



Country fact sheet for the CRC

CHILDREN'S RIGHTS IN PARENTAL SEPARATION CASES

COUNTRY: JAPAN

<p>REPORT N°</p>	<ul style="list-style-type: none"> • Fourth and Fifth Periodic Report (UNCRC)
<p>PRE-SESSION/ SESSION</p>	<ul style="list-style-type: none"> • Pre-sessional: (February 2018) • Sessional 80th (January-February 2019)
<p>LAWS (CONVENTIONS, GUIDELINES, DOMESTIC LAWS)</p>	<ul style="list-style-type: none"> • Convention on the Rights of the Child 1989 (ratified in 1994) • Hague Convention on the Civil Aspects of International Child Abduction 1980 (ratified in 2014) • HCCH Guide to Good Practice under the Child Abduction Convention: Mediation • Conclusions and recommendation of the Seventh Special Commission on the practical operation of the 1980 and 1996 Hague Conventions (October 2017) • Japanese Civil Code (1896) (revised article 766 took effect in 2012) • Japanese Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (2013) • Japanese Act on Promotion of use of Alternative Dispute Resolution (2004)
<p>EXECUTIVE SUMMARY</p>	<ul style="list-style-type: none"> • Although Japanese legal rules are based on a principle of non-intervention in civil matters, and access is being determined by the custodial parent, the country has recently ratified the 1980 Hague Convention. This opens the way to a new era for the settlement of cross-border family disputes. With an ever-increasing number of international marriages and divorces (see “Statistics” below), Japan is addressing the challenges of cross-border family matters by developing new promising practices. Some challenges may arise from divergent perspectives on the best interest of the child involved in parental disputes and from practical obstacles regarding the execution of Japanese court decisions. Referring to alternative dispute resolution and mediation —as a voluntary, neutral, confidential and independent process— is one way to settle disputes in the best interest of all persons involved and to enhance international cooperation, while respecting domestic and international law.
<p>THE BEST INTERESTS OF THE CHILD IN PARENTAL SEPARATION (examples <i>inter alia</i>)</p>	<ul style="list-style-type: none"> • Separation, Divorce & Sole Custody: The Civil Code allows joint custody only for married parents, and the administrative personal register known as the ‘koseki’ system, based on the family unit, does not provide the possibility for a person to be registered with two families (i.e. to register one child under two parents in an extra-marital relationship)¹. It is important to grasp that Japanese family is marked by the pre-eminence of marital link over filiation. When a custodial parent remarries, the child from a previous union can be adopted by the new spouse without notifying the non-custodial biological parent. After a divorce is pronounced, usually only one parent is granted exclusive physical and legal custody. More than 90% of divorces are filed outside of any judicial procedure², simply by filing a ‘rikon-todoke’ —a divorce notice— to a municipal office (divorce by mutual consent). In this case, matters of custody over a child, visitation rights, and child support are expected to be discussed between parents according to article 766 of the Civil Code, and the divorce is pronounced automatically right after submission of the notice and execution of the changes following it in the ‘koseki’ register. Article 766 also refers to the consideration of the child's interests. In practice however, nothing obliges the parents to discuss these matters³ (and there is no penalty or further consideration in case they did not). If parents have disagreements, in particular regarding custody, they petition a case to a family court. In such cases, the Japanese courts apply the “continuity principle,” which awards custody to the parent who is living together with a child when presenting the case. This jurisprudence leads to parental child abduction toward the goal of winning custody, and family law attorneys^{4 & 5} advise their clients to do so. In addition, parental child abduction is not a crime in Japan, while re-abduction is punished^{6 & 7}. • Visitation Rights: An estimated 150,000 children lose access to one of their parents every year⁸. The country does not have substantive laws guiding the process of awarding visitation rights upon divorce. In most cases, the custodial parent will determine the other parent’s access to the child. Nevertheless, judges, upon request of non-custodial parents, grant some access to children, even if visits generally do not include an overnight stay. 54% of court decisions on visitation upon divorce are on a frequency of once a month or more, 6% are once every 2 to 3 months, and the rest are less or none⁹. Apparently, no penalties (except a fine¹⁰) are imposed when parents do not respect the court

decisions¹¹, and 44% of court decisions turn out to be not executed at all; 70.2% of the children whose parents got divorced have never visited their non-custodial parents for at least half a year¹². In summary, the significant loss of access of a large number of children to their non-custodial parent, extremely limited visitation time, and exclusion of the non-custodial parent in educational matters tolerated by the system are obstacles against respecting art. 9 of the CRC. The outdated aspects of this system become increasingly problematic as evidence indicates that abrupt separation from one parent affects children and changes in their attribution of social roles have naturally occurred. Young Japanese couples tend to be more enthusiastic about sharing household duties including childrearing¹³ and want to jointly engage in the education of their children even after the breakdown of a relationship¹⁴.

