

2020, 9, 28

The Human Rights Committee

The 7th examination against the Japanese government
Counter Report to the Japanese Government Report
for List of Issues No.5

<Discriminatory Legal Systems
against Children Born out of Wedlock in Japan >

Society for Abolishing the Family Registration System
and Discriminations against Children Born out of Wedlock
(AFRDC)

E-mail: kouryu2-kai@ac.auone-net.jp

[Proposals for questions and recommendations to the Japanese government]

In order to abolish the discriminatory legal system against children born out of Wedlock, we hereby request you to ask the following questions in the examination of Japan and make recommendations on the general findings.

1. Despite that Japan has abolished the discriminatory provision in the right to inheritance of the Civil Code, it still maintains the concept of “legitimacy” that discriminates against children of their legal status as "a legitimate child" or "a child not legitimate" depending on whether the parents are married or not.

Japanese legal system discriminates between "legitimate children" and "children not legitimate", but this discriminatory legal system should be eliminated and the concept of “legitimacy” should be abolished. Furthermore, we request the clarification of the time schedule for the abolition.

2. Japan should immediately abolish the provisions of the Family Registration Law, which require the birth notification to indicate whether a child is legitimate or not.

3, ① Japan still maintains the descriptions of "female" and "male" in the family relations column of Koseki (the family register) created before November 2004, and it can be easily recognized that she or he is a child born out of wedlock because those descriptions are different from the ones for children born in wedlock.

If there is a request from a child born out of wedlock, the description will be changed to “first daughter” or “first son”, which is the same description for a child born in wedlock, but if there is no request, the description of "female / male" remains unchanged.

② Japan should abolish the unnecessary column for the family relations in Koseki under the responsibility of the administration, and eliminate the discriminatory descriptions where anyone can recognize at a glance that a child is born out of wedlock. The parent-child relationship can be confirmed sufficiently by descriptions in the parents’ column.

< Reason for Proposal >

I. Current status of the legal system which discriminates against children born out of wedlock

Introduction

During the examination of Japan by the United Nations Committees on Human Rights, including the Human Rights Committee (1993, 1998, 2008), many concerns and

recommendations regarding discriminations against children born out of wedlock have been repeatedly issued (***Material 7**). The discriminatory provision in the right to inheritance of the Civil Code was ruled to be a violation of the Constitution by the Supreme Court with the unanimous consent of all 14 judges on 4th September 2013. Then in December of the same year, this provision was abolished as stated in the Japanese government report (**footnote 1**). At the same time the Ministry of Justice prepared a revision bill of the Family Registration Law, which would abolish the column to enter whether a child is "legitimate" or "not legitimate" in the birth notification. However, the ruling party didn't agree to the bill and the first petty bench of the Supreme Court decided that the provision which required the column in the birth notification was constitutional (*** Footnote 2**), and as a result, the bill wasn't submitted to the Diet on the ground that "it is not urgent." .

The discriminatory provision in the right to inheritance of the Civil Code, which was the biggest reason for distinguishing between children born in wedlock and children born out of wedlock, had been abolished, and it had been expected that the entire legal system for children born out of wedlock would be reviewed and there would be progress in abolishing other provisions that discriminate against children based on whether the parents are married or not when they are born. However, even now, after seven years, the abolition of the concept of legitimacy has not been discussed officially and the terms of "legitimate children" and "children not legitimate" are still maintained

The descriptions whether a child is "legitimate" or "not legitimate" in the birth notification are still required by the Family Registration Law and the discriminatory descriptions in the family relations column in Koseki (the family register) where anyone can recognize at a glance that the child is born out of wedlock are not yet all eliminated..

1. Maintaining the concept of legitimacy

(1) Even though the discriminatory provision in the right to inheritance of the Civil Code has been abolished, the concept of legitimacy that determines the legal status of a child as legitimate or not legitimate depending whether the parents were married or not when the child was born. the Civil Law and the Family Registration Law discriminate against children as "legitimate" and "illegitimate".

(2) The discriminatory terms, "legitimate child" and "illegitimate child" are used in the provisions of the Civil Code and the Family Registration Law.

In the Japanese examination of the Children's Rights Committee in January 2019, the committee members said to the Japanese government delegation: "Children born out of

wedlock now have the same share in inheritance as children born in wedlock so we'd like you to abolish the term 'illegitimate child' totally and amend all the related laws."

In response, the Japanese delegation answered as follows: "We are not planning to abolish the concept of legitimacy. This is because the Japanese law adopts the legal marriage system. Even the Supreme Court of Japan, which decided that it was unconstitutional to make inheritance rights of a child born in wedlock and a child born out of wedlock different from each other, accepts the legal marriage system itself. We believe that this distinction is the basis of our family system."

"Ms. Khazova asked what kind of words and phrases are used in the Supreme Court's decision. The Supreme Court didn't say that such a distinction itself was unconstitutional. By justifying legal wedlock the Supreme Court acknowledges it is logically inevitable that there are children who are legitimate and children who are not legitimate."

