



Country fact sheet for the CRC

CHILDREN'S RIGHTS IN PARENTAL SEPARATION CASES

COUNTRY: JAPAN

REPORT N°	<ul style="list-style-type: none"> ▪ Fifth and sixth Periodic Report (UNCRC)
PRE-SESSION/SESSION	<ul style="list-style-type: none"> ▪ Pre-sessional: (February 2018) ▪ Sessional 79th (September-October 2018)
LAWS (CONVENTIONS, GUIDELINES, DOMESTIC LAWS)	<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 ▪ 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)
EXECUTIVE SUMMARY	<ul style="list-style-type: none"> ▪ Although Japan is based on a tradition of parental authority (<i>shinken</i>) and a principle of non-intervention in civil matters, the country has recently ratified the 1980 Hague Convention, opening 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. Referring to mediation and alternative dispute resolution 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.
THE BEST INTEREST OF THE CHILD IN PARENTAL SEPARATION (examples <i>inter alia</i>)	<ul style="list-style-type: none"> ▪ Sole Custody: It is of utmost importance to grasp that Japanese family is marked by the preeminence of marital link over filiation. Japanese legal system recognizes only the arrangement of sole custody upon divorce and usually awards custody to the mother, reflecting the importance of marriage and gendered roles in Japan. The Civil Code allowing joint custody only for married parents, and the administrative personal register known as the ‘<i>koseki</i>’ system, designed upon the basic unit of a family, does not provide the possibility for a person to belong to 2 families (in other words: to register two parents in an extra-marital relationship for one child). When a divorce is filed, one parent is granted exclusive physical and legal custody and can decide over the visitation rights of the ex-spouse. More than 90% of divorces are filed outside of any judicial procedure, simply by filing a divorce paper. When a custodial parent remarries, the child from previous union can be adopted by the new spouse without notifying the non-custodial biological parent. The best interest of the child appears to be respected by avoiding interference of the non-custodial parent in the subsequent marital arrangement. ▪ Visitation Rights: The country does not have substantive laws guiding the process of awarding visitation rights upon divorce. In most cases, the custodial parent will define the other parent’s access to the child. Nevertheless, judges, upon request of non-custodial parents, grant more and more access to children, even if generally visits do not include overnight stay and in approximately half of the cases access to the child is granted on a frequency of once a month or less. ▪ Non-intervention Principle: In Japan, civil matters are considered as eminently private, the State’s interference can thus be perceived as intrusive. The principle of

