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**Report of the Denial of the "Right of Children to Express Their Views" in the
Japan Education and Judicial System: "Convention on the Rights of the Child"
Court Case of 59 High School Students**

Introduction

We would like to express our sincere gratitude for the accomplishments and efforts of the United Nations and the United Nations Committee on the Rights of the Child in establishing the Convention on the Rights of the Child and working to get implemented in each country. We would also like to express our deepest gratitude to committee chairperson Jaap Doek and committee member Lothar Krappmann for coming to Japan. We have great expectations in regard to your activity here in Japan.

Our Movement to Bear the Ensign of the Ideals of the Convention on the Rights of the Child

We are former students of Takatsuki Minami High School, a school that was closed for unreasonable reasons at the end of March 2005 in Osaka Prefecture, the number two metropolitan region in Japan. Our school was deeply loved and was officially called "Osaka Prefectural Takatsuki Minami Senior High School," but also affectionately called "Takanan." One of the members of the Osaka Prefectural Board of Education involved in the decision to close our school stated, "Takatsuki Minami High School was an exemplary school." In addition, one of the witnesses for the defendant in the court case stated for the record that "Takatsuki Minami High School is a most excellent school." Takatsuki Minami High School was indeed a school that was extremely loved by its students and the surrounding community.

Using the "right of children to express their views" clause from the Convention on the Rights of the Child as our last resort in our battle against the Osaka Prefecture's decision to close our school, we (59 students and 121 parents) took our signed petition to Osaka District Court on March 28, 2003 to take on Osaka Prefecture and the governor in a lawsuit aimed at having the order to close our school canceled and to seek reparations. We fought until the court's decision was finally delivered on September 10, 2004. Our lawsuit was based on the fact that there was no reasonable reason for closing our school, that the signed petition and opinions of nearly 170,000 names from the local community in opposition of the decision to close our school had been ignored, and that the authorities involved had not acknowledged our right to express our views. This kind of court case involving high school students was unprecedented here in Japan in the history of modern education. Through our movement to oppose the closure of our school, the Convention on the Rights of the Child ---our ultimate last resort--- became a true presence in supporting our feelings. In fact, I do not think that we would have gone

forth with our lawsuit if it were not for the Convention on the Rights of the Child.

We are so happy that we have been afforded this opportunity to meet with chairperson Jaap Doek and committee member Lothar Krappmann during their visit to Japan and to share our experiences with Japan's education and judicial system in regard to the current state and problems here in Japan surrounding the rights set forth in the Convention on the Rights of the Child, as well as highlight some of the challenges that Japan faces in effectively implementing those rights.

Restrictions resulting from a Government Notice that stated that "this Ideal is Merely a General Principle"

One of the problems here in Japan in the government and judicial system is that measures to implement the Convention on the Rights of the Child have ended up as a nice sounding ethical provision without any real substantial plans for implementation. Criticism from all directions has been made to the effect that there is no sign of sincere desire or attitude to respect and honor these rights. Above all, much criticism has been to the effect that there are way too few measures in place to bring the law and policies of Japan into harmony with the Convention on the Rights of the Child.

One of the biggest hindrances to protecting the rights of children here in Japan traces back to an official notice made by Japan's Administrative Vice-Minister of Education of Japan's Ministry of Education on May 20, 1994. The notice stated the following regarding Article 12.1 of the "right of children to express their views":

"5. In regard to the right of a child to express their views as set forth in Article 12.1 of the Convention on the Rights of the Child, it is stipulated that the 'views of the child be given due weight in accordance with the age and maturity of the child.' This ideal is acceptable as a general principle, but this does not imply that this ideal must always be reflected in all circumstances."

In other words, here in Japan, the "right of children to express their views" is merely a nice sounding ethical provision without any real substance.

