



Human Rights Now

Shadow Report Submission: Children's Rights in Japan

CRC 76th Session

Human Rights Now

7F Creative One Akihabara Bldg., 5-3-4 Ueno, Taito-ku,
Tokyo 110-0005 JAPAN
(7 minutes' walk from JR Okachimachi or Akihabara station)
Tel: +81-3-3835-2110
Fax: +81-3-3834-1025
info@hrn.or.jp

Reporting Organisation

Human Rights Now (HRN) is an international human rights NGO based in Tokyo, Japan with UN special consultative status. HRN was established in 2006 by a group of human rights professionals, such as lawyers, scholars, and journalists, as the first international human rights NGO based in Japan. With over 700 members comprised of various human rights specialists, HRN works for the promotion and protection of human rights for people in the world, with a special focus on Asia. In 2012, HRN obtained UN special consultative status

HRN main goals are to:

- Contribute to the promotion and protection of human rights worldwide, with a special focus on Asian countries;
- Contribute to the development of international human rights standards and norms through the UN and other international institutions;
- Promote the incorporation of international human rights standards within the domestic framework of Japan.

Among various human rights problem related to children in Japan, this report focuses on the following three areas:

- 1) Rights to health of children after the Fukushima nuclear disaster
- 2) Child pornography and the sexual exploitation of children
- 3) Human rights violations of children in the Japanese education system

1. Rights to Health of Children affected by the Fukushima nuclear disaster

(1) Overview

The March 2011 nuclear disaster at the Fukushima Dai-Ichi Nuclear Power Station released a huge amount of radioactive material over parts of Fukushima Prefecture. This material continues to pose health risks to affected populations, in particular vulnerable groups such as women, especially pregnant women; children, especially girls; and infants.

In particular, children are more vulnerable to the effects of radiation. However, the measures taken by the government to protect rights to health of affected children have been extremely insufficient.

Although several UN human rights mechanisms, including the UN special rapporteur on the rights to health made comprehensive recommendations to mitigate the situation, the government has failed to implement most of these recommendations.

(2) Insufficient evacuation policy

The nuclear disaster of March 2011 led to the evacuation of approximately 80,000 people from Fukushima Prefecture.¹

However, many citizens in Fukushima still live in areas where they could be exposed to higher doses of radiation than the internationally recommended limit. This is due to the government's lifting of evacuation orders in areas up to a 20mSv per year exposure limit, which is in fact 20 times greater than the limit for the public based on international standards recommended by the International Commission on Radiological Protection (ICRP).²

There are broad areas with large populations that are not included in the evacuation zones in Fukushima. Without sufficient financial support for evacuation from the government, many people who cannot afford to relocate have no choice but to stay within the areas in which they could receive doses greater than the ICRP recommended limit for the general public. Some families, including pregnant women and children, decided to evacuate without any financial support from the Japanese government.

¹ Fukushima Prefecture, "Heisei 23 nen tōhoku chihō taiheiyō oki jishin niyoru higai jōkyō soku hō", 30 Jan. 2017, <http://www.pref.fukushima.lg.jp/site/portal/shinsai-higaijokyo.html>.

² ICRP, 1990 Recommendations of the International Commission on Radiological Protection, ICRP Publication 60, Ann. ICRP 21 (1 - 3); and ICRP, 2007 Recommendations of the International Commission on Radiological Protection, ICRP Publication 103, Ann. ICRP 37 (2 - 4).

Children living in or returning to non-evacuated exposed areas therefore face serious health risks. The World Health Organization also pointed out the issue of low level radiation exposure, showing how it results in increased risk of cancers.³

(3) Policy to end evacuations and support

Furthermore, in March 2017 the Japanese Government lifted the evacuation orders for formerly-evacuated areas which had fallen under 20 mSv/year exposures by 2017. This policy included ending the evacuation compensation for formerly evacuated persons by March 2018, and Fukushima prefectural government also ended a free housing programme for all evacuated families around March 2017.

