour-management agreements with special provisions”, however, making it possible to make employees work so long that may lead to death from overwork.

Although employers are obliged to ensure management of working hours, some employers do not fulfill the obligation and others manipulate the records by registering less working hours than the actual ones. The labour standards inspection bodies do not have a sufficient number of inspectors to deal with these problems; while the total workforce amounts to some 65 million, there are less than 3,000 inspectors only.

Recommendations

1. In order to ensure effective implementation of the limitations on extra-legal working hours, “labour-management agreements with special provisions” should be prohibited. The rate of premium for overtime work should be increased from 25% to 50%, with a view to deterring dependence on extra-legal overtime work.
2. In order to encourage workers to take annual paid holidays, measures should be taken to facilitate obtaining paid holidays, for example, including through obliging them to take some consecutive holidays (a week or ten days, for example).
3. The number of labour standards inspectors should be increased at least to 6,500, making one inspector cover 10,000 workers.

Issue 11 (Article 7: Right to fair and favorable working conditions)

After the beginning age of the provision of the employees’ pension benefits were raised, the Law concerning Stabilization of Employment of Older Persons was amended, obliging employers to take measures to secure employment of older persons after April 2006. Employers who set the mandatory retirement age lower than 65 must take one of the following three measures to secure employment of

their employees until 65: (a) raising the retirement age to 65; (b) introducing a system for keeping their employees on the job after the retirement age; or (c) abolishing the mandatory retirement age altogether.

According to a survey by the Ministry of Health, Labour and Welfare, some 95% of the employers have taken such measures. More than 80% have opted to introduce a system for keeping their employees on the job after the retirement age. Some 57% of the companies have established the criteria, by way of labour-management agreements, for selecting which employees should be kept on the job after the retirement age, which is allowed under the Act. Labour-management conflicts have occurred over the criteria and some cases have been brought to court. In addition, effective measures cannot be applied under private law to employers who have not taken measures to secure employment of older persons.

Because the beginning age of the provision of the employees' pension benefits (the earnings-related component) is to be gradually raised after April 2013, the Law concerning Stabilization of Employment of Older Persons was amended again in 2012. With regard to the system for keeping employees on the job after the retirement age, those who wish to continue working are to be kept on the job under the amendments; the age of application is to be gradually raised for twelve years and, in 2025, those who wish to do so are to be kept on the job until 65. Exceptions are made under the guidelines issued by the Ministry of Health, Labour and Welfare, however, concerning older persons who are not eligible for the job.

The amendments also make it possible for the Ministry of Health, Labour and Welfare to publicize the name of the companies that have not introduced measures to secure employment of their employees until 65. Effective measures still cannot be taken under private law, however.

Recommendations

1. Older employees should be able to continue working even if their employers have not introduced measures to secure employment of their employees until 65 by recognizing private law effects of the Law concerning Stabilization of Employment of Older Persons.
2. Since employers might abuse exceptions under the guidelines issued by the Ministry of Health, Labour and Welfare concerning older persons who are not eligible for the job, specialized public focal points should be established to receive complaints from older persons concerning measures to secure employment until 65.

Issue 13 (Article 7: Violations of human rights of foreign trainees and technical interns)

(2001 Concluding observations, para.61; the third periodic report of Japan, para.114)

After having been criticized for different forms of human rights violations, including trafficking in person, the scheme for foreign trainees was replaced by the new scheme, focusing on practical technical training, in July 2010. The scheme continues to have grave inconsistencies, however, with large gaps between the official objective of "international contribution" (cooperation for the development of human resources that can contribute to economic development of developing countries) and the actual situation in which they are used as "extremely inexpensive manpower" by tiny, small and medium enterprises in Japan suffering from a shortage of workers.

Therefore a number of human rights violations continue to occur under the scheme, including the imposition of unskilled labour that does not contribute to the development of human resources; confiscation of passports; rake-offs under different pretexts; forced savings; nonpayment of overtime

pay; the reinforcement of restrictions by way of deposits or penalties for contract breach; involuntary return of those who claim their rights; and sexual harassment and sexual violence.

In the peak period of 2007 and 2008, more than 100,000 foreign trainees and technical interns came to Japan annually. The number decreased to some extent after the Lehman economic crisis in September 2008, being around 80,000 annually in 2009 – 2011. The estimated number of foreign trainees and technical interns staying in Japan is some 180,000. The majority of them (more than 60%) are from China.

In recent years, UN bodies have paid special attention to the scheme, expressing concern about exploitation of labour and human trafficking. Problems have been pointed out repeatedly by the Human Rights Committee (October 2008, para.24), the CEDAW Committee (August 2009, paras.39-40), the Special Rapporteur of the Human Rights Council on trafficking on persons (Ms. Joy Ngozi Ezeilo's report, May 2010, paras.26-46, 43, 49, 104, 118 and 119) and the Special Rapporteur on the human rights of migrants (Mr. Jorge Bustamante's report, March 2011, paras.38-41. The annual Trafficking in Persons Report, prepared and published in June every year by the US Department of State (Office to Monitor and Combat Trafficking in Persons), has referred to the issue of exploitation of labour under the scheme. Mr. Bustamante's report, in particular, referred to the changes of the scheme and pointed out that "the structure of the programme effectively remains the same, and does not introduce a mechanism through which trainees can directly have access to an effective protection system".

The government of Japan itself has publicized cases of malpractice with regard the scheme on an annual basis through the Ministry of Health, Labour and Welfare (Labour Standards Bureau) and the Ministry of Justice (Immigration Bureau).

Recommendations

1. Given the fact that large gaps between the official objective of "international contribution" and the actual situation in which foreigners are used as "extremely inexpensive manpower" have led to different forms of human rights violations, the technical intern scheme should be abolished in order to ensure fundamental improvement, with a view to officially admitting foreign workers.
2. At least the following measures should be taken under the present scheme:
 - To adopt a fundamental law on foreign trainees and technical interns and to create a single governmental body in charge of the scheme;
 - To establish public focal points throughout the country that are competent in receiving complaints in different languages and addressing them;
 - To ensure that foreign trainees and technical interns are informed of their rights in order to protect them;
 - To take specific measures for the prevention of involuntary return by accepting bodies before the expiry of the terms; and,
 - To consolidate the scheme by promoting the improvement of sending bodies through bilateral agreements with the sending countries.

Issue 13 (Article 7: Irregular foreign workers)

The government estimates that the number of foreigners who overstayed their visas decreased to 67,000 in January 2012 from some 300,000 in 1993. This reflects the success of the policy formulated in December 2003, which aimed at reducing the number of irregular foreigners by half in five years.

In addition, the government changed the policy concerning public identification of foreigners in irregular situations through the amendments to the Immigration Control Act, which came into force in July 2012. Foreigners in irregular situations, who had been given public identification through the alien registration system, are now unable to have any public identification given by the Japanese authorities.

In this way, Japan has introduced extensive control over foreigners in irregular situations, which is rather exceptional in the world. Consequently, it has become extremely difficult for those foreigners to keep living and working in Japan in recent years, which means that they are now more vulnerable to human rights violations. The labour legislation, including the Labour Standards Act, the Minimum Wage Act and the Workers' Accident Insurance Act, is generally applied to foreigners in irregular situation, and the right of their children to education is also guaranteed; the right to medical services is also guaranteed, although to a limited extent. The amendments to the Immigration Control Act, however, jeopardize the protection of those limited rights.

Comprehensive research has not been conducted on foreign workers in irregular situations. However, the statistics have been compiled on foreigners in irregular situations who had been deported on the charge of violations of the Immigration Control Act.

The statistics illustrate obvious deterioration of their working conditions. The proportion of undocumented foreign workers who earned less than 7,000 yen per day rose to 63.5% in 2011 from 55.8% in 2006. The proportion of those who earned less than 5,000 yen per day (which is in violation of the Minimum Wage Act if they worked for eight hours a day) rose by some 10 points, from 14.5% in 2006 to 24.7% in 2011.

In addition, even if the labour legislation is generally applied to foreign workers in irregular situations, it has become even more difficult for them to make complaints to the authorities for the application of the relevant laws, because of the tough policies against them. In practice, foreign workers in irregular situations cannot enjoy the right to fair and favorable working conditions effectively, because it is difficult for them to apply for the workers' accident insurance or to make complaints about non-payment of the wages or violations of the Minimum Wage Act.

Recommendations

1. In order to ensure that foreign workers in irregular situation can exercise their right to fair and favorable working conditions in practice, the labour authorities should be exempted from the obligation under the Immigration Control Act to report violations of the Act to the Immigration Bureau.
2. If foreigners in irregular situations are found out to have been violated their right to fair and favorable working conditions, their deportation should be undertaken after the restitution has been completed.

(Article 7: Bullying and harassment at workplace)

In recent years, an increasing number of complaints about bullying and harassment at workplace have been received by different focal points for labour complaints. For example, the focal points operated by the Ministry of Health, Labour and Welfare received 256,343 complaints concerning individual labour conflicts in 2011/2012, of which 45,939 cases (17.9%) were concerned with bullying and harassment at workplace. The number of the complaints on this issue ranks second, following the ones on dismissal, among the whole complaints. The number rose by 16.6% from the previous year, and almost doubled (2.2 times) from the number in 2006/2007 (21,153 cases).

Different factors may have contributed to the increase. Being exposed to competition with China, the Republic of Korea and other countries through the globalization of economies, Japan is losing its

international competitiveness rapidly. As a result, wages do not increase; awareness of community at workplace has become weaker because more than a third of the workforce is irregular workers. It is getting difficult for young people to have hope for the future. Feeling of despair at workplace easily leads to difficulties in relationships, contributing to the development of bullying and harassment at workplace from minor troubles.

In March 2012, the Ministry of Health, Labour and Welfare published proposals by the Roundtable on the Issue of Bullying and Harassment at Workplace. Since there are no legal definitions of “bullying and harassment at workplace”, the proposals adopted the term “power harassment at workplace”, defining it as “acts of inflicting mental or physical pain on colleague(s) or of deteriorating the workplace environment, abusing one’s position or predominance in the workplace relationships, beyond the proper scope of business operations”.

The Ministry has not taken further measures so far, however, leaving remedial efforts to individual employers. Since specific legislative measures have not been taken, measures against workplace bullying have been extremely ineffective. On the other hand, workers are very concerned about bullying and harassment at workplace, demonstrating the prevalence of the problem.

Recommendations

1. In order to address bullying and harassment at workplace effectively, relevant laws should be adopted to illegalize such acts and to impose appropriate sanctions on perpetrators. Such laws should provide for a clear definition of “bullying and harassment at workplace” and oblige employers to take certain measures for the prevention of such acts.
2. Since it is not practical for workers to resort to judicial procedures for conflict resolution, which gives them heavy burdens in terms of time and money, alternative dispute resolution mechanisms should be established.

Issue 14 (income gaps between men and women in the pension insurance schemes)

The government explains that, with a view to addressing the issue of gender gaps, the 2004 pension reforms articulated the position of the category-2 insured person under the National Pension Act (that contributions have been borne by both members of the couple) and introduced a system for splitting employee pension benefits in case of divorce (State Party’s report, para.87). Since this has not led to the rectification of the income gaps between men and women in the pension insurance schemes, this issue was taken up again by the Committee in the List of Issues.

In its written replies (January 2013), the government responded in this regard that (a) many women are short-time workers, who are only eligible to receive a basic pension because they cannot join employees’ pension insurance schemes, and that (b) the employees’ pension system will be extended to some short-time workers through the reform of the pension system in August 2012, which will “contribute to increasing future pension benefits” for short-time workers, mainly women.

There are gender gaps in the basic pension benefits, however, and the gaps are particularly significant in the employees’ pension insurance schemes in 2011/12 (Pension Bureau, the Ministry of Health, Labour and Welfare, December 2012).

The average amount of “old-age” benefits under the national pension scheme was JPY 54,612 per month (at the end of March 2012), with JPY 59,200 for men and JPY 51,083 for women. The average amount of benefits received by those who are entitled only to basic pensions* was JPY 49,605

per month, with JPY 54,515 for men and JPY 48,095 for women. Under the employees' pension insurance schemes, the average amount of benefits received by those who are entitled to basic old-age pension benefits was JPY 149,334 per month, with JPY 170,265 for men and JPY 103,989 for women.

* The term "those who are entitled only to basic pensions" refers to those who are eligible to receive basic old-age pension benefits but non-eligible to receive employees' pension insurance benefits (except the ones under former mutual aid associations), and those who are eligible to receive pension benefits under the former national pension scheme (except five-year pension benefits).

The number of splits of employees' pension benefits following divorce, on agreements between the couples or on decision by the court, was 8,586 in 2007/08, 13,072 in 2008/09, 14,850 in 2009/10, 18,282 in 2010/11 and 17,462 in 2011/12. The number of splits of "category-3 employees' pension benefits" was 33 in 2008/09, 154 in 2009/10, 392 in 2010/11 and 769 in 2011/12. The trend shows that the system of splitting pension benefits has spread to some extent.

Such splits were conducted, however, only in 7.6% of the total cases of divorce in 2011/12. Looking at the changes of the amounts of pension benefits through splits, the average amount of the monthly benefits decreased from JPY 140,756 to 108,795 (-31,961) for the category-1 recipients in 2011/12; the average amount for the category-2 recipients increased from JPY 44,620 to 77,134 (+32,513)*.

* While no explanations are provided by the government with regard to "the category-1 recipients" and "the category-2 recipients", the changes of the amounts of pension benefits imply that the pension benefits of the former are split for the latter. It is assumed that many of the former are men and many of the latter are women, although it is not decisive since genders are not indicated in the official statistics.

Genders are indicated in the statistics on cases of splits of category-3 employees' pension benefits, although it is no more than reference numbers since there are not many cases. In 2011/12, the amount decreased for men from JPY 91,199 to 88,731 (-2,468) and increased for women from JPY 18,650 to 20,574 (+1,924).

It is difficult to say, both in terms of the proportion of cases and of the actual changes of the amounts of pension benefits, that the system for splitting pension benefits is intended to address income gaps between men and women. While the system serves in favor of women to some extent in terms of the amount of the benefits, it can be considered as having confirmed dependency relationships between men and women from the gender perspectives.

In August 2012, the government announced that, in the context of the pension reforms, the employees' pension schemes would be extended to some short-time workers (the requisite working hours would be reduced from 30 hours to 20 hours per week). It has been pointed out, however, that not many workers would benefit from the extension. Even if the system is extended to more short-time workers, the amount of pension benefits will not increase very much if they continue to work with such wages as only to supplement family finances, since the employees' pension benefits are proportional to the wages and the years of service (the period for which the worker has been insured).

Recommendations

First of all, the employees' pension schemes should be further extended to short-time workers, which will lead to the correction of dependency relationships between men and women. However, it will result in no more than minor reduction of income gaps. It is necessary, fundamentally, to correct wage differences between men and women while they are in service and to promote women workers' continuous stay in service as regular workers, because income gaps between men and women in the

employees' pension schemes originate from the wages and the years of service (the period for which the worker has been insured).

Issue 15 (problems in relation to pensions and older persons)

Three issues are raised in paragraph 15 of the List of Issues. The government explains in its written replies: that (a) the 2012 pension reforms would shorten the qualifying period for receiving pensions from more than 25 years to more than 10 years, through which about 200,000 older persons who are otherwise not eligible to receive pensions will become eligible; that (b) measures are taken through the public assistance system for older persons who are not eligible to receive pensions or who are not able to secure a sufficient standard of living even if they receive pensions; and that (c) the government submitted to the Diet, in July 2012, a bill to provide certain welfare benefits to low-income pension recipients, in addition to their pension benefits.

With regard to (a), however, only some 200,000 persons are covered. Even if the qualifying period is reduced from more than 25 years to more than 10 years, those who had paid pension premiums for less than 10 years will still be non-eligible to receive pensions. Thus the measure will not eliminate those who cannot receive pensions, because some persons will still be excluded from the framework of the pension schemes.

With regard to (b), public assistance is provided complementarily to those who are living in poverty only when, even if they utilize their abilities, assets, support from those who have duty to do so as well as social insurance systems and other relevant measures, they cannot maintain the prescribed minimum standard of living. Thus the public assistance system does not specifically focus on older persons. Older persons may find it physically difficult to utilize their "abilities" to sustain their livelihood. Another problem is that, even if they are able to work, they may not be able to find employment.

Actually, 268,937 households received both old-age pension benefits (under the revised National Pension Act or through the employees' pension schemes or mutual aid associations) and public assistance in 2010 (Public Assistance Division, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Welfare and Labour); 66,034 households on public assistance received old-age pension benefits under the previous National Pension Act, and 646 households received welfare pensions. The total number of such households amounts to about 3,360,000. If more persons become eligible to receive pensions, as was mentioned in relation to (a), it is concerned at the same time that more persons would receive a low amount of pension benefits, even if those who cannot receive pensions will be given relief to some extent.

With regard to (c), the Act on the Provision of Pensioners Support Benefits was enacted in November 2012, which will come into force in October 2015 along with the introduction of the increased rate of the consumption tax. The benefits are to be provided for those who are receiving old-age basic pension benefits and who meet certain requirements; some five million persons are estimated to be covered. The requirements are that all members of the person's household are exempted from residents' taxes and that the person receives less than the full amount of old-age basic pension benefits (JPY 770,000 per year in 2015/16). The period during which the person actually paid premiums is to be considered to some extent in determining the amount of the benefits.

It is concerned, however, whether or not the increase in the consumption tax rate alone can cover the expenditures for the measure, given the large number of the possible beneficiaries. While the new system can be seen as respecting social insurance schemes, in that the period during which the person actually paid premiums is to be considered to some extent in determining the amount of the

benefits, it can be said that the financial institutional design of the pension insurance schemes is approaching to the limit.

Recommendations

1. The government should actively inform the people of the actual situation and background of those who do not receive pension benefits at all or who receive only a low amount of pension benefits. Furthermore, the government should consider the extension of the period during which late payment of the pension premiums is permitted and of the coverage of the employees' pension insurance schemes (see also Issue 14).
2. The government should also consider the linkage of the pension schemes and the public assistance system, focusing on older persons. In this context, the performance and contribution of the payment of social insurance premiums should also be taken into account, since the pension schemes are based on social insurance modalities.
3. Schools and other educational institutions should provide students with opportunities to learn about an overview of the pension schemes (benefits and contributions), so that they consider them as being relevant to their own lives, making the pension schemes part of their life cycle designs.

Issue 15 (problems in relation to pensions and Korean residents who cannot receive pension benefits)

The third report of Japan only states, "Foreigners who reside legally in Japan are afforded the same social security as Japanese people in accordance with the principle of equality for nationals and foreigners" (para.112) and conceals the existence of older foreigners and foreigners with disabilities who are not eligible to receive pension benefits. On 28 February 1981, Mr. Sunao SONODA, then Minister of Health and Welfare, promised at the Diet to "take transitional measures as early as possible because they [those foreigners] now have the status similar to the one of the nationals". The promise has not been fulfilled, however. They are now very old and living in very difficult conditions, which is not compatible with the principle of non-discrimination under Article 2(2) of the ICESCR. (Previous concluding observations, para.61)

The original National Pension Act, which was enacted in 1959, excluded foreigners from the scheme by limiting the beneficiaries to the nationals. 95% of the foreigners residing in Japan at that time were those from the former colonies of Japan in the Korean Peninsula and Taiwan.

Although the exclusion of foreigners was abolished in 1982, when the Act was amended following Japan's accession to the Convention on the Status of Refugees, there would be older persons and persons with disabilities who cannot receive pension benefits.

This was because, under the general national pension scheme, the beneficiaries must have paid premiums at least for 25 years between 20 to 60 years of age to be eligible to receive old-age basic pension benefits after 65 years of age. (When they become severely disabled before reaching 65, they receive disability basic pension benefits and are exempted from the obligation to pay further premiums.)

Therefore older persons or persons with disabilities will not be able to receive pension benefits if they are over certain age when the Act was enacted. Transitional measures were taken to prevent them from being forced to live without pension benefits. Special measures were also taken for the same purpose with regard to those living in the Ogasawara Islands (returned to Japan in 1968), those living in Okinawa (returned to Japan in 1972), returnees from China (1994) as well as victims of the abduction by the DPRK authorities and their families (2002). When the exclusion of foreigners under the national pension scheme was abolished in 1982, however, no such measures were taken, leading to the existence of foreigners, mainly Korean residents, who cannot receive pension benefits.