However, the concept of a legal marriage is the system where the requirements for the formation of a marriage are defined by law and only those that meet the requirements are considered to be a marriage. In a discussion with the Ministry of Justice in June last year, we said, "All members of the United Nations adopt the legal marriage system, but in many countries the concept of legitimacy is abolished, so it is not logical to say that there is a distinction between a child born in wedlock and a child born out of wedlock as an inevitable result from legal marriage system," but there was no clear reply.

Thus, Japanese government (Ministry of Justice) has not changed its opinion and they are not planning to abolish the concept of legitimacy, nor the legal system which distinguish "illegitimate children" from "legitimate children", nor the terms "legitimate child" and "illegitimate child" which is used 11 times in the Civil Code and 7 times in the Family Registration Law.

We had a discussion with the Ministry of Justice in June this year, but the Ministry of Justice answered that the words "legitimate child" and "child not legitimate" in the Civil Code means a child born of married parents and a child who is not, and these expressions don't have discriminatory connotations.

2. Discriminatory statement on a notification of birth

The Family Registration Law stipulates that when a child is born and the parent goes to a local government office to submit a birth notification, she/he must enter whether the child is legitimate or illegitimate (* footnote 3). This is a discriminatory provision and should be abolished immediately.

① A birth notification is for creating a Koseki (family register) and is not seen by a third party, but the fact that the official document of a birth notification has a column to place a check mark next to either "legitimate" or "not legitimate" is a kind of message to place children born out of wedlock in a socially inferior position, which is also a factor that preserves and promotes discriminations against them. It also causes unmarried mothers unnecessary pain.

② Before 2010, when a parent refused to check the discriminatory column, the birth notification was rejected and neither Koseki nor the resident card could be obtained. The Ministry of Justice issued a notice (* footnote 4) in 2010 to change the operation so that a birth notification should be accepted without checking either legitimate or illegitimate. However, the notice states that if there is no entry in this column, a staff in charge of counter operations of family registration must ask for the entry. Only if the notifier refuses the request, the staff will not force her/him to enter it and tell the notifier that it is possible to enter instead such as "the child will be registered in the mother's Koseki" or "the child will take the mother's surname" in the remarks column of the birth notification.

Therefore, an unmarried mother (a birth notification of a child born out of wedlock shall be submitted by the mother) who comes to submit a birth notification (*Material 1) is instructed by a staff at first to enter "legitimate child" or "illegitimate child". There are mothers who checked "not legitimate" as instructed by staffs of family registration and have been regretting the whole time that they had described their children as "illegitimate child".

③ In April of this year, when a woman who was in common-law marriage went to the Hiroshima City Office to submit a birth notification of her child, she refused to check "legitimate" nor "not legitimate" by drawing crossed lines on them and entered "the child will be registered in the mother's Koseki" in the remarks column. However, the staff who attended to her wrote down "illegitimate child" in the birth notification without her consent, and when she protested against it, the staff did not make any further entries.

A few days later, the staff called her home and threatened her saying "I confirmed with the Legal Affairs Bureau, and we will not accept the birth notification unless you agrees to enter

‘illegitimate child’ in the form."

Not only the staff but also the Legal Affairs Bureau, who advises city halls, forced the notifier who would not like her child to be described as "illegitimate child" to enter the discriminatory description by going so far as to threaten to reject the birth notification (and this is just the tip of the iceberg).

Women have been deeply hurt by this kind of treatment from local government offices.

The most serious problem with this case is that not only the local government staff but also the Legal Affairs Bureau didn't know the existence of the notice from the Ministry of Justice and forced the notifier to enter "illegitimate child" in the form.

We asked about this case in a discussion with the Ministry of Justice held in June this year, and the Ministry of Justice answered: "It is very regrettable and we will make sure the notice will be informed so that nothing like this happens again."

However, this kind of discriminatory treatment has been repeated over and over even with the dissemination of the notice, and the only solution is to abolish the discriminatory column itself.

3. Discriminations that remain in Koseki (the family register)

In the family relations column of Koseki created based on birth notifications before October 2004 (*** Material 2**), children born out of wedlock are described as "male / female", which are different expressions from those for children born in wedlock.. The current way of changing the discriminatory expressions upon a request from a child born out wedlock should not be continued because the elimination of discriminations should be done under the government's responsibility. The Family Registration Law must be amended and the government must set a clear direction for changing the situation to abolish the discriminatory expressions and moreover, to abolish the family relations column.

Before October 2004, the relations between parents and children born in wedlock in Koseki (the family register) were described as "first daughter / first son", and children born out of wedlock were described as "female / male". There was a judgment at the first trial on March 2, 2004 upon the suit that the discriminatory description of family relations was a violation of the Constitution, and as described in the content of the judgment below, it was ruled that the distinguishing description by family relations was an infringement of privacy (later, the High Court and the Supreme Court denied this).