We Sought to Have the Court Directly Apply the Convention on the Rights of the Child

During the trial, we submitted petitions, briefings and testimonies to make our case for our rights in an attempt to have the court deliver a decision that would result in the direct application of the Convention on the Rights of the Child in regard to our participation in the decision to close our school and in other aspects of school activity, learning and life. Naturally, we sought to make clear the relevancy that the Convention on the Rights of the Child has as a critical foundation in preserving rights along with the Constitution of Japan, Japan's Fundamental Law of Education and various Supreme Court decisions. This was the first time that a ruling was made on the "right of children to express their views" in the Japan judicial system.

The articles of the Convention on the Rights of the Child that we applied to our petition in court were Article 3 (best interests of the child), Article 6 (protection of the life, survival and development of the child), Article 12 (right of children to express their views), Article 13 (right to freedom of expression) and Article 29 (educational goals). We also used the summary findings of the 946th assembly held on January 30, 2004, which used the theme from summary finding of the United Nations Committee on the Rights of the Child to reinforce our petition. That is, Japan's (2nd) 28-a. "Promote respect for the views of children in regard to all matters affecting the child in the family, court, government facilities, institutions, schools and in the act of policy making. Also, make sure that children are aware of these rights."

Infringement of the Children's Right to Education Violates the Law and is a

Violation of the Constitution of Japan and Japan's Fundamental Law of Education.

Article 13 of the Constitution of Japan establishes that "...people shall be respected as individuals" and that they are guaranteed the "right to life, liberty, and the pursuit of happiness" and Article 26 of the same establishes education as a human right. Article 1 of Japan's Fundamental Law of Education, Japan's constitution for education, states that "education shall aim at the full development of personality" and the preamble sings loudly of Japan's "resolution to contribute to the world peace and welfare of humanity by building a democratic and cultural state."

In order to achieve this kind of education, Article 10.2 of Japan's Fundamental Law of Education states that "school administration shall, on the basis of this realization, aim at the adjustment and establishment of the various conditions required for the pursuit of the aim of education" clarifying the duties of school administration.

In May 21, 1976, nearly 20 years prior to Japan ratified United Nations Convention on the Rights of the Child, Japan's Supreme Court clearly indicated that "education is performed entirely for the benefit of the children." This served as the basis for "best interests of the child," which was the Convention on the Rights of the Child adopted by the unanimous approval in the United Nations General Assembly in 1989. It is assumed that Japan's Fundamental Law of Education enacted in 1947 served as the origin of this solidly established Supreme Court precedent that "children's education is performed entirely for the benefit of the children."

As the plaintiff, we sought prompt relief for the violation of our right to learn by petitioning the Osaka Bar Association on October 25, 2003. It was our way of actually exercising our "right of children to express (our) views" as afforded us in Article 12 of the Convention on the Rights of the Child. In our petition we stated, "We were never provided with an official forum for discussing the matter. We were never provided with

measures for continuing our extracurricular activities." We also stated, "this consolidation and closure will destroy the legacy of Takatsuki Minami High School and is a major infringement of our right to a normal school life."

Toyokazu Urano, Professor Emeritus of Tokyo University and former chairman of the Japan Educational Administration Society, sought to have his view reflected in the court's decision by submitting his opinion to the Osaka District Court that states "there is a fatal defect in the view taken toward the children (high school students) and schools on behalf of the Osaka Prefectural Board of Education pertaining to a very fundamental matter. Also, the starting point for this problem, the 'Educational Reform Program' (April 1999), also has a serious defect in its distinctive theory regarding the making of schools. Since these defects are at the base of this issue, the actions of the Osaka Prefectural Board of Education are in clear violation of the education laws pertaining to the Constitution of Japan."

Osaka Prefectural Board of Education Sacrificed the Students Education and Even Ignored Their Right to Express Their Views

Takatsuki Minami High School, an excellent school on the rise with absolutely no reason to be closed, was designated for closure by the Osaka Public High Schools consolidation and restructuring plan, consolidated with Shimagami High School in November 2001 and completely closed in at the end of March 2005.