- **Child Support:** According to the 2017 research of the Ministry of Health, Labour and Welfare¹⁵, 75.7% of children in Japan are not receiving child support by a non-custodial parent. More than 50% of couples divorce without making efforts to discuss child support at all for various reasons (tradition, mentality, legal system, help from extended family, etc.), even though this is recommended in some booklets and brochures at city halls. It appears that parents are not sufficiently informed of the very purpose of child support to guarantee the child's welfare.

¹ Yoko Konno, "A Haven for International Child Abduction: Will the Hague Convention Shape Japanese Family Law." Cal. W. Int'l Law Journal, Vol. 46, 2016, pp. 39-68

² *Idem*

³ A sample of a divorce notice for a city hall of Moriya City:

<https://www.city.moriya.ibaraki.jp/kurashi/kosekijyumininnkann/kosekitodokede/rikonntodoke.files/kyougirikonn.pdf>

⁴ Hyperlinks to the pieces of evidence where Japanese attorneys encourage to take away the child:

<http://myben54.com/custody-mother>; <http://www.mori-law-office.com/katei/custody/q&a/>;
<http://kyodosinken-news.com/?p=3410>;

⁵ Child's welfare and custody of parents - Comparative law study on custody and legislation accompanying separation and divorce, JFBA Legal Research Foundation, 2007, p. 40; Kosuke Ohkawa, A textbook for 30s to divorce written by attorneys, 2012, p. 106

⁶ Mikiko Otani, Masami Kittaka, Family law in Japan: overview, Thomson Reuters, 2018:

[https://uk.practicallaw.thomsonreuters.com/w-009-5907?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhpc=1#co_pageContainer](https://uk.practicallaw.thomsonreuters.com/w-009-5907?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhpc=1#co_pageContainer)

⁷ Decision of the Petty Bench of the Supreme Court No. 2199, December 6, 2005:

http://www.courts.go.jp/app/hanrei_jp/detail2?id=50081

⁸ Okiharu Yasuoka, former member of the Lower House of the National Diet of Japan, Blog, 2014:

http://www.yasuoka.org/idea/idea_txt.php?fname=idea45

⁹ The Japanese Courts statistics: <http://www.courts.go.jp/app/files/toukei/314/009314.pdf>

¹⁰ Decision of the Petty Bench of the Supreme Court on Indirect Enforcement No. 48, March 28, 2013:

http://www.courts.go.jp/app/hanrei_jp/detail2?id=83152

¹¹ Colin P.A. Jones, In the best interest of the court: what American lawyers need to know about child custody and visitation in Japan, Asian-Pacific Laws & Policy Journal, Vol. 8 Issue 2, 2007, pp. 167-269

¹² The Japan Federation of Bar Associations Research, p. 107:

https://www.nichibenren.or.jp/library/ja/ifba_info/organization/data/26th_shihosympo_2-3.pdf

¹³ M. I. White, Perfectly Japanese: Making families in an era of upheaval, University of California Press, 2002.

¹⁴ Takeshi Hamano, "The Aftermath of Japan's Ratification of the Hague Convention on Child Abduction: An Investigation into the State Apparatus of the Modern Japanese Family" Journal of Asian Studies, Vol. 3, Issue 1, 2017, pp. 35-49

¹⁵ The Ministry of Health, Labour and Welfare of Japan Research, p. 68 and 71:

<https://www.mhlw.go.jp/file/06-Seisakujouhou-11920000-Kodomokateikyoku/0000188169.pdf>

INTERNATIONAL CHILD ABDUCTION

- **The 1980 Hague Convention ratification:** Japan has ratified the Hague Convention on the Civil Aspects of International Child Abduction, and it took effect on April 1st, 2014. It was implemented through the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction of 2013. This ratification, much-anticipated by the international community, was realized through the establishment of the Hague Convention Division in the Ministry of Foreign Affairs (MOFA) of Japan, as Japan's Hague Central Authority. The ratification of the Hague Convention on child abduction could assist in triggering reforms of Japanese family law¹⁶.

- **Alternative Dispute Resolution:** Article 144 of the Act for Implementation encourages the courts to refer to conciliation (in-court mediation) in return proceedings regarding international child abductions cases. In addition, the MOFA has introduced an international mediation scheme tailored for child abduction and access cases, based on voluntary participation and conducted by an impartial mediator¹⁷.

