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**NGO Report**

**Association for the Protection of Children's Smiles**

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**About Association for the Protection of Children's Smiles**

**Association for the Protection of Children's Smiles is an organization formed to solve problems at child guidance centers.**

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## **1. Relevant ICCPR articles and CRC recommendations**

### **1 – 1. Relevant ICCPR articles**

Article 9-1~5, 10-1~3, 14-1~3,16,19-1~3,23-1 and 24-1

### **1 – 2. CRC recommendations**

Concluding observations on the combined fourth and fifth periodic reports of Japan issued 5 March 2019 ( CRC/C/JPN/CO/4-5 )<sup>1</sup>

Paragraph 12,13,19,21,22,24,25,26,28,29,34,35, 48 and 49

## **2. Human rights violations by child guidance centers against children and persons with parental rights**

### **2 – 1. What is the "Child Guidance Center Problem"?**

The "child guidance center problem" is a criticism of child guidance center over-intervention and abuse by child guidance centers used in and contains a number of alarming human rights violations in violation of the Civil Liberties Covenant and the Convention on the Rights of the Child. The definition of "abuse" is extremely vague, and there is a lack of objective findings of fact, so it is essential to scrutinize the evidence before and after the fact. The "temporary protection" is called "abduction," etc., because it is done at the sole discretion of the warden for extremely vague reasons and without the consent of the guardian.

In Japan, child welfare has become a "means of governing parents" rather than a "welfare of children", and temporary protection. In this study, the abusive judgments of the Japanese population were not based on the presence or absence of abuse, but on the presence or absence of risk. Although Japan has the principle of the separation of powers, the majority of investigators who are supposed to investigate the situation of parents and children from a neutral standpoint are pro-Child Guidance Centers, and the overwhelming majority of judges accept the applications of Child Guidance Centers as they are.

### **2 – 2. List of child guidance center problems in Japan**

The problems of child guidance centers in Japan can be enumerated as follows.

1. No objective findings of fact have been made for temporary protection.
2. Not obtaining the consent of a parent or guardian for temporary custody.
3. the prohibition of visitation and communication by the child guidance center is an abuse.
4. Restrictions on visitation and communication (prohibition) are imposed not only on those with parental authority but also on attorneys, etc.

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<sup>1</sup> <https://undocs.org/CRC/C/JPN/CO/4-5>

5. The supervisory authority of the Child Guidance Center is unclear and its responsibility is unclear.
6. the administration of medication to a child in their care without parental consent
7. The substantive independence of family courts, lawyers, etc. from child guidance centers is not guaranteed.
8. The legal position as a custodial parent is unfair.
9. There is a unit price system for protection that allows one person to receive income if he or she is protected.
10. Insufficient measures have been taken to improve the expertise of Child Guidance Centers.

## **2 – 3 . Child Guidance Center issues covered in this report**

In order to rectify these, the CCPR's (Covenant Committee on Civil Liberties) stringent recommendations are sought, and this report specifically addresses items 1-8 above.

## **3 . current situation and background**

### **3 – 1 . Definition of abuse**

The Child Abuse Prevention Law stipulates the definition of "abuse" in Article 2, but the definition is extremely abstract and subjective. If the Child Guidance Center determines that a cut or bruise caused by a child's play is an act of parental assault, it is considered abuse. With this vague definition of "abuse," the Child Guidance Centers under the jurisdiction of the Ministry of Health, Labor and Welfare (hereinafter referred to as "MHLW") have been given unparalleled authority in the world.

In order to prevent human rights violations due to arbitrary decisions by child guidance centers, it is essential to scrutinize the evidence both before and after the fact.

The nursery school (protection division), which was a social enterprise in the pre-war era, became the center, and the temporary protection service started from the "Child Protection Dormitory" within the nursery school. Since the post-war measures for orphans, the counseling service, which was undifferentiated before the war, was newly established as a children's counseling center, and has changed in a way that reflects the social conditions of the time.

