



Parental Child Abduction and Loss of Access within and to Japan

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JAPAN

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Introduction

The purpose of this report is to show severe and continued human rights violations caused by parental child abduction in Japan, loss of access of children to one of their parents, and the role of the Japanese government.

1. Definition of the Issues

1-1. Definition of Parental Child Abduction (PCA)

Articles 1 and 3 of the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) set forth a definition of international child abduction. We could extrapolate the convention to domestic cases and obtain a general definition of parental child abduction (PCA); separation of a custodial parent from his/her children caused by the other parent without consent, except for the cases where there is immediate or proven necessity for the separation.

The Hague Convention on the Civil Aspects of International Child Abduction

Article 1

The objects of the present Convention are –

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State;

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.¹

1-2. Definition of Rights of Access

The Hague Convention on the Civil Aspects of International Child Abduction

"Rights of Access

Article 21

¹ Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
<https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights."²

We could describe “loss of access” as the inability or undue difficulty to exercise unfettered rights of access. Article 21 of the Hague Convention sets forth rights of access and the obligation of member States to promote rights of access in international abduction cases.

The UN Convention on the Rights of the Child (UNCRC) also sets forth the human right of children to maintain regular contact with both parents even if the parents are separated in article 9 paragraph 3.

The United Nations Convention on the Rights of the Child

"Article 9

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."³

UN OHCHR Report on the rights of the child and family reunification

"Background

Children who have been separated from their families experience heightened vulnerabilities and violations of their rights, including violence, abuse, detention, neglect, trafficking and exploitation, serious deprivations of their economic, social and cultural rights, and other rights violations detrimental to their lifelong health and development. Because they are children, they often lack appropriate support and clear pathways to seek family reunification, and may receive no remedy or redress for the rights violations they endure as a consequence.

The present status quo in which a patchwork of policy priorities and approaches are applied to family reunification is failing children. All children have the right to grow up in a family environment, in an atmosphere of happiness, love and understanding. All children are equal in dignity and in rights, which cannot be overlooked, limited, or negated because of their specific situation. The report

² <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

³ Convention on the Rights of the Child

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

recommends that States urgently follow up on the matter of family reunification by developing a global strategy on the basis of child rights guiding principles.”⁴

The background of the A/HRC/49/31: Report on the rights of the child and family reunification issued on 9 March 2022 gives a summary of the damage done to children when separated from their families and describes that family reunification policies are failing children.

1-3. Scenario of Cases

The scenario of PCA that we are reporting on primarily herein has two types of cases. One is the domestic case in which a child is taken by one parent without the consent of the other parent within Japan. The second type is the international case in which a child is taken to Japan across national borders without the consent of the other parent. As described below, there is a vast number of domestic cases that are much bigger than that of international cases. Almost every domestic case is inappropriately condoned in Japan despite human rights being violated in the same manner as international cases. It should also be noted that the two types of cases have a common basis in that they are both treated by the judicial branch, legal practice, legislation, and infrastructure at large of Japan. Another important note is that although the Hague Convention is ratified by cooperating member states, each member state implements its own version of domestic legislation to administer the treaty. Indeed, the Japanese Hague implementing legislation is quite deficient in that it is at odds with facilitating a compliant performance of its treaty obligations. The administration of Japanese domestic cases of PCA almost entirely lacks the ability to prevent PCA or hold abductors accountable. Worse yet, the scenario incentivizes PCA as shown below.

⁴ Office of the High Commissioner for Human Rights, “Report on the rights of the child and family reunification,” (select the Background drop down “+” sign)
<https://www.ohchr.org/en/calls-for-input/report-rights-child-and-family-reunification>

2. Accumulating Evidence of Abundant Occurrence of Parental Child Abduction and Loss of Access within or to Japan

The Japanese Government has not officially admitted the existence of PCA and loss of access. However, PCA and loss of access happen very frequently within or across the border of Japan. In this chapter we show evidence of the issue.

2-1. Statistical Evidence

- (1) Japan-based NGO Kizuna Child-Parent Reunion estimates the number of children who are victims of loss of access in Japan to be around 150,000 per year and 3 million over 20 years.⁵
- (2) Japan-based NGO Network for Implementing Visitation (Oyako Net) submitted their survey result to the 18th session of Family Law Subcommittee of the Legislative Council 2022, which revealed 378 Japanese parents out of their 400 respondents answered that their separation started by PCA.
- (3) US-based NGO Bring Abducted Children Home reports at least 489 children were abducted from the US to Japan by a parent between 1994 and 2021 according to figures provided by the United States Department of State. More than 70 children were abducted after Japan acceded to the Hague Abduction Convention in 2014.⁶
- (4) The survey regarding divorce by agreement conducted by The Ministry of Justice of Japan in 2021 revealed 23.4% of divorced parents answered that they started separation from their spouses by taking away their children without consent (=PCA).⁷ Considering there are around 150,000 divorces involving children every year, this gives us the estimate that more than 30,000 children every year experience PCA.