"There is no reason or necessity to use a method that clearly distinguishes between a legitimate child and an illegitimate child in the relations column of Koseki by stating "female"

in the case of an illegitimate child and stating "first daughter" or "second daughter" in the case of a legitimate child so that the plaintiff's daughter can be clearly identified at a glance to be an illegitimate child. Therefore, the distinction between a legitimate child and an illegitimate child in the relations column of Koseki in this case must be said to be an infringement of the privacy rights of the plaintiff and her family."

Based on this judgment, the government (Ministry of Justice) decided that the family relations of children born out of wedlock in Koseki would be described as "first daughter / second daughter", "first son / second son", etc., from birth notifications submitted on or after November 1, 2004. However, the descriptions of the family relations in Koseki created before that date for children out of wedlock (at the age of 16 or older as of the end of October 2020) remain "female" or "male".

Since birth order of children was decided to be maintained at the time of the revision of the system, the government made a decision that they would change the descriptions from "female / male" to "first daughter / first son" only when being requested by a child born out of wedlock. They said "It is a big burden on staffs to eliminate the discriminatory descriptions under the government authority" (because they have to trace the mother's Koseki and check the number of children born out of wedlock and the number of girls and boys in the family in order to figure out the family relations.)

As a result, you have to come forward and risk being identified as a child born out of wedlock if you'd like to change the description while there is a strong sense of discriminations against children born out of wedlock.

It is estimated that there were around 2.5 million children born out of wedlock who were described as "male" or "female" as of October 2004, but because of those risks being identified and the lack of publicity by the government (*Footnote 5), the number of the descriptions changed by March 2020 is only about 46,110 (*Material 3), which is less than 2% of the children born out of wedlock whose description in Koseki is "female" or "male".

Thus, most children born out of wedlock die while they are discriminated. Koseki will be preserved for more than 150 years after death and a copy can be issued upon request, and every time that happens, people will see the discriminatory entries in Koseki. It is no exaggeration to say that the discriminatory descriptions of children born out of wedlock are left as it is.

Relying on the request of a child born out of wedlock to change the discriminatory description in his or her family relations will not solve the problem, and it is necessary to abolish the discriminatory descriptions on the responsibility of the government.

II、 Social discriminations against children born out of wedlock

In Japan, there is still a strong sense of discriminations against unmarried mothers who have children and children born out of wedlock. For this reason, many children born out of wedlock and their mothers are forced to live quietly so as not to be known that the children are born out of wedlock.

Since there is a strong sense of normality that everyone should be married first and then give birth, there are many "shotgun marriages" that occur as soon as the pregnancy is found out. As a result, the birth rate of children born out of wedlock in 2017 was only 2.2% (*Material 4).

The following are actual cases of discriminations.

1. Discriminatory claims were made against children born out of wedlock in the course of the parliamentary debate over the abolition of discriminatory provision in the right to inheritance.

In the parliamentary debate over the abolition of discriminatory provision in the right to inheritance, opposing views were voiced by conservative lawmakers that the abolition would "promote adultery", "destroy the family system" and so on. It was unbearable to hear.

2. Known as a child born out of wedlock and forced to leave her home

For being on TV in the news concerning the abolition of discriminatory provision in the right to inheritance, a woman was found out by a resident of the apartment she lived in that she was a born out of wedlock, and he spread it to others in the same apartment. She was harassed by them and had to move out.

3. Known to have given birth to a child without getting married and forced to quit her job.

When a woman submitted a copy of her Koseki (family register) to the company for administrative procedures, a staff member found out that she had a child without getting married and the father of the child was unknown. The staff told everyone about it, and she became uncomfortable at work and had to leave her job.

4. Discriminatory remarks against children born out of wedlock by conservative members when petitioning a local council for the abolition of discriminations against children born out of wedlock

① When a petitioner submitted to a local council "Petition regarding submission of a written

opinion requesting the government to revise the Family Registration Law to eliminate discriminations against children born out of wedlock" and she was explaining the purpose of the petition at the committee meeting, she received discriminatory remarks from one of the attending committee members. When she said "My co-workers who knew that I was living unmarried with my partner accused me and told me that they felt sorry for the child and I was not a mother", a member of the committee yelled at her "You deserve it".

② While explaining the contents of the petition to lawmakers, she stated that it was not right for children to be discriminated against in the legal system when they had no responsibility. Then a conservative male member of the committee said, "Certainly there is no responsibility for the child. However, the mother had an affair with a man who she knew had a wife and children, and got pregnant. She could have had an abortion but she didn't so she should be blamed for that," which was selfish and discriminatory logic of men.

③ In another parliament, when a member from another congregation expressed her opinion on the petition to eliminate discriminations against children born out of wedlock, a conservative member told the member sitting next to him, laughing, that a child born out of wedlock was a child born of adultery.