This decision to consolidate Takatsuki Minami High School was extremely unjustified for the following reasons:

1. The Osaka Prefectural Board of Education never asked Takatsuki City authorities or Takatsuki Minami High School students, parents and teachers for any input prior to announcing their decision to close Takatsuki Minami High School. Instead they were too busy holding private meetings to make deals with local

representatives to create a national credit-based high school based on the future plans of the school originally scheduled for closure, which resulted in Takatsuki Minami High School being arbitrarily selected for closure. On top of that, after the decision was made to close Takatsuki Minami High School, the plans that showed the reason for closing the other school were scrapped and a cram school style school was proposed instead ---going back on the promises made to the residents of Osaka Prefecture. At the start of this "crushing" of Osaka public high schools, the usual approach seems to have been to come up with a reason for closing a school after the making the decision to close the corresponding school, which more or less amounts to double treachery against the affected students, parents, teachers and residents.

2. Even after the Osaka Prefectural Board of Education announced the plan to close Takatsuki Minami High School on August 30, 2001, they continued to deny us students a forum to be heard and continued to ignore and severely violate the our right as children to express our views. Though the student body demanded an opportunity offer of an opinion expression for the Osaka Prefectural Board of Education, they never did set a date for a forum to explain the matter to us students. Moreover none of the members of the Board of Education ever tried to come to our school. So we sent a video visit to them by mail. It introduced our daily school life, a beautiful school building, our appeals and opinions to them. Amazingly there was a member of the Board of Education who sent back to us by cash on delivery. This fact became a result to let many students and their parents lose trust for the Osaka Prefectural Board of Education. We think that you can understand how the "right of children to express their views" is ignored in Osaka Prefecture.

When we students presented the signatures of parents we needed to be

accompanied or go downtown to the Osaka Prefectural Board of Education to request a forum for our voices to be heard, resulting in insufficient reception. Moreover, from 2003 on, the school was prohibited from recruiting new students, and, as a result, Takatsuki Minami High School gradually decreased in number of students and teachers, which in turn resulted in the shutting down of extracurricular activity after extracurricular activity that used to be some of the most active among all the Osaka public high schools. In this way, the Osaka Prefectural Board of Education violated the students' right to an education.

3. This crushing of Osaka public high schools is in reality a key element to the Osaka Prefectural administration plans. This poor Osaka Prefecture education policy was born out the desire to raise 80 billion yen (about 800 million US dollars) from the sale of school property, despite the sacrifices to the children's education, in an attempt to try to make up for the deficits incurred by misgovernment during the bubble economy that was created by large scale projects such as Kansai Airport and Rinku Town in which there was much participation and corruption on behalf of part of the Prefectural Assembly.
4. The Osaka Prefectural Board of Education's way of implementing their restructuring plans of Osaka public high schools is one in which that give priority to private negotiations with members of the Osaka Prefectural Assembly, city councilpersons and city school board members while at the same time showing a great deal of disdain toward the affected students, guardians and educators as well as to the environment of the affected schools. This was made evident in court based on the documents submitted by the plaintiff and several Osaka Prefectural Board of Education internal documents.

Unusual Court Operations Resulting in Our Petition and Wished Being Trampled

This court's ruling was delivered on September 10, 2004 in the Osaka District Court. The presiding judge, Tomoichiro Nishikawa, ruled completely and unjustifiably against us. The odd thing about the whole process was that after six hearings with the original presiding judge, Tomoji Yamada, in what turned into a marathon of deliberations lasting all day of March 31, 2004, and included the cross examination of 6 witnesses in total (both plaintiff and defendant), a new presiding judge, Tomoichiro Nishikawa, was put in charge of the case just before the evidentiary hearings began on the next day, April 1, 2004. On top of that, the new presiding judge made the odd move of holding only one hearing (on May 28, 2004) and then nothing else until he delivered his ruling on September 10, 2004.