Still, the actual number of PCA and loss of access must be much higher than 30,000 because the methodology of the survey is flawed in at least three aspects; 1) It excluded high-conflict cases such as divorce by arbitration and judicial divorce; 2) It surveyed only parents in their 30s and 40s; and 3) It was conducted via the Internet with unclear sampling methodology, and thus, kidnapping parents might be filtered out.

⁵ Kizuna Child-Parent Reunion: Counting the Children in Japan, loss of access, divorce data 1992 - 2019
<https://www.kizuna-cpr.org/counting-the-children>
<https://www.kizuna-cpr.org/loss-of-access>
<https://www.kizuna-cpr.org/divorce-data-1992-2019>

⁶ 475+ U.S. Children Kidnapped To Japan, Bring Abducted Children Home
<http://www.bachome.org/news/400-us-children-kidnapped-to-japan>

⁷ March 2021 Report of the 'Research on the System of Divorce by Agreement.
<https://www.moj.go.jp/content/001346483.pdf>

- (5) A US Department of State official named Japan a top-three worst offender of International Parental Child Abduction at a U.S. Congressional hearing on the crisis.⁸
- (6) It was noted in expert witness testimony on 27 October 2017 at The Commission on Security and Cooperation in Europe, also known as the US Helsinki Commission, which is an independent commission of the U.S. Federal Government, “None of these parents have received true, unfettered access to their kidnapped children. Japan’s implementation of the Hague Abduction Convention is an abysmal failure.” Additionally, “As of January 2007, there were at least thirteen cases of unresolved parental abduction from Australia to Japan.”

As of December 2009, there were 35 French cases on record. From 2003 to 2009, the United Kingdom had 37 cumulative cases of British nationals being abducted to Japan by a parent. As of the end of 2013, there were 38 cases from Canada.”⁹

- (7) On 15 May 2018 as Japan was about to be cited for International Parental Child Abduction by the United States, they held a public seminar at the House of Culture of Japan in Paris co-organized by the Ministry of Foreign Affairs of Japan and the Japan Federation of Bar Associations (JFBA). In an audio recording from inside the event, we hear participants being educated about The Hague Convention on the Civil Aspects of International Parental Child Abduction. They are also taught how to prevent having their children from being returned to France should they take them without consent to live in Japan. More simply put, organizers lay out how to abduct to Japan and get away with it.¹⁰
- (8) The Government of Japan’s failure to ensure access and return of parentally abducted children was noted again in expert witness testimony at the 29 September 2021 hearing in the Tom Lantos Human Rights Commission of the U.S. Congress. Jeffery Morehouse, Executive Director of Bring Abducted Children Home testified, “On May 25, 2018, my colleague and I met with Japanese Embassy officials to try to better understand if there was any genuine path for Japan to reunite parents with their kidnapped children. The Head of Chancery, Mr. Takuya Sasayama was shockingly candid. He said, ‘your access depends on the mother and child's wishes.’ State Department officials met with the Japanese Central Authority in November 2018, to again raise cases of American children kidnapped to Japan and the lack of progress and failures in enforcement of judicial rulings. There were three important points in it. Japan acknowledged that: 1. Enforcing an order depends on the voluntary cooperation of the kidnapping parent; 2. If this parent refuses there are no

⁸ Japan named as top three worst offender, video excerpt of U.S. Congressional hearing
<http://www.bachome.org/news/japan-named-as-top-three-worst-offender>

⁹ The Crime of International Parental Child Abduction, U.S. Helsinki Commission
<https://www.csce.gov/international-impact/events/crime-international-parental-child-abduction>

¹⁰ Caught! Japan Seminar On How To Abduct, Bring Abducted Children Home
<http://www.bachome.org/news/caught-japan-seminar-on-how-to-abduct>

repercussions for ignoring an application for access, return or a court order; and 3.

Kidnapping parents in Japan know this. Japan admits the problem, deflects its responsibility and blames it on the kidnapper.”¹¹

- (9) The Ministry of Foreign Affairs of Japan serves as the administrator of the Hague Convention on the Civil Aspects of International Child Abduction. It maintains a Status of Implementation of the Hague Convention webpage.

The status as of 1 July 2022 is shown here. The table on the next page shows the 30 countries from which children have been taken and the number of cases that applied for return for each of those countries. The source data can be found on the Ministry of Foreign Affairs webpage.¹²

According to this status webpage, since the beginning of the implementation in 2014, there have been 172 applications made to return children from Japan to their home country with 151 of those applications processed. The requesting countries and their respective numbers of cases are shown. Of those 151 cases, 108 cases have been concluded, and 44 of them have resulted in non-returns, which is 41%. Since the implementation of the revised enforcement of court orders in April 2020, 40 applications for return have been submitted. Of those 40 cases, only 5 cases, 12.5%, reached the stage of an enforcement of a court order. This performance of the implementation of the Hague Convention reported by the Japanese Hague Central Authority is very poor.