The ending of financial compensation and the free housing program are forcing families to return to live in contaminated areas as they may not afford the cost of living elsewhere without the financial or housing support from the government and TEPCO. Some areas where families are returning with their children remain insufficiently decontaminated for long-term habitation. Long-term storage of contaminated soil, which currently concentrates radiation in temporary sites, also remains an issue in many locations six years after the accident.⁴ These issues are a direct threat to children's right to health as recognized by the CRC.

(4) Insufficient health checks and medical treatment for the affected children

The government has failed to establish free, periodic, and comprehensive health checks for affected persons, except for biennial ultrasound examinations for children under the age of 18 at the time of the accident who live or used to live in Fukushima prefecture.⁵

As of December 2016, 183 children in Fukushima prefecture were diagnosed with or believed to have thyroid cancer, a worrying increase of 68 children from the second survey conducted in 2014 and 2015.⁶ Despite the alarming nature of these findings, the prefectural government has failed to acknowledge the impact of radiation on children. It has also made no move to expand the scope of its healthcare services, thereby leaving many potentially affected persons unable to seek medical evaluation or treatment.

The measures taken by the Japanese government have been extremely insufficient to protect rights to health of affected children.

³ Human Rights Now, "Japanese civil society requests that the reports of the United Nations Scientific Committee on Fukushima be revised", 24 Oct 2013, <http://hrn.or.jp/eng/news/2013/10/24/japanese-civil-society-requests-that-the-reports-of-the-united-nations-scientific-committee-on-fukushima-be-revised/>.

⁴ The Mainichi, "Fukushima laden with piles of radioactive soil that can't be moved into storage", 9 Mar. 2017, <https://mainichi.jp/english/articles/20170309/p2a/00m/0na/019000c>

⁵ Fukushima Health Management Survey, <http://fmu-global.jp/fukushima-health-management-survey/>

⁶ Friends of the Earth, "Fact Sheet: kodomo kodomo-tachi no kōjōsen gan no jōkyō", 1 Feb. 2017, http://www.foejapan.org/energy/fukushima/pdf/factsheet_thyroid_170201.pdf

(5) Bullying

In addition to the health risk, evacuee children also face discrimination, bullying, and persecution at school in particular. The abuse comes from other students, and in some reported cases from the teachers as well.⁷ The Government has not put in place any concrete programme to assist children evacuated from Fukushima who are victims of bullying. This is inconsistent with Japan's duty under Article 27 of the Convention of the Rights of the Child to "recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."

(6) Failure to implement UN recommendations

Many of these concerns have previously been expressed by the Special Rapporteur on the right to health, Anand Grover, in his report for the 23rd Human Rights Council in May 2013.⁸ His report included recommendations that evacuees only return when radiation doses had been reduced, as far as possible, to levels below 1mSv/year, and that all residents in areas with higher exposure be provided with sufficient medical care. In addition, he called on the government to adopt a rights-centred approach and continue to financially support evacuees so as to allow them to return at a time of their choosing.

In 2014 the UN Human Rights Committee also recommended that the Japanese government "lift the designation of contaminated locations as evacuation areas only where the radiation level does not place the residents at risk."⁹ The present actions of the Japanese government clearly run contrary to these recommendations.

(7) Recommendations

We request the Committee on the Rights of the Child (CRC) to recommend the government of Japan to:

1. Revise the decision to lift or not have evacuations for areas above 1 mSv/year;
2. Provide efficient health examination for children exposed to radiation levels exceeding 1 mSv/year;
3. Revise the decision to cease financial, housing, or medical support for evacuees from non-designated areas;

⁷ The Mainichi, "Fukushima dai ichi genpatsu jiko hinan 'sugu shinu kamo' tōkyō ijime, shōgaku kyōshi mo hatsugen soshō de haha shōgen", 12 Jan 2017, <https://mainichi.jp/articles/20170112/ddn/012/040/043000c>

⁸ "Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Mission to Japan (15 - 26 November 2012)", A/HRC/23/41/Add.3, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-41-Add3_en.pdf.