In Japan, there are still many people who think that a child born out of wedlock is a child of a man with a wife and children (but that doesn't mean that they should be discriminated against and despised at all). Under the circumstances with the low status of women and a strong sense of discriminations against women, this has led to the idea that children born out of wedlock and their mothers deserve to be discriminated against.

* Even in Japan, diverse family structures have been generated in which men and women raising children through de facto marriage, women raising children as unmarried single mothers, and LGBT people raising children together. Still, there are many conservative lawmakers who won't see or admit any of them.

5, Heartbreaking cries from children born out of wedlock received for telephone consultation

We, the Society for Abolishing the Family Registration System and Discriminations against Children Born out of Wedlock, have been working on telephone counseling since 2012 and have received the following voices even after the abolition of the discriminatory provision in the right to inheritance.

◎ "I was born out of wedlock and I had been suffered from being bullied for a long time. When I said I didn't have a father, I was told that I was "a mistress's child" or "a bastard". I was depressed by being discriminated against. I think of myself as half a man and feel so small."

◎ "I was told by a school teacher that I had no friends because I was an illegitimate child. After getting married, my husband blamed me, saying, 'A bastard like you is inferior and

usually cannot even get married.' I became mentally ill and got divorced."

◎ "I have been discriminated against so much that I feel ashamed of myself."

◎ "I have lived my life feeling sorry for being born. I cannot have confidence in myself."

◎ "I was discriminated against and depressed. I've always thought of myself as a being who should not be alive."

The discriminatory legal system against children born out of wedlock needs to be abolished as soon as possible in order to respond to the sorrows and cries of them.

III, Movement for the abolition of discriminations against children born out of wedlock...from local parliaments and governments

1. The appeals and petitions to amend the Family Registration Law to eliminate discriminations against children born out of wedlock have been adopted by local parliaments.

With the abolition of the provision in the right to inheritance in December 2013, it was hoped that the problem of discriminations against children born out of wedlock would be resolved. However, the movement to abolish the discriminatory legal system against children born out of wedlock has stopped. Out of a fear that discriminations against children born out of wedlock may be buried in the darkness if nothing is done, we have been working on appeals and petitions (***Material 5**) to local councils since 2014, requesting the national government for the revision of Family Registration Law and the abolition of discriminations against children born out of wedlock; the abolition of the discriminatory column on birth notification and the family relations column on Koseki (the family register) (***Footnote 6**) .

By June this year, we contacted 21 local councils, and appeals and petitions have been adopted by 17 councils (in two of which, the proposal was adopted as a submission by members of the councils). In 3 of the 21 councils it has been abandoned in the continuous examination, and in 1 council it has been rejected.

2. At the General Assembly of the "National Union Family Register and Resident Register Office Council", which is a gathering of family register affairs and resident register clerical staffs of local governments all around Japan, a request for revision of the Family Registration Law to eliminate discriminations against children born out of wedlock has been submitted to the government for two consecutive years.

This request is to ask the Ministry of Justice, which has jurisdiction over the family register affairs, to revise the Family Registration Law to abolish the discriminatory column of birth notification and abolish the family relations column of Koseki (the family register), as in the section 1 above. The fact that this request was adopted in 2018 and 2019 for the second consecutive year has a very significant meaning.

Because the local government officials across the country who are actually in charge of these practices at the local government offices request this for the reason below:

"In recent years, discriminations against children born out of wedlock have been abolished in other countries as well, and legal revisions to remove words for children born out of wedlock have been undertaken as the distinction between legitimate and illegitimate children is itself an unjust discrimination against children. The revision of Japan's Family Registration Law has been repeatedly recommended by the United Nations Human Rights Institutions, and it is hoped that the law will be revised as soon as possible in order to respect the human rights of children born out of wedlock.

It is quite reasonable to abolish the column for the family relations in order to eliminate the factors that may induce discriminations against children born out of wedlock and simplify the administration work of family registers by eliminating unnecessary items." (***Material 6**)

<Answer from the Civil Affairs Bureau of the Ministry of Justice>

*** Published in the June issue, page 59 of "Koseki" edited by the National Federation of Family Register Resident Register Office Council**

In response to the above request, the Civil Affairs Bureau of the Ministry of Justice replied as follows and rejected the request:

"Regarding the descriptions of the distinction between legitimate and illegitimate children in birth notification pursuant to Article 49, Paragraph 2, Item 1 of the Family Registration Law, the judgment of the Supreme Court on September 26, 2013 said, 'At least it is difficult to deny that it contributes to the convenience of processing administrative paperwork,' and it is also an issue that has a lot of different opinions.

In addition, the Family Registration Law provides that not only the gender but also family relations should be stated in Koseki (the family register), and because of the historical background of notarizing the birth order of the child as a person's status, we believe that there is a large public consensus about the family relations' being entered..

Therefore, it is difficult to comply with the request."