¹¹ Lantos Human Rights Commission Hearing: The Rights of Parents and Children, Bring Abducted Children Home

<http://www.bachome.org/news/lantos-human-rights-commission-hearing-the-rights-of-parents-and-children>

¹² Status of Implementation of the Hague Convention <https://www.mofa.go.jp/files/100012160.pdf>

Table of Hague Convention Cases of Children Abducted to Japan as of 1 July 2022

No.	Country	Number of cases	No.	Country	Number of cases
1	USA	49	16	ROK	3
2	Australia	15	17	Turkey	2
3	France	9	18	Thailand	2
4	UK	8	19	Argentina	2
5	Germany	7	20	Ireland	2
6	Singapore	6	21	Hungary	2
7	Canada	5	22	Mexico	2
8	Brazil	5	23	Fiji	1
9	Italy	4	24	Colombia	1
10	Russia	4	25	Sweden	1
11	Hong Kong	4	26	Belgium	1
12	Spain	3	27	Ukraine	1
13	Sri Lanka	3	28	the Philippines	1
14	New Zealand	3	29	Paraguay	1
15	Switzerland	3	30	Estonia	1

The Japan Ministry of Foreign Affairs Status of Implementation of the Hague Convention webpage also shows the cases that applied for rights of access. A number of these cases occurred prior to the implementation of the Convention. In the negotiations to arrange for Japan's ratification of the Convention, cases that occurred prior to the implementation were excluded from being able to apply for return. They could only apply for access. A total of 128 applications were made, and 111 were processed. The pattern of requesting States and their numbers of cases is similar to that of the applications for return. The status page shows the number of access applications but does not show numbers of cases in which access was achieved. Then, it is not possible to assess the performance of the implementation of rights of access by their report.

The treatment of access cases has been quite unacceptable. Japan has not made providing access compulsory. The form of access provided has been Mimamori Contact via video calls that are monitored. Taking parents have continued to deny access by this procedure with no consequences, so there has been no relief whatsoever in some cases under this implementation of Hague rights of access. Our sense of the network of parents who applied for access is that a rather small percentage of cases have been granted video access. Some have had access only for

a small number of video calls. Moreover, very few have had face-to-face access. Quite a few parents still have no idea where their children live as that information is not provided by the Ministry of Foreign Affairs, and there is no readily available means of finding the location of their children.

2-2. International Arrest Warrants Related to PCA by Japanese Citizens

- (1) USA¹³
 - Reiko Nakata Greenberg-Collins
- (2) Canada¹⁴
 - Chieko Teton

2-3. International Criticism

- (1) EU resolution
On 8 July 2020, the European Parliament almost unanimously voted for a resolution on PCA within and to Japan. It expressed "... concern over the situation of children who are suffering as a result of a parental child abduction in Japan and over the fact that relevant laws and judicial decisions are not enforced everywhere..." and "notes with regret that Japan, as a strategic partner of the EU, does not appear to be complying with international rules in cases of child abduction; recalls that the country's legal framework should be improved ...". It also stated the European Parliament "points out the fact that parental child abduction can harm a child's well-being and can have long-term harmful effects".¹⁵
- (2) French resolution
On 5 February 2020, the French Senate adopted a resolution on PCA within and to Japan. The Senate noted "with concern that Franco-Japanese children are currently deprived of any link with their French parent following the divorce or separation of their parents" and recalled "that these children have been either internationally abducted by their Japanese parent or abducted by their parents within Japan and that, in both cases, they have suffered a real trauma and are deprived of an essential part of their identity."¹⁶
- (3) In the 2016 U.S. Department of State's Annual Report on International Child Abduction Japan was cited as a convention country that failed to comply with one or more of their obligations under the Hague Abduction Convention because it "failed

¹³ FBI most wanted: Parental Kidnappings <https://www.fbi.gov/wanted/parental-kidnappings>

¹⁴ Royal Canadian Mounted Police <https://www.rcmp-grc.gc.ca/en/wanted/chieko-teton>

¹⁵ European Parliament resolution of 8 July 2020 on the international and domestic parental abduction of EU children in Japan https://www.europarl.europa.eu/doceo/document/TA-9-2020-0182_EN.html

¹⁶ Original french text : RÉSOLUTION relative aux enfants franco-japonais privés de tout lien avec leur parent français à la suite d'un enlèvement parental <http://www.senat.fr/leg/tas19-057.pdf>

to comply with its obligations under the Hague Abduction Convention in the area of enforcement of return orders.”¹⁷

- (4) The 2018 U.S. Annual Report on International Child Abduction Japan was cited again as a country demonstrating a pattern of noncompliance. The report noted, “in cases where taking parents refused to comply with court return orders, there were no effective means to enforce the order, resulting in a pattern of noncompliance.” and “The Department continues to urge Japan to resolve the 21 pre-Convention abduction cases that remained open at the end of the year, all of which have been outstanding for many years.”¹⁸
- (5) In May 2017, U.S. Congressman Chris Smith released a video message to the