(Older foreigners who cannot receive old-age welfare pension benefits)

Old-age welfare pension benefits (some 34,000 yen per month) are provided, on a non-contributory basis, to Japanese nationals who were over 50 years of age when the national pension scheme was established. The benefits are not given to foreigners who were over 50 years of age when the exclusion of foreigners was abolished.

(Foreigners with disabilities who cannot receive disability basic pension benefits)

Disability basic pension benefits (some 80,000 yen per month) are provided, on a non-contributory basis, to Japanese nationals with severe disabilities who became disabled before reaching 20 years of age. The benefits are not given to foreigners with severe disabilities, however, if they were over 20 years of age when the exclusion of foreigners was abolished. Since they are not exempted from the obligation to pay premiums for the national pension, they have to contribute more than 15,000 yen per month to the national pension scheme, even if they do not receive disability basic pension benefits. On the other hand, the benefits are provided in full to persons with severe disabilities who reached 20 after the exclusion of foreigners was abolished, irrespective of their nationality, even if they were short-term students or trainees from abroad.

There were students and housewives with disabilities who cannot receive pension benefits. Previously it was voluntary for students and housewives to join the national pension scheme; if they became disabled without joining the pension scheme, they cannot receive disability basic pension benefits. (Now it is compulsory for both categories to join the pension scheme.) They brought the cases to the court, arguing that it is in breach of the principle of equality under law not provide remedies for persons with disabilities who cannot receive pension benefits due to the institutional flaws. The Tokyo and Niigata District Courts decided in favor of the plaintiffs, respectively in March and October 2004, both acknowledging state responsibility for failing to take necessary legislative measures. Following the judgments, the Act on Provision of Special Disability Benefit to Specified Persons with Disabilities was enacted in December 2004, under which some 60% of the amount of the disability basic pension benefits is paid to the persons concerned. Foreigners with disabilities were excluded again from the application of the Act, however.

Korean residents who cannot receive old-age or disability pension benefits have filed a number of lawsuits, seeking for the rectification of discrimination on the basis of nationality, but have lost in all the cases. Although they have always brought attention of the courts to the incompatibility with the International Covenants, their arguments have not been accepted. In December 2007 and February 2009, the Supreme Court dismissed the petitions for acceptance of final appeal on the ground of the incompatibility with the International Covenants, without examining the arguments at all. The latest judgment was given by the Fukuoka High Court in November 2011, which decided against the plaintiffs by quoting the only judgment by the Supreme Court that refer to the International Covenant (the First Petty Bench, 2 March 1989): "It should be understood that Article 9 of the ICESCR does not require the State to grant specific rights to individuals immediately, only confirming that the right to social security deserves protection through State social policies and declaring that the State has political responsibility to promote proactive social security policies towards the realization of the right".

Japan had already ratified the International Covenants when the National Pension Act was amended and the exclusion of foreigners was abolished. In the supplementary provisions (para.5) of the act to amend relevant legal provisions in accordance with the Refugee Convention, the government deliberately stipulated that transitional measures would not be taken, which led to the existence of foreigners who cannot receive pension benefits. The government ignores the United Nations by invalidating the Covenant through national legislation. In the reports to the human rights treaty bodies, furthermore, it continues to conceal the fact that those foreigners have been neglected.

The Human Rights Committee recommended the rectification of the discriminatory exclusion, which it pointed out incompatible with Articles 2 and 26 of the ICCPR (31 October 2008). Having conducted research on the difficulties faced by those foreigners, the Japan Federation of Bar Associations found that it is discriminatory treatment without reasonable grounds, which violates human rights, and recommended the provision of remedies as soon as possible (7 April 2010). The Japan Association of City Mayors and the National Association of Major Cities on the National Pension Scheme have submitted requests for remedial measures every year, reflecting national public opinion calling for the elimination of discrimination.

Recommendations

It is strongly recommended that the legislative and administrative bodies take immediate measures to resolve the problem of foreigners who cannot receive pension benefits, with a view to complying with the international human rights standards.

Issue 16 (abuse of older persons)

The Act on the Prevention of Abuse of Elderly Persons was adopted and has come to be known gradually among citizens. Annual surveys are conducted on the responses taken under the Act and its results published, which is effective for revealing actual situations and raising awareness among the people. In addition, the Social Welfare Act has reinforced the promotion of community welfare, which has created favorable conditions for improving community life of older persons.

Overall, cases of abuse of older persons can be categorized into (a) those by the staff of care institutions and (b) those by caregivers. The number of requests for advice on or reports of abuse from caregivers was 19,971 (in 2007), 21,692 (in 2008), 23,404 (in 2009), 25,315 (in 2010) and 25,636 (in 2011). While a significant increase has not been observed in the last few years, it is concerned that the incidence remains high.

According to the survey on the responses taken under the Act on the Prevention of Abuse of Elderly Persons in 2011/12, more than 40% of those who requested advice on or reported abuse were long-term care support specialists and other personnel involved in the administration of long-term care insurance. The result indicates that, if older persons are using services under the long-term care insurance scheme, they are likely to come to the attention of the authorities when they are abused. If not, it is difficult for the authorities to identify cases of abuse.

While the majority of cases are identified as physical abuse (64.5%), it has been pointed out that psychological abuse, neglect, economic abuse and, particularly in case of women, sexual abuse are intertwined. Precarious living conditions of care-giving family members may be associated with abuse of older persons, such as when they are badly off and depend on older persons' pension benefits. The problems cannot be addressed only from the perspectives of abuse and neglect.

80% of the victims are women, and older persons whose need for long-term care is at the lower or middle levels (Care Requirement Degrees 1-3 or Dementia Self-Sufficiency Levels II and III) are likely to be victimized; and sons are most likely (40%) to become perpetrators. This indicates that women become vulnerable to physical, psychological or economic abuse by their sons as they get weak physically and mentally. Older persons often become targets of their sons' economic hardships or anxiety, in particular when the sons have no regular occupation or when they have mental illness or disabilities. Although it is necessary to support care-giving family members in terms of stable employment and mental health, measures have not been taken in this regard in practice.

A community general support center is established at each junior high school district in principle. While it is part of the important functions of the center is to receive general requests for advice from older persons and to respond to cases of abuse, the center is not necessarily well-equipped in this regard, since it is also responsible for preventive long-term care services under the long-term care insurance scheme. Not all the centers are staffed with social workers specialized in the identification of and response to abuse and other problems in older persons' life. Also, not all the centers are operated by the authorities, and some municipalities contracts out the administration of all the centers to private entities. Thus the authorities are not fully responsible for the administration of these centers.

The number of requests for advice or reports from the staff of care institutions was 379 (in 2007), 451 (in 2008), 408 (in 2009), 506 (in 2010) and 687 (in 2011), which shows a significant increase in recent years. Poor working conditions of the staff have been identified as one of the contributing factors. Many of them are irregular workers and move from one workplace to another, being deprived of opportunities for adequate training or career-making. Since long-term care service providers have been forced to streamline the workforce due to excessive competitions among service providers under the long-term care insurance scheme, they are not necessarily well-staffed with regular workers.

Recommendations

1. Administrative focal points and community general support centers should be staffed with a sufficient number of specialists who can identify, not only abuse cases that came to the attention of the authorities, but also cases below the surface or high-risk cases.
2. The long-term care scheme has aggravated competition among service providers and made it difficult for them to collaborate with each other, which contributes to the difficulties in finding out hidden cases of abuse in the community. It is necessary to promote local networking among service providers, authorities and other stakeholders.
3. Since victims' sons and other perpetrators often have complex problems in their own lives, it is necessary to establish regular partnerships with professionals in other fields, such as support for children, disability welfare and prevention of domestic abuse against women, overcoming negative effects of the administrative fragmentation. Specific rehabilitation programs should also be developed for perpetrators, since it is important in preventive terms to provide them with support in daily lives, including support for finding employment.
4. Since it is easier to identify abusive situations of those who are using long-term care services, the long-term care scheme and other social services should be expanded so that attention be paid to all older persons. In institutions, it is necessary to introduce ombudspersons and other mechanisms to make it possible to identify cases of abuse by the staff.

Issue 17 (Article 10: Trafficking in persons)

In spite of the repeated concerns expressed by the UN bodies and foreign governments, the government of Japan has not taken sufficient measures to eliminate and prevent trafficking in persons, demonstrating lack of proactive stance compared to other countries.

Victimization through trafficking in persons is widespread in Japan. Victims are brought into Japan from all over the world for exploitation of labour or sexual exploitation; commercial sexual exploitation of Japanese women and girls is also seriously prevalent. However, only tens of persons have been acknowledged by the government as victims of trafficking in persons every year, being less than thirty in recent years. This reflects the fact that only the police and the immigration authorities decide whether someone is a trafficking victim or not, without disclosing the relevant criteria and involving non-profit organizations or lawyers in the process. Although some victims are prosecuted on the charge of violating the Immigration Control Act or other laws, little training has been provided for prosecutors and judges. Since little efforts have been made to raise awareness among the public, the issue of trafficking in persons is not recognized as a social problem. (According to a survey conducted by Polaris Project Japan, a non-profit organization, less than 20% of the public in Japan are aware of human trafficking.)

The government of Japan formulated the Action Plan to Combat Trafficking in Persons in 2004 and revised it in 2009. Inadequacy of the official measures, however, has frequently pointed by NGOs in

and outside the country as well as UN treaty bodies. Victims are not protected as such, being regarded as illegal workers, prostitutes or trainees/technical interns who deserted workplace in breach of the contracts and, in some cases, being arrested and deported.

Although the government explains that it is aware of the problem, leading to the formulation of the Action Plan as well as the guidelines on the protection of victims and prosecution of perpetrators, most of the victims who do not fit into particular categories (in particular, foreign women who are confined and forced to be involved in prostitution) are not protected. Sexual exploitation of a number of Japanese women and girls, labour exploitation of foreigners and sexual exploitation (without prostitution) in the entertainment industry is not regarded as trafficking in persons.

Measures for victims are primarily limited to temporary protection at women's consulting offices. No shelters exist for male victims. Women's consulting offices only provide short-term assistance before return to countries of origin, giving no support for restitution or the prevention of re-trafficking. Since legal support is not provided for claims for unpaid wages or compensations, victims are forced to return to their countries of origin with the possibility of re-trafficking due to poverty.

Recommendations

1. Comprehensive legislation should be adopted for the prohibition of trafficking in persons and the protection of victims, including the reinforcement of measures to curb demands leading to trafficking; awareness-raising and training among all the businesses that may be involved in the trafficking process (including recruiting and worker dispatching, advertisement, tourism and hotel industries); awareness-raising among the public; and the reinforcement of penalties against sexual and labour exploitation.
2. Victims of child pornography and child prostitution should be protected as victims of trafficking in persons. The Act on Child Prostitution and Child Pornography should be amended to criminalize possession of child pornography for private purposes.
3. More rigorous measures should be taken against human trafficking for the purpose of labour exploitation.

Issue 19 (single mothers)

(1) The income level of single parent households is low. According to the overview of the survey on single mother households and other households conducted by the Ministry of Health, Labour and Welfare, the average annual income of single mothers was JPY 2.23 million, their average annual earnings were JPY 1.81 million (JPY 1.71 million in the previous survey) and the average annual income of single mother households, which consist of 3.42 members on average, was JPY 2.91 million in 2010. The average annual earnings of single fathers were JPY 3.6 million (JPY 3.98 million in the previous survey) and the average annual income of single father households, which consist of 3.77 members on average, was JPY 4.55 million. Compared to the average annual income of households with both parents and children, which was JPY 6.581 million in 2010, the average annual income of single parent household is only 44.2% (single mother households) and 69.1% (single father households) of households with both parents.

(2) Disparities have been observed in children's motivation for further education. In 2011/2012, the Cabinet Office conducted a national survey on "the views and behavior of parents and their children", targeted at households with the ninth graders (14 to 15 years old), and published the findings according to the types of households. The survey showed that both boys and girls of single parent households achieved lower academic performance, compared to those of two parent households, and many of them

did not selected higher education as future options both in idealistic and realistic terms. 40.1% of children of single parent households wished to go to universities and graduate schools in the future, compared to 64.5% of two parent households, which demonstrated that children's wishes on future education are affected by the types of households. The survey also showed that children of single father households study less at home, which indicates that social support in children's daily lives is inadequate.

(3) According to the official statistics on the high school enrolment rates, the percentage of children who went on to high school (upper-secondary school) was 87.5% for those from the households on public assistance in 2010/2011, compared to 98.0% for those from general households (on the national average). The gap of 10.5 points indicates that poverty prevents children from continuing education.

(4) As part of the self-sufficiency support programmes for the households on public assistance, launched in 2005/2006, the Ministry of Health, Labour and Welfare has implemented support programmes for children, including for income security through the universal child allowance (instituted in 2010/2011), tuition waiver at the upper-secondary level (introduced in 2010/2011) and learning support for children from the households on public assistance. In 2009/2010, the Ministry of Health, Labour and Welfare announced the preparation and implementation of "the programme for children's healthy development", which was formally initiated in 2011/2012 as "the support programme for social places where children can feel safe and comfortable". While focus has been placed on poverty among child-rearing families through these initiatives, they do not result in children's motivations for the future in themselves, leaving many children being reluctant to go on to high school.

Recommendations

1. Measures should be taken to support daily lives of children of single parent households, including sending care workers to help them at home and developing community places to assist their studies after school.
2. Awareness-raising measures should be taken for employers to ensure that single parents can take necessary holidays for child-rearing.
3. More case workers should be put to work in order to promote employment of single parents while ensuring children's healthy development. Income security as well as tuition waiver at the upper-secondary level should also be promoted further.

Issue 19 (single older women)

According to the Comprehensive Survey of Living Conditions conducted by the Ministry of Health, Labour and Welfare, the percentage of aged households (with older persons who are 65 years old and over) among the total households increased from 24% in 1980 to 42.6% in 2010. Among others, the number of single older women has continuously increased, many of whom became single because they had lost or divorced their husbands or had not married.

Due to the problems of women's labour itself, such as precarious employment and low wages, women are likely to experience instability in their old age. Combined with troubles in marital relationships, single women become particularly vulnerable to poverty when they get old, which is demonstrated by the fact that single women's households constitute major part of the aged households (with older persons who are 70 years and over) in urban areas.

Although it has been pointed out that a significant number of older persons live in low-income households, whose standards of living are close to those of the households on public assistance, their

actual situation is not understood. The relevant statistics are insufficiently disaggregated by sex or geographical locations. Therefore measures have hardly been taken for these households.

Recommendations

The situation of low-income households, in addition to the households on public assistance, should be comprehensively surveyed in both quantitative and qualitative terms. Furthermore, mechanisms should be urgently established for monitoring the living of single older women, since they tend to be isolated from social relationships and thus be excluded from information on and resources for long-term care and other life support services.

Issue 20 (older persons affected by the Great East Japan Earthquake)

In the Tohoku (north-east) region of Japan, the declining rate of the population has been greater in municipalities with smaller population, which has resulted in the high and increasing rate of aging compared to the national average. This is largely because young and middle age groups have moved to large cities for employment opportunities.

Older persons have suffered from enormous psychological damages, being deprived of association with communities, land and bases for living. They are actually at a loss, not being able to have prospects for reconstruction of their lives particularly because they are old. Since temporary shelters are not designed specifically for older persons, many of them have become weaker in both physical and mental terms, leading to withdrawal in some cases. In addition, many of them cannot receive adequate support in daily lives, including preventive care and long-term care services, because of the serious shortage of care workers in the aftermath of the earthquake.

In particular, older persons living in the Fukushima area, which has also been affected by the nuclear disaster, have suffered from major changes in daily lives and anxieties. Even if they had lived with their children, many of them moved out from the prefecture after the earthquake, being worried about health hazards, leading to family disintegration in many cases.

Recommendations

1. Rather than reconstruction plans for the future decades, older persons need immediate opportunities for employment, mediation of family relationships, collaboration of community stakeholders for helping them and effective services for support in daily lives. Meeting places in temporary shelters, which have contributed to the reconstruction of communities, should be further established in their neighborhoods, so that older persons can use these places as the bases for developing association with communities.
2. It is essential to expand extensive and multi-faceted services for support in daily lives, including long-term care services, for older persons. Since it is cold in the Tohoku region and public transportation is less developed, it is essential to develop public transportation, along with intensive support services, in order to enable older persons to go out of the home.
3. Intensive and individualized livelihood support should be provided for older persons and their families living in Fukushima, the main areas affected by the nuclear disaster.
4. Comprehensive living surveys should be conducted through extensive interviews, with a view to understanding older persons' needs in daily lives in the affected areas, including on health and medical care, welfare and employment.

Issue 20 (children affected by the Great East Japan Earthquake)

The actual situation of children affected by the earthquake has come to be known through the surveys conducted by the Ministry of Education, focusing on the situation of schoolchildren and support for them. The situation of their parents has been surveyed by the Ministry of Health, Labour and Welfare, highlighting the problems faced by child-rearing families. On the basis of the findings, efforts have been made to bring them back to the situation before the earthquake.

Support for children through the existing structures is restricted, however, because the Great East Japan Earthquake caused enormous damages to adults, including professionals at school and day-care institutions, leading to psychological trauma in many cases. While new measures should be taken to address the challenges faced by the affected people from their own points of view, such perspectives and efforts have not emerged. Basic data for effective support is not publicly available.

In this context, the Reconstruction Agency should develop and implement support policies, on the basis of the analysis of the actual situation of children and child-rearing families affected by the earthquake, coordinating the activities of the relevant governmental bodies in their respective fields of competence. The Reconstruction Agency does not have its own budget, however, thus lacking financial and human resources to implement specific measures and projects in the affected areas.

Effective support for children, who are not given opportunities to talk about their own situation, depends on the attitude of those who are expected to provide support for them. Consequently, in many areas, reconstruction efforts for children have been undertaken in accordance adults' perspectives, which hardly reflect the philosophies of the UN Convention on the Rights of the Child (CRC). In a small number of areas where children have been heard or encouraged to participate, their views have not been integrated sufficiently into relevant plans.

Due to lack of appropriate care in the aftermath of the earthquake, different problems have emerged among children and young people. Delays in the reconstruction of families, schools and communities have caused fatigue among children, combined with insufficient responses. Children and young people act out their problems in different ways according to their ages and developmental stages. Still being unable to play, surrounded by the debris, children are affected by lack of association with reliable others and by inadequate sense of being supported, leading to isolation, withdrawal and rough behavior.

Recommendations

1. Rights-based support should be provided for children. One of the basic principles for reconstruction should be the mindset and methodologies of children's perspectives and rights. On the basis of the purposes and provisions of the CRC, measure should be taken to support children and their families, to rebuild schools and facilities, to facilitate the reconstruction of communities and to promote the development of child-friendly cities advocated by UNICEF. Basic legislation on children should be adopted at the national and local levels, reflecting the purposes and provisions of the CRC, as the legal basis of the rights-based reconstruction.
2. Reconstruction plans, including plans for disaster reduction, should be developed and implemented with the involvement of children themselves, listening to them and having them participate in different ways and forms, in line with the purposes of the CRC and the Vision for Children and Young People.
3. The staff of daycare centers and schools as well as other personnel directly involved in the provision of support for children has worked so hard for two years after the earthquake. Support for those who are involved in support for children should be promptly provide, including the guarantee of

rest, the provision of mental health care services and the appropriate arrangement and augmentation of the personnel.

4. Reconstruction from the earthquake obviously involves not only material aspects but also recovery of mental health, which is a long process. All measures should be taken to provide continuous support, including “not forgetting” about the affected people. It is also necessary to develop methodologies of social entrepreneurship and support for non-profit organizations so that those who are involved in support efforts can earn their livelihoods.

5. Rather than focusing only on school education and mental health care in relation to support for children, municipal plans for reconstruction from the earthquake should also integrate measures for the promotion of children’s play and activities, the provision of support and the creation of environment for their lives at home and in communities as well as the creation of child-friendly cities from children’s rights perspectives. In the planning process, it should be made a rule to listen to children, including by recruiting professionals who help them to speak out.