During that year we ended up going to court a total of 8 times, even as we continued with school and extracurricular activities, and proudly asserted the injustice of the decision to close our school. The high school students packed the court room (that had a capacity of 100) three times. In addition, over 500 parents, graduates, teachers and Takatsuki City residents provided a powerful presence as observers. During this time, we held three support meetings and gathered 10,000 signatures for a fair and speedy ruling. Added to the already gathered 170,000 signatures, we were able to put up a powerful opposition in court in response to the illegal closure of Takatsuki Minami High School.

Problems with the Unjustified Ruling that Denied the Right of Children to Express Their Views But Also the Education Rights of the Parents and the Teachers

The content regarding the "right of children to express their views" in presiding judge Tomoichiro Nishikawa's ruling (see Exhibit 1), a judge who only participated in one hearing, is as follows:

1. The judge overruled us in regard to our request to have the governor cancel the promulgation by stating "promulgations are not subject to lawsuits." He then went on to rule a restriction on the right to seek a restoration of citizen rights using arbitrary administrative punishment. However, it is impossible to restore student rights in a case like this where the affected students will be long gone after the final punishment of the Osaka Prefectural Board of Education that enacted the school closure rules. Also, this goes against the ideals and statutes of the Administrative Appellate Law. The ruling should be heavily criticized since it allowed the decision to close the school to remain in place due to the cessation of recruiting activities and did not rectify the rights that had been violated.

2. In their "demand" to the Osaka Prefectural Board of Education, the Osaka Bar Association commented on the students' right to express their views by stating that "even if the guardians and the teachers have a profound concern for the methods used in the education of the children, that concern cannot be interpreted to mean that these parties should also be guaranteed special participation in the enactment of education policies and the execution of related, normal decision processes. We can find no clue in established law for establishing such a basis for an interpretation to that effect... nor can we find a basis for this in positive law either." This indicates the unconstitutional logic being used to deny the specifically protected education rights granted to the sovereign citizens by the Constitution of Japan and the Fundamental Law of Education. This kind of opinion raises questions about the judge's competency and qualification to act as judge. Also, it is evident from the fact that the ruling judge did not attempt to include the opinion of the former chairman of the Japan Educational Administration Society Constitution of Japan that indicated that the Osaka Prefectural Board of Education was in violation of the Constitution of Japan, Japan's Fundamental Law of Education and various Supreme Court decisions, that this ruling was made just like that of the Osaka

Prefectural Board of Education ---without viewing the high school students as being sovereign. In this end this ruling was unjust and heavily lacking in awareness of human rights and the proper acknowledgement of the children and their education.

No matter that this is a judge of a government lawsuit we are talking about, for him to make this kind of ruling that affirms that intentions and policies of the government authorities involved, and, furthermore, to blatantly make such an archaic ruling in the face of the school, education, the rights to education and the right to participate in education on behalf of the children, the parents and the teachers, is the equivalent abandoning the role and mission of the judicial system.

3. As if to establish trampling on education rights as a premise, the ruling stated in regard to the "right of children to express their views" that the Convention on the Rights of the Child "could not be interpreted as guaranteeing the procedural and specific rights of students to express their views in settings of decision making regarding individual measures." Such a restrictive interpretation of this international standard that has been ratified here in Japan indicates a substantial denial of the "right of children to express their views" and demonstrates the governments attempt to restrict the rights of the youth.

The content of this ruling and its interpretation of the Convention on the Rights of the Child is very symbolic of the impoverished sense of human rights here in Japan.

4. In regard to the Educational Reform Program put together by the Osaka Prefectural Board of Education, the ruling ignored the fact that there were plans to shut down 20 schools and that of the overall figure of 29 schools, the closure of 14 of those schools (e.g., part-time and night schools) resulted in various problems and the judges simply stated that "there is nothing particularly irrational in this respect." Likewise in regard to the sale of school property related to the closure of schools, the judges remarked in the ruling that "the defendant appears to have had sufficient merit in opting to sale the

properties in question. There is not sufficient evidence to conclude that the ultimate goal was to close a great deal of schools to raise enough fiscal resources to meet its financial crisis." Again, another example of a very one-sided ruling that did not involve close examination of the actual matter at hand and that also seemed to be to "beautify" the administrative measures which were the targets of much criticism on behalf of the Osaka Prefecture residents.