In recent years, the rise of the idea of "maltreatment risk" has made it a primary objective of child welfare to categorize parents according to their degree of risk and to monitor parents judged to be "high risk". Child welfare has been transformed into a "means of governing parents" rather than a "child's welfare," and the determination of abuse in temporary custody has been transformed into the presence or absence of risk rather than the presence or absence of abuse as a fact. Although Article 33 of the Child Welfare Law defines "temporary protection" as "when the director of the child guidance center deems it necessary," there is no description of the requirement, nor does it require a pre/post check by a third-party organization. The "temporary custody" of a child by a child guidance center is

called "abduction" because it is done at the discretion of the director for extremely vague reasons, such as scratches or bruises caused by the child's play or a fight between a married couple in front of the child, without the consent of the guardian. In criminal cases, a person is taken into custody on a court warrant, but since the court usually conducts pre-checks or post-checks, an arrest cannot be made by the police or prosecutors alone.

There is also a problem with the skills and methods of the experts to be interviewed when making findings of fact. The use of anatomical dolls, which have been criticized for their use in diagnosing the presence or absence of sexual victimization, as an adjunct, and no measures at all to deal with the bias of prior information to make judgments.

### **3 – 2 . Lack of objective findings of fact in temporary protection.**

Temporary protection may include prying open the door of a house with a chainsaw to protect a child, or even taking a child away from a parked car on the way to or from school, or while a parent is shopping. When such intense powers are given to the executive, strict procedural laws are almost always in place to prevent the executive from running amok, but the legal basis for temporary protection is very thin. It is neither "temporary" nor "protective," but, in effect, "prolonged isolation" by prohibiting visitation and communication, treatment below the family of a prison inmate, and can be said to be a substantive suspension or deprivation of parental rights. In order to clarify and improve these issues, a neutral organization with a third party as a constituent who is not related to children's counseling offices, courts, or children's homes should be established, and evaluation by an external agency should be mandatory regarding the response to temporary protection. In order to prevent human rights violations due to arbitrary decisions by child guidance centers, it is essential to scrutinize the evidence both before and after the fact.

Paragraph 29(c) of the general findings on the fourth and fifth integrated periodic reports of the United Nations Committee on the Rights of the Child in Japan also makes the recommendation that "the practice of temporary protection of children in child guidance center should be abolished".

### **3 – 3 . Not obtaining the consent of a parent or guardian for temporary custody**

The Child Guidance Center Operating Guidelines (revised in 2012) states, "In principle, temporary custody should be provided with the consent of the child or guardian, but this does not apply to cases where it is recognized that leaving the child unattended would harm the welfare of the child", but the current practice operates in reverse of the principle and exceptions of preempting the removal of a child from a nursery school or school without parental consent and then initiating procedures to obtain consent.

In addition, paragraph 28(a) of the general findings on the fourth and fifth integrated periodic reports of the United Nations Committee on the Rights of the Child, Japan, also states that "there are

reports of large numbers of children being separated from their families, and that children may be separated from their families without a court order and may be taken to a child guidance center for up to two months. The recommendation was made that it would be of serious concern to.

**3 – 4 . That the prohibition of visitation and communication by the child guidance center is abuse**

Although temporary protection is a temporary measure for the purpose of "parent-child reunification," it is neither "temporary" nor "protection," but rather "prolonged isolation" through the prohibition of visitation and communication, which can be said to be a substantial suspension or deprivation of parental rights, and the blocking of visitation and communication by the child guidance center is a serious violation of the fundamental rights of children and parents to live together as a family. Article 12 of the Child Abuse Prevention Law states that "all or part of the visitation and communication with children may be restricted", but this means that "it may be restricted" or "it may be prohibited in special circumstances", and the premise is that "it shall not be restricted", and the exception cannot be converted into a principle.

Thus, the total restriction (prohibition) of visitation communication is a serious violation of the right to be completely separated from the family, and if the prohibition of visitation communication continues for more than a month without any special circumstances, it must be said to be abuse by the child guidance center. Visitation exchanges are the most effective and essential means to achieve the fundamental purpose of child welfare, which is to "re-shape human relationships and reintegrate parents and children", to identify and clarify the grounds for protection, and above all to ensure the child's human dignity, and should be fully guaranteed as long as there is no real and concrete danger to life and body.