* * * *Footnotes* * * *

***Footnote (1): Preliminary Questionnaire B5, Human Rights Committee, November 24, 2017**

“We would also like you to report on measures to eliminate all discriminatory provisions regarding the status of children out of wedlock.” Japan answered to this inquiry in its report dated April 19, 2020, as follows:

"In December 2013, the law for partial revision of the Civil Code was enacted to delete its provision which provided that the share of inheritance of an illegitimate child shall be half of the share of inheritance of a legitimate child, and to make the share of inheritance between a legitimate child and illegitimate child equal. The law came into effect in the same month."

***Footnote (2): Supreme Court First Bench judgment on September 26, 2013**

The Supreme Court's decision in a dispute over whether or not the provision of the Family Registration Law, which required birth notification to state whether a child was born "legitimate" or "not legitimate", violated the Constitution. It ruled that "It cannot be said that the provision stipulates unreasonable discriminatory treatment in relation to a legitimate child and it does not violate Article 14 Item 1 of the Constitution (equality under the law)." However, it also pointed out that "requiring the description is not indispensable for paperwork" (unanimous opinion of the five judges). Furthermore, Judge Ryuko Sakurai mentioned in her supplementary opinion the need to revise the system, saying, "It is desirable to consider reviewing the system, including changing the descriptions. "

***Footnote (3): Article 49, Paragraph 2 of the Family Registration Law (notification of birth)**

The following matters shall be entered in the notification form:

1. the gender of the child, and whether the child is legitimate or not legitimate

***Footnote (4) : Ministry of Justice Min-I No. 729, March 24, 2010**
Director, First Civil Affairs Division, Civil Affairs Bureau, Ministry of Justice
Handling of the cases where the "Relations with Father and Mother" column of birth
notification is not entered at the time of notification of the birth of an illegitimate child (Notice)

Regarding the above cases, they shall be handled as follows.

Please be noted and arrange for the heads of your regional offices and the heads of cities, wards, and villages in your area of jurisdiction to be informed.

Notice

1 If there is no entry whether the child is "legitimate or not legitimate" in the "Relations with Father and Mother" column of the notification:

(1) An amendment to state whether the child is "legitimate or not legitimate" shall be requested.

(2) If the applicant do not follow the request in (1) above, another way of amendment shall be requested to clarify the surname of the illegitimate child or which Koseki the child should be registered by entering comments in the remarks column of the notification form such as "the child takes the mother's surname" or "the child is enrolled in the mother's Koseki (family register)".

***Footnote (5) : From the words of a mother who has struggled with guilt for over 20 years because her son was described as "male" in Koseki (the family register)**

"While studying about the inheritance by will, I learned from Mr. Shuhei Ninomiya's book 'Family Law 5th Edition' that it was possible to correct the discriminatory expressions of family relations in Koseki, and I went to a ward office in order to correct the family relationship and reproduce Koseki.

When my son was born, I was told that his family relationship in Koseki was going to be "male" instead of "first son," and I remember feeling sad because of the discriminatory description and feeling pain because of the guilty that it was my fault.

That feelings never went away so I was really happy when I found out that the description of the family relations could be corrected. After correcting it, I felt indescribable emotions welling up in me like I finally made atonement for my sin and the tears came into my eyes.

Discriminations that children are not responsible for, such discriminations should be eliminated."

***Footnote (6) : Article 13 of the Family Registration Law**

In Koseki (the family register), the following matters shall be entered for each person in Koseki in addition to the registered domicile:

4. the names of his/her natural parents and his/her relationship with his/her natural parents;
5. in the case of an adopted child, the name(s) of his/her adoptive parent(s) and his/her relationship with his/her adoptive parent(s);

***** Materials *****

【 * Material 1】 Birth Notification

dd/mm/yyyy

To whom it may concern

A person who submits the birth notification is required to mark this column.

Child	(Pronunciation) Name	Surname	FirstName	Relations with Father and Mother	<input type="checkbox"/> Legitimate <input type="checkbox"/> Not legitimate <input type="checkbox"/> male <input type="checkbox"/> female	
	Time of Birth	dd/mm/yyyy		am/pm		
	Place of Birth					
	Address (Place of Resident Registration)					
		Name of Head of Household	Relations with Head of Household			
Father And Mother	Name of Father and Mother	Father		Mother		
	Date of Birth (Age when the child was born)	dd/mm/yyyy (Age)		dd/mm/yyyy(Age)		
	(omitted)					

【 * Material 2】 Koseki (Family Register)

In the column of family relations with the parents, there is still discriminatory description by which anyone can see at first sight that the person registered was born out of wedlock.

Permanent Domicile Name	1-4 Ogikubo, Suginami-ku, Tokyo Kohno Taro
Matters of the Family Register Compilation of the Family Register	【Registered Date】 dd/mm/yyyy
Person recorded in the Family Register	【Name】 Taro 【Date of Birth】 dd/mm/yyyy 【Marital Status】 Husband 【Father】 Kohno Tadashi 【Mother】 Kohno Yoshi 【Relationship】 First Son
Person recorded in the Family Register	【Name】 Ume 【Date of Birth】 dd/mm/yyyy 【Marital Status】 Wife 【Father】 Okada Tarou 【Mother】 Yamada Haru 【Relationship】 Female

“Female” means that she was born out of wedlock.
 "First Son" means that he was born in wedlock.