⁹ UN Human Rights Committee, "Concluding observations on the sixth periodic report of Japan", 20 Aug. 2014, CCPR/C/JPN/CO/6.

4. Protect all affected evacuees and provide the necessary support to ensure children's right to health;
5. Reform health monitoring policy and conduct comprehensive and long-term health check-ups for children living in areas with radiation doses exceeding 1mSv/year;
6. Formulate a national plan on evacuation zones and dose limits of radiation to protect the most vulnerable people, children in particular, and reduce the radiation dose to less than 1mSv/year;
7. Implement the recommendations made by Mr. Anand Grover in his 2013 report,¹⁰ the Human Rights Committee's 2014 concluding observations,¹¹ and CEDAW's 2016 concluding observations.¹²

2. Sexual Exploitation of Children in Japan

(1) Overview

As a response to the prevalence of child pornography in Japan and the mounting criticism from the international community, Japan passed the "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children" in 1999 in accordance with the CRC. The original law was revised in 2014 with the aim to better regulate the matter. Japan is also party to a party to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (hereinafter referred to as "the Protocol.") While the production, sale, distribution, commercialisation and even a simple possession of child pornography have been banned since the revision of the law, evidence shows that products explicitly advertised as or highly suspected of being child pornography are openly sold and circulated in Japan.¹³

(2) Ambiguous definition of child pornography

Japan's revised law on child pornography, "Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children" (hereinafter referred to as "the CP Law") defines the term "Child Pornography" under three items in Article 2(3). Items (i) and (ii) define punishable products as any image involving sexual intercourse or touching of sexual organs which stimulates sexual desire, respectively. While Items (i) and (ii) are straightforward in intent, Item (iii) has provoked disputes. Item (iii) defines child pornography as "**any image of a Child wholly or partially naked, in which sexual body parts of the Child (genital organs or the parts around them, buttocks**

¹⁰ Grover, above, note 8.

¹¹ CCPR/C/JPN/CO/6, para.24 ; CEDAW/C/JPN/CO/7-8, paras.36-37 ; E/C.12/JPN/CO/3, paras. 24-25

¹² UN Doc. CEDAW/C/JPN/CO/7-8, paras.36-37

¹³ Human Rights Now, "Nippon - jidō poruno kisei no jitsujō to kadai", at 4, <http://hrn.or.jp/wpHN/wp-content/uploads/2016/09/33f47e793333c9ddbaf3efcc9a977f7.pdf>.

or chest) are exhibited or emphasized and arouses or stimulates sexual desire.”¹⁴ The core intention of Item (iii) is to ensure that even a product not involving (quasi-)sexual intercourse could still be punishable as child pornography.

However, Item (iii) was newly added for the 2014 revision and has yet to be fully implemented in society. This means that depictions of children such as *chakuero* (i.e., erotic images of persons clothed in an erotic way) and “image videos” remain widely distributed and sold for commercial purposes. *Chakuero* and image videos both refer to products with contents where the models or performers are in one way or another clothed, and they are not necessarily involved in sexual interaction with another person. As such, it is argued by some, especially the manufacturers, that *chakuero* and image video depictions of children do not fall under child pornography as defined in Article 2(3) of the CP Law, making them not subject to any reviewing process.¹⁵ However, evidence shows, nevertheless, that there are many *chakuero* and image video depictions of children that explicitly emphasise the sexual body parts of child performers or involving a form of interaction with adults with the intention of arousing or stimulating sexual desire in the viewer. Thus, these genres of pornography can amount to child sexual abuse and also encourage tolerance for the offences.¹⁶

Accurate knowledge about the CP Law is also poorly communicated as products like *chakuero* and image videos are widely distributed and consumed by people who believe they are not considered child pornography.¹⁷ This false belief is widespread across in Japan, and it is a clear indication that the government has failed to meet Article 9(1) and (2) of the Protocol to promote awareness of what is considered an offence against children’s rights.