The Child Guidance Center should clearly explain the reasons and grounds for the prohibition of visitation, and if this is not possible, the visitation communication should be resumed immediately. However, the reality is that even when parents and lawyers ask the specific reasons and grounds for the prohibition of visitation and communication, the Child Guidance Centers rarely respond sincerely, and even when appeals are made to the courts, there have been few cases where the prohibition (restriction) on visitation and communication has been lifted simply by rubber-stamping the claims of the Child Guidance Centers. In addition, the United Nations Commission on the Rights of the Child, Concluding Observations on Japan's 4th and 5th Synthetic Periodic Reports, Paragraph 28(e), states that "children placed in institutions maintain contact with their biological parents. It is recommended that they are seriously concerned about being deprived of their rights.

**3 – 5 . Restrictions on visitation and communication (prohibited) not only to the custodial parent but also to attorneys, etc.**

In many cases, child advocacy centers completely block not only the custodial parent but also the custodial attorney from visiting and communicating with the child's representative during temporary custody or institutionalization. In particular, asking for an explanation, pointing out the unreasonableness of the temporary protection, or asking for a defense attorney will almost always result in a restriction or prohibition on visitation and communication. When that happens, they don't even inform us of the child's well-being, which is a complete human rights violation and parental rights violation that goes beyond prison. The requirements for both total restriction (prohibition) and partial restriction are left to the unilateral judgment of child guidance centers and nursing homes, and the result is, in effect, complete separation from the family, which is no exaggeration to say abduction. The prohibition of visitation and communication is being abused by child guidance centers as a means of feeding lies to children and separating them from their parents for a long period of time, and a child who was falsely protected by a child guidance center said, "It was also a lie that I was told that I couldn't get through to my mother when I called her, and even when I did, she was confused and couldn't get through to me. She said, "My mom called the child guidance center many times and tried very hard to talk to me about it. (Case 2: Lies from the Child guidance center and the reality of temporary shelters that have to be called abusive)

### **3 – 6 . The supervisory authority of the Child Guidance Center is unclear and the responsibility is unclear**

Although the Child Guidance Center is nominally under the jurisdiction of the Ministry of Health, Labour and Welfare, its position is not clear either legally or in terms of on-site administration. Although the Ministry of Health, Labour and Welfare has an overarching role, it has not been given direct guidance or supervisory authority. Although the governor and the mayor are responsible for supervising the work of the Child Guidance Center, they do not actually issue instructions or give warnings and recommendations, and they operate as an isolated department. In other words, even among local governments, child guidance centers are operated in an extraterritorial manner, and even if they are not controlled from anywhere, it is difficult to improve them even if there are errors in their response or operation. For this reason, the supervisory authority with jurisdiction over the child guidance center should be identified and the responsibility should be clarified.

### **3 – 7 . Medication is administered to a child in their care without parental consent.**

In many cases, child guidance centers do not disclose information about treatment and medication for children. The Medical Practitioner's Act stipulates the obligation to record the medical treatment of patients in the medical records and to provide guidance on necessary matters, and children and their guardians have the right to see it. The Child Welfare Law states that the head of a child welfare institution may take necessary measures for the welfare of the children in the institution, even if there

is a parent present, and may do so even against the will of the parent if there is an urgent need. In other words, unless there is an urgent need to do so, it cannot be done against the will of the person providing custody, etc. A child who was falsely placed in the custody of a child advocate also said, "I don't want to drink, but it's a rule, so drink. I would have to ask the nurse if I wanted to stop it, but I was forced to take it because it wasn't there now. (Case 2: Lies from the children's ministry and the reality of temporary shelters that have to be called abusive)

Psychotropic drugs themselves have many problems, and facility staff in the field admit to administering psychotropic drugs for their own benefit, knowing that they are harmful.

