



Comments on the List of Issues on Japan

The Concerned Japanese Citizens for the Rights of the Child
to Eradicate Child Guidance Centre Sufferings (JCREC)

27 April 2018

For Paragraph 1:

1 The Japanese government boasted that it has made significant progress in the amendment of the Child Welfare Act (CWA) in 2016 by explicitly including the title of the Convention in Article 1: 'All children shall have rights to be brought up appropriately, to have their lives guaranteed, to be loved and protected, for healthy growth and development, and for their independence to be secured and other types of welfare that are equally guaranteed *in conformity with the spirit of the Convention on the Rights of the Child*'. This may lead one to believe that the child and juvenile policies of Japan would accordingly be conducted in compliance with the Convention on the Rights of the Child. However, this is not the reality. Rather, the Act has not been amended to conform to the Convention. The Japanese judiciary has ignored the Convention when passing judgement. No amendments have been made to Article 33 of CWA, which allows the Child Guidance Centre to remove a child WITHOUT judicial review; this is a clear breach of Clause 1, Article 9 of the Convention. Some articles of the CWA have been revised to the detriment of others; for example, a family home, which is a flat-type alternative care facility (ACF) with small rooms that are run by social welfare corporations that manage alternative care facilities, has been defined as equivalent to the own family of the child, thus, enhancing the placing of children in ACFs. The amendment of Article 1 of CWA is, therefore, nothing but window-dressing so as to deceive the international community. This is clearly evidenced in the claim of the CGC social worker presented in Annex 1b, which shows intentional ignorance of the Convention by the Japanese government in its administration. We hope that the committee will scrutinise the response of the Ministry of Health, Labour and Welfare (MHLW) if there is any more such deceptions.

For Paragraph 4:

2 We understand that the committee has for quite a while demanded the prohibition of corporal punishment in families in Japan. In Japan, Article 822 of the Civil Code, which has been endorsed by the Ministry of Justice, permits corporal punishment within the limits of the interest of the child. On the contrary, the Child Guidance Centre, which is under jurisdiction of the MHLW, defines corporal punishment as abuse without regard for Article 822 of the Civil Code and further uses it as a pretext for removing a child from his or her family, without prior judicial review. Consequently, the MHLW has taken advantage of this discrepancy between the ministries and has placed more children into care in order to expand its ministerial turf and accordingly, increase its budget from government funds. This has been one of the most important reasons given to remove children from their home unfairly and keep them in a detention quarter for an extended period; the official term is temporary protection facilities.

3 With regard to the latter part of the paragraph, we interpret that the Committee must have addressed this point knowing that the Child Guidance Centre is officially supposed to handle child abuse cases in Japan. The Committee must suspect that the Child Guidance Centre in Japan is not handling child abuse cases properly. The Committee is correct in that many serious and deadly abuse cases have been overlooked. Serious cases are generally more cumbersome and risky to handle for the CGC staffs thus more likely to be avoided. The directors have never been sanctioned for this mishandling as in the case of Tokorozawa CGC.

For Paragraph 5:

4 This is the core paragraph that deals with human rights infringements committed by the Child Guidance Centre in Japan.

1. Preventing the children to be removed from their families:

5 Firstly, the committee requires 'concrete steps taken to *prevent* children being removed from or abandoned by their families'. However, what the Japanese government (Ministry of Health, Labour and Welfare is in charge) has been performing is exactly the opposite: it has enthusiastically *promoted* the removal of children from their families; even without any concrete evidence or decisions of the court. We interpret this modestly expressed text as its claim that the Japanese government has breached Clause 1, Article 9 of the Convention. Furthermore, in 17b of Part III, the committee requests detailed data on the number of children who have been separated from their parents, thus, showing the committee's serious concern for the arbitral removal of children from their families. We are of the opinion that the request is very appropriate.

2. Releasing the children from the alternative care facilities

6 Secondly, the committee urges the Japanese government to release children from ACFs, thus, voicing concern that children are placed in ACFs for prolonged periods, which infringes on their human rights. There are two options available to release children from the ACFs: firstly, an early return of the children from alternative care; and secondly, entrusting children to foster parents instead of ACFs. Although the committee appears to emphasise the second option, the JCREC would like to draw the Committee's attention to the fact that a considerable number of children entrusted to foster parents have suffered from abuse at the hands of or have even been murdered by foster parents in Japan. Therefore, foster parents do not offer a complete and everlasting solution to the problem. The Committee should, therefore, consider the first option, namely, an early return of the child to his or her family; this is in compliance with Clause 14 of the UN Guidelines for the Alternative Care of Children, providing, '[r]emoval of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration'. There could be conditions attached to the return of children to their original families such as those in OTS (*ondertoezichtstelling*) in the Netherlands. The adoption of OTS may have a further positive effect, namely, reducing the heavy deficit of the Japanese public finance. We hope the Committee

will make a recommendation for Japan to adopt a system like OTS in the Netherlands so as to prevent the Child Guidance Centre from removing more children.