【 *Material 3 】 The number of the application for the correction and the remaking with regard to the discriminatory description against children born out of wedlock in Koseki (the family register) since the start of the system. (The yearly number and the total number)

Each year since the start month of the system	Application for the correction	Application for the remaking
November 2004 - March 2005	3,750	1,236
April 2005 - March 2006	4,556	907
April 2006 - March 2007	3,626	436
April 2007 - March 2008	3,455	285
April 2008 - March 2009	3,897	660
April 2009 - March 2010	3,222	434
April 2010 - March 2011	3,064	287
April 2011 - March 2012	2,693	205
April 2012 - March 2013	2,640	214
April 2013 - March 2014	2,504	181
April 2014 - March 2015	2,426	230
April 2015 - March 2016	2,412	249
April 2016 - March 2017	2,056	189
April 2017 - March 2018	1,931	168
April 2018 - March 2019	1,998	132
April 2019 - March 2020	1,880	119
The total number from Nov. 2004 (when the system started) to March 2020	46,110	5,932

*** Investigated by Civil Affairs Bureau, The Ministry of Justice**

**【 * Material 4】 International comparison of birth rates of children born out
of wedlock**

Name of country	Year	Percentage (%)	The most recent year	Percentage (%)
Japan	2 0 0 3	1. 9 3	2 0 1 7	2. 2
South Korea	2 0 1 2	2. 1	2 0 1 6	1, 9
France	2 0 0 2	4 4. 3	2 0 1 5	5 9. 1
Germany	2 0 0 3	2 6. 2 0P	2 0 1 5	3 5. 0
Italy	2 0 0 2	1 0. 8 0e	2 0 1 5	3 0. 0
Sweden	2 0 0 3	5 6. 0	2 0 1 5	5 4. 7
U.K.	2 0 0 3	4 3. 1 0p	2 0 1 5	4 7. 9
U.S.A.	2 0 0 2	3 3. 9 6	2 0 1 5	4 0. 3

Note: The figures of the U.K. are provisional.

Data : Eurostat "Population and Social Conditions"

U.S. Department of Health and Human services

"National Vital Statistics Reports" The National Statistical Office of Korea

2004 Declining Birthrate White Paper from the Cabinet Office and 2018 Vital Statistics
from the Ministry of Health, Labor and Welfare

* e is from statistics, p is provisional

**[*Material 5] Petition to the Tokyo Metropolitan Assembly adopted
on March 27, 2020**

Petition regarding submission of a written opinion requesting the government to revise the Family Registration Law to eliminate discriminations against children born out of wedlock

Submitted December 5, 2019

Ryoichi Ishikawa, Chairman of the Tokyo Metropolitan Assembly

Society for Abolishing the Family Registration System
and Discriminations against Children Born out of wedlock

Purpose of Petition

In your parliament, please submit an opinion requesting the government to revise the Family Registration Law, including the following:

1 Delete Article 49, Paragraph 2, Item 1 of the Family Registration Law, and abolish the entry fields for legitimate and illegitimate children.

2 Amend Article 13, Item 4 and 5 of the Family Registration Law, and abolish the column for family relations with the actual parents and with the adoptive parents. If a column is needed to clarify the gender due to the abolition of the relations column, please provide a gender column.

Reason for petition

On September 4, 2013, the Grand Bench of the Supreme Court with 14 judges unanimously agreed that the provision of the Civil Code, which provided that the inheritance of a child born out of wedlock shall be the half of that of the child born in wedlock (Civil Code Article 900, Item 4 proviso), violated the constitution. This provision has already been amended and put into effect at the extraordinary Diet session of the same year. At the same time, the Ministry of Justice was preparing a "proposed amendment to the family registration law" that would eliminate the entry fields for "legitimate and not legitimate" ., but the Ministry of Justice refrained from submitting the amendment because "it is not urgent" for part of the reason that the Supreme Court First Bench decided on September 26 of the same year that the provision of Article 49, Paragraph 2, Item 1 of the Family Registration Law was constitutional.

However, this provision makes little sense since the most significant civil law provision separating children born in and out of wedlock was abolished. It is also completely unnecessary in terms of family register practices for creating a Koseki based on a birth notification.

The Supreme Court First Bench certainly issued a judgment that it was constitutional ,but it clearly states that this provision is "not an essential request for paperwork" although "it does not violate the Constitution," and furthermore a supplementary opinion by Judge Sakurai is added that it should be reviewed on legislation. So it is never meant to go along with the status quo.