	<p>non-intervention in civil affairs results in a minimal interference by the state, e.g. regarding law enforcement in domestic disputes.</p> <ul style="list-style-type: none"> ▪ Foreign spouse: Foreign spouses do not enjoy the same status as a national regarding the possibility to obtain custody over a child; it can also be noted that a foreign spouse cannot be registered as head of family (<i>hittousya</i>) in the 'koseki' system, and that upon divorce, a foreign spouse cannot have its own entry there. <p>Sources: Konno, Yoko. "A Haven for International Child Abduction: Will the Hague Convention Shape Japanese Family Law." Cal. W. Int'l LJ 46, 2015. Ellman, Ira Mark. "Comparing Japanese and American Approaches to Parental Rights: A Comment On, and Appreciation Of, the Work of Takao Tanase," 2005. Hamano, Takeshi. "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, 3-1, 35-49, 2017.</p>
<p>INTERNATIONAL CHILD ABDUCTION</p>	<ul style="list-style-type: none"> ▪ Hague Convention ratification: Japan has ratified the Hague Convention on the Civil Aspects of International Child Abduction on April 1st 2014, and implemented it 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 materialized through the establishment of the Hague Convention Division inside the Ministry of Foreign Affairs of Japan, as its Central Authority. ▪ Alternative Dispute Resolution: The 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 Japanese Ministry of Foreign Affairs (MOFA) as the Central Authority of Japan has introduced an international mediation scheme tailored for child abduction cases and access cases, based on voluntary participation and conducted by an impartial mediator. ▪ Challenges <i>inter alia</i>: <ul style="list-style-type: none"> ➢ Enforcement of judicial decisions under the Hague Convention: According to the Act for Implementation of the convention, the child cannot be removed by force from the taking parent. Therefore, the enforcement of returns can be difficult if the taking parent is opposed to the return of the child. The best interest of the child as understood in Japan is respected at the stage of the execution of a return order under the Hague Convention (and can represent an impediment to its implementation). ➢ Recognition of foreign judicial order (extradition request, international warrant arrest, custody orders): The process of recognition of foreign judgments can be lengthy and some obstacle subsist to the timely application of exequatur in abduction cases. ➢ Deliverance of administrative documents: 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 parents/guardians. If one parent/guardian submits a written refusal/objection to the relevant authorities, the passport is issued only upon consent of both parents/guardians. A two parent-signature requirement upon delivering passport might have a preventive effect on child abduction. <p>Sources: Konno, Yoko. "A Haven for International Child Abduction: Will the Hague Convention Shape Japanese Family Law." Cal. W. Int'l LJ 46, 2015. Stark, Barbara 'Foreign Fathers, Japanese Mothers, and the Hague Abduction Convention: Spirited Away', Legal Studies Research Paper Series, vol. 41-2, 2016. http://www.mofa.go.jp/fp/hr_ha/page22e_000344.html http://www.mofa.go.jp/announce/info/pdfs/notice_for_parents.pdf</p>
<p>STATISTICS</p>	<ul style="list-style-type: none"> ▪ 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: indeed, international marriages and divorces have more than doubled between 1985 (around 10,000) and 2015 (around 23,000) constituting respectively 4% of the total marriages and 7% of the total amount of divorces. ▪ International Child Abduction: Bearing in mind that statistical data for

	<p>international child abduction is scattered and incomplete, we can nevertheless outline several trends. Between April 1st 2014 and the end of December 2017, Japan’s MOFA handled or – as inscribed in the implementation act - decided on assistance in) 233 applications for return or access cases within the Hague Convention procedure, and secured 33 returns. Another source indicates that among the applications received in 2015, 46% of the application concerned petitions for access, a much higher rate than most countries. The most recent data, as of 1st January 2018, indicates that 47 return cases out of 69 were resolved with Japan as the requested State; ~ 70% of those were resolved amicably; and 35 return cases were resolved with Japan as the requesting state.</p> <ul style="list-style-type: none"> ▪ International Family Mediation: No data is available to this date. <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.</p> <p>Updated statistical data on decisions on assistance in child’s returns: January 2018, courtesy of Japanese Minister of Foreign Affairs.</p>
<p>ACCES TO INTERNATIONAL FAMILY MEDIATION</p>	<ul style="list-style-type: none"> ▪ Strengths: <ul style="list-style-type: none"> ▪ Well-established and institutionalized ADR services for domestic dispute resolution ▪ MOFA’s subsidy for commissioned ADR services ▪ MOFA’s promotion of International Family Mediation (IFM) for cross-border disputes ▪ Comprehensive information on ADR services provided on MOFA’s website ▪ Specialized professional training in International Family Mediation 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> and the <i>How to Use</i> addressed to State Authorities)
<p>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, on a regular basis, personal relations and direct contact <u>with both parents</u> having common responsibilities 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>POTENTIAL QUESTIONS</p>	<ul style="list-style-type: none"> ▪ Can you explain the relation between the Civil Code and the <i>Koseki</i> System in extra-marital family matters? Do you see any benefits in reforming this system to better take into consideration the rights of the child? ▪ Do you see a possibility to promote mediation in case of a divorce by “mutual agreement” to encourage dialogue regarding visitations rights (that are barely regulated in Japan) between parents and ensure the right of the child to maintain relations with both? ▪ Could the international family mediation scheme apply to, and be promoted, for other family issues, like parental responsibility, custody, visitation, search of origins, family reunification? ▪ How can you strengthen mediation as 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?