• **Challenges *inter alia*:**

- **Jurisprudence at variance with certain rules of the 1980 Hague Convention:** There is a systemic, concealed adherence to the above-mentioned “continuity principle” regarding custody by the Japanese judicial branch which impedes judicial cooperation with the 1980 Hague Convention. In other words, and as reflected in jurisprudence in international child abduction matters¹⁸, custody in effect is usually being determined before a decision of return, which does not comply with the provisions of art. 16 of the 1980 Hague Convention. The issue of the “continuity principle” was discussed at the Diet¹⁹ without results. More recently, a number of States (like Canada, Italy²⁰ and the USA²¹) reported difficulties encountered with domestic child access mechanisms, implementation of the 1980 Hague Convention, and repeated non-compliance with established cooperation principles in Japan.
- **Enforcement of judicial decisions under the Hague Convention:** The enforcement of judicial decisions in Hague cases may be subject to the interpretation of “the use of force” as described in art. 140 of the Act for Implementation regarding removal of a child from the taking parent opposed to the return of the child. Disobedience of a taking parent regarding court orders appears to be tolerated, and enforced return is impossible²². The non-intervention principle for domestic disputes might be the basis of such interpretation of the best interests of the child, or a divergent consideration of the best interests of the child.
- **Deliverance of passports for children:** Japan does not have a formal two-parent signature requirement for issuing passport for minors. A requirement signed by one parent is accepted under assumption that the signature is a representation of consent of both custodial parents. If one parent submits a written refusal/objection to the relevant authorities before issuing the passport the first time, the passport is issued only upon consent of both parents. In case of divorce, the non-custodial parent has neither the right to object to the issuing of the passport, nor the right to request to cancel an already issued passport in order to prevent an abduction. A two-parent-signature requirement upon delivering passport might have a preventive effect on child abduction, especially if a family lives outside Japan (in cases where after a court ruling, a non-custodial parent applies for a Japanese passport for his/her child).
- **Foreign spouse:** Foreign spouses do not enjoy the same status as Japanese nationals regarding the possibility to obtain custody of a child. For example, a foreign parent cannot be registered as head of family (*hittousya*) in the ‘koseki’ register. Custody can be granted to a foreign spouse upon divorce and there will be a note in the ‘koseki’ register of the Japanese ex-spouse, it is however not clear what happens with the child registration once the Japanese spouse remarries²³.

¹⁶ Okiharu Yasuoka, *ibid*.

¹⁷ http://www.mofa.go.jp/fp/hr_ha/page22e_000344.html

¹⁸ Colin P.A. Jones, Article “Japan’s Supreme Court hands down a road map for parental child abductions”, The Japan Times, 2017: <https://www.japantimes.co.jp/community/2017/12/31/issues/japans-supreme-court-hands-road-map-parental-child-abductions/#.W4epwWO3yUk>; Article “Left-behind dad’s last resort: Impeach Japan’s Supreme Court judges”, The Japan Times, 2018: <https://www.japantimes.co.jp/community/2018/06/03/issues/left-behind-dads-last-resort-impeach-japans-supreme-court-judges/#.W4fjvGO3yUk>; Article “Meine Ex-Frau sabotiert jeden Kontaktversuch zur Tochter”, Tages-Anzeiger, Switzerland, 2018: <https://www.tagesanzeiger.ch/ausland/asien-und-ozeanien/Meine-ExFrau-sabotiert-jeden-Kontaktversuch-zur-Tochter/story/21791674>

¹⁹ Kenta Matsunami, discussions on the “continuity principle” and child abduction at the Diet, March 2017: https://www.youtube.com/watch?v=l_X0uK-laBk

²⁰ Report A/HRC/37/15 of the Working Group on the Universal Periodic Review for the Human Rights Council 37th session, January 2018, p. 22: https://www.upr-info.org/sites/default/files/document/japan/session_28_-_november_2017/a_hrc_37_15_e.pdf

²¹ Report of the United States Department of State on compliance with the Hague Convention on the Civil Aspects of International Child Abduction, April 2018, p. 21-22: <https://travel.state.gov/content/dam/NEWIPCAAssets/pdfs/AnnualReports/2018%20Annual%20Report%20on%20International%20Child%20Abduction%20FINAL1.pdf>

²² Colin P.A. Jones, In the best interest of the court: what American lawyers need to know about child custody and visitation in Japan, *Asian-Pacific Laws & Policy Journal*, Vol. 8 Issue 2, 2007, pp. 167-269

²³ Colin P.A. Jones, Article “Japan’s discriminatory koseki registry system looks ever more outdated”, The Japan Times, 2016: <https://www.japantimes.co.jp/community/2016/07/10/issues/japans-discriminatory-koseki-registry-system-looks-ever-outdated/#.XA4i8RArGUL>