Moreover, in recent years, elimination of discriminations against children born out of wedlock has been happening in other countries and related laws are being amended as the distinction

itself between children born in wedlock and children born out of wedlock is an unfair discrimination against children. Japan has been repeatedly recommended by the United Nations organizations on human rights for legal reform together with the discriminatory provision in the right to inheritance which has already been abolished. It is desired that the law will be revised as soon as possible for the sake of respect for human rights of children born out of wedlock.

Originally, the order of birth in the family relations column was used to clarify the order of succession to family headship, which was abolished after the WW II, and is now completely unnecessary. In addition, children born out of wedlock whose birth notification was filed before the revision of the system in November 2004 are described as "male / female", and this is also a factor of discrimination against children born out of wedlock. Although it is possible to change the description upon the request from the child or the mother, it is difficult to come forward on her/his own when there are discriminations against children born out of wedlock. Many people do not know about the amendment to the system because there is little publicity by the government and administrations. Therefore, it is extremely rational to abolish the relations column in order to remove the factors of discriminations against children born out of wedlock and to simplify the clerical work by abolishing unnecessary items in the family register practices.

**[* Material 6] Adopted requirements at the General Assembly of the
National Union Registered Family Resident Register Office
Council in 2019**

To revise Article 49, Paragraph 2, Item 1 of the Family Registration Law and abolish the entry column to check whether a child is legitimate or not legitimate in birth notification.

To revise Article 13, Item 4 and 5 of the Family Registration Law, abolish the relations column with birth parents and adoptive parents, and add a gender column.

(Kanagawa Prefectural Family Register and Resident Register Office Council*)

(Reason)

On September 4, 2013, the Grand Court of the Supreme Court ruled that the provision of the Civil Code (Article 900, Item 4 proviso), which provided that the legal inheritance share of a child born out of wedlock shall be one-half of the child born in wedlock, was a violation of the constitution, and this provision was already amended and put into effect at the extraordinary Diet session in December of the same year. At the same time, the Ministry of Justice prepared a "proposed amendment to the family registration law" to eliminate the entry column to check whether a child is legitimate or not in birth notification, but it was not submitted because some of the ruling parties didn't agree on it.

On September 26, 2013, the Supreme Court's first court decided that this provision of the Family Registration Law was constitutional, but declared that "the column is not exactly essential" although "it cannot be said that it is illegal." Furthermore, there is a supplementary opinion that it should be reviewed on legislation.

In recent years, elimination of discriminations against children born out of wedlock has been happening in other countries as well, and legal revisions which remove words for children born out of wedlock have been undertaken because the distinction itself between legitimate and illegitimate children is an unfair discrimination against children. The provisions of Japan's Family Registration Law have been repeatedly recommended for revision by the United Nations organizations on human rights, and it is desired that the laws will be amended as soon as possible for the sake of respect for human rights of children born out of wedlock.

In November 2004, the way of describing family relations for children born out of wedlock was changed and they are also described as "first son / first daughter" and etc., but the family

relations of Koseki (the family register) of children born out of wedlock whose birth notification was submitted before that time (up to October 2004) are described as "male / female", which clearly identifies them as children born out of wedlock. Although it is possible to change the description upon a request by the child or the mother, some people hesitate coming forward for fear that others will find out and some people do not know the revision of the system.

The entry of the birth order in the family relations of Koseki was made for the purpose of clarifying the order of succession to family headship, and it has been meaningless since the family headship system was abolished after the war. Under the current way of describing family relations, every time a birth notification for a child born out of wedlock is submitted, the local government has to go back to the childbearing age of the mother in order to confirm the birth order, which is a meaningless paperwork.

It is extremely rational to abolish the relations column in order to remove the factors that may induce discriminations against children born out of wedlock and to simplify clerical work by eliminating unnecessary matters in the family register practices. Therefore, we request it as the main text.

*A council composed of municipalities in Kanagawa Prefecture

[*Material 7] Concerns and recommendations from the Commissions of the United Nations Conventions on Human Rights

1. Concerns and Recommendations regarding discrimination against children born out of wedlock by the Human Rights Committee

<Year 2008 Concerns and Recommendations >

28. “We again express concerns that children born out of wedlock are discriminated against in relation to acquisition of nationality, the right to inheritance and birth notification (Paragraph 1 of Article 2, Article 24 and 26 of the Covenant).”

“The government as a contract party should eliminate any discriminatory provisions against children born out of wedlock including Article 3 of the Nationality Act, Article 900 Item 4 of the Civil Code, and Article 49 Paragraph 2 Item 1 of the Family Register Act, which requires to describe in a birth notification whether a born child is in or out of wedlock.”

<Year 1998 Major Concerns and Recommendations >

12. “We again express concerns about discriminations against children born out of wedlock, especially, the rights in relation to nationality, family registers and inheritance. In accordance with Article 26 of the Covenant, we hereby confirm our view to date that every child deserves the protection of equality.”

<Year 1993 Major Interest Issues >

11. “We are extremely concerned about the discriminatory legal systems against children born out of wedlock. In particular, the legal texts and practices relating to birth certificates and family registers violate Article 17 and 24 of the Covenant.”