(Day-care)

Demands for day-care services have continued to be on the increase, mainly in urban areas. As a result of the establishment of more day-care centers and other measures taken by local municipalities, the number of young children on the waiting list for vacancies at day-care centers decreased for the first time after four years as of 1 April 2012. Nevertheless there are still 25,556 children (mainly in the 0-2 age groups) on the waiting list, which has led to the following problems.

(a) Some parents work longer or give up childcare leave before the prescribed period expires so that their children can be admitted into day-care centers, generating demands that would not exist if sufficient places are available at those centers and creating a vicious circle.

(b) In the admission into day-care centers, priority is given to children of parents who are able to work every working day for long hours. Thus children are often excluded from day-care if their parents are unable to work and receive public assistance, if they cannot find employment because of inadequate educational career or vocational training, or if they cannot get sufficient wages. It is thus difficult for families in need of support for child-rearing to make use of day-care centers for the purposes of strengthening self-sufficiency or providing therapeutic day-care for children with disabilities.

(c) The number of facilities and services that are not supervised by the authorities or public independent bodies, such as “baby hotels” and personal child-minding, is on the increase. Effective mechanisms have not been established to ensure that children’s rights are not violated in such facilities and services.

(d) According to an opinion survey published by the Cabinet Office in January 2013, 52% of the respondents supported the proposition that “Husbands should be breadwinners and wives should be homemakers”. Those who supported this proposition increased for the first time since the launching of the survey in 1992. The rate of increase is particularly significant among the twenties, with 21 points (56%) among males and 16 points (44%) among females compared to the rates in the 2009 survey. Social changes have discouraged women from being motivated to keep working.

Recommendations

1. A sufficient number of day-care facilities and services, which can be used safely and securely, should be made available to all children in need, irrespective of the situation and types of families. Rather than establishing large facilities for the purpose of efficiency, family-type forms of day-care should be developed by making small facilities in the neighborhoods of young children.

2. Day-care facilities should be made secure places where young children can achieve healthy development with the provision of support for children and their parents. For this purpose, methodologies should be developed and applied to review day-care facilities and services from the children's rights perspectives.
3. Since many families using day-care services are in need of help, social workers and other professionals who can assist child-rearing should be assigned to provide necessary care and support for child-rearing families.
4. Linkages should be developed between day-care services and other services used by children and their parents, such as playgroups, so that young children feel comfortable with day-care services. Views of young children and their parents should be heard in the development of such networks.

Issue 22 (Article 11: On the issue of homelessness)

(1) Adoption of the Act on Special Measures concerning Assistance in Self-Support of the Homeless

The Act on Special Measures concerning Assistance in Self-Support of the Homeless was adopted on 31 July 2002 as temporary legislation valid for ten years. The Act has had the following two problems:

- (a) It limits the definition of "the homeless" to those who live on street; and
- (b) It does not explicitly prohibit eviction of the homeless.

Another major problem has emerged as self-sufficiency assistance projects have developed in accordance with the Act. A number of homeless persons could not benefit from these projects because they were required to achieve economic self-sufficiency through regular employment, and those who did benefit from the projects were often forced to go back to street because they could not find regular employment. Twenty-five "self-sufficiency support centers" have been established throughout the country by 2011, the tenth year of the implementation of the Act. However, the proportion of the homeless persons who could find employment and achieve self-sufficiency remains at some 50%.

In July 2003, the Basic Policy on Assistance in Self-Support for the Homeless was also formulated in accordance with the Act. While several measures have been implemented throughout the country, more than 90% of the budgets for the measures on homelessness have been allocated to the above-mentioned self-sufficiency assistance projects; no other projects have been implemented that are noteworthy. Although the provision of public assistance was included in the Basic Policy, no progress had been observed until the Ministry of Health, Labour and Welfare issued a circular in March 2009.

(2) Emergence of the issue of "Internet cafe refugees"

Responding to the indication from different sources that there are precarious workers who are not living on street but cannot secure stable housing, the Ministry of Health, Labour and Welfare conducted "the survey on the actual situation of workers dispatched on a daily basis and of precarious workers who had lost places to live" in August 2007. The survey found that the estimated number of so-called "Internet cafe refugees" was some 5,400 throughout the country; the figure is likely to be much underestimated, because the number of "Internet cafe refugees" is more difficult to calculate than those living on street. Through the survey on the actual situation of their lives and work, it was found that their monthly earnings (133,000 yen on average) were less than the eligibility criteria for public assistance and that they were involved in dispatched day work on a temporary basis until they could find employment as regular workers.

(3) Findings of the 2007 Nationwide Survey of the Actual Situation of the Homeless (Survey on Actual Life Situation)

In September 2007, the National Task Force on the Actual Situation of the Homeless published the findings drawn from the 2007 Nationwide Survey of the Actual Situation of the Homeless (Survey on Actual Life Situation). Although the Ministry of Health, Labour and Welfare had reported in April, on the basis of the surveys conducted in January 2007, that the number of the homeless decreased to 18,564 from 25,296 in 2003, that they tended to live on street longer and that they were getting older, the Ministry considered that the effectiveness of the measures taken after the adoption of the Act could not be evaluated through the simple tabulation.

The detailed analysis by the task force, undertaken in collaboration with the Ministry, illustrated: that a new influx onto street could be observed (approximately one third of the sample); that some homeless persons (approximately one third of the sample) repeated the process of coming onto and leaving street; and that those who remain on street tended to live longer on street and be old (approximately one third of the sample).

(4) Revision of the Basic Policy on Assistance in Self-Support for the Homeless

The Basic Policy was revised on 31 July 2008 in accordance with the Act. On the basis of the discussions since the adoption of the Act, the revised Policy newly referred to “Internet cafe refugees”, stating that “those who are unemployed or in precarious employment (such as day work or dispatched day work) and who are in precarious housing conditions, having lost stable housing and staying at places like cheap lodging houses or all-night business establishments” are at risk of becoming homeless. However, the straightforward recognition that “Internet cafe refugees” are part of the homeless was not made.

(5) Emergence of a number of homeless persons

Affected by the Lehman economic crisis in the autumn of 2008, the number of irregular workers who lost job rose drastically; a number of them lost housing at the same time. At the end of 2008, assistance was provided for those workers who had lost job and housing at the same time in the forms of food distribution and advising services, which was called “Dispatched Workers’ Village for the New Year”. The initiative, which attracted national attention, built on traditional support activities undertaken by private organizations for day workers since 1970s.

In March 2009, the Ministry of Health, Labour and Welfare issued the notice on the provision of public assistance for those people, stating that those who had lost job and housing at the same time are not necessarily outside the scope of the scheme even if they have the capacity to work and directing that the scheme should be applied to them as well. In addition, “the second safety net” had been gradually developed to prevent them from being forced to live on public assistance, including training, life support benefits, housing allowances, comprehensive support loans as well as ad-hoc and exceptional stop-gap fund loans.

(6) Five-year extension of the Act on Special Measures

In June 2012, the validity period of the Act on Special Measures concerning Assistance in Self-Support of the Homeless is valid was extended for five years. Before the extension, some people had pointed out that the concept of “self-support” should embrace diverse ways of working, not only regular employment, or that the definition of “homelessness” should be expanded. Furthermore, an extensive survey on the homelessness in a wider sense, conducted by private organizations, had demonstrated that some 41,000 persons could have left homelessness every year. No changes were made to the Act, however, since there was little time left to discuss amendments.

Meanwhile, the Ministry of Health, Labour and Welfare have envisaged the formulation of “the Life Support Strategy” since around 2008. The concept has not been well-developed yet, however, since it is part of the Comprehensive Reform of Tax and Social Security plan, in which priority has been given to the discussion on the reduction of public assistance benefits. It is important to address the issue of the homeless in the Life Support Strategy, including ways to resolve the problems.

(7) Publication of the 2012 Report of the National Task Force on the Actual Situation of the Homeless

In January 2012, the survey on the round number of the homeless and their actual situation was conducted in accordance with the Act, which found out that there were 9,576 homeless persons in the country. As was the case in the 2007 survey, the Task Force analyzed the results and identified regional discrepancies in the relevant measures as well as the extent of appropriateness of the measures for different categories of the homeless.

Issue 23 (Article 12: workers’ rights infringed through radiation exposure in the work to bring the Fukushima Daiichi Nuclear Power Plant to stability)

(1) Actual situation of workers’ radiation to exposure

a. According to the General Overview of the Exposure Doses of the Workers at the Fukushima Daiichi Nuclear Power Plant, published by the Tokyo Electric Power Co., Inc. (TEPCO) on 3 December 2012, the level of the exposure doses has decreased in the work to bring the nuclear power plant to stability since the accident on 11 March 2011, resulting in the situation that “the overwhelming majority of the workers have sufficient leeway in terms of the exposure doses to the dose limit”.

One of characteristics of the health consequences of radiation exposure is, however, that it has no thresholds under which no consequences will be observed and that the probability of cancer and other diseases increases in proportion to the exposure doses. It is thus obvious that the health of the workers involved in bringing the nuclear power plant to stability will be affected according to the doses that they are exposed to.

b. In sum, 24,575 workers were involved in bringing the nuclear power plant to stability between 11 March 2011 and 31 October 2012; each worker was dosed with 11.85 mSv on average (the total sum of the accumulated doses was appropriately 290,000 man-mSv). On the other hand, 75,988 workers were involved in radiation-related works in the nuclear facilities throughout the country in the fiscal year 2009/2010 (April 2009 – March 2010), when there were no accidents in these facilities, and each worker was dosed with 1.1 mSv on average (the total sum of the accumulated doses was appropriately 83,000 man-mSv). The comparison demonstrates that the exposure doses among the workers in the Fukushima Daiichi Nuclear Power Plant after the nuclear disaster are extremely high.

Looking at the data for September and October 2012, when the level of the exposure doses during the work to bring the plant to stability had allegedly become stable, the number of the workers dosed with more than 10 mSv per month was 27 in September and 20 in October. In 2009, the level of the exposure doses was below 1 mSv per year for 80% of the workers, and the exposure doses of the most affected workers were no more than 23 mSv per year. The level of the exposure doses among the workers involved in bringing the plant to stability is and continues to be extremely high.

(2) Deficiencies in the legal regulation of the works exposed to radiation

a. Legal dose limits are the last stronghold against negative health consequences of radiation exposure. The International Commission on Radiological Protection (ICRP) identifies three basic

radiological protection principles as follows: “justification of a practice”, “optimization of protection” and “individual dose limits”. The first principle (“justification of a practice”) means that any practice involving exposure should not be introduced unless the practice produces sufficient benefit. The principle of “optimization of protection” means that the magnitude of individual doses and the number of people exposed should be kept as low as reasonably achievable (ALARA), economic and social factor being taken into account.

In line with these principles, Article 1 of the Ordinance on Prevention of Ionizing Radiation Hazards stipulates that “an employer shall seek to limit the exposure of their employees to ionizing radiation as low as possible”. Nevertheless, the workers involved in bringing the nuclear power plant to stability have been exposed to an enormous amount of radiation doses, based on the justification that individual doses are below the prescribed dose limits.

b. The exposure doses of many workers largely exceeded the prescribed dose limits, since the work to bring the nuclear power plant to stability immediately after the accident was regarded as “emergency work”. It is legally permitted to exceed the ordinary prescribed dose limits in emergency work, during which the dose limit is set at 100 mSv per year (50 mSv per year in ordinary work). The dose limit was made even higher in the work to bring the Fukushima Daiichi Nuclear Power Plant to stability, which was set at 250 mSv per year, until it was lifted on 16 December 2011.

These regulations have serious problems, however, in that they are part of the labour standards legislation providing for the minimum standards of workers under the control of employers. On the prerequisite that the probability of cancer and other diseases exists even if the level of the exposure doses is low, the dose limits are set for workers in accordance with the principle of “justification of a practice”. Nevertheless, an employer is allowed to “expose the workers under its control to radiation” two times as high as the usual dose limit in emergency work. In the context of the work bringing the plant stability, moreover, the dose limit was increased exceptionally and even “an exposure order” was permitted.

The 2007 recommendations of the ICRP refer to the management of workers’ exposure in “emergency exposure situations”, stating that emergency workers must be informed and be engaged in the work voluntarily. The relevant provisions in the present labour standards are contrary to this principle, in that an employer is allowed to “expose the workers under its control to radiation” in the context of the employer-employee relationship, in which workers have no choice.

c. The safety of nuclear facilities should be the responsibility of licensees of the operation of such facilities. Under legislation, however, licensees of nuclear facilities are not obliged to be responsible for the management of workers’ exposure to radiation.

In Japan, the Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors provides for the management of the safety of nuclear facilities. Under the Act, “a licensee of reactor operation” shall be responsible for safety measures, including the prescribed reports and matters subject to official approval.

However, under the Industrial Safety and Health Act and the Ordinance on Prevention of Ionizing Radiation Hazards, which provide for the radiation management for workers in nuclear facilities, “an employer” who “carries on an undertaking and employs a worker or workers” shall be responsible, instead of “a licensee of reactor operation” or “an operator of nuclear activities”. In other words, many business operators, its contractors and sub-contractors are to be responsible for the radiation management, having taken on different works to bringing the nuclear power plant to stability from the licensee of reactor operation.

d. Radiation-related works in nuclear facilities, including the work to bring the nuclear power plant to stability, are undertaken within these multi-layered contractor-subcontractor structures. While

the licensee of reactor operation has managerial liability as the original orderer, it has no direct responsibility for radiation exposure of workers.

Thus the labour authorities demand the licensees of reactor operation, by way of administrative guidance that lack explicit legislative basis, to exercise institutional radiation management. Actually, however, the licensees of reactor operation only receive reports from the contractors who compile the observed values of exposed doses in accordance with their legal obligations. It is impossible or extremely difficult to implement the principle of “optimization of protection” because different actors have different legal obligations.

e. With the shortage of workers involved in the works exposed to radiation as the background, a board member and field manager of a sub-contractor was found, in July 2012, to have had disguised the exposed doses of their workers by putting lead covers over the individual dosimeters with alarms of the workers involved in the work to bring the nuclear power plant to stability. While the subcontractor has direct liability for radiation management as an employer under the Industrial Safety and Health Act, it is difficult to hold the contractor accountable because it is only regarded that the contractor’s liaison and coordination had been inadequate. The licensee of reactor operation, which is the original orderer, cannot be hold accountable because it only made orders.

As a result of these deficiencies in the labour standards legislation, the rights of the workers involved in the work to bring the nuclear power plant to stability have been seriously infringed.

Recommendations

In order to ensure strict management of radiation management among workers involved in the work to bring the Fukushima Daiichi Nuclear Power Plant to stability, the government should be responsible for radiation management, providing effective support, guidance and research findings concerning work methods that will decrease exposed doses. In addition, licensees of reactor operation should be legally held accountable for the management of radiation exposure among workers in their facilities, with a view to ensuring effective management of radiation exposure.

Issue 24&25 (Article 12: Right to Health)

1. Availability of healthcare services

(a) Please provide information on the number of health professionals per population divided into different regions and departments. If there is a dearth of health professionals and uneven distribution in different regions and department, please explain this cause and the measures which the Government takes and the effectiveness of the measures.

(b) Although the Government’s report indicates the data of the WHO Regional Office for the Western Pacific (P.57, para.303.) and outline of the healthcare Services in Japan (PP.58-59, paras.314-319), there is no mention of the measures which the Government has taken in order to ensure the availability of health care.

(c) Japan has 289,669 physicians, with 2.25 physicians per 1,000 of population⁴. This number is lower than the OECD average of 3.1 physicians per 1,000 of population and ranks Japan 30th among 40 OECD countries⁵. Japan has 99,426 dentists, with 0.78 dentists per 1,000 of population⁶. Japan has 267,751 pharmacists, with 2.1 pharmacists per 1,000 of population⁷. Japan has 1,295,670 nurses, with 10.15 nurses per 1,000 of population⁸; this number is somewhat higher

⁴ Op.cit. WHO.

⁵ Op.cit. OECD.

⁶ Op.cit. WHO.

⁷ Ibid.

than the OECD average of 8.4 nurses per 1,000 of population⁹. Japan has 27,789 midwives, with 0.22 midwives per 1,000 females of population¹⁰.

According to data from the OECD, Japan has 14.3 obstetricians/gynecologists per 10,000 females of population; this number decreased 0.8% from 2000 to 2009 while the OECD average increased 1.5% to 26.8 obstetricians/gynecologists per 10,000 females of population during the same period¹¹. In addition, Japan has 10.6 psychiatrists per 10,000 of population versus an OECD average of 15.4 psychiatrists per 10,000 of population¹². Japan also has 5.9 graduates of medical schools per 10,000 of population, which is lower than the OECD average of 9.9 graduates of medical schools per 10,000 population¹³. Japan has 36.8 graduates of nursing schools per 10,000 of population, which is somewhat lower than the OECD average of 39.1 graduates of nursing schools per 10,000 of population.

Results of a Survey of the Actual Number of Physicians Needed in Hospitals and Other Facilities put out by the Ministry of Health, Labour and Welfare in 2010¹⁴ indicated that 18,288 physicians needed to be hired. The total number of physicians at the time and the number of physicians that needed to be hired was 1.11 times the number of physicians at the time. The prefectures or cities with the greatest number of physicians that needed to be hired (relative to the number of physicians at the time) were Shimane Prefecture (1.24 times the number of physicians at the time), Iwate Prefecture (1.23 times the number of physicians at the time), and Aomori Prefecture (1.22 times the number of physicians at the time). The departments with the greatest number of physicians that needed to be hired were Rehabilitation (1.23 times the number of physicians at the time), Emergency Medicine (1.21 times the number of physicians at the time), and Respiratory Medicine (1.16 times the number of physicians at the time). The number of physicians needed to handle deliveries was 1.1 times the number of physicians handling deliveries in that time. The prefectures or cities with the greatest number of physicians needed to handle deliveries were Gifu Prefecture (1.29 times the number of physicians handling deliveries), Shimane Prefecture (1.25 times the number of physicians handling deliveries), and Aomori Prefecture (1.24 times the number of physicians handling deliveries). These figures indicate a dearth of physicians and uneven distribution of physicians in different regions and departments.

Results of a 2009 Survey of Communities with No Physicians & a Survey of Communities with No Dentists put out by the Ministry of Health, Labour and Welfare in 2000 indicated there were 705 communities with no physicians nationwide, with a population in these communities of 136,272. The prefectures or cities with the greatest number of such communities were Hokkaido (101 communities, representing a population of 13,086), followed by Hiroshima Prefecture (53 communities, representing a population of 9,467) and then Kochi Prefecture (45 communities, representing a population of 7,352). There were 903 communities with no dentists, with a population in these communities of 236,527. The prefectures or cities with the greatest number of such communities were Hokkaido (97 communities, representing a population of 12,842), followed by Hiroshima Prefecture (63 communities, representing a population of 12,199) and then Kochi Prefecture (57 communities, representing a population of 11,179).

In response to this dearth and uneven distribution of physicians, the Government announced Urgent Measures for an Increase in Physicians in 2007. At the national level, these measures created a system for the temporary dispatch of physicians in emergencies to communities with a dearth of physicians and these measures promoted the training of physicians working in communities or specialties with a dearth of physicians. In 2008, the Ministry of Health, Labour and Welfare set out its Vision for Safe and Desirable Medical Care that included measures to increase the number of physicians, improve working conditions for physicians, and remedy the imbalance of physicians in certain specialties¹⁵.

(d) Take necessary measures continuously to dissolve dearth of health professionals and uneven distribution of health professionals in different regions and departments.

2. Accessibility of healthcare services

⁸ Ibid.

⁹ Op.cit. OECD. According to data from the OECD, there were 9.5 nurses (per 1,000 population) in 2009.

¹⁰ Op.cit. WHO. According to data from the OECD, there were 32.5 midwives per 10,000 female population in 2009 compared to an OECD average of 69.8 midwives.

¹¹ Op.cit. OECD.

¹² Ibid.

¹³ Ibid.

¹⁴ Ministry of Health, Labour and Welfare, Overview of the Survey on the Actual Number of Physicians Needed in Hospitals, 2010.

¹⁵ Ministry of Health, Labour and Welfare, A Vision for Safe and Desirable Medical Care, 2010.

(a) Please provide information on the number of population who are not covered by National health insurance and who cannot access medical treatment under insurance sufficiently. Also please explain the measures which the Government will take in order to ensure to provide basic health care for such people.