7 Once removed from the family, the Child Guidance Centre detains the children 'for the LONGEST (in)appropriate period of time', which is contrary to the provisions of Article 37b of the Convention. We are of the opinion that the committee should make a compelling recommendation to ensure that Japan abides by Article 37b as it applies to 'welfare' cases such as CGC.

8 In this regard, we hereby submit two pieces of evidence offered by one of our supporters. She is a mother whose children were removed from her family more than four years ago without a decision from the court. The first piece of evidence is conversations with the mother and two social workers from the CGC and the second is the list of conditions required by the Child Guidance Centre to return a child to his or her original family.

9 The social workers as noted in Annex 1a explicitly rejected the request from the mother to return her son despite the fact that the child had requested this. This measure of the CGC is in contravention of Article 12 of the Convention, which stipulates 'the views of the child be given due weight in accordance with the age and maturity of the child'. In Annex 1b, the social worker openly rejects the Convention as the guiding principle of the CGC operation. The demand of the social workers that the mother had to follow steps implies that the mother has to fulfil the list of conditions that are presented in the Annex 2. It is difficult for ordinary families, not to mention those disadvantaged, to fulfil them as revealed by our critical comments, which are presented in the right column of Annex 2. The MHLW and the CGC thereby have 'legalised' the detention of the children for extended periods. Because the judiciary has hardly questioned the legitimacy of this list of conditions itself, the judicial review for the children's detainment, which is meant to take place every two years, has degenerated into mere rubber-stamping formalities for repeated extensions. It is not uncommon for children to be detained for more than seven or eight years, often without their parents being granted visitation rights. Therefore, it is imperative for the Japanese government to revise this list of conditions so as to facilitate the early return of children to their original families.

3. The Evaluation System of the CGC that is dysfunctional

10 Thirdly, the committee has identified the Child Guidance Centre as the sole government agency that is mentioned in the List of Issues, thus, suggesting a valid reason for the committee's suspicion that the CGC inflicts grave human right infringements on the children in 'temporary child protection facilities' (detention quarters). Thus, the committee requests 'the evaluation system of temporary child protection facilities'.

11 In a sense, this 'evaluation system' is a substitute for the complete nonfeasance of the recommendation of the Committee made in paragraph 63 of Concluding Observation 2010, which asked Japan to 'commission an independent investigation of the child guidance system and its working methods'. In spite of the positive remarks in the state report, however, the 'evaluation system' do not functioned properly because as the MHLW confessed (<http://www.mhlw.go.jp/file/05-Shingikai-11901000-Koyoukintoujidoukateikyoku-Soumuka/0000163963.pdf>), a considerable number of the agencies that actually undertake such evaluations include auxiliary organisations of the MHLW such as the Social Welfare Council and the Japanese Association of Social Workers. These organisations are within the ambit of the MHLW; therefore, neither can be regarded as a third party, which is capable of real independent evaluation. The evaluation, therefore, is quite likely to degenerate into appropriate lenient comments so as to meet the interests of the Child Guidance Centre itself.

12 There is evidence for our prediction in the sexual abuse case committed by Sagami-hara-shi Child Guidance Centre, Kanagawa, where nine girls detained in its 'temporary child protection facilities' were forced to strip naked in 2015 so the authorities could search for a piece of blank sheet of paper. The local Social Welfare Council took charge of the 'evaluation' and ordered a lax ten per cent salary reduction for only one month. The Tokyo Metropolitan Government claimed they had evaluated an abuse case in the Child Guidance Centre in Shinjuku, but the evaluation of the incident, which was televised nationwide on 7 May 2015 (<https://www.youtube.com/watch?v=27smKDCGC9s>) was never mentioned. We await a response from the MHLW.

For Paragraph 12:

13 In Japan, preventive detention, which was legal for all citizens during the World War II under the fascist 'Peace Preservation Law', was abolished for adults in the process of democratisation after World War II. However, to date, it has remained legal for children under Article 3 of the Juvenile Act. The Committee has every reason to ask the Japanese government to abolish it. However on the contrary, the MHLW plans to *promote* this preventive detention by removing children from their families and placing in custody in detention quarters, which is officially called 'temporary child protection facilities' to transfer to juvenile reformatories; for this duty, the MHLW intends to deploy a full-time lawyer to each Child Guidance Centre across the nation. Once again, the MHLW has gone against the Committee and infringed upon the human rights of children. If this system of preventive detention for children is established, the Child Guidance Centre could function as a public security institution and place the youth who are political activists, but whose age is that covered by the Child Welfare Act, into preventive detention in case of a national emergency.

14 We, the JCREC, wish the Committee to manifest its concern in this respect. It is quite appropriate to question the number of children in preventive detention in 20c of Part III.