5. In regard to the adverse impact resulting from the termination of recruitment activities, the judges acknowledged in their ruling that "at the very least, it can be argued that the students enrolled at the plaintiffs' school from 2003 and later suffered some adverse impact compared to students in earlier years in regard to this aspect (Note: extracurricular and school activities)." However, the judges nonetheless ignored the facts made clear by the briefings and testimonies that we plaintiffs submitted and we were awarded a mere 500,000 yen (about 5000 US dollars) to be shared between three schools and 720 people. The judges claimed that other than the issue of scoring Osaka Prefectural Board of Education entrance exams that our situation was no different than that of other schools that have been appointed unsubstantial additional duties and/or that are faced with rationing measures. The judges additionally remarked in a very dogmatic fashion that, "We cannot acknowledge that the students enrolled have suffered any significant infringement in this respect." This ruling is an unjust ruling in which the conclusion was reached from the outset and with complete disregard to the actual conditions.

6. The Osaka Prefectural Board of Education continually rejected requests for information (e.g., internal documents) by replying that "we did not make that" or "we did not save a copy of that." However, as the plaintiff submitted briefings that countered their claims the Osaka Prefectural Board of Education changed their story and begin admitting to the existence of the corresponding documents. However, the judges once

again managed to totally disregard the many Osaka Prefectural Board of Education documents and plaintiff briefings that demonstrated the their arbitrary exercise of administrative power by stating that, "...we acknowledge all these facts, but it is simply not enough to infer that this all adds up to some nefarious scheme in which pressure from a Prefectural representative led to the arbitrary selection of the plaintiffs' school to be consolidated with Shimagami high School...there simply is not any clear evidence to this effect." Here again, the judges ruled in a manner that almost seems to legitimize the manner in which the Osaka Prefectural Board of Education went about selecting our school for closure. In this way the judges carefully danced their way around the arbitrary methods used to restructure and consolidate as documented Osaka Prefectural Board of Education internal documents. From the outset to the very end of the trial, it was like the judges were there to pat the defendants on the back and affirm their position over and over.

7. The Educational Reform Program noted that the biggest problem facing Osaka public high schools was that of drop-out rates. However, our school was faithful to Article 28.1(e) of the Convention on the Rights of the Child states the need to "take measures to encourage regular attendance at schools and the reduction of drop-out rates" and has archived the lowest drop-out rates in Osaka Prefecture. Ironically, however, due to political riggings behind closed doors, our school was arbitrarily and unjustly selected for closure. Nonetheless, the judges still managed to disregard these clear, objective and quantitative facts and brush it all aside and again take the side of the defendants by stating that "the plaintiffs' assertion is mere conjecture and this (the criteria used by the Osaka Prefectural Board of Education to select schools for closure) cannot be acknowledged as there is simply not enough clear evidence." Again, more indication that the judges made no effort to put on a fair trial and fairly interpret the clear facts presented to them.

A Request for the Support of the United Nations Committee on the Rights of the Child

This ruling was an interpretation that rejects the briefings and testimonies submitted by the plaintiff, the petition of plaintiff students, parents, teachers and citizens, and of all things, the Constitution of Japan, Japan's Fundamental Law of Education and the Convention on the Rights of the Child. This ruling dismisses the sense of human rights and was a decision that was arbitrary and involved the illegal use of discretionary power that did not involve sufficient and careful examination and that gullibly swallowed all the bureaucratic and formal documents and excuses made. This ruling was very problematic and we feel a great deal resentment, perhaps equal to that of the abandonment of the role of judicial system.

What we feel is, even as high school students are capable of comprehending, is a great disappointment in the fact that Japan's justice and government administration authorities did not try to understand us.