(b) Although the Government's report gives an outline of the National health insurance system (PP.40-42), there is no mention on the actual application of this system.

(c) All citizens of Japan are mandatorily enrolled in the public medical insurance system. Japan has adopted a universal health insurance system that allows the receipt of necessary medical care at a fixed out-of-pocket cost, but in recent years some people have not had access to needed health care since they were unable to pay premiums or pay a medical facility's accounting office the full amount. Under National Health Insurance, an individual is asked to return his Health Insurance Certificate when his premiums are in arrears for a year, excluding a natural disaster or other particular circumstances stipulated by other government ordinances, and the individual is issued a Certificate of Eligibility. When the individual with the Certificate of Eligibility is seen by a medical facility, the individual must pay the full amount of healthcare costs covered by insurance at the medical facility's accounting office and then be reimbursed later by an insurer for 70% of the health care costs covered by insurance. According to statistics from the Ministry of Health, Labour and Welfare (2009), 4.36 million households were in arrears with their premiums, representing 20.6% of the households (21.13 million households) covered by National Health Insurance. Japan had 1.28 million households (6.1%) that were issued a Short-term Health Insurance Certificate¹⁶ and 307,000 households (1.5%) that were issued a Certificate of Eligibility¹⁷. People who have difficulty paying their premiums would presumably have difficulty paying 100% of fees out-of-pocket to a medical facility. In actuality, a privately conducted survey found that 1 in 73 typically insured individuals received care with a Certificate of Eligibility (2009)¹⁸. In addition, another privately conducted survey of instances of a "delayed death due to financial reasons" at 1,767 medical facilities in 2010 indicated that 10 individuals were issued a Short-term Health Insurance Certificate, 7 were issued a Certificate of Eligibility, and 25 were uninsured. Of the 25, 60% were unemployed and 20% were temporary workers¹⁹. There were 3.34 million unemployed in Japan in 2010. Japan's unemployment rate was 5.1%²⁰, and Japan had 17.55 million temporary workers (34.3%)²¹.

(d) In order to ensure the accessibility to healthcare for people who are not covered by the National health insurance entirely or sufficiently, investigate the actual condition of these people and review the measures of setting and collection of insurance bill and application on issuing a Certificate of Eligibility.

Issue 24&25 (Article 12: Right to Health of Medical services for foreigners, including undocumented workers and trainees)

(1) Emergency medical services

¹⁶A Health Insurance Certificate that is valid for several months as opposed to a normal Health Insurance Certificate, which is valid for 1 year (except in special circumstances).

¹⁷ Ministry of Health, Labour and Welfare, The Status of (Municipal) Financing of National Health Insurance in 2009, 2011.

¹⁸ Japanese Medical and Dental Practitioners for the Improvement of Medical Care (Hodanren), Results of surveys (2008 & 2009) on the ratio of insured individuals receiving care with a Certificate of Eligibility for National Health Insurance, 2010.

¹⁹ Japan Federation of Democratic Medical Institutions, 2010 Survey of Deaths Due to a Lack of Health Insurance, 2011.

²⁰ Ministry of Internal Affairs and Communications, 2010 Labour Force Survey, 2011.

²¹ Ministry of Internal Affairs and Communications, Labour Force Survey October–December 2010, 2011.

The right to health is one of the fundamental human rights, which is essential for the exercise of other rights. In particular, everyone is entitled to temporary and emergency medical services, irrespective of nationality, residential status or immigration status.

While Japan has applied the scheme of medical insurance for the whole nation since the National Health Insurance Act came into force in 1958, the government does not admit certain categories of foreigners into the scheme, including short-stay travelers, foreigners in irregular situations and asylum-seekers in the process of refugee determination procedures.

Some municipalities operate emergency medical services for foreigners, compensating for part of uncollected medical bills on their own budgets. The central government also compensates for part of the emergency medical costs exceeding 300,000 yen. These schemes hardly function as comprehensive emergency medical services, however, because the compensation is limited and because there are wide discrepancies in terms of their availability, depending on places and circumstances.

Consequently, medical and health care services in Japan are not affordable for foreigners who are socially disadvantaged. This leads to refusal of treatment by medical facilities or reluctance on the part of foreigners themselves to use these services, which gives grave and serious impact on their life and health. Some examples include:

- A foreigner fell into a dangerous condition because of serious tuberculosis, but a medical facility refused to admit him because he was not covered by medical insurance. He could not receive timely treatment and died.
- A foreigner with the onset of AIDS symptoms was not admitted into hospital by a doctor, who urged him to go back to his country, despite the fact that he was so ill that he could hardly walk. Although he was admitted into hospital with the assistance of an NGO, it was too late and he died.
- A foreigner who had become destitute and homeless could hardly walk because of lung cancer. When his supporter took him to a national hospital, the hospital demanded the supporter to be responsible for his medical expenses, which made it possible for the patient to be admitted smoothly.

Recommendations

Although Japan has certain capacities to provide public health care and medical services, the government has failed to make efforts to secure such services, both in legal and practical terms, for the most vulnerable or marginalized people living in Japan. The government should ensure, at least, that everyone can receive emergency medical services.

(2) Medical interpretation

Services provided at medical and health care facilities should be accessible to all without discrimination. In order to enable patients to receive appropriate services, it is particularly important to secure their right to seek, receive and impart information and ideas about health issues, in a sufficient manner, by promoting communication between the doctor and the patient as well as informed consent. In particular, it is essential for foreigners whose mother tongue is different from the major languages in their place of residence to be provided with interpretation and translation services without discrimination in the context of medical and health care services.

Medical interpretation services have not been developed in Japan, where the overwhelming majority of the inhabitants routinely use the Japanese language. According to reports by the municipalities that have conducted surveys on this issue, foreigners who cannot understand Japanese very much are sometimes reluctant to go to hospital or unable to receive appropriate medical services because of language difficulties.

In these circumstances, many foreigners are forced to rely on family members, friends or others who are close to them. As a result, cases of disadvantages to the patients have reported, including serious infringement on their privacy, divorce or dismissal on the ground of illness and inappropriate interpretation due to poor language ability. Some examples include:

- Many foreigners who cannot understand Japanese very much ask family members or acquaintances to serve as interpreters when they go to medical facilities. They are forced to be notified about their conditions, including serious illness, through family members.
- Since husbands, wives or colleagues are called on to serve as interpreters even in HIV testing, many foreigners are reluctant to receive HIV testing, fearing divorce or discrimination. In one case, a foreigner came to know that he was infected with HIV when he temporarily returned to his country of origin, but he could not receive medical services in Japan and was admitted into hospital when he got critically ill.
- In some cases, foreigners were dismissed after having been found out about their infection with HIV or tuberculosis through interpreters associated with their employers.
- In many cases, children attending primary school are the best speakers of Japanese in the family. They often skip school in order to accompany their parents to hospital for serving as interpreters, and medical facilities tolerate it. In some cases, children were expected to serve as interpreters for the notification of serious illness.

While some non-profit corporations or municipalities provide medical interpretation services on a project basis, most of the interpreters are volunteers. Since these services depend on personal willingness, they have problems in terms of the continuity, quality control or regional equity.

Recommendations

Given the difficulties faced by foreigners who cannot understand Japanese very much in receiving appropriate medical services, the government should develop medical interpretation services and allocate necessary budgets for this purpose.

Issue 27 (Article 13: Right to Education)

1. Harsh working conditions of teachers

Teachers are placed in harsh working conditions in the primary and secondary levels of education, resulting in the increase of the instances of suspension from work among them, which requires urgent efforts to solve the problem.

The former government, replaced by the new government in December 2012, decreased the number of pupils per class from 40 to 35 at the first and second grades, with a view to enhancing the quality of education and to improving working conditions of teachers. Although the same policy was planned to be extended to the third grade and onward, the new government has not sought to implement the policy, which raises the concern that the problem may continue.

8,544 teachers (decreased by 116 in number from the previous year) took sickness leave in the year 2011/2012. Among them, 5,274 teachers (decreased by 133 by number from the previous year) were absent from work due to mental illness, which amounts to 61.7% of the total sum. The number of sickness leave because of mental illness exceeded 5,000 for the consecutive four years, remaining at a high level, while the level of sickness leave on other grounds has been rather stable. The percentage of teachers who took sickness leave because of mental illness has almost tripled for the last decade. The number of newly recruited teachers who leave work because of illness has also increased for the last decade, being around 300 in number; almost 90% of them left work because of mental illness. Almost half of the teachers who are absent from work because of mental illness have worked at their schools less than two years. (Note: The Ministry of Education compiles statistics only on teachers, thus other school staff being not included.) The expansion of mental health measures at school is urgently necessary in this context.

Possible factors contributing to mental ill-health among teachers may include heavy workload of teachers as well as deterioration of supportive relationship among colleagues. The environment

surrounding schools has gone through major changes, reflecting the times and social conditions. Society, community and parents now make diverse demands on schools, where teachers and other school staff have to work harder and harder, including for making intensive responses for each child, taking up more lessons and routine duties and dealing with parents. In addition to hours of teaching, teachers' duties include learning support, coaching in and supervision of club activities and liaison works with communities. Changes in the amount and quality of teachers' work, combined with the increase in the amount of work per person, have forced them to work overtime. Although it is desirable that schools be managed with cooperation and collaboration of the whole staff, supportive relationship among colleagues has weakened while teachers and other school staff have become increasingly busier, pressed with their own work, which has made it more difficult to provide support with each other and to deal with those who have mental problems.

The actual working conditions of teachers have continued to deteriorate, regularly being forced to work overtime, unable to take breaks and hardly being able to take holidays freely. While teachers and other school staff are highly motivated, they tend to be less satisfied in terms of working hours or holidays. According to the survey conducted by the International Economy and Work Research Institute, teachers' motivation is highly affected by whether or not they are being able to manage teachings and classes according to their ideals; they may be likely to be burnt out, being overstrained physically and mentally because they are driven by such enthusiasms, ideals and a sense of vocation. In addition, partly because teachers are legally not entitled to allowances for overtime work and working on holidays, personal management by local boards of education and headmasters does not function in a sufficient manner, resulting in lack of measures to prevent long working hours among teachers and other school staff.

Since balanced and rewarding conditions will lead to motivated, healthy and sustainable work, it is utmost important to create, through the improvement of working conditions (such as holidays and working hours) and the presentation of organizational visions along with dialogue, an environment where teachers and other school staff can work with mental security.

Trends of the number teaching staff who took sickness leave (compiled by the Ministry of Education)

School year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
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Total number of teaching staff (A)	925,938	925,007	921,600	919,154	917,011	916,441	915,945	916,929	919,093	921,032
Sickness leave (B)	5,303	6,017	6,308	7,017	7,655	8,069	8,578	8,627	8,660	8,544
Sickness leave because of mental illness (C)	2,687	3,194	3,559	4,178	4,675	4,995	5,400	5,458	5,407	5,274
Percentages										
(B)/(A)	0.57	0.65	0.68	0.76	0.83	0.88	0.94	0.94	0.94	0.93
(C)/(A)	0.29	0.35	0.39	0.45	0.51	0.55	0.59	0.60	0.59	0.57
(C)/(B)	50.7	53.1	56.4	59.5	61.1	61.9	63.0	63.3	62.4	61.7

Trends of the number of newly recruited teachers who voluntarily left work because of illness (compiled by the Ministry of Education)

School year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Because of sickness (A)	15	10	61	65	84	103	93	86	101	118
Because of mental illness (B)	-	-	-	-	-	-	-	83	91	103
(B)/(A) %								96.5	90.1	87.3

Note: The number of newly recruited teachers who voluntarily left work because of mental illness has been compiled only after the school year 2009.

2. Tuition waiver at the secondary and tertiary levels

Significant progress was made in terms of responsibility of the society as a whole for child development by the introduction of the tuition waiver at the upper-secondary (high school) level since April 2010. The withdrawal of the reservation to Article 13(2)(b) and (c) of the ICESCR (September 2012) is also appreciated.

There are remaining challenges, however, including that not all the students can benefit from the waiver. Nevertheless, the new government is considering the introduction of the income limit with regard to the tuition waiver, which raises concern about delays in the resolution of those challenges and of the progressive introduction of free education.

(1) Not all the students at the upper-secondary level can benefit from the tuition waiver.

It is left to local municipalities whether or not they would apply the tuition waiver to so-called repeaters (those who stay in school exceeding the standard education period, which is 36 months for full-

time school and 48 months for part-time school) or to graduates who are re-enrolled in school for learning again. Consequently, there are regional disparities in the application of the tuition waiver. A survey conducted by Japan Teachers' Union revealed that more than 1,500 students (2010) and more than 2,000 students (2011 and 2012) were required to pay tuition fees.

In addition, Korean schools have been excluded from the tuition waiver. In this regard, the UN Committee on the Rights of the Child expressed concern that "schools for children of Chinese, North Korean or other origin are insufficiently subsidized" in its concluding observations on the periodic report of Japan (June 2010). It is necessary to include Korean schools in the tuition waiver scheme promptly.

(2) Students are forced to bear significant amounts of educational costs other than tuition fees.

Students are forced to bear significant amounts of educational costs, other than tuition fees, in order to learn at upper-secondary schools. According to a survey conducted in 2010 by the Ministry of Education, they paid JPY 237,699 on average per year to school (in case of public high schools). In the year before the introduction of the tuition waiver scheme, 225,000 students were exempted from paying the tuition fees because of the low income of their families. For such students, at least, access to upper-secondary education is not secured only by way of the tuition waiver. It is necessary to take measures to reduce the burden of educational costs, along with the creation of scholarships without reimbursement.

Survey on the Costs for Children's Learning in 2010 (the Ministry of Education)

School trips and study visits	JPY 32,324
Fees for PTAs, student councils and other bodies	JPY 48,777
Books, school supplies and material	JPY 36,539
Costs for extracurricular activities	JPY 41,570
Cost for school commute	JPY 74,436
Others	JPY 4,023
Total	JPY 237,669

(3) Challenges faced by those who finished education at the lower-secondary level and those who dropped out from high school

According to the Ministry of Education, 53,937 students (1.6% of the total number of high school students) dropped out from high school and more than 17,000 students were not enrolled in upper-secondary schools in 2011. They are treated as junior high school graduates. According to a survey conducted by the Cabinet Office, only 58.6% of the high school dropouts can find employment and 43.9% work part-time. The effective ratio of job offers to junior high school graduates is less than one, which means that many of them can only find irregular jobs, being economically disadvantaged with few opportunities to move to regular jobs. In order to materialize the purpose of Article 13(2)(b), opportunities should be expanded for junior high school graduates and high school dropouts by making vocational training for them free of charge.

(4) Higher education

Further measures are required to be taken by the State to materialize the philosophy of the ICESCR with regard to higher education. While students have to bear various costs other than tuition fees in order to learn at universities, they had to pay JPY 535,800 (national universities), JPY 743,699 (humanities departments of private universities) and JPY 1,040,472 (science departments of private universities) respectively as the tuition fees, according to a survey conducted by the Ministry of Education in 2011. Since they have to bear other costs, such as the costs for facilities and equipment, significant burden is imposed on students at the tertiary level and their guardians.

Private universities

Department	Tuition fees (JPY)	Admission fees (JPY)
Humanities	743,699	253,167
Science	1,040,472	267,869
Medicine and dentistry	2,896,519	1,020,487

National universities

Tuition fees (JPY)	Admission fees (JPY)
535,800	282,000

With regard to the costs other than the tuition fees, the average university education costs (including the tuition fees and the costs for school commuting and textbooks) amounted to JPY 1,443,000 per year, according to a survey of 21,103 households that used the national educational loans in February – March 2012, conducted by Japan Finance Corporation. The average total costs for going to universities, including the costs for extracurricular learning (tutoring schools, reference books, etc.), amounted to JPY 1,499,000 per year. The average annual income per household was JPY 5,578,000. The average proportion of the total educational costs, including for all children enrolled in primary and secondary schools, was 38.6%. The lower the income level of the household is, the heavier the burden of the total educational costs becomes; in particular, the average proportion of the total educational costs is 58.4%, more than half of the annual income, for the stratum with the annual income of two to four million yen. Since national scholarships are not adequate in themselves, 60.6% of the households cut the non-educational expenses, while young people themselves work part-time in 41.5% of the households, with a view to cover the educational costs.

In addition, the poverty rate among children (below eighteen) is 14.9% in Japan, which ranks at the 27th among thirty-five developed countries, according to UNICEF. The total number of pupils and students in need of assistance was 1.55 million in 2010, which increased by 46% since 2001 and is still on the rise.

The existing national scholarships are not sufficient for those children and young people. In addition to the tuition waiver, it is urgently necessary to establish scholarships without reimbursement.

Issue 28 (Article 2:Non-Discrimination, Article 13: Right to Education)

Chapter . Reply to the first sentence of para. 28

Incidents of verbal and physical attacks against Korean school students have been occurring when the tension between Japan and Democratic People's Republic of Korea rises tension. The only measure that the Japanese Government took for such incidents is distribution of some enlightening posters and pamphlets calling for "Stop discrimination", although such measure has not been effective.

In the last several years, the number of demonstrations repeating hate speech against Non Japanese nationals, especially Korean, communities has been increasing in Japan (Annex1). The police are just gazing at the demos without restricting them because there is no anti-discrimination law nor hate speech legislation in Japan so that the demos has been unchecked.

The Japanese Government stated in the para. 145,146 and 147 of the Reply to the issues raised in paragraph 28 of the list of issues that the Human Rights Organs of the Ministry of Justice has been in good effect on the issue of discrimination against foreigners. However, the Organs do not have compulsory authority on investigations nor executions so that there is little effectiveness. In addition, the Organs have not been functioned on facing with human rights infringements by public institutions; rather than that, the Organs confirm the discrimination. For instance, as to mention in the chapter below, only Korean high school students have been excluded from the "the free tuition at public high schools and high school enrollment support fund system (para.151 and152 of the Reply of Japan). In this regard, one of parents of Korean high school students made an allegation for this Organ as a human rights infringement case on August 2012. Surprisingly, however, a notice with just one sentence saying "there is no human rights infringement" sent to the parent on February 2013 without having any interview as such with the person concern.

Concerning to the education for eliminating discrimination, there is no policies and laws which guarantee the education. On this point, although the Japanese Government explained in the para.,148 of the Reply of Japan that "elementary, and lower and upper secondary, schools provide children with education to deepen international understanding based on the Courses of Study", there is no phrase on non-Japanese nationals nor ethnic minorities in Japan including resident Koreans and children of migrant families, anti-racial discrimination education nor the history of the colonial rule over Korean Peninsula. On the contrary, the Japanese Government made sweeping revision on the Fundamental Act of Education in a narrow nationalistic way; the Government strengthened assimilative education by imposing domestic-oriented education into the Act.

For that reason, there is considerable number of Japanese children who do not know the fact that resident Koreans come to live in Japan as a result of the Japanese colonial rule over the Korean Peninsula. In addition, discrimination and infringement against Korean students still exist in Japanese schools; 80-90% of Korean students attending to Japanese public schools hides their real Korean name and use Japanese name in order to avoid discrimination and harassment.

< Proposal for recommendations >

- 1、 The State party should conduct nation-wide investigation on discrimination against children belonging to foreign and ethnic minorities including incidents of verbal and physical attacks towards pupils and students of Korean schools.
2. The State party should immediately establish anti-racial discrimination legislation.

3. The State party should set up for an independent national human rights institution based on the the Principles relating to the status of national institutions (Paris Principle) in 1991.
4. The State party should establish the law systems and policies which ensures education for eliminating discrimination against national and ethnic minorities including history education on the perspective of reflection on the colonial rule over Korean peninsula.
5. The State party should strengthen human rights education and enlightening activities in order to eliminate violence based on racism. The government should also consider taking concrete countermeasure for mass media not to inform the report which leads to racism but to inform the report fighting for racial bias.