*A staff member of the institution who attended a child's psychiatric clinic told us that the doctor explained the following to her. The doctor said that "If the child feels stress in his life, it is necessary to relieve him with psychotropic medication". In addition, the doctor told the staffs of the facility that "If the staffs of the facility also feel stress in the treatment of the child, it is necessary to make sure that the child does not fail by taking the medicine". In other words, the doctor had explained to the facility staff that the psychotropic medication was not only for the stress of the child but also to reduce the stress of the facility staff on the child. Mr. C (male in his 40s), who opposed the use of psychotropic medication in the facility, said, "I think that controlling children's behavior with medication is the same as abusing them. Ms. D said that she opposed the administration of psychotropic drugs to children, but recognized that psychotropic drugs were becoming necessary in order to manage children in the operation of the institution. Ms. D, who did not rely on hospitals or medication when she was raising her children, said, "I would never take psychotropic drugs if it were my own child," and had doubts about psychotropic drugs for children. The staff of the institution were against the administration of psychotropic drugs, but the staff of the institution had to use psychotropic drugs in order not to inflict corporal punishment on the children who deviate from them, and they talked about the fluctuation of their feelings that they could not perform their duties and their dilemma. (The Fluctuation and Dilemma of the Administration of Psychotropic Medication by the Employees of an Orphanage Kohei Yoshida)*

A number of books have been published warning about this problem, indicating the seriousness of the problem. Thus, the administration of psychotropic drugs with many side effects to a growing child is nothing more than a violation of rights and should be banned altogether. Psychiatrists should not be involved because they are only there to receive requests from the child guidance center, make decisions that are convenient for the child guidance center, and ultimately administer psychotropic drugs that have many side effects. Since entrusting medical care to a child guidance center would be a violation of the child's human rights, the active involvement of the custodian in the life of the child in temporary custody and in institutionalization is necessary to protect the child's rights. Medical care for children is an important component of parental rights, and the government's deprivation of this through "temporary custody" or "institutionalization" is an unjustified deprivation of the child's



development and the parental right to encourage it.

**3 – 8. The independence of family courts and lawyers from child guidance centers is not guaranteed.**

From the perspective of an attorney whose mission is to protect human rights and justice, all of the counsel for the child advocates do not act in the best interest of the child in temporary custody, but defend the position of the child advocacy center, no matter how unreasonable, and petition the family court for institutional action for the child after temporary custody. Child psychiatrists, like attorneys, write a medical certificate certifying abuse when petitioning the family court for institutional action for a child after temporary custody, and prescribe psychiatric medication to a child in temporary custody without the consent of the custodial parent. A portion of the budget allocated to child advocacy centers is paid to lawyers and even child psychiatrists. If a lawyer or child psychiatrist entrusted by a child guidance center puts the interests of the child first and advises against the temporary protection and treatment of the child guidance center, the entrustment will be terminated and the remuneration will be eliminated.

The child guidance center will eventually file a request for action with the family court to restrict all visits and communications between the parents and the child and to place the child in a "children's home" in complete isolation from the parents. In addition, the Family Court, which is the sole reviewing body of the Child Guidance Center, is only systematically strong on the part of the Child Guidance Center and is only a formality, and the Family Court has degenerated into an organization that approves the claims of the Child Guidance Center as they are, making it difficult for the claims of the child or the person with parental authority to be reflected in the results of the trial. Japan has the principle of separation of three powers, and the judiciary should be independent, but the court has an "administrative wall", and the court is weak against the government (administration) and does not enter the administrative discretion. There is a strong stance that there is no stance, and most of the investigators who should investigate the situation of parents and children from a neutral position are more than the child consultation center, and the overwhelming majority of judges accept the petition of the child minister as it is.

**3 – 9. The unfairness of their legal position person exercising parental authority**

When a parent refuses to consent to institutionalization, the child guidance center applies for the family court's approval of institutionalization measures based on Article 28 of the Child Welfare Law, but in doing so, the person with parental authority is merely an "interested party" and cannot contest the case as a litigant. The detriment of the court's rubber stamp is significant, and the law should be amended to grant the custodial parent unilateral party status and allow them to compete on an equal footing with the child guidance center.