STATISTICS

- **International marriages and divorces:** The country is marked by a growing number of international marriages and related divorces, resulting in a high number of cross-border parental disputes: international marriages and divorces have more than doubled between 1985 (around 10,000) and 2015 (around 23,000) constituting respectively 4% of the total number of marriages and 7% of the

	<p>total number of divorces.</p> <ul style="list-style-type: none"> • International Child Abduction: Bearing in mind that statistical data for international child abduction is scattered and incomplete, we can nevertheless outline several trends. Between April 1st 2014 and the end of November 2018, the Japanese MOFA handled or —as described in the Act for Implementation— decided on assistance in 279 applications for return or access cases within the Hague Convention procedure, and secured 68 returns out of 168 return cases. Another source indicates that among the applications received in 2015, 46% of the applications concerned petitions for access, a much higher rate than most countries. The most recent data, as of 1st December 2018, indicate that 68 return cases out of 86 were resolved with Japan as the requested State; 82 return cases were resolved with Japan as the requesting state. • International Family Mediation: No data is available to this date. <hr/> <p>Sources: N. Lowe & V. Stephens, “A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction — Global report”, 2017. Updated statistical data on decisions on assistance in child’s returns: courtesy of the Japanese Ministry of Foreign Affairs, December 2018: https://www.mofa.go.jp/files/000335933.pdf</p>
<p style="text-align: center;">ACCESS TO INTERNATIONAL FAMILY MEDIATION (IFM)</p>	<ul style="list-style-type: none"> • Strengths: <ul style="list-style-type: none"> ➢ Institutionalized ADR services for domestic dispute resolution ➢ MOFA’s subsidy for commissioned ADR services²⁴ ➢ MOFA’s promotion of International Family Mediation for cross-border disputes ➢ Comprehensive information on ADR services provided on MOFA’s website²⁵ ➢ Specialized professional training in IFM in Japan (by MiKK e.V. & Reunite International) ➢ Involvement of Japanese family mediators and international law experts in global projects for IFM professionalization • Way Forward: <ul style="list-style-type: none"> ➢ Assessing the use of IFM through MOFA to promote Japanese good practice ➢ Provide statistical data and analysis on the use of IFM in child abduction cases ➢ Contributing to the development of global and participative IFM endeavours including translation of IFM tools into Japanese (e.g. <i>Charter for International Family Mediation Processes</i>²⁶ and the <i>How to Use</i>²⁷ addressed to State Authorities) ➢ Apply the <i>Charter for International Family Mediation Processes</i> ➢ Mediation in cross-border cases is a good practice in Japan; hence, mediation should also be encouraged to discuss access and visits of the non-custodial parent after domestic divorce or separation (upon receipt of a ‘rikon-todoke’ –a divorce notice). <hr/> <p>²⁴ https://www.mofa.go.jp/ca/ha/page22e_000381.html ²⁵ https://www.mofa.go.jp/fp/hr_ha/page22e_000344.html ²⁶ http://ifm-mfi.org/sites/default/files/CHARTER/ENGLISH/IFM%20Charter_ENG.pdf ²⁷ http://ifm-mfi.org/sites/default/files/CHARTER/ENGLISH/How_to_Use_EN.pdf</p>
<p style="text-align: center;">RISKS</p>	<ul style="list-style-type: none"> • There is a need to further advance in securing less restricted access/visitation rights, to ensure that the child can maintain, <u>on a regular basis</u>, personal relations and <u>direct contact with both parents having common responsibilities</u> for his/her upbringing and development in accordance with art. 9, 10 and 18 of the CRC. • There is also a need to further address the issue of equal status of foreign parents in custody awarding upon divorce, to ensure the best interest of the child in compliance with art. 2 of the CRC (re. discrimination of any kind, irrespective of parent's national status).
<p style="text-align: center;">POTENTIAL QUESTIONS</p>	<ul style="list-style-type: none"> • Do you see any benefits in reforming the legal and administrative system in questions related to sole custody and visitation rights to better take into consideration the rights of the child? • Do you see the possibility to change sole custody in extra-marital relationships to shared custody? • Did you resolve the issue of the “continuity principle” in the legislative and judicial branches in conformity with the relevant laws and conventions? • Do you see a possibility to promote mediation in case of a divorce by “mutual agreement” to encourage dialogue regarding visitations rights between parents and ensure the right of the child to maintain relations with both? • Is mediation an efficient way to adapt restrictions of domestic family law to the international legal framework and requirements of judicial cooperation? • How do you ensure the right of the child to uphold his/her culture when separated from his/her parent abroad?
<p style="text-align: center;">ACKNOWLEDGMENTS</p>	<ul style="list-style-type: none"> • The MOFA • NGO CRC-Japan • NGO Kizuna Child-Parent Reunion