Chapter II. Reply to the second sentence of para. 28

Firstly, as the Special Rapporteur on the human rights of migrants stated in 2011, “according to the School Education Act, elementary and middle education is compulsory for Japanese children, but not for foreign children, since the law obliges only Japanese nationals to send their children to an elementary school and junior high school. According to the Ministry of Education, Culture, Sports, Science and Technology, Japanese elementary and secondary schools may accept foreign children of school age “if they wish to enter” schools. Schools and municipalities have no legal obligation to accept migrant children and education is not secured for those children as a legal right. Moreover, there is no obligation for municipalities to offer specific services or language teaching to migrant children. Each municipality determines its own policy at its discretion” (para. 62, A/HRC/17/33/Add.3). As the Special Rapporteur pointed out, Japan has not guaranteed these children’s access to education generally. Therefore, nearly 10,000 children belonging to migrant families such as Brazilians and Peruvians do not attend any schools.

As to this point, **the Government explains in the para. 149 of the Reply of Japan** that “every foreign child in Japanese public school is ensured an equal opportunity to receive education as to a Japanese national”, however, it is a fraud because the Government does not admit the legal right to education.

Secondly, although the Committee strongly recommended that “mother tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities” (E/C.12/1/Add.67.para.60) in 2001, the Japanese Government has not allowed mother tongue instruction in the official curricula in public schools. In addition, due to the absence of law and subsidies by the Government for mother tongue education, even extracurricular classes for minority languages and cultures are taken place in only few schools in the limited area such as Osaka. Teachers of these special classes work as part-time instructors under severe work conditions.

<Proposal for recommendations>

- 1, The right to education for foreign children should be recognized and guaranteed by law (cf. para. 81 (c), A/HRC/17/33/Add.3).
- 2, Mother tongue instruction should be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities, **as the Committee recommended previously.**

Chapter III. Reply to the third sentence of para. 28

Concerning “the free tuition at public high schools and high school enrollment support fund system” in paras. 151 & 152 of the Replies of Japan, 39 minority schools were applied to this system and the students of these schools have received subsidies from the central government, regardless of their nationality.

Regarding Korean high schools in Japan, these schools applied for the system according to the rule (6) (c) in para. 152 of the Reply of Japan, but the Government had postponed its decision of screening for two and a half years. The new Government of Japan announced a policy to exclude these schools from the system and delete the rule (6) (c) above, right after the Liberal Democratic party took office in December 2012, for the reason of the DPRK’s abduction of Japanese citizens. As a result, the Government deleted the rule (6) (c) above to exclude these schools from the system and decided not to apply the system to these schools on 20 February this year (Annex2, 3 &4).

Although the Government referred to the rule (6) (c) above in the Replies of Japan submitted in January this year, this reference is false because the Government announced a policy of deleting the rule in December 2012.

Concerning this issue, the CERD expressed concern before the implementation of the system in 2010 (CERD/C/JPN/CO/3-6, para.22)

Unlike the central government, all local governments and many municipalities where Korean schools are located had granted subsidies to these schools, although the amount of them is approximately one-tenth of the Japanese public schools or one-severalth of private schools. However, the decision of the central government to exclude Korean schools from this tuition system has heighten the Anti-Korean Racism in Japan and it has led to the new discriminative situation in which seven local governments including Tokyo and some municipalities have stopped their subsidies to these schools (Annex5).

In such situation, Korean schools are forced to rely on private donations, which are not exempted or deductible from taxes, unlike donations to private Japanese schools or international schools. The MEXT granted tax exemption treatment to the donations for some foreign schools such as international schools for European and American in 2003, but not for other schools for foreigners. On this issue, the CCPR urged Japan to ensure the adequate funding of Korean schools, by increasing state subsidies and applying the same fiscal benefits to donors of Korean schools as to donors of other private schools.” (CCPR/C/JPN/CO/5, para. 31) The CERD and the CRC also referred to this issue. (CERD/C/JPN/CO/3-6, para. 22, CRC/C/JPN/C/CO3, para. 72)

In addition, most schools for children of migrant workers such as Brazilian schools and Peruvian schools have not been able to receive any financial support from the central government nor local government, because those schools have not been accredited as “miscellaneous school”. There were approximately 110 Brazilian schools in 2008, but the number of the schools decreased by half because many parents were dismissed from the workplace under the influence of the economic downturn. Consequently. 30% of Brazilian children who went to Brazilian schools which had been closed after 2008 do not go schools at all

<Proposal for recommendations>

- 1, The State party should legislate for institutional support equivalent to Japanese schools for minority schools.
- 2, The State party should give minority schools which are accredited as “miscellaneous school” financial support equivalent to at least Japanese private schools until the legislation for institutional support for foreign schools is adopted.

- 3, The State party should give urgent financial support to foreign schools regardless of the accreditation of “miscellaneous school” in order to guarantee the right to education for minorities.
- 4, The State party should withdraw the decision to exclude Korean schools from “the “the free tuition at public high schools and high school enrollment support fund system and apply the system to these schools.
- 5, The decisions to stop subsidies for Korean schools by some local governments should be withdrawn and the adequate subsidies should be granted to these schools.
- 6, The State party should abolish discrimination among minority schools on tax exemption treatment for donations.

CONTACT

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- 1, The images of demonstration by anti-Korean racists in Korean Town of Tokyo
- 2, The Statement of President of the Japan Federation of Bar Associations objecting to exclusion of Korean Schools from applying Free High School tuition policy
- 3, The Article of The Japan Times (21 February, 2013)
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Annex 1: The Images of Demonstration by Anti-Korean Racists (February 2013, in Korean Town of Tokyo)



Koreans, hurry up and hang yourselves!



Koreans, Hang yourselves!
Drink poison! Leap to your deaths!



Good or bad, kill all Koreans!

Video URL: <http://matome.naver.jp/o dai/2136038266418742101>

Annex2: Statement of President of the Japan Federation of Bar Associations objecting to exclusion of Korean Schools from applying Free High School tuition policy

The Ministry of Education, Culture, Sports, Science and Technology (MEXT) announced a proposed amendment to ministerial ordinance on December 28th, 2012, which amends a part of enforcement regulations regarding free tuition for public high schools and subsidies for private high schools. As for the high schools where foreign students are enrolled such as international schools and ethnic schools, the current enforcement regulations define the subject for the policy as either high schools that are confirmed through its embassy to have curriculum equivalent to that of high schools in its native state, or high schools that are certified by international evaluation body, while the rest of the schools that are evaluated as having curriculum equivalent to that of Japanese high schools can be the recipient of the subsidies, whether or not Japan has diplomatic relations with its native state, after the minister of the MEXT designates each school individually. The proposed amendment is to delete the grounds for the individual designation.

Regarding the purpose of this revision, the minister of MEXT, Hakubun Shimomura, stated at the press conference on December 28th, 2012, that the proposed amendment is aimed at deleting the grounds for designating Korean schools because there is no progress to resolve the Democratic People's Republic of Korea's (DPRK) abduction of Japanese citizens, which makes it clear that this proposed amendment is aimed at excluding Korean Schools from applying the Free High School tuition policy.

As we stated in the "Statement on Subject High Schools of the Free Tuition Bill" on March 5th, 2010, the main purpose of this bill is "to contribute to the creation of equal educational opportunities by alleviating the financial burdens of high school education", which is also demanded by Article 28 of Convention on the Rights of the Child. Considering the fact that Convention on the Rights of the Child as well as International Bill of Human Rights (International Covenant on Civil and Political Rights) guarantee the right to receive education with ethnic identity being maintained, the current ministerial ordinance which would include international schools and ethnic schools is in a right direction. Furthermore, it is revealed through the process of the deliberation on the bill that, as the Government's collective view, the designation of high schools for foreign students should not be judged by diplomatic concern but should be judged objectively through educational perspective.

On contrary to that, this proposed amendment is to refuse to provide subsidies based on the grounds that there being no diplomatic relations between Japan and DPRK or no progress to resolve the DPRK's abduction issue, either of which has nothing to do with the right of the child to receive education. It is a discriminative treatment which is prohibited by Article 14 of the Constitution of Japan.

Korean Schools in Japan completed applying for the designation based on the current bill legitimately by the end of November, 2011, this upcoming amendment is to extinguish the regulations considered as the grounds for applying and refuse the Korean Schools' application retroactively after more than two years from the application, which poses serious doubt on its procedure.

The Japan Federation of Bar Associations strongly urges that the proposed amendment be withdrawn whilst the review of the application from Korean schools be concluded promptly based on the current law and screening standard.

February 1st, 2013

Kenji Yamagishi

President Japan Federation of Bar Associations

Annex 3: The Article of The Japan Times

Pro-Pyongyang schools barred from tuition waiver

by Masami Ito, Staff Writer

21 February, 2013

Pro-Pyongyang high schools were officially banned Wednesday from the government's tuition-waiver program, almost three years after every student in Japan, including those at foreign schools, was declared eligible to receive the financial aid.

The decision reflects hawkish Prime Minister Shinzo Abe's get-tough stance toward North Korea over various provocative actions, including repeated nuclear tests, missile launches and the abduction of Japanese nationals in the 1970s and 1980s.

But critics have slammed the punishment, calling it "blatant racism" against ethnic minorities and are turning to international organizations, including the United Nations and the International Olympic Committee, to force a reversal.

The Ministry of Education, Culture, Sports, Science and Technology on Wednesday revised an ordinance to omit the 10 pro-North Korea high schools that filed for the tuition aid and later informed the schools of the decision.

"The schools are under the influence of the General Association of Korean Residents in Japan (Chongryon) and (making them eligible for the program) may violate the Basic Law of Education, which stipulates that 'education shall not be subject to improper control,'" education minister Hakubun Shimomura said Tuesday in explaining the government's decision.

Japan and North Korea do not have diplomatic ties and Chongryon acts as the de facto diplomatic mission in Tokyo.

The tuition-waiver program, introduced in April 2010 under the then-ruling Democratic Party of Japan, is available to all high schools in the country, including 39 international and ethnic schools with curricula similar to Japanese schools and approved by the education ministry.

But the DPJ kept postponing a decision on what to do about the Chongryon-linked schools. When the Liberal Democratic Party returned to power in December, however, it didn't wait long to take action.

Yasuko Morooka, a visiting researcher at Osaka University of Economics and Law, expressed outrage over the decision, claiming it violates the law on the tuition-waiver program. Article 1 stipulates that the program aims to give financial aid to contribute to "equal education opportunity."

"What the LDP did was blatant racism. It clearly revised the ordinance in order to eliminate the North Korean schools, in violation of the tuition-waiver law," Morooka told The Japan Times. "The government is punishing these children who have nothing to do with the abduction issue or the nuclear tests and violating their human rights. It is completely unfair and shameful."

The education minister has also cited a lack of public understanding as another reason for the exclusion of pro-Pyongyang schools. But Shimomura himself revealed that a recent survey by the education ministry showed that public opinion was split — about 52 percent were in favor of excluding the schools while 46 percent were against it.

“It was divided in half and there is no way that the government can blame it on public opinion. More importantly, it is extremely dangerous for the education minister to justify violating people’s human rights by using public opinion and understanding as an excuse,” said Morooka, a member of the nongovernmental Japan Network for the Institutionalization of Schools for Non-Japanese Nationals and Ethnic Minorities.

This controversial issue has attracted international criticism and in 2010 the United Nations Committee on the Elimination of Racial Discrimination urged Japan to “ensure that there is no discrimination in the provision of educational opportunities” and specifically raised concern over the possibility that pro-North Korean schools may be excluded from the program.

And with the members of the IOC delegation coming to Tokyo to evaluate Japan’s bid to host the 2020 Olympics, Morooka intends to bring the issue to their attention as well. The Olympic Charter takes a strong position against all forms of discrimination.

“The Olympics is based on all states and people of all ethnicities being equal But what the Japanese government did this time was official discrimination against ethnic minorities,” Morooka said. “Given the current domestic political situation, it is difficult to see the decision being reversed, so we are hoping that the international community, especially the IOC, will become a major source of pressure.”

Annex4: The Article of The Mainichi Shimbun

Discrimination against Korean Schools need be reconsidered

Hiroshi Tanaka

Honorary Professor at Hitotsubashi University

24 February, 2013

Since the host city for the 2020 Olympics and Paralympics games will be determined in September, the Governor of Tokyo Metropolitan, Naoki Inose, has started Bids for Olympics in earnest. Under such circumstances, would it be right for the Tokyo Metropolitan Government and the Japanese Government to continue discriminating Korean Schools in Japan?

At the time of Nagoya bid for the 1988 Summer Olympics, Nagoya City had “Nationality Clause” for the employment of teachers at public school which has been open to foreigners in Tokyo or Osaka, thus preventing foreigners from applying. A nongovernment human right committee in Nagoya sent an English letter to the International Olympics Committee (IOC), urging IOC to consider the serious issue on human rights of Nagoya City and to be sufficiently concerned about the improvement of moral qualification in the Olympic Movement to determine the host city. It was Seoul that was chosen as the host city in September, 1981. Though it is uncertain whether or not the letter had anything to do with the decision, it must be remembered that discrimination is unforgivable matter in the international community.

The Tokyo Metropolitan Government had previously been providing subsidies worth of 15,000 yen per a student to each of 27 schools for foreign students. However, the Metropolitan Government has stopped providing subsidies to Korean Schools alone since 2010 and not on the budget next year either. There has been no illegal act on the Korean Schools side. The education of the child should not be confounded with international affair.

So called “Free High School tuition law” was implemented in the same year 2010, which was applied not only to Japanese high schools but to vocational schools and high schools for foreign students as well. Students from each of 39 high schools, such as Brazilian Schools, Chinese Schools, (South) Korean Schools and International Schools were provided with subsidies equivalent to the tuition for the public high school.

Nevertheless, the decision over whether or not (North) Korean Schools would be applicable to the policy still remains unmade and students at Korean Schools have already graduated without ever receiving subsidies over the last two years.

Following the birth of Abe Cabinet, the Minister of the Ministry of Education, Culture, Sports, Science and Technology (MEXT), Hakubun Shimomura (aka Hirohumi Shimomura) amended the enforcement regulations of Free High School tuition law with the purpose of excluding Korean Schools alone from the policy because there is no progress to resolve Democratic Peoples Republic of Korea’s abduction of Japanese citizens. The law’s main purpose is “alleviating the financial burdens of high school education” and “to contribute to the creation of equal education opportunities”. Doesn’t this amendment to the enforcement regulations go beyond the limitation of a delegated order?

UN Committee on the Elimination of Racial Discrimination (CERD) expressed its concern about the exclusion of Korean Schools from Free High School tuition policy in the Concluding Observation in March, 2010, after reviewing the report submitted by Japanese Government and recommended Japan to consider acceding to the UNESCO Convention against Discrimination in Education (adopted in 1960, 100 signatories). The concern of CERD became realized by Abe Cabinet.

The report from Japanese Government to the UN Committee on Economic, Social and Cultural Rights is to be reviewed in coming April. List of Issues from the Committee says “Please provide information on the impact of the measures taken to address the persistent discrimination against children belonging to ethnic minorities and migrant families, in particular children of Korean origin”. Female students at Korean Schools used to go to school wearing chima jeogori, the traditional Korean form of dress. It’s been a long time since it became unseen in order to avoid harassment and assaults by heartless Japanese citizens.

Olympic Charter states “Any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is incompatible with belonging to the Olympic Movement.” Discrimination against Korean School is incompatible with Olympics.

Discrimination against Korean Schools need be reconsidered.

Annex5: The situation of the cut of the subsidies to Korean schools

from local governments in Japan (2009 - 2013)

	2009	2010	2011	2012	2013
Prefecture (start date of subsidy)	Total amount of subsidy	Total amount of subsidy	Total amount of subsidy	Total amount of subsidy	Total amount of subsidy
Tokyo (1995)	23.5 million	0	0	0	Cut from the budget
Saitama (1982)	9 million	0	0	0	Cut from the budget
Osaka (1988)	185 million	87 million	0	0	Cut from the budget
Miyagi (1992)	1.5 million	1.5 million	0	0	Cut from the budget
Chiba (1985)	5.6 million	5.6 million	0	0	Cut from the budget
Hiroshima (1992)	13.8 million	10.1 million	9.6 million	0	Cut from the budget
Kanagawa (1977)	72.5 million	63 million	63 million	63 million	Cut from the budget
Yamaguchi (1992)	2.4 million	2.4 million	2.3 million	2.2 million	Cut from the budget

Based on a survey by The Association of Korean Human Rights in Japan

All the currency unit is Japanese yen (1 euro = 123 yen, 1 dollar = 93 yen [as of 22 Feb 2013])

□ GENERAL ISSUES

1 Implementation of the ICESCR and mechanisms for the provision of remedies

- Please provide information on specific measures and developments, if any, with regard to the concerns expressed in the previous concluding observations (para.10).
- With regard to the recommendations in the previous concluding observations (para.33), please explain why courts are reluctant to apply the provisions of the Covenant and why no considerations have been given to the introduction of “human rights impact assessments”.
- Please indicate specific position of the Government with regard to the creation of national human rights institutions and the acceptance of individual communication procedures.

2 Ratification of other treaties concerned with the realization of human rights

- Does the State Party intend to sign the Optional Protocol to the ICESCR? Does it plan to ratify optional protocols under other human rights treaties without delay with a view to promoting economic, social and cultural rights in the country?
- Does the State Party intend to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Their Families?
- Does the State Party plan to ratify the UN Convention against Transnational Organized Crime as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention (the Palermo Protocol)?
- Does the State Party intend to ratify main ILO conventions at an early stage, namely No.111 (non-discrimination in employment and occupation), No.171 (night work), No.175 (part-time work) and No.183 (maternity protection)?

□ GREAT EAST JAPAN EARTHQUAKE, NUCLEAR POWER PLANT DISASTER AND ICESCR

Recovery/reconstruction, measures to deal with natural disasters and the administration of nuclear power plants on the basis of human rights

- In the disaster prevention measures before the Great East Japan Earthquake, the administration of nuclear power plants as well as the current efforts for recover and reconstruction and for the management of the nuclear power plant disaster, how has the Government considered and applied the applicable international standards, including, for example, the Guiding Principles on Internal Displacement (1998), the IASC Operational Guidelines on Protecting Persons in Situations of Natural Disasters (2008), the ICESCR and other human rights treaties?
- With regard to “human rights impact assessments” recommended in the previous concluding observations (para.33), does the Government intend to reconsider its position not to introduce such procedures and to set up mechanisms to review the impact of and responses to the earthquake and the nuclear power plant disaster from the perspectives of international human rights?
- What measures have been taken to protect the rights of those affected by the earthquake and the tsunami, especially with regard to housing for the internally displaced people, physical and mental health services, poverty and employment as well as education?

Nuclear power plant disaster and ICESCR

- The nuclear power plant disaster illustrated the fact that the responses of the Government to paras.22 and 49 were not adequate. What were the problems?
- What measures have been taken to protect the rights of those affected by the nuclear power plant disaster, especially with regard to the internally displaced people, livelihoods of those involved in agriculture and fishery, external and internal exposure to radiation as well as health and safety of those working at the plant?
- What measures have been taken to protect those who live or had lived in Fukushima from discrimination, including bullying and harassment among children against peers who had evacuated from Fukushima?

- How does the Government deal with the effects of radiation on schooling in Fukushima, including restrictions on children's play?

Rights of minorities and socially vulnerable people, including foreigners affected by the disaster

- What measures have been taken to protect and promote the rights of socially vulnerable people affected by the disaster, including children, women, persons with disabilities, those in need of medical treatment or care, elderly people, refugees and other foreigners as well as detainees in juvenile centers or prisons?
- Have multilingual information and services been provided for foreigners, including refugees, affected by the disaster?

DISADVANTAGED GROUPS

1 Elderly persons

- How does the Government understand and plan to respond to the situation of elderly persons, whose lives are very precarious in terms of livelihoods and housing?
- How does the Government understand the right of elderly persons to survival (minimum guarantee for livelihoods), inadequate protection of which has led to the high incidence of crimes, death from hunger, death in isolation and other problems among the elderly? What is envisaged to respond to these problems?
- How does the Government understand the incidence of elder abuse and neglect as well as the shortage and high rate of labour turnover of care workers? What is envisaged to respond to these problems?