We made this report today because we feel that it is a matter of urgency that the United Nations Committee on the Rights of the Child know about the serious current state and problems here in Japan surrounding the "right of children to express their views" and the disgraceful governmental and judicial developments that led to ruling against us that misconstrues, limits and virtually rejects the ideals of the Convention on the Rights of the Child.

In closing, we would like to ask committee chairperson Jaap Doek and committee member Lothar Krappmann from the United Nations Committee on the Rights of the Child to provide us with any assistance or help that will help us correctly and effectively implement the ideals and rights set forth in the Convention on the Rights of the Child throughout the fields of education, government administration and the judicial system.

Exhibit 1: Excerpt from the Ruling of the Takatsuki Minami High School

"Education Rights"

("Right of Children to Express Their Views" section)

Pages 57 and 58 of the Ruling

September 10, 2004

Osaka District Court

(Presiding Judge Tomoichiro Nishikawa;

Assisted by Judge Kenji Tanaka and Judge Haruhiko Ishida)

Based on the aforementioned facts, it is certain that the defendant did indeed establish a three year plan for the closure of the plaintiffs' school. However, the apparent secrecy of the operation was in an effort to avoid confusion among the community in regard to the schools being considered for closure. It is for this reason that the defendant did not attempt to get any input from the concerned parties in the Osaka public high school system and community. Once the did go public with the decision, though, they did explain the matter via our principal of the plaintiffs' school to the teachers, students and guardians after publicizing the decision to close plaintiffs' school. In addition, there is no trace of any evidence to indicate preliminary discussion with Takatsuki City.

Moreover, in light of the objective circumstances of an actual decrease in students it appears that the defendant genuinely attempted to counter these conditions by enacting and implementing an Educational Reform Program to deal with these circumstances by restructuring and consolidating the high schools throughout Osaka Prefecture.

Although it may be argued that the defendant should have operated in accordance to positive law to allow for the input from the community in regard to this kind of social matter, and even though it can be argued that every effort should be made to advocate

the interests of the children and answer the concerns related to the public interest regarding the growth of the children, and even though the necessary and appropriate authority should be granted for making decisions regarding the content of education within an acceptable range, education is foremost the duty to provide the essential rights needed for the children to learn. In addition, even if the guardians and the teachers have a profound concern for the methods used in the education of the children, that concern cannot be interpreted to mean that these parties should also be guaranteed special participation in the enactment of education policies and the execution of related, normal decision processes. We can find no clue in established law for establishing such a basis for an interpretation to that effect. Also, upon review of the content of Articles 12.1, 12.2 and 13 of Convention on the Rights of the Child, we could find no specific right that guarantees procedural rights, such as the "right of children to express their views" in a setting in which decisions are made regarding of individual policies, such as in regard to the determination of the establishment and closure of public high schools as encountered in this trial.

In fact, based on the aforementioned facts, it could even be said that the method in which the defendant enacted and implemented its plan to identify candidates for restructuring and consolidation without listening to the opinions of and receiving documentation from the concerned parties of each school in the Osaka public high school system, and then waited to explain the matter to the teachers, students and guardians via our principal after the defendant had gone public with their decision, was intended to avoid unnecessary confusion and therefore we cannot state that it was an illegitimate or unreasonable act on the part of the defendant. Even in this actual case in question, the defendant implemented a three year plan for the plaintiffs' school and after announcing it on August 30, 2001, the defendant conveyed an explanation to the teachers, students and guardians of the plaintiffs' school via our principal. In this respect

we cannot justifiably take the position of the plaintiff and deem the actions of the defendant as illegal or even inappropriate.

As stated above, we cannot deem the actions of the defendant in regard to the education policies employed for consolidation and restructuring in light of the ideals and education laws pertaining to the Fundamental Law of Education (e.g., Articles 41 and 42), nor can we deem that the defendant has greatly infringed the interests of the students enrolled at the corresponding high school during the affected period. Therefore, we cannot deem that the defendant's use of discretionary power to decide to close the corresponding school as deviant, abusive or illegal.