Article 9(1)

“State Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol....”

Article 9(2)

“State Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventative measures and harmful effects of the offences referred to in the present Protocol.”

(3) Weak policing of suspected products

The government stated in its report on the CRC that the police has been strengthening the regulation and investigation of child pornography using various methods including the Child Pornography Advanced Searching System (CPASS) and cyber patrols.¹⁸ However, this only applies to actions taken to eliminate Items (i) and (ii) which they see as more malicious and thus need to be prioritized due to the fact that they involve scenes of an actual or quasi-sexual intercourse. Factors such as this create the situation where products like *chakuero*

¹⁴Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children, No. 52 of 26. May 1999, <http://www.japaneselawtranslation.go.jp/law/detail/?id=2895&vm=04&re=02>

¹⁵Human Rights Now, above, note 3.

¹⁶United Nations General Assembly, “Report of the Special Rapporteur on the sale of children, child prostitution and child pornography”, Human Rights Council 31st session, 30 Dec. 2015, at 10.

¹⁷Human Rights Now, above note 3.

¹⁸UN Committee on the Rights of the child, “Combined Fourth and Fifth Periodic Report of Japan on the Convention on the Rights of the Child”, Jun. 2017, at 185.

and image videos are left circulating despite them being punishable offences as Item (iii) child pornography.

Additionally, law enforcement has been reluctant to initiate investigations of products for which they cannot completely ascertain the performer's age.¹⁹ There is no sufficient established system of age verification of performers in any parts of the manufacturing, producing or reviewing process.

The current situation is not in line with Article 8(2) of the Protocol.

Article 8(2)

“States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.”

(4) Child prostitution

Apart from child pornography, the government also needs to strengthen their efforts in regulating what is commonly called a “JK business”, that is, the practice of female high school students (i.e., *joshi kōsei* or JK) providing services such as walking and conversation for payment. Commercial activities like this often escape punishment by adopting different forms of business such as a “walk”, “conversation”, or “reflexology” service provider. However, the reality is that such businesses often provide sexual interactions with the customer as an optional service.

Although measures to eliminate such activities were decided by the government, there is not yet a targeted law regulating them.²⁰ Also, the major approach taken by the police to tackle this problem is to conduct juvenile guidance which entails detention and de facto punishment of children instead of protecting their human rights and providing a better environment for them.

In particular, the government has failed to recognise the core societal factors causing children take parts in child prostitution and child pornography. Such factors can include child poverty, abuse and neglect in their families, homelessness and lack of social resources / infrastructure to support children who have dropped out or are facing various difficulties. Alongside providing detailed juvenile guidance and assistance, the government must establish a comprehensive strategy to address the root cause of such activities prevailing in Japanese society.

(5) Recommendations

We request the Committee on the Rights of the Child (CRC) to recommend the government of Japan to:

1. Adopt a “zero tolerance” policy in regulating child pornography regardless of the genre, including *chakuero* and image videos;

¹⁹Human Rights Now, *above*, note 3.

²⁰ Ministerial Meeting Concerning Measures Against Crime, “Third Comprehensive Measures to Eliminate Child Pornography”, Jul .2016, at 10-11, https://www.npa.go.jp/safetylife/syonen/no_cp/cp-taisaku/pdf/cp-measures3.pdf.

2. Clarify the definition of Item (iii) child pornography with the eradication of contents such as *chakuero* and image videos as the focal point, and raise awareness among all relevant bodies including civil society;
3. Actively initiate investigations and monitoring of suspected child pornographic products in which the performers age cannot be fully ascertained;
4. Take all necessary measures to establish the age of performers and also improve the reliability of the age verification method;
5. Establish an appropriate and accessible support system for children suffering from issues such as poverty, abuse, homelessness and facing various difficulties.