2 Discrimination against Buraku people

- Does Japan have legal provisions to prohibit discriminatory treatment at the time of recruitment, personal background investigation at the time of marriage or recruitment, and investigation into the location of Buraku districts for land appraisal? (Arts 2, 6, 10 and 11 of the Covenant; paras 13, 39 and 40 of the 2001 Concluding Observations of CESCR; and the General Clause Comment 4 "Discriminatory Treatment Prohibition Clauses" of the Third Periodic Report of Japan)
- Do the government's measures for the minority groups take the issue of Buraku discrimination into consideration? (Art 2 of the Covenant; paras 13 and 40 of the Concluding Observations; General Comment 7 "minority groups" in the Part 2 of the Third Periodic Report)
- Present actual labor conditions of Buraku are not shown. (Art 6 of the Covenant; paras 13 and 24 of Concluding Observations; and Art 6 of the Third Periodic Report)
- In order to combat marriage discrimination based on Buraku discrimination, it is needed to implement drastic measures including legal restrictions to eradicate the possession of Buraku List and the illegal acquisition of a copy of one's family registration. The government is required to reveal actual situations of these practices and show measures it has taken to eradicate. (Art 10-1 of the Covenant)
- The government is required to reveal the practice of avoiding Buraku in the transaction of real estate, and show its strategies to eradicate it. (Art 11-3 of the Covenant)
- The government is required to reveal how the public understands Buraku problem, and show strategies it takes to eliminate discrimination. (Art 13-1 of the Covenant; para 40 of the Third Periodic Report with the title "human rights awareness building")
- The government is required to reveal the situation of illiteracy in Buraku and the situation of children going to high schools and colleges, and show what measures it has taken to improve these situations. (Art 13 of the Covenant; paras 13 and 50 of Concluding Observations; Art 13 of the Third Periodic Report)

Backgrounds:

1. Even today, discriminatory incidents continue to occur in an attempt to avoid a person with Buraku origin at the time of marriage or recruitment. From 2005 to 2006, a new version of Buraku List was discovered, while illegal acquisition of a copy of one's family registration occurred one after another by administrative scriveners. Also it often happens that people try to avoid Buraku neighborhood at the time of real estate transactions. This deep-rooted attitude of avoidance of and discrimination against Buraku is proven in the study of citizens' awareness conducted by different local governments.
2. The Cabinet Council on Dowa Measures made the report in 1965 stating that Buraku problem is the most serious social problem of Japan and its solution rests with the government and people. In June 1969, the Law for Dow Special Measures was enacted, and it was effective until the end of March 2002. During the 33 years under the law, a series of Dowa Special Measures were implemented, and situation of Buraku improved mainly in the living environment, leaving gaps unfulfilled between Buraku and non-Buraku in terms of living conditions, work and education. In May 1996 before the termination of the law, the cabinet council for Dowa measures (Council for Regional Improvement Measures) stated that Buraku problem was still the most serious social problem of Japan and its solution rested with the government and people. However, after the termination of the law, there has been no governmental policies to address the problem and no specific function in the government that is responsible for Buraku problem. Since the last national survey in 1993, the government has not conducted any nationwide survey to find out current actual conditions of Buraku.
3. The survey to find out living conditions of Dowa districts by Tottori Prefecture in 2005 revealed the labor conditions of Buraku as follows: in comparison with non-Dowa districts, the unemployment rate among the youth was double, the number of irregular workers was double, and the number of working poor with annual income below two million yen was double. Meanwhile, a kind of affirmative action on the employment of Buraku people by local governments under the Special Measures Law stopped with the termination of the law in 2002. As a result, once improved employment situation of Buraku is now retreating.
4. Since 2003, an illegal acquisition of a copy of one's family registration by administrative or judicial scriveners without the one's knowledge has continually taken place in a large scale. In tracing the incident, Osaka Association of Buraku Liberation League found the retention of Buraku List by private investigative agencies. Among others were floppy discs containing data about Buraku areas. These attest that Buraku discrimination continues under the surface. With these incidents, the government revised the family registration law in 2007 regulating illegal activities by administrative and judicial scriveners. Nevertheless, it still continues. It is required to introduce a new procedure that a notice is given to the principal when a copy of his/her family registration is taken by these licenced scriveners. Some local governments have already introduced this procedure, and the national government is urged to change the law to include the procedure as mandatory.
5. In recent years, it is continually found that people ask city/town offices to check the location of Buraku district at the time of transaction of real estate. In 2007, it was discovered that 15 real estate developers, 13 advertisement agencies and 5 research companies in Osaka were involved in the inquiry to find out the location of Buaku district so that they would not construct houses for sale in or close to Buraku areas. Because of this, Osaka Prefecture enacted the ordinance to restrict land inquiries motivated by Buraku avoidance. It is now required that such restrictive measures must be in place at the national level.
6. A survey to find out how people are aware of human rights has been conducted by different local governments. Results show that people tend to avoid Buraku at the time of marriage or purchase of property. Furthermore, once-improved attitude of people towards Buraku has gotten worse. It is attributable to the fact that promotion of human rights education at school and for the public has sharply declined since the termination of the Special Measures Law, and the public in general holds the impression that Buraku discrimination problem was solved.

7. According to the results of surveys conducted by Women divisions of local branches of BLL during the period from 2005 to 2010, illiteracy rate among Buraku, especially Buraku women, is relatively high. Among the youth, it is about 5%, while among the elderly it is between 30 to 50%. Also, a gap between Buraku and non-Buraku in enrollment in higher education is outstanding. The enrollment rate of Buraku children in high schools dropped by 5 point (when comparing the drop-out rate, it is 10 point higher than non-Buraku). Only about 60% of children of Buraku go to colleges. After the Special Measures Law, these gaps are getting wider.

Recommendations:

1. For the elimination of Buraku discrimination, the Government of Japan should immediately enact the law to restrict the personal background investigative activities on the occasions of marriage or recruitment, and the discriminatory land research.
2. In accordance with the 1996 opinions made by the Regional Improvement Council and recommendations made by the CESCR, the Government should include Buraku problem in the “measures for the socially vulnerable.” The Government is required to have a responsible section to address Buraku problem, and to set up a council on the problem with participation of Buraku representatives and experts. It is also required to conduct a nationwide survey to find out actual conditions of Buraku, and develop policies and programs toward the solution of the problem.
3. The Government should immediately conduct a survey on the employment situation of Buraku and develop policies and strategies to secure stable employment.
4. The Government should immediately enact a law to restrict the production and sale of Buraku List and the conduct of personal background investigation against Buraku. It is also urged to revise the Family Registration Law to introduce a notice procedure to a principal when whose family registration is copied.
5. The Government should disclose actual situation of investigative activities to identify Buraku location in the real estate industry, and introduce a law to ban on such activities.
6. The Government should conduct a national survey to find out peoples’ attitude toward Buraku, and include Buraku problem in the school education curriculum, social education program and civil awareness-raising program.
7. The Government should conduct a survey into the illiteracy problem in Buraku, and start literacy classes or support such initiatives. Also, it should conduct a survey to find how many Buraku children go to high schools and colleges, and take necessary steps to encourage them to have higher education.

3 Rights of Foreigners

General observations: Foreigners in Japan and their right to survival

Article 2 (2) of the ICESCR confirms the principle of non-discrimination in the application of economic, social and cultural rights (General Comment 20 of the Committee). In Japan, however, “the natural principle of law”, which tolerates discrimination without legal basis, is applied in various systems concerning foreigners and has led to easy determination that different forms of discrimination against foreigners are lawful.

The ratification of the International Covenants in 1979 and of the Refugee Convention in 1981 resulted in the removal of nationality requirements in legislation concerning public housing, national pension, child allowance and

other schemes, leading to partial acceptance of the principle of equality between nationals and foreigners. The recent Act on Compensation for Detainees in Siberia of 2010, however, introduced the nationality requirement again.

Although many lawsuits have been filed against discrimination on the ground of nationality in social security schemes, arguing that it is contrary to the constitutional principle of “equality under law”, the Supreme Court has dismissed all the claims. The institutional discrimination on the ground of nationality has never been remedied by the judiciary in accordance with the principle of non-discrimination.

Poverty among migrants

- Please indicate how the State Party considers about the need to consolidate statistics and to conduct baseline surveys for the purposes of understating the actual situation of poverty among migrants and their need for support.
- Please indicate long-term perspectives with regard to employment of foreigners and measures concerning their unemployment.
- Please provide information on measures to ensure access to employment support schemes for migrants.

Since the change of government in September 2009, the awareness of the problem of poverty has rapidly increased within the Government, which has led to the establishment of a council or the adoption of measures dealing with migrants’ hardships by the Ministry of Health, Labour and Welfare or the Ministry of Education.

Nevertheless, surveys on poverty among migrants, essential for the formulation of effective anti-poverty measures, have not been conducted so far, in spite of the fact that the high unemployment rate and the serious level of poverty among migrants can be inferred from surveys done by some municipalities or NGOs. Lack of official surveys makes the situation of poverty among migrants invisible. While migrants are at high risk of being affected by poverty, no measures have been taken to recognize them as groups in need of special consideration and to provide targeted assistance, making them vulnerable to the risk of poverty reproduction.

Since the existing schemes for employment support, including self-sufficiency programmes and job applicant assistance schemes, do not cover training of Japanese language, migrants who do not understand Japanese are excluded from the schemes. (No reference in the Government report)

Discrimination and violence against migrant women

Please provide information on difficulties and human rights violations faced by migrant (foreign) women living in Japan. Please indicate measures that have been taken for migrant women, a minority in Japan, as well as challenges, if any, in the implementation of such measures.

The number of migrant women in Japan has increased since 1980s, due to transnational marriage and other factors, and an increasing number of them have settled in Japan since 1990s. While they are likely to face multiple discrimination, violence and exploitation because of their status as women and foreigners, the Government has not even tried to understand their actual situation.

Japan has no measures to protect transnational families, and migrant women have been neglected in gender equality policies due to their minority status. Although the rate of victimization through violence is very higher among migrant women than among Japanese, support for them in this regard is extremely insufficient. Concerns have been expressed and recommendations made in this regard by the CEDAW (August 2009) and the CERD (March 2010).

Furthermore, the amendments to the Immigration Control Act and the Residential Basic Book Act (which will come into force in July 2012) provide for the revocation of spousal status of residence. This raises concern about the aggravation of the situation of migrant women who have settled in Japan as a result of transnational marriage or other reasons, such as less enjoyment of rights as well as more discrimination and victimization through violence.

Human rights of stateless children

- Please indicate the position of the Government on the ratification of the Convention on the Status of Stateless Persons.
- Please provide data on the number of stateless children and of such children who had been deported, including on their age, living history in Japan, place of birth and their parents' nationality (place of origin). Please also explain about the environment in which these children have been born and brought up and about how their human rights are protected.
- Please indicate the status of reproductive health/rights of stateless mothers and their children, including to what extent they enjoy maternal health services.

Children born to undocumented mothers suffer from extreme restrictions on their human rights because of their status of being "in breach of the Immigration Control Act". Mothers who are "illegal migrants" hardly visit public facilities, being afraid of detection that would lead to deportation to their countries of origin.

Many of those mothers do not report pregnancy and thus do not have maternal and child health handbooks. Consequently they face high-risk deliveries without receiving maternal medical check-ups. Since birth of their children is reported to nowhere, those children remain stateless, being virtually unable to be immunized or to go to hospital when they get sick or injured. These problems get worse as they grow up, undermining the environment of their development and education. The inter-generational cycle, in which stateless children grew up and gave birth themselves, is also occurring. (No reference in the Government report)

Lack of pensions for certain Koreans and other permanent residents

Please explain the reasons for non-reporting of the existence of foreigners who are elders or with disabilities and who cannot receive pensions because of the past requirement for nationality in the National Pension Act. Please also indicate when and how the Government intends to provide remedies for those foreigners.

The third periodic report of Japan (para.112) only states, "Foreigners who reside legally in Japan are afforded the same social security as Japanese people in accordance with the principle of equality for nationals and foreigners" and conceals the existence of foreigners who are elders or with disabilities and who cannot receive pensions. (Refer to the previous concluding observations, para.61.)

At the Budget Committee during the 94th Diet session, held on 28 February 1981, Mr. Sunao SONODA, then Minister of Health and Welfare, promised to take transitional measures to provide remedies for them as soon as possible. The promise has not been fulfilled until today, however. Those foreigners are now very old and face extreme hardships in their lives, contrary to Article 2 (2) of the ICESCR (the principle of non-discrimination).

Return of foreigners of Japanese origin

Please clarify the intention of the Assistance Project for the Return of Foreigners of Japanese Origin who Have Left Their Job (April 2009 – March 2010) and the official position on the human rights implications of the project.

During the global recession after the Lehman Shock in the autumn of 2008, termination of employment contract of irregular workers became a social issue in Japan as well. Many foreign workers of Japanese origin, who had been concentrated in the labour market of irregular employment, lost their job in this context.

In order to avoid having the unemployed within the country, the Government provided assistance to foreign workers of Japanese origin and their families for their return. 21,675 persons received the assistance and returned to their countries of origin. Together with other returnees who do not receive the assistance, the number of Japanese-Brazilians decreased to 215,000 and that of Japanese-Peruvians to 53,000 at the end of September 2011.

Inquiries about criminal records and discrimination on the ground of nationality

Please indicate why it is necessary to inquire into criminal records of the applicants only when foreigners of Japanese origin apply for the status of long-term residents.

According to the Revised Notification on Long-Term Residents, which came into effect in April 2006, foreigners of Japanese origin are now required to submit certificates of their criminal records in the countries of origin and in Japan in order to obtain or renew the status of residence as “long-term residents”, whose “behavior and conduct must be good” as a new requirement. The status of “long-term residents” is granted to foreigners who are deemed to be descendants of Japanese immigrants in accordance with the prescribed definitions. It is not clear, however, why it is necessary to inquire into criminal records only when they are concerned.

Employment of foreigners as local civil servants and “full-time lectures”

Please provide data on local civil servants of foreign nationality, disaggregated by municipalities, nationalities, positions and types of work, and on teachers of foreign nationality. Please explain the reasons if such data are not available.

Initiatives for employment of foreigners as local civil servants or teachers have been undertaken since mid-1970s, primarily in the Kansai (southern-central) region, with a view to securing freedom to choose one’s occupation for Korean residents in Japan. Consequently a number of municipalities have employed foreigners as civil servants.

The second periodic report of Japan (para.8) only states, however, “Japanese nationality is required for civil servants who participate in the exercise of public power or in public decision-making; however, it is understood that Japanese nationality is not necessarily required for civil servants who do not engage in such mentioned work”. With regard to employment of foreigners as teachers in public schools, it states, on the basis of the Memorandum between Japan and the Republic of Korea, “[I]n March 1991, it became possible for individuals not possessing Japanese nationality, including Korean residents in Japan, to be employed as teachers.... Those who pass the same examinations as Japanese nationals are employed as full-time instructors, without a limited period of appointment. The Government pays attention to their stability and conditions of employment”.

However, such discriminatory treatment in employment and appointment on the ground of nationality has greatly influenced employment of foreigners as local civil servants or teachers, contributing to manifestly discriminatory treatment of foreigners. Even today, there are cases in which foreigners are prevented from taking examinations for civil servants; are imposed restrictions on their appointment even if they have been employed; or, in case of teachers, are not promoted as Japanese colleagues are.

In line with the increase in the number of foreign residents, municipalities are required to adopt up-to-date personal management systems tailored to the need to create the environment where Japanese and foreigners can live together. The Ministry of Internal Affairs and Communications, however, has not attempted to collect data in this regard.

Human rights violations of foreign trainees/technical intern trainees

Please indicate what kind of human rights violations and other problems have been identified in the former scheme for foreign trainees. Please also provide information on the practical improvements and remaining

challenges under the new scheme for foreign technical intern trainees.

After having been criticized for different forms of human rights violations, including trafficking in person, the scheme for foreign trainees was replaced by the new scheme, focusing on practical technical training, in July 2010. The scheme continues to have grave inconsistencies, however, with large gaps between the official objective of “international contribution” (cooperation for the development of human resources that can contribute to economic development of developing countries) and the actual situation in which they are used as “extremely inexpensive manpower” by tiny, small and medium enterprises in Japan suffering from a shortage of workers.

Therefore a number of human rights violations continue to occur under the scheme, including the imposition of unskilled labour that does not contribute to the development of human resources; confiscation of passports; rake-offs under different pretexts; forced savings; the reinforcement of restrictions by way of deposits or penalties for contract breach; involuntary return of those who claim their rights; and sexual harassment and sexual violence. (Previous concluding observations, para.61; the Government report, para.114)

Medical services for foreigners

Please provide information about the measures taken, including budget allocations, with regard to medical interpretation services for foreigners. In addition, please indicate the measures take to ensure that emergency medical services are provided to all persons, including undocumented foreigners.

Lack of the established medical interpretation services, which are essential to provide appropriate medical care for foreigners, creates a number of problems, including that foreigners are prevented from accessing medical services or obtaining appropriate treatment. In addition, although medical care is guaranteed to some extent for undocumented foreigners as well, it is not necessarily well-established; therefore adequate safeguards do not exist with regard to emergency medical services, which should be applied to all persons irrespective of their status of residence. (No reference in the Government report)

Koreans living in the Utoro district

While the Koreans living in the Utoro district are likely to be able to remain there thanks to the official project for the improvement of the housing environment in the district, the issue of eviction seems to be unresolved. What does the Government intend to do in this regard?

Detainees in immigration facilities

- What safeguards exist in legal and institutional terms to keep the duration and scope of detention of foreigners to the minimum, with a view to prevent human rights violations?
- What measures have been taken to achieve the full realization of the right of detainees to physical and mental health? What measures and arrangements are put in place to ensure and monitor the implementation of such measures?

4 The Ainu people

- Please explain the reason why the rights of the Ainu are not recognized at all in the relevant policies, which are limited to awareness-raising and the promotion of the Ainu culture.
- Please also explain the reason why the Government has not conducted official inquiries into and adopted appropriate policies on the colonization of the Ainu people and discriminatory policies against them.
- Why does the Government not permit traditional whaling by the Ainu people, while permitting it for the Yamato-Japanese?
- Why are the relevant welfare and educational measures limited to the Ainu people living in Hokkaido,

excluding the Ainu people in other areas?

5 The Ryukyuan/Okinawan people

- Why have the Ryukyuan people continued to be denied the rights as an indigenous people in spite of the colonization and discriminatory policies since the annexation of the Ryukyu Kingdom in 1879? Why does the Government guarantee their rights to confirm and pass on their culture, tradition and language?
- Why are the US bases planned to be expanded at Henoko and Takae in Okinawa, which has already suffered from the excessive existence of the US bases, violating a wide range of the rights of the indigenous Ryukyuan people?
- Please explain the reason why the Government has not set up a committee to monitor and redress human rights violations against the Ryukyuan people.

6 Sexual minorities

- How does the Government understand the difficulties faced by children who are sexual minorities? What measures are envisaged to address their problems, including in terms of sexuality education and suicide prevention?
- What measures are envisaged to ensure that sexual minorities can receive appropriate medical services without being fearful of discrimination and prejudice on the grounds of sexual orientation and sexual identity?
- How does the Government understand the difficulties faced by sexual minorities at workplace, including lay-offs and other disadvantageous treatment as well as sexual harassment? What measures are envisaged to protect them from such discrimination and abuse and to ensure that couples of sexual minorities can equally benefit from corporate welfare schemes?
- How does the Government understand the situation of couples of sexual minorities, who are completely excluded from legal and social welfare schemes for families and are subject to social exclusion, discrimination and violence based on social stigma, prejudices and stereotypes? What measures are envisaged to address the situation?

7 Women

Remedies for women in relation to social, cultural and economic rights

- Please provide the number and summaries of cases, if any, in which courts admitted plaintiffs' claims on the basis of the ICESCR.
- How will the independence of a national human rights institution, which is now planned to be created, ensured? Will the national human rights institution deal with discrimination against women and, if so, under what definitions?
- Are there plans to adopt legislation that prohibits discrimination against women and provides remedies for such discrimination as well as gender-based violations of human rights?
- How does the State Party organize training for judicial personnel, administrative officials and law-enforcement officers on the elimination of discrimination against women in the field of economic, social and cultural rights?

Discrimination against minority women

- What surveys have been done by the Government on the situation of discrimination against and needs of minority women, including the indigenous Ainu population, Buraku people, Korean residents and the Okinawan population, in the field of economic, social and cultural rights?
- What kind of effective measures are taken to eliminate discrimination against minority women and obstacles to the enjoyment of their economic, social and cultural rights? What is the impact of such

measures?

- How do minority women participate in decision-making process in practice? What measures have been taken to ensure meaningful participation by minority women?