### **3 – 1 0 . Insufficient measures have been taken to improve the professionalism of child guidance centers.**

The number of employees assigned to a child guidance center is determined by the personnel transfer of each local government, and there are no qualifications required to become an employee of a child guidance center. And after less than a month of simple job training, they would be on the front lines as front-line employees. For this reason, a manual of judgment standards has been prepared in advance based on relevant laws and regulations, and by following the manual, it is possible to make certain judgments without understanding the law. However, because laypeople have strong authority to decide on protection and then take action, there is no way that cases that occur in the field can be resolved according to the manual, and this can cause real cases of abuse to be overlooked. There are also a number of mistakes made by healthy families to protect them by assuming that they are being abused unnecessarily. The children who were falsely placed in foster care were also "not given any explanation of temporary custody" and "all the children were treated like prisoners in prison. The most frightening thing was the punishment for being alone. I've always been scared of 'One Person'," she said. (Case 2: Lies from the children's ministry and the reality of temporary shelters that have to be called abusive)

### **3 – 1 1 . Case 1 Child guidance centers that unilaterally impose restrictions without even making home visits**

In September 2010, due to unfounded visitation and communication restrictions imposed at the same time as entering a facility, I was forced to be in a situation similar to deprivation of parental rights. In the 10 years since admission, fathers were allowed to see their children for only 5 minutes, and mothers for only 35 minutes. In 2003, her mother was referred to a psychiatrist by an orthopedic surgeon at the City Medical Center, and after just a few words she was prescribed sleeping pills. After that, she continued to prescribe a large amount of psychotropic drugs, and as a result, the child attempted suicide in an unstable home environment due to the side effects, and child guidance center intervention began. At this point, his family believed in medical care, so the cause was unknown, and he was taken into temporary custody with his parents' consent. Her wife, with the help of her doctors, endured her painful tapering off and successfully quit smoking. Her domestic affairs, caused by the side effects of her psychotropic drugs, were resolved when she stopped taking her drugs, and she returned to her healthy life as her wife. The Child Guidance Center has seen how my family suffered from the side effects of psychotropic drugs. Our families no longer need to intervene with doctors and child guidance centers. However, since the Child Guidance Center has never conducted home visits or home environment surveys, they have no way of knowing. Through trial and error, we have steadily created an environment that welcomes children. Child is currently on psychotropic medications, but without presenting a medical certificate or confirming consent to the

parents. The practice of blindly prescribing powerful drugs with high potential for side effects and unestablished safety in children is medical abuse by physicians.

In 2010, the Child Guidance Center judged that I was "a parent who does not consent to admission", and the Child Guidance Center filed a petition for a ruling under Article 28 of the Child Welfare Law. Since I had agreed to be placed in a facility from the beginning, the court in charge of the trial also approved my consent to be placed in a facility and dismissed the child guidance center's petition. In 2013, based on Article 28 of the Child Welfare Law, the Child Guidance Center conducted a retrial as a guardian who did not agree to change the measures to a child care facility. I asked for a reasonable explanation as to why visitation restrictions and communication restrictions were not lifted even though the child had recovered, and why she was unable to return to her home and enter an orphanage. However, the child guidance center gave me only vague answers over the phone, and I was unable to attend the interview with the child guidance center. The Child Guidance Center then took advantage of this and started claiming that I had not followed instructions because I had not responded to the discussion. Unfortunately, the family court approved my admission to the facility. A family court investigation report reveals that child guidance centers hid multiple acts of self-harm from parents at facilities where children were hospitalized. In addition, it was revealed that at the children's home (location and name unknown) to which they were forcibly moved, the children stopped attending school and multiple self-harming behaviors were covered up. It turned out that it was a lie that "facility is a safe and secure place" that people involved in child guidance centers and facilities chant like a spell. I wish to eliminate the violation of children's human rights by the runaway child guidance center.