3. Human Rights Violations of Children in the Japanese Education System

The children in Japan are facing various human rights abuses in the education system, including corporal punishment, excessive restrictions of rights under the school rules, and problems in physical education and extra-curricular sports activities.

(1) Corporal punishment

Corporal punishment in schools is prohibited under Japanese law. However, it is still widely practiced, not only in classrooms but also in extra-curricular sports activities. Under the teaching guidelines of the Japanese Ministry of Education and Science on after-school sport clubs activities, “hitting and kicking students, or putting relentless and excessive physical or spiritual pressure on a particular student” is defined as “improper teaching”.²¹

(2) Bullying

Bullying remains serious and widespread human rights problem surrounding children in the school system in Japan. Significant numbers of students have taken their own lives after experienced bullying at school or through online channels. For instance, In 2016, 320 students under the age of eighteen took their lives. Some of these victims were younger than fourteen.²² And in the period from 2015-2016, 224,540 reports of school bullying were received.²³

²¹ Japan Judo Accident Victims Association. “Corporal punishment continues: Mindset reform is needed”, 7 Sep 2017, <http://judojiko.net/eng/news/477.html>.

²² The Japan Times, “Bullying in schools keeps youth suicide rate high”, 28 Apr 2017, <https://www.japantimes.co.jp/news/2017/04/28/national/social-issues/bullying-schools-keeps-youth-suicide-rate-high/#.WfmK99WRiw>.

²³ Id.

In 2013, the Japanese government passed anti-bullying legislation, the Promotion Measures for the Prevention of Bullying and Suicides in Japan Law (hereinafter, Bullying Prevention Law). Under the law, all schools are required to create countermeasures against bullying under the law. Such measures include moral education, measures for early detection of bullying, a well-prepared consultation system, and measures to prevent cyber-bullying. Further, schools are required to both conduct investigations to address the problem and prevent recurrence. However, the law is not properly implemented.

There are several cases where investigative panels and schools have denied the fact of bullying despite students having committed suicide due to their distress from being harassed.²⁴

(3) School rules

In many schools, very restrictive school rules are imposed on children and seriously limit the exercise of fundamental rights of children.

For instance, in Osaka, an 18-year-old high school girl recently sued the Osaka Prefectural Government for compensation.²⁵ She claims that she was repeatedly told by school authorities to dye her hair black or leave the school in accordance with the school policy, despite not having naturally black hair. She had no choice but to dye her hair, which burned her scalp and caused painful rashes. According to the girl, due to this problem, she was virtually forced to drop out from the school.

This manner of school policy is not unique to a specific high school.²⁶ Asahi Shimbun reported that roughly 60% of more than 170 metropolitan high schools in Tokyo have a policy to require students with brightly coloured hair to submit a “proof of real hair” document verified by their guardians.²⁷

Besides this, there are many restrictive school rules that are decided without proper consultation with children in Japanese schools and controlling the entire life-style of children.

²⁴ The Japan Times, “Ibaraki school, education board hit for concealing a girl’s bullying linked suicide when probing classmates”, 31 Jul 2017, <https://www.japantimes.co.jp/news/2017/07/31/national/social-issues/ibarak-school-board-education-hit-concealing-girls-bullying-linked-suicide-quizzing-classmates/#.WfmLNWRriw>.

²⁵ Refinery 29, “This Student Is Suing Her School After Being Forced To Dye Her Hair Black”, 31 Oct 2017, <http://www.refinery29.com/2017/10/178872/japanese-student-sues-school-forced-dyed-hair-black>.

²⁶ The Japan Times, “Teen sues Osaka Prefectural Government for being forced to dye hair black to attend school”, 27 Oct 2017, <https://www.japantimes.co.jp/news/2017/10/27/national/teen-sues-osaka-prefectural-government-forced-dye-hair-black-attend-school/#.WfIZ1VuOPIX>.

²⁷ The Asahi Shimbun, “Survey: 57% of Tokyo high schools demand hair-color proof”, 1 May 2017, http://www.asahi.com/ajw/articles/AJ201705010035.html?utm_content=buffer8ede3&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.