Discrimination against vulnerable women

- Please explain how information and statistical data are collected with regard to women in socially vulnerable situations, who are likely to be subjected to multiple forms of discrimination in relation to, *inter alia*, access to employment, health care, education and social welfare, including rural women, single mothers, women with disabilities, refugee women and migrant women. What kind of specific programmes are provided for those women and what are the achievements of such programmes?
- Please indicate whether gender-sensitive policies and programmes have been introduced in order to respond to specific needs of women in socially vulnerable situations. What is the impact of such measures?

Implementation of gender equality policies

- What measures have been taken to respond to the concern expressed by the CEDAW (2009, para.25) that the Gender Equality Bureau of the Cabinet Office, which serves as the secretariat for the national machinery for gender equality, lacks the mandate and appropriate financial resources to perform its functions?
- Was the Convention used as a legal framework for the formulation of the third Basic Plan for Gender Equality? Is the Basic Plan in conformity with the Convention?
- How do the central and local governments and other authorities specifically implement the third Basic Plan for Gender Equality, adopted by the Cabinet in December 2010? Are there any ways for effective implementation of the Basic Plan? Please also provide information on the organization and practical functions of monitoring mechanisms for the purpose of regular evaluation of the progress toward the achievement of targets in the Basic Plan.
- Please explain the roles played by the Government in the formulation and implementation of prefectural and municipal plans for gender equality, along with the present situation of local plans for gender equality.

Discriminatory legislation

- Is there any plan to abolish the offence of illegal abortion, which makes abortion punishable, from the Criminal Code?
- Please explain on the planned process of adopting a set of amendments to the Civil Code concerning setting the minimum age of marriage at 18 for both men and women; abolishing the period of prohibition of remarriage (six months) only for women; and allowing couples to retain their own surnames if they so wish.
- Is there any plan to amend the Prostitution Prevention Act that punishes only solicitors and not customers?
- Does the Government have the policy of proactively amending discriminatory legal provisions, with a view to fulfilling its immediate obligations to eliminate discrimination, instead of taking reactive attitudes in view of public and national opinions?

Remedial measures against de fact discrimination based on gender

- The third Basic Plan for Gender Equality establishes targets on the proportion of women in fifteen areas, to be achieved by 2015 or 2020. Specifically how will they be implemented? What specific measures will be taken to achieve the targets in political spheres and private sectors, where the participation of women lags behind in particular, with the Basic Plan having no legally-binding force?

Violence against women: Domestic violence

- Is there any plan to vigorously punish perpetrators of domestic violence?
- Please provide data on the actual management of criminal and protection order cases involving domestic violence, with a view to finding out whether these cases are dealt with by the judiciary and other authorities in a speedy, appropriate and strict manner.
- Is there any plan to expand the scope of protection orders in order to cover all victims of domestic violence,

including victims of violence by dating partners or among sexual minorities?

- Since adequate consideration is not given to domestic violence in family procedures, it is reported that courts are used by perpetrators as a means of control with negative consequences on female victims and their children. What measures are planned to prevent this phenomenon?
- With regard to the protection of and assistance to victims, what measures are planned to establish 24-hour hotlines, to increase shelters and to provide mid- and long-term support to such facilities?

Violence against women: Sexual violence

- From the perspective of the physical integrity and sexual autonomy of the victim, is there any plan to review the elements of crimes of sexual violence, with a view to, *inter alia*, removing the requirement of the victim's complaint for initiating criminal procedures, mitigating the requirement of the existence of assault and intimidation, criminalizing incest and spousal rape, raising the age of sexual consent and increasing statutory penalties?
- What is planned for the protection of and support for victims of sexual violence, including through the establishment of permanent 24-hour hotlines and one-stop centers? What measures are envisaged to expand support for victims, in particular those who have not filed complaints to the police?
- What measures have been taken to prevent secondary victimization of victims in criminal and judicial procedures? What kind of education and training is provided for the concerned officials?

Violence against women: Sexual harassment

- Does the Government intend to criminalize sexual harassment or to make it one of the aggravating circumstances to abuse one's authority or position in education or at workplace for the purpose of sexual violence? Is there any plan to explicitly prohibit sexual harassment in the Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment?
- How does the Government provide effective remedies for victims of sexual harassment so that they can continue education/work and maintain their previous position, including through securing their right to return to school/workplace after temporary absence and subsidizing the costs for physical and psychological recovery?
- Does the Government intend to oblige schools and other educational institutions to prevent sexual harassment? What measures are planned or envisaged for effective prevention of sexual harassment in the field of education?
- Has the Government confirmed whether or not sexual harassment at workplace is dealt with in an appropriate and prompt manner? What measures have been taken to ensure prompt remedies and resolutions with regard to sexual harassment at workplace?
- The criteria for the recognition of sexual harassment as workers' accidents are reportedly being revised. Even then, it is pointed out, it will take long for cases of sexual harassment to be recognized as workers' accidents due to the burden of alleged victims and the complexities of the procedures. Specifically how and to what extent are cases of sexual harassment recognized as workers' accidents?
- Is there any plan to improve judicial remedies in this regard, including prolonged proceedings and low amounts of compensations?

Violence against women: Violence against girls, including sexual abuse

- Does the Government intend to raise the age of sexual consent from the current level (13 years of age), with a view to protecting healthy development of children and to preventing child abuse?
- Is there any plan to abolish the statute of limitations concerning crimes against minors?
- In order to ensure that children are not traumatized further by being asked to make testimony repeatedly, is the Government reviewing the procedures to provide support and assistance to child witnesses, in consultation with experts in this field? Is the Government considering the introduction of testimony through video-recording instead of oral hearings?
- Is there any plan to introduce specific criminal provisions against sale of children and incest?
- What measures have been taken to ensure physical and psychological recovery and social integration for crime victims?
- Are effective regulations put in place to prohibit child prostitution through the Internet?

Violence against women: Sex industry

- Is there any plan to amend the Prostitution Prevention Act that punishes only solicitors and not customers?
- What has been undertaken to understand the actual situation of victimization of those who work in the sex industry and violation of their human rights, including violence, forced debt, unpaid wages and health problems, which is unlikely to be reported for appropriate remedies due to fear of stigma or punishment under the Immigration Control Act or the Prostitution Prevention Act? What measures have been taken to prevent such victimization and human rights violation effectively?
- What measures are planned to change official and social discriminatory attitude toward female prostitutes, who are likely to be regarded as corrupted women?
- What specific measures are planned by the Government to suppress demand for the sex industry?

Violence against women: Trafficking in person

- Does the Government intend to ratify the Palermo Protocol?
- What measures are planned to improve the procedures for victim identification in order to prevent trafficking victims from being recognized as criminals under the Immigration Control Act and other laws?
- How does the Government envisage the expansion of the protection of trafficking victims?
- Is there any plan to abolish the status of residence under “Technical Inter Trainee” that is likely to be used for the purpose of labour exploitation?
- How is training organized on support for trafficking victims in order to sensitize law enforcement officers and judicial personnel about the rights and needs of victims?
- Please explain on the development of bilateral agreements with countries of origin of trafficking victims with a view to addressing the problem and causes of trafficking in person.

Violence against women: Pornography

- Does the Government intend to prohibit the sale of video games or comic books depicting rape and other sexual violence against women?
- Does the Government intend to prohibit possession of child pornography without exceptions?
- Please provide data on the incidence of sale of children, child prostitution and child pornography, disaggregated by victims' age, sex, ethnic groups and geographical locations.
- What measures are taken to provide effective remedies for victims of pornography production, including severe sexual violence, forced filming and distribution of sexual images against their will? Is there any plan to improve the protection of such victims?

Stereotypes

- What measures are being taken in a proactive and sustained manner specifically to eliminate attitudes on the basis of stereotypical awareness about gender roles and responsibilities?
- What kind of education and in-service training is provided to teachers and counseling staff of all educational institutions at all levels with regard to the issues of gender equality?
- Are textbooks and teaching materials being reviewed with a view to eliminating attitudes on the basis of stereotypical awareness about gender roles?
- What measures have been taken to prevent Diet members, mayors and government officials from making slighting remarks that are degrading for women and foster discriminatory patriarchal systems?
- Please indicate the position of the Government on the criminalization of verbal violence (hate speech).
- What specific measures have been taken against indecent materials in the media and advertisements?
- What measures has the Government taken to eliminate discrimination in the media reporting and other materials?

Employment: Discrimination against women in employment

- What specific and effective measures are planned to remedy wage differences between men and women?
- What measures have been taken to change marked occupational segregation in both vertical and horizontal terms?

Employment: Irregular workers

Please provide information on specific legislative amendments and other measures envisaged to ensure equal and equitable treatment of part-time workers, workers with terminable contract and other irregular workers and to improve their working conditions.

Employment: Harmonization between family and occupational life

- What effective measures are envisaged to prevent women from being overburdened with child-rearing and other care work, being unable to continue their career and facing difficulties in re-entering the workforce?
- What measures are taken to deal with the situation of women who are forced to choose irregular employment, which is precarious and without guarantees of equal treatment, due to inadequate consideration given to family responsibilities and work-life balance at workplace?

Taxation and social welfare from gender perspectives

- Does the Government intend to change the existing schemes of social welfare and taxation, which are not neutral in terms of gender and lifestyles, being economically disadvantageous to dual income households and single persons? Is there any plan to replace the existing household-based schemes by individual-based schemes?
- Is there any plan to abolish discrimination in terms of the exemption for widows, which is not applied to non-married mothers and their children?

Decentralization and the national minimum standards

Please indicate how the national minimum standards are secured in terms day-care, gender equality policies, support for victims of domestic violence and other issues in the context of decentralization.

Economic impact of divorce

- Does the Government understand the actual living conditions of divorced couples and their children through surveys?
- What measures have been undertaken to secure agreement on and payment of maintenance after divorce, which is adequate in terms of amount for children's survival and development?
- Have measures been taken to redress unequal economic consequences of divorce, including compensatory distribution of property?

Women and poverty

- Have effective measures been taken to eliminate poverty among women and to prevent the perpetuation and prolongation of poverty? What are the impacts of such measures?
- What measures have been taken to redress gender disparities in the amount of pension, reflecting income disparities during the working age, which are among the contributing factors in poverty among elder women?

Sexuality education

- In the context of some interference into effective sexuality education, labeling it as "excessive" or "extreme" according to specific values, what specific measures have been taken to provide comprehensive reproductive health education for adolescent boys and girls and to promote sexuality education on the basis

of reproductive rights? What is being taught in such education and what is its coverage?

- What specific measures have been taken to guarantee access to reproductive health information and services for all women and girls, including by removing obstacles to such access, and to allocate resources for programmes for adolescents for the prevention and treatment of HIV/AIDS and other sexually transmitted infections?

Contraception and abortion

- Is there any plan to abolish the offence of illegal abortion from the Criminal Code, as is generally recommended by the Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health (A/66/254)?
- What measures are envisaged to improve access to safe and lawful abortion in terms of legal aspects (by removing the requirement of spousal consent), costs (very expensive), methods (virtually limited to curettage, which puts physical, mental and financial burdens on women) and social stigma?
- While forced sterilization of persons with disabilities was abolished, does the Government intend to take necessary legislative steps to provide for the right of victims of forced sterilization to compensation?
- Has the Government taken effective measures to expand the coverage of modern methods of contraception?

Access to reproductive health services

- Is there any plan to adopt comprehensive legislation on reproductive rights?
- What is planned to improve the arrangements for medical services and social welfare in relation to birth, with a view to preventing disparities in this regard according to financial situations and geographical locations of women?
- What effective measures have been taken to prevent illegal lay-off or termination of employment of women who are pregnant or gave birth? Has research been conducted on consequences of long working hours and night work on maternity?

International cooperation

- How does the Government intend to effectively implement the GAD Initiative and the gender mainstreaming in official development assistance?
- What is being planned to contribute to the achievement of MDGs Target 5.B (Achieve universal access to reproductive health by 2015), which is not indicated in the Kan Commitment? Does the fact that the contributions to the UNFPA and the IPPF have been reduced by larger rates than those to other UN bodies, both in the fiscal years 2011 and 2012, indicate that not only the Government neglects reproductive health but also intends to reduce assistance to multilateral organizations?
- What are the policies and measures envisaged by the Government for the most effective realization of the Kan Commitment?
- How does the Government intend to implement the agreements on gender equality and the realization of human rights contained in the outcome document adopted at the fourth High Level Forum on Aid Effectiveness?
- What safeguards and remedies are put in place by the Government to protect human rights of women from operations by Japanese corporation abroad?

8 Children born out of wedlock

- Does the Government have a specific roadmap for the elimination of discrimination against children born out of wedlock with regard to inheritance?
- Is the Government ready to grant Japanese nationality to children born out of wedlock through transnational relationship, simply when their mothers or fathers submit the notification of acquisition of Japanese nationality?
- In what process does the Government plan to remove the concept of illegitimacy from legislation and

practice?

- What is envisaged to ensure that children born out of wedlock cannot be identified as such in the family register through making complete reform of the entry formalities?
- Does the Government intend to adopt legislation explicitly prohibiting discrimination against children born out of wedlock?
- Does the Government intend to conduct extensive education and awareness-raising campaigns for public officials and the wider public, with a view to eliminating discrimination against children born out of wedlock?

9 The problem of “comfort women”

What measures are planned to provide remedies for victims of the military “comfort women” system in order to fulfill the obligations of the State Party under the ICESCR?

PROBLEMATIC AREAS

1 Articles 7 and 8: Right to Work

Please provide detailed and specific information on the actual status of working hours, the usage of annual paid holidays and the status of death from overwork, along with the indication of policy frameworks for the reduction of working hours.

Long working hours are still prevalent in Japan (more than 2,000 hours per year for general workers), showing little improvement since the consideration of the previous report. The usage of annual paid holidays has continued to decrease, being below 50% every year for the last decade. In this context, the incidence of death from overwork, primarily due to long working hours, remains to be high. This indicates that the existing regulations of working hours are not effective at all. (Previous concluding observations, paras.19 and 46; the Government report, paras.70-71 and 187-188)

Please report on the status of and problems faced by irregular workers (including part-time workers, dispatched workers, workers with terminable contract and sub-contractors’ workers), along with the measures taken by the Government for improvement.

The proportion of irregular workers in the workforce has increased to more than 35% (over 17 million). Consequently an increasing number of workers are forced to work in poor conditions, facing not only lower wages but also very precarious situations, in which they cannot join social insurance schemes and are very likely to lose their jobs. The very high rate of relative poverty (16% in 2010) reflects this situation. (Virtually no reference in the Government report)

Please provide information on the situation of irregular foreign workers and their working conditions. In particular, please explain how workers’ accident compensation insurance has been applied to them for the last

decade.

Labour legislation applies, as a rule, to irregular foreign workers as well. These workers are vulnerable to violation of their rights, however, due to their status making it difficult for them to claim their rights. Consequently 65.4% of such workers are paid less than JPY 7,000 per day. (No reference in the Government report)

Please indicate what arrangements have been made to ensure safety and health of workers in nuclear power plants, in particular those working for responding to the accidents at the Fukushima Dai-ichi (No.1) Nuclear Power Plant. Please provide information on workers' accidents involving those working in nuclear power plants.

Many workers are involved in the construction, operation, management and maintenance of nuclear power plants. Since they work under hazardous conditions with the risk of exposure to radiation, high-level arrangements must be made to ensure their safety and health. The nuclear power plant industry consists of layers of subcontracts, however, and the involvement of crime syndicates in recruitment has been reported at lower levels. Therefore there are cases where workers are involved in hazardous work without being fully informed or where some workers cannot be traced after leaving the job, leading to the situation in which their safety and health is not thoroughly secured. (No reference in the Government report)

2 Article 9 : Social Security

How does the Government plan to develop social welfare policies and schemes in a consistent and sustained manner, avoiding repeated modifications?

3 Article 10 : Protection of families and children

What measures have been taken to mitigate financial and other burdens of child-rearing?

4 Article 12: Right to Health

Availability of healthcare services

Please provide information on the number of health professionals per population divided into different regions and departments. If there is a dearth of health professionals and uneven distribution in different regions and department, please explain this cause and the measures which the Government takes and the effectiveness of the measures.

Although the Government's report indicates the data of the WHO Regional Office for the Western Pacific (P.57, para.303.) and outline of the healthcare Services in Japan (PP.58-59, paras.314-319), there is no mention of the measures which the Government has taken in order to ensure the availability of health care.

Accessibility of healthcare services

Please provide information on the number of population who are not covered by National health insurance and who cannot access medical treatment under insurance sufficiently. Also please explain the measures which the Government will take in order to ensure to provide basic health care for such people.

Although the Government's report gives an outline of the National health insurance system (PP.40-42), there is no mention on the actual application of this system.

5 Article 2, 13 & 14 : Right to education for Non-Japanese nationals

The general

i) Please provide the number of non-Japanese national children of compulsory school age who attend Japanese schools, those who attend "schools for non-Japanese nationals and ethnic minorities" (hereinafter "minority schools") and those who do not go to any school with data disaggregated by prefecture, grade in school or age, sex, nationality and ethnicity.

ii) Why does the central government exclude non-Japanese national children from annual "Survey on Children of School Age Who Do Not Attend School"? Please give the view on the information that there are over 10,000 non-Japanese children of compulsory school age who do not go to any school, which is said to be arisen from non-recognition of non-Japanese children's right to education by the Japanese central government and absence of legal responsibility that Japanese schools and local governments have to accept these children.

The central government has never conducted a nationwide survey on non-Japanese national and ethnic minority children in Japan. All the non-Japanese children of compulsory school age are supposed to 110,000. According to surveys by some local governments and NGOs, 60% of children of new comers: migrant workers such as Brazilians, Peruvians and Filipinos, attend Japanese schools, while 20% of them go to minority schools, and the rest of them are estimated not to be attending any school at all.

The Japanese government explains that "in cases where children of foreign residents in Japan wish to enroll in public schools for compulsory schooling, public schools accept them free-of-charge, just as they do for Japanese schoolchildren" (para. 20 in Third periodic reports to CESCR). This simply means that "permission" will be given if the non-Japanese national "wishes" to enroll. In other words, the school administration does not have the legal obligation to accept such students, and for non-Japanese nationals, education is not "secured" as a legal "right." A former high official of the Ministry of Education, Culture, Sports, Science & Technology of Japan (MEXT) writes that "with regard to the implementation of compulsory education for foreigners, no such imperative exists in the Constitution and Basic Education Law. [...] As long as the individual is a foreigner, no obligation arises to send the child to elementary or junior high school." (Suzuki, Isao, Chikujyou Gakkou Kyouiku Hou (Clause-by-Clause Review of the School Education Act), 2009, Tokyo: Gakuyoshobo).

This opinion leads neglect of non-Japanese national children. For example, the annual "Survey on Children of School Age Who Do Not Attend School" carried out by the MEXT, clearly states that "foreigners are excluded from the survey." In addition, in The Annual Report of the School Basic Survey by the MEXT, there are only total number of non-Japanese national children who attend to Japanese schools: primary schools, junior high school and high schools and those children who go to minority schools accredited as "miscellaneous schools" without data disaggregated by prefecture, grade in school or age, sex, nationality and ethnicity.

Problems in Japanese Public Schools

- i) Please explain how the Japanese government has considered and implemented the Committee's strong recommendation in 2001 to introduce "mother-tongue instruction in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities" (E/C.12/1/Add.67, para. 60).
- ii) Please explain the reason why the Japanese Government limits mother tongue education as extracurricular classes.
- iii) Please explain the Government of Japan's policies, laws and budgets on minority's mother tongue education.

In Japanese schools, foreign children are receiving assimilation education. They are forced in effect to use "Tsūmei" (Japanese name; literary, "commonly used name") and are not allowed to have their heritage language and culture education in the official curricula.

Due to the absence of state subsidies, extracurricular classes for their heritage language and culture education are taken place in only few schools in limited areas. Foreign children, in particular those of new comers, are placed in a disadvantageous situation to improve scholastic ability because Japanese language instruction is also insufficient for them.

In addition, due to the lack of human rights education on minority issues for Japanese students as a whole in Japanese schools, bullying and discrimination against foreign children are often rampant.