<Proposals and Recommendations >

17. “We recommend that the government should amend the legal systems toward children born out of wedlock and eliminate the discriminatory terms contained therein in order to comply with Article 2, 24 and 26 of the Covenant. All of the discriminatory laws and practices still existing in Japan should be abolished in order to be consistent with Article 2, 3 and 26 of the Covenant.”

2. Concerns and Recommendations regarding discrimination against children born out of wedlock by the Committee on the Rights of the Child

<Year 2019 Concerns and Recommendations >

17. The Committee remains concerned that:

- (b) The discriminatory provisions of the Family Registration Act regarding illegitimacy of children born to unmarried parents are partially maintained, especially those relating to birth notification

(c) Societal discriminations persist against children of various marginalized groups.

18. The Committee urges the contract party to:

(b) Repeal all provisions which discriminate against children on any basis, including those relating to the status of children born to unmarried parents.

<Year 2010 Concerns and Recommendations >

33. The Committee is concerned that, in spite of some legislative actions, children born out of wedlock still do not enjoy the same rights as children born in wedlock under the laws governing intestate succession.

34. The Committee recommends that the contract party should:

(a) Enact a comprehensive antidiscrimination law and repeal all legislation which discriminates against children on any basis.

<Year 2004 Concerns and Recommendations >

24. The Committee is concerned that legislation discriminates against children born out of wedlock.

25. The Committee recommends that the contract party amend its laws to exclude from its legislation all forms of discriminations against children born out of wedlock, particularly in relation to inheritance, citizenship and birth registration, as well as discriminatory terms such as "illegitimate".

<Year 1998 Concerns and Recommendations >

14. The Committee is concerned that the laws does not protect children from discriminations on all grounds listed by the Convention, particularly in relation to birth, language and disability. The Committee is particularly concerned that legal provisions such as Civil Code Article 900 Item 4, which provides that children born out of wedlock have half the inheritance rights of children born in wedlock, explicitly condone discriminations, and that birth as a child born out of wedlock is mentioned in official documents.

35. Legislative measures should be taken to correct discriminations that currently exist, especially against children born out of wedlock.

3. Concerns and Recommendations regarding discrimination against children born out of wedlock by the Committee on the Elimination of Discrimination against Women

<Year 2016 Concerns and Recommendations >

12. The Committee regrets that no action has been taken to address previous recommendations regarding existing discriminatory provisions. The Committee is especially concerned about the following:

Although the discriminatory provision in the right to inheritance against children born out of wedlock was eliminated in December 2013, many other discriminatory provisions have been retained, including the provisions of the Family Registration Act regarding the discriminatory expressions in birth notification.

13. The Committee reiterates its previous recommendations (CEDAW/C/JPN/CO/5 & CEDAW/C/JPN/CO/6) and urges the contracting party to do the following without delay: To repeal all the discriminatory provisions regarding the status of children born out of wedlock and ensure that laws protect children born out of wedlock and their mothers from social stigma and discriminations.

<Year 2009 Concerns and Recommendations >

17. The Committee is concerned that children born out of wedlock continue to be discriminated against through the family registry system and in the provision on inheritance.

18. The Committee recommends that the contracting party should eliminate the discriminatory provisions of the Civil Code and the Family Registration Law against children born out of wedlock and their mothers.

<Year 2003 Concerns and Recommendations >

35. The Committee is concerned about discriminations against children born out of wedlock in law and administrative practices with regard to family registers and inheritance rights, and the serious impact they have on women.

36. The Committee requests the Government of Japan to remove the discriminatory provisions that still exist in the Civil Code and to bring legislation and administrative practices into conformity with the Convention on the Elimination of All Forms of Discrimination against Women.

4. Concerns and Recommendations regarding discrimination against children born out of wedlock by the Committee on Economic, Social and Cultural Rights

<Year 2013 Concerns and Recommendations >

10. The Committee notes with concern that while the contracting party strives to ensure compliance with its obligations under the Covenant, as far as the Covenant rights are concerned, discriminatory provisions against women, children born out of wedlock and same-sex couples continue to exist in the contracting party's legal system. (Article 2.2)

The Committee requests the contracting party to comprehensively review and, if necessary, amend relevant laws to ensure that these people are not discriminated against, directly or indirectly, in relation to the exercise and enjoyment of their rights under the Covenant.

<Year 2001 Concerns and Recommendations >

14. The Committee is also concerned that legal, social and institutional discriminations against

children born out of wedlock persist, particularly in relation to limitations on the rights of inheritance and nationality.

41. The Committee urges the contracting party to remove from its laws and practices the concept of “illegitimate children”, which is unacceptable in modern society, and to urgently take legislative and administrative measures to eliminate all forms of discriminations against children born out of wedlock and further to restore the rights under the Covent (Article 2 Paragraph 2 and Article 10) of people concerned.