(4) Problems in physical education (P.E.)

Some practices of physical education are extremely dangerous and have caused serious accidents. However, the government has failed to protect children from such problematic practices.

For instance, *kumitaiso* (i.e., “human pyramid”) is a long-standing and popular gymnastic formation included in Japanese P.E. curriculum commonly seen in school athletic festivals, even though it has been a source of serious injuries annually.²⁸ The number of accidents resulting from *kumitaiso* exceeds 8,000 per year.²⁹

A major accident that sparked the safety debate occurred in September 2015 at a junior high school in Yao City, Osaka, when a 10-tier human pyramid composed of 150 students collapsed during a performance at the school’s sports festival.³⁰ The accident left several students injured, including one with a broken arm.³¹ This incident stirred up a national debate and triggered the new guideline on *kumitaiso*.³²

In February 2016, Hiroshi Hase, then Minister of Education, announced new guidelines on *kumitaiso*, which were finally released on 25 March 2016.

The Osaka City Board of Education also responded to the incident by creating new guidelines that limited the size of human pyramids to five students and human towers, which feature the student on top standing, to three.³³ Osaka officials were further trying to completely ban the practice,³⁴ but they postponed a total ban as they considered that proper practice lessens the number of *kumitaiso* accidents.³⁵ However, such limitations have not been added into national guidelines.³⁶ There is also no move to abolish this entire practice harmful to children.

²⁸ Japan Today, “Osaka city to ban human pyramids at school sports days”, 10 February 2016,

<https://japantoday.com/category/national/osaka-city-to-ban-human-pyramids-at-school-sports-days>.

²⁹ “Supōtsu chō seisaku ka gakkō taisaku shitsu, 2016 nen 3 tsuki 25 nichi 'kumi taisō tō niyoru jiko no bōshi nitsuite” (Japanese text of the guideline on *kumitaiso*).

³⁰ Mail Online, “Students crushed as 10-storey human pyramid involving 150 pupils collapses in a disastrous performance,” 2 Oct 2015, <http://www.dailymail.co.uk/news/article-3257189/Students-crushed-Japanese-human-pyramid-collapse.html>.

³¹ UPI, “Japan enforces new guidelines for human pyramids in schools,” 10 Feb 2016, https://www.upi.com/Odd_News/2016/02/10/Japan-enforces-new-guidelines-for-human-pyramids-in-schools/3941455128308/.

³² BBC News, “Japan Finally Has Some Rules For Human Pyramids In Schools ” 9 Feb 2017, <http://www.bbc.com/news/blogs-news-from-elsewhere-35532561>.

³³ The Japan Times, “Let’s discuss the dangers of human pyramids at schools,” 22 Feb 2016, <https://www.japantimes.co.jp/life/2016/02/22/language/lets-discuss-dangers-human-pyramids-schools/#.WfloXlu0PIV>.

³⁴ UPI, above, note 31.

³⁵ Sankei Shimbun, “Kumi taisō, zenmen kinshi wa miokuri arata ni 'tōdai' shōgakkō de kinshi ōsaka shi kyōi” 26 Apr 2016, <http://www.sankei.com/west/news/160426/wst1604260089-n1.html>.

³⁶ The Japan Times, above, note 33.

(5) Recommendations

This series of practices and customs clearly violates children's rights under CRC Articles 6, 12 and 19.

We request the Committee on the Rights of the Child (CRC) to recommend the government of Japan to:

1. Ensure that bullying counter-measures under the Bullying Prevention Law are effective to actually prevent bullying;
2. Establish and implement an effective policy to end corporal punishment in school curriculum and extra-curricular sports activities;
3. Review all practices of school rules which restrict children's rights under the CRC and ensure the school rules are in accordance with the CRC;
4. Review all practices of physical education harmful to the rights to life, health and provide educational measures to protect children from all forms of physical or mental violence, injury or abuse, and maltreatment.