[relevant paragraphs in concluding observation by the last Committee]

*The Committee expresses its concern about the fact that there are very limited possibilities for children of minorities to enjoy education in their own language and about their own culture in public schools. (E/C.12/1/Add.67, para 32)

*The Committee strongly recommends that mother-tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities. (E/C.12/1/Add.67, para 60)

[relevant part in the 3rd periodic report to the CESCR by Japan]

*E/C.12/JPN/3, I, para 20, para 108, para 109 and E/C.12/JPN/3, □, p 356 - p 359

The issues of minority schools in Japan

i) Is it possible that a minority school to be accredited as a regular school even if that school gives lesson using minority language or teaches minority language in regular classes, or does not mainly use official textbooks approved by the MEXT written in Japanese? If it is not possible, how does the Japanese government consider legislation to authorize minority school as a regular school, with keeping identities of minorities?

ii) The Committee was informed that students of minority schools which are accredited as “miscellaneous schools” became to receive financial assistance from the central government by the system of making high school education tuition free at the first time in 2010. However, what is the reason that students of Korean schools are only excluded from that system?

iii) The Committee was also informed that financial assistance from some local governments to Korean schools was stopped, which would signify the retreat of the policy to give opportunities to maintain contact with native language and culture to ensure adequate opportunities for minority children to receive instruction in or of their language and about their culture. What is the central government’s countermeasure for such retreat?

iv) The Committee was informed that there used to be more than 110 Brazilian schools in Japan before the financial crisis in 2008, but the current number of those schools decreased to less than 70 because many parents of Brazilian students dismissed from work and could not pay school fees of their children. What was the policy of the Japanese government to support these schools which guaranteed the education of minorities? If no policy has been taken, what policy does Government plan to take?

Some minority schools such as Korean schools and Chinese schools are accredited as “miscellaneous schools” like driving schools, not regular schools for children. These schools are given no financial assistance by the central government.

In particular, Korean schools are seriously discriminated. Korean schools are only excluded from the system of so-called “Free High School Tuition” which was introduced in April 2010, although other minority schools with accreditation of “miscellaneous school” were applied to this system. In addition, this discrimination by the central government has led to the new discriminative situation that some local governments which have provided Korean schools with their subsidies for a long time have stopped or been reducing their subsidies to Korean schools. The number of such governments has been increasing.

Since most of newcomer schools have been having difficulty to even get accreditation of “miscellaneous school”, they are not be able to receive any financial assistance from local governments. After the financial crisis in September 2008, many parents of those schools have been dismissed from work and have not been able to pay school fees. As a result, in case of Brazilian schools, almost half numbers of them were forced to close their schools and a lot of students were forced to leave their schools.

[E/C.12/1/Add.67 (24 September 2001)]

60. The Committee strongly recommends that mother-tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities. The Committee further recommends that the State party officially recognize minority schools, in particular Korean schools, when they comply with the national education curriculum, and consequently make available to them subsidies and other financial assistance, and also recognize their school leaving certificates as university entrance examination qualifications.

[Third Periodic Report by Japan, paragraph 60 (in English, paragraph 110,111), Article 13-1 (in English, paragraph 361)]

Please clarify the rates of non-Japanese children advancing to senior high school education.

The central government has not conducted a survey concerning the rates of non-Japanese children advancing to senior high school education.

According to a survey by the Solidarity Network with Migrants Japan (<http://www.jca.apc.org/migrant-net/English/English.html>), the rate of Brazilian children advancing to senior high school education in 2000 is only 30%, while the rate of Japanese children is over 90%.

Education and gender

- Does the Government intend to re-introduce the concept of gender equality in the Basic Act on Education?
- Does the Government intend to encourage girls, as part of educational policies, to be educated and trained in the areas where girls and women have traditionally not participated in?
- Is there any plan to make the gender balance of teaching staff at the tertiary level completely equitable? What measures are envisaged specifically for this purpose?
- What measures are being planned to guarantee access to higher education for children who are forced to give up upper secondary education due to financial or cultural reasons?

ANNEX

Right to education for Non-Japanese nationals (Article 2, 13 & 14)

I. The general

(a) Proposals for list of issues

i) Please provide the number of non-Japanese national children of compulsory school age who attend Japanese schools, those who attend “schools for non-Japanese nationals and ethnic minorities” (hereinafter “minority schools”) and those who do not go to any school with data disaggregated by prefecture, grade in school or age, sex, nationality and ethnicity.

ii) Why does the central government exclude non-Japanese national children from annual “Survey on Children of School Age Who Do Not Attend School”? Please give the view on the information that there are over 10,000 non-Japanese children of compulsory school age who do not go to any school, which is said to be arisen from non-recognition of non-Japanese children’s right to education by the Japanese central government and absence of legal responsibility that Japanese schools and local governments have to accept these children.

(b) Situation

1. The central government has never conducted a nationwide survey on non-Japanese national and ethnic minority children in Japan. All the non-Japanese children of compulsory school age are supposed to 110,000. According to surveys by some local governments and NGOs, 60% of children of new comers: migrant workers such as Brazilians, Peruvians and Filipinos, attend Japanese schools, while 20% of them go to minority schools, and the rest of them are estimated not to be attending any school at all.

2. The Japanese government explains that “in cases where children of foreign residents in Japan wish to enroll in public schools for compulsory schooling, public schools accept them free-of-charge, just as

they do for Japanese schoolchildren” (para. 20 in Third periodic reports to CESCR). This simply means that “permission” will be given if the non-Japanese national “wishes” to enroll. In other words, the school administration does not have the legal obligation to accept such students, and for non-Japanese nationals, education is not “secured” as a legal “right.” A former high official of the Ministry of Education, Culture, Sports, Science & Technology of Japan (MEXT) writes that “with regard to the implementation of compulsory education for foreigners, no such imperative exists in the Constitution and Basic Education Law. [...] As long as the individual is a foreigner, no obligation arises to send the child to elementary or junior high school.” (Suzuki, Isao, Chikujyou Gakkou Kyouiku Hou (Clause-by-Clause Review of the School Education Act), 2009, Tokyo: Gakuyoshobo).

3. This opinion leads neglect of non-Japanese national children. For example, the annual “Survey on Children of School Age Who Do Not Attend School” carried out by the MEXT, clearly states that “foreigners are excluded from the survey.” In addition, in The Annual Report of the School Basic Survey by the MEXT, there are only total number of non-Japanese national children who attend to Japanese schools: primary schools, junior high school and high schools and those children who go to minority schools accredited as “miscellaneous schools” without data disaggregated by prefecture, grade in school or age, sex, nationality and ethnicity.

(c) Background

4. Although ICESCR requests that primary education shall be compulsory and available free to “all” (Article 13-2(a)), the Japanese government still has persisted in education for only “Japanese nationals”.

5. CERD notes in 2001 that elementary and lower secondary education is not compulsory and the Japanese government stated that “the purpose of the primary education in Japan is to educate the Japanese people to be members of the community (CERD/C/304/Add.114, para. 15). Moreover, the Committee, in the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends in 2010 that the State party ensure that there is no discrimination in the provision of educational opportunities and that no child residing in the territory of the State party faces obstacles in connection with school enrolment and the achievement of compulsory education (CERD/C/JPN/CO/3-6, para. 22).

6. The report of the Special Rapporteur on the human rights of migrants reports in 2011 as follows; According to the School Education Act, elementary and middle education is compulsory for Japanese children, but not for foreign children, since the law obliges only Japanese nationals to send their children to an elementary school and junior high school. According to the MEXT, Japanese elementary and secondary schools may accept foreign children of school age “if they wish to enter” schools. Schools and municipalities have no legal obligation to accept migrant children and education is not secured for those children as a legal right (HRC/17/33/Add.3, para. 62). Then, the Rapporteur recommends that the right to education for migrant children should be recognized and guaranteed by law (para. 82 (c)).

II. Problems in Japanese Public Schools

(a) Proposals to the list of issues

i) Please explain how the Japanese government has considered and implemented the Committee’s strong recommendation in 2001 to introduce “mother-tongue instruction in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities” (E/C.12/1/Add.67, para. 60).

ii) Please explain the reason why the Japanese Government limits mother tongue education as extracurricular classes.

iii) Please explain the Government of Japan’s policies, laws and budgets on minority’s mother tongue education.

(b) Situation

1. In Japanese schools, foreign children are receiving assimilation education. They are forced in effect to use *Tsu-meï* (Japanese name; literary, “commonly used name”) and are not allowed to have their heritage language and culture education in the official curricula..

2. Due to the absence of state subsidies, extracurricular classes for their heritage language and culture education are taken place in only few schools in limited areas. Foreign children, in particular those of new comers, are placed in a disadvantageous situation to improve scholastic ability because Japanese language instruction is also insufficient for them.

3. In addition, due to the lack of human rights education on minority issues for Japanese students as a whole in Japanese schools, bullying and discrimination against foreign children are often rampant.

[relevant paragraphs in concluding observation by the last Committee]

*The Committee expresses its concern about the fact that there are very limited possibilities for children of minorities to enjoy education in their own language and about their own culture in public schools. (E/C.12/1/Add.67,para32)

*The Committee strongly recommends that mother-tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities. (E/C.12/1/Add.67,para60)

[relevant part in the 3rd periodic report to the CESCR by Japan]

*E/C.12/JPN/3,I,para20,para108,para109

*E/C.12/JPN/3,□,p356 - p359)

(c) Background

4. Historically, education provided by the Government of Japan is not directed for non-Japanese nationals and ignored education respecting to ethnicity, national character and identity other than Japanese ones. Because of that, 80% of children originated from former Japanese colonies in Japanese schools are still forced to use Japanese name according to recent surveys by some local governments including Kyoto city and Osaka city.

5. Such severe situation in Japanese schools is expanded to children of new comers. Significant number of them leaves Japanese schools and some of them changes to minority schools. According to investigation of actual situation by Kani city in Gifu prefecture, there are about 30-40% students in Brazilian school, which changed school from Japanese schools.

6. The central government of Japan explained that “children that go to compulsory education schools can be given opportunities to maintain contact with their native language and culture on extra-curricular activities”(CCPR/C/JPN/Q/5/Add.1, reply28).

In fact, some schools in Osaka where many Koreans originated from former Japanese colonies reside offer opportunity of ethnic education using extracurricular classes, but the point is that such education activities are organized by the cooperation of local governments, schools and NGOs. It is the truth that the Japanese central government has not given them legal force, nor provided financial support for such activities. Hence ,teachers of those ethnic minority education activities are not regular full-time employees and their pay is very low.

7. CRC concerned in 2004 (CRC/C/15/Add.231) that “Children of minorities have very limited opportunities for education in their own language” (para40(f))and recommended the Japanese

Government to “expand opportunities for children from minority groups to enjoy their own culture, profess or practise their own religion and use their own language (para50(d)).”

8. CERD also recommended in 2001 that the Japanese government “ensure access to education in minority languages in public Japanese schools (CERD/C/304/Add.114,para. 16) and encouraged in 2010 “the State party to consider providing adequate opportunities for minority groups to receive instruction in or of their language and invites” (CERD/C/JPN/CO/3-6 5,para 22).

9. The Committee “reiterates the view expressed in its previous concluding observations (para. 18) that the name of an individual is a fundamental aspect of cultural and ethnic identity that must be respected” (CERD/C/JPN/CO/3-6 5,para 16).

10. The Committee also recommended that “the State party carry out a revision of existing textbooks to better reflect the culture and history of minorities and that it encourage books and other publications about the history and culture of minorities (CERD/C/JPN/CO/3-6 5,para 25)”, the Japanese government should “intensify public education and awareness-raising campaigns, incorporating educational objectives of tolerance and respect”(CERD/C/JPN/CO/3-6 5,para 26).

11. Report by the Special Rapportuer of Human Rights of the migrants (HRC/17/33/Add.3,para63) pointed out that there are “number of obstacles for migrant children to completing their education in Japanese schools”, “the majority of migrant children do not receive necessary assistance to develop appropriate language skills and tend to find themselves lost in Japanese schools” and “discrimination against them is still common”.

The issues of minority schools in Japan

(a) Proposals for list of issues

i) Is it possible that a minority school to be accredited as a regular school even if that school gives lesson using minority language or teaches minority language in regular classes, or does not mainly use official textbooks approved by the MEXT written in Japanese? If it is not possible, how does the Japanese government consider legislation to authorize minority school as a regular school, with keeping identities of minorities?

ii) The Committee was informed that students of minority schools which are accredited as “miscellaneous schools” became to receive financial assistance from the central government by the system of making high school education tuition free at the first time in 2010. However, what is the reason that students of Korean schools are only excluded from that system?

iii)The Committee was also informed that financial assistance from some local governments to Korean schools was stopped, which would signify the retreat of the policy to give opportunities to maintain contact with native language and culture to ensure adequate opportunities for minority children to receive instruction in or of their language and about their culture. What is the central government’s countermeasure for such retreat?

iv) The Committee was informed that there used to be more than 110 Brazilian schools in Japan before the financial crisis in 2008, but the current number of those schools decreased to less than 70 because many parents of Brazilian students dismissed from work and could not pay school fees of their children. What was the policy of the Japanese government to support these schools which guaranteed the education of minorities? If no policy has been taken, what policy does Government plan to take?

(b) Situation

1. Some minority schools such as Korean schools and Chinese schools are accredited as “miscellaneous schools” like driving schools, not regular schools for children. These schools are given no financial assistance by the central government.
2. In particular, Korean schools are seriously discriminated. Korean schools are only excluded from the system of so-called “Free High School Tuition” which was introduced in April 2010, although other minority schools with accreditation of “miscellaneous school” were applied to this system. In addition, this discrimination by the central government has led to the new discriminative situation that some local governments which have provided Korean schools with their subsidies for a long time have stopped or been reducing their subsidies to Korean schools. The number of such governments has been increasing.
3. Since most of newcomer schools have been having difficulty to even get accreditation of “miscellaneous school”, they are not be able to receive any financial assistance from local governments. After the financial crisis in September 2008, many parents of those schools have been dismissed from work and have not been able to pay school fees. As a result, in case of Brazilian schools, almost half numbers of them were forced to close their schools and a lot of students were forced to leave their schools.

[E/C.12/1/Add.67 (24 September 2001)]

60. The Committee strongly recommends that mother-tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities. The Committee further recommends that the State party officially recognize minority schools, in particular Korean schools, when they comply with the national education curriculum, and consequently make available to them subsidies and other financial assistance, and also recognize their school leaving certificates as university entrance examination qualifications.

[Third Periodic Report by Japan, paragraph 60 (in English, paragraph 110,111), Article 13-1 (in English, paragraph 361)]

(c) Background

Foreign Schools as “miscellaneous schools”

4. There are approximately 200 foreign schools in Japan including approximately 70 Korean schools, 70 Brazilian schools, tens of national schools which are Chinese, Peruvian and Indian etc., and tens of international schools. About 30,000 children²² are learning in those schools including kindergarten, primary to high schools, universities and graduate schools today.
5. Japanese school system is divided into three kinds of schools, which are regular school defined in article 1 of School Education Act (so-called “School of Article 1”), technical school defined in article 12 of the Act, and “miscellaneous school” defined in article 134 of the Act.
6. The Japanese government has insisted that “miscellaneous school” can be accredited as “School of Article 1” if the school has fulfilled the accreditation criteria and such schools have existed (Third Periodic Report by Japan in English, paragraph 111).
7. In order to be accredited as “School of Article 1”, however, the school has to fulfill the accreditation criteria determined by the MEXT, such as the implementation of Japanese school curricula for

²² According to “School Data Survey” conducted by Ministry of Education in 2010, there are 26,253 children who are on the register in foreign schools accredited as “miscellaneous schools”. Besides, there are thousands of students who are on the register in foreign schools not accredited as “miscellaneous schools”.

Japanese children with Japanese textbooks in Japanese approved by the MEXT and the qualifications of teachers approved by the Japanese government. Therefore, it is almost impossible practically to be accredited as “School of Article 1” for minority schools if minority community wants to give education using their own language and textbooks written in their own language. Three minority schools accredited as “School of Article 1” in the past have difficulties. For example, they cannot teach their own language in curriculum so the students cannot master their language completely until graduation.

Discriminatory treatment against Korean schools

8 In March 2010, CERD expressed concern about “the approach of some politicians suggesting the exclusion of North Korean schools from current proposals for legislative change in the State party to make high school tuition free of charge in public and private high schools, technical colleges and various institutions with comparable high school curricula” because it has “discriminatory effects on children’s education” (CERD/C/JPN/CO/3-6. para. 22 (e)).

9. This concern has been realized when Korean schools were only excluded from the “Free High School Tuition”, though other 31 minority schools were included in it by Notification of the MEXT in April 2010.

10. This discriminatory treatment by the central government has affected some local government including Tokyo, Miyagi and Osaka as of March 2012.

11. The Japanese government replied to the question by the Human Rights Committee asking to “provide detailed information on measures taken to ensure adequate opportunities for minority children to receive instruction in or of their language and about their culture, in particular as regards the Korean and Ainu minorities” (CCPR/C/JPN/Q/5,para28) as follows; People of Korean residents in Japan have opportunities to learn the distinct Korean culture at many schools for people of Korean residents. Almost all of these schools are sanctioned by the competent authorities (the prefectural authorities), with the competent authorities providing subsidies for these schools.”(CCPR/C/JPN/Q/5/Add.1,reply28). This reply means that the Japanese government has recognized Korean schools as the institution where Korean people learn their own culture and provision of subsidies for Korean schools by local governments as the measure to give adequate opportunities for minority children to receive instruction in or of their language and about their culture. Therefore, the central government should take measures for such retreat of local governments.

Financial suffering of newcomer schools

12. Brazilian schools have increased rapidly since 1995 as Japanese Brazilians have increased after 1990. There used to be approximately 110 Brazilian schools in Japan and 10,000 students were on the register in those schools just before the financial crisis in fall 2008 when Brazilian population ran up to over 300,000. According to some surveys of students and parents of Brazilian schools in Japan, the reasons why they go to Brazilian school with school fees instead of Japanese school with no school fees are that they cannot learn Portuguese nor also Japanese adequately in Japanese school, that it is not easy to keep up with lessons and that they face bullying or discrimination against them in Japanese school. Those reasons indicate that Brazilian schools are not only the place for the right to education to protect identity of minorities but also a necessary haven for them, due to the problems of Japanese school education.

13. The Government has been trying to let the Brazilian students move into Japanese schools who are not on the register in the schools due to the integration and abolition of Brazilian schools, by giving them Japanese lessons (Niji-no-Kakehashi-Kyoushitsu) after Lehman's fall. However, there will be

many minority students continuously who do not want to move into Japanese schools as long as the problems of Japanese school education do not improve. .

14. The accreditation of “miscellaneous school” is granted by local governments and the accreditation criteria are severe such as possession of school land and school building. It is too difficult to fulfill such criteria for most of South American schools because those schools are operated by the school fees paid by immigrants and the private property of a founder, who has been in Japan for at most only 20 years.

15. Some local governments have made effort to improve treatment of minority schools and alleviated the conventional accreditation criteria of “miscellaneous school” in March 2004. So, 14 South American schools have been accredited as “miscellaneous schools” as of February 2012, but the number of those schools is only a few compared to whole number of South American schools in Japan which is approximately 70.

16. The Special Rapporteur on the human rights of migrants pointed out that “foreign schools must rely exclusively on financial contributions by parents, which amount to approximately 45,000 yen per month” [A/HRC/.17/33/Add.3, paragraph 65] and recommended that “Central and prefectural governments should also increase their financial support to foreign schools. Moreover, in order not to discriminate among foreign schools, the Government should increase its subsidies to Korean, Brazilian, Peruvian, Filipino and other foreign schools and apply tax benefits, in order for them to receive the same support as other private international and Japanese schools” in March 2011. [A/HRC/.17/33/Add.3, paragraph 81 (e)]

IV. Low rates of immigrant children advancing to senior high school education

(a) Proposals for list of issues

Please clarify the rates of non-Japanese children advancing to senior high school education.

(b) Summaries

The central government has not conducted a survey concerning the rates of non-Japanese children advancing to senior high school education.

According to a survey by the Solidarity Network with Migrants Japan (<http://www.jca.apc.org/migrant-net/English/English.html>), the rate of Brazilian children advancing to senior high school education in 2000 is only 30%, while the its rate of Japanese children is over 90%.