### **3 – 1 2 . Case 2 Lies from the Child guidance center and the reality of temporary shelters that have to be called abusive**

When I was first taken to Child guidance center, a staff member told me, 'wait here until we finish talking with your mother'. I therefore thought that 'I should wait for only two or three hours and then I can return home'. Yet I was taken to the detention quarter of the Child guidance center. On the way, I was forced to visit a gynaecology clinic against my will, under the guise that 'we are anxious and believe that you may have some illnesses'. Later, when I found out that they examined me to see if I was a virgin, I was so shocked that I was rendered speechless.

The staff of Child guidance center was did not give me any explanation for my detention (temporary custody). He did not reply when I asked, 'where is my mother ', instead, he asked me for my dress size. I told him 'I want to return home', then he replied, 'once you are here, you cannot return home for some time'. I screamed. My heart was filled with anger and sadness. I told him, 'I was merely joking when I said I was abused', yet he would not listen to me. He told me 'if you want to cry so

much, do it here!' and stuffed me into a room alone. From that day on, the six months of forced living in a temporary shelter began.

All the children were treated like prisoners in prison. When I finish writing my journal, I don't see any No whispering. Private conversations were also forbidden, such as while eating or brushing your teeth. The most frightening thing was the punishment of "one person". If you broke the rules, you were forbidden to talk or play and ordered to spend your free time alone "on your own". If you talk to the child who is receiving that punishment, he or she will also receive the punishment of "one person," so if the "one person" child speaks to those around him or her, "Don't talk to me! I'm not sure what to do. The "one person" can be as short as three days and as long as a month. I've always been intimidated by "one person".

I also didn't like the medication they were giving me before I went to bed on the first day. Because the next day, you will surely feel uncomfortable. But even if you say, "I don't want to drink," it's a given, so drink it. I was forced to drink it, saying, "If I want to stop, I'll have to ask the nurse, but she's not here right now.

I was also told to write the letter to my mother as the Child guidance center told me to do. For example, I was forced to write, "If only my mom would rent me an apartment so I could go home," even though I didn't even think about it. When the mother questioned me about this after I returned home, the children's minister said, "You didn't say anything like that, but you seem to have thought it through and written it yourself.

He lied to me further and said, 'the telephone call to your mother did not go through. Even if she picked up the phone, your mother was confused and the conversation did not go very far'. In reality, my mother repeatedly called the Child guidance center and tried to discuss the matter with the staff. They turned her down, claiming that 'we're not at that stage now'. When my mother asked, 'how can I get my daughter back ', the Child guidance center staff was said to have replied, 'that is your business!' All I can think of is that he was manipulating information to make me think that "your mother won't do anything" and to make me dislike her.

I was longing to return home all the time. I do not want to go anywhere like the former orphanages, and I cannot even think of going back to the Child guidance center detention quarter, which is like a prison. I want to live with my loving mother!

#### **4. Proposed recommendations**

1. Pre and post review of temporary protection shall be conducted by a warrant issued by the court
2. The procedure for obtaining a warrant shall be the same as for arresting a person for a criminal offense or an emergency arrest (requiring prior scrutiny of the evidence by the court).
3. Restricting visitation for more than one month without special circumstances is suspected as abuse by the Child Guidance Center. Child Guidance Centers are responsible for creating prima facie

evidence.

- 4 . Guaranteeing the right of visitation, correspondence, telephone and other transportation to the custodian or custodial agent of the child in temporary custody.
- 5 . A system of informed consent for medical care for children under temporary custody and in institutions should be introduced, and the consent of the custodial parent should be mandatory.
- 6 . Any administration of psychiatric medication to children in temporary custody or institutionalization is prohibited due to the seriousness of the side effects.
- 7 . With respect to psychiatrists, prohibit psychiatric intervention. If it cannot be prohibited, guarantee the opportunity for a second opinion by direct examination by a physician recommended by the custodial parent.
- 8 . Guarantee substantial independence from child counseling centers, including family courts, child psychiatrists and lawyers.
- 9 . Requiring that all children in residential care measures and social care entrusted to foster care be appointed an independent advocate to represent the views of the child.
- 1 0 . A verification committee with a third party member shall be established in the case of suicides of children in social care.
- 1 1 . Mandatory that all children in foster care or social care entrusted to foster parents be appointed independent advisors to represent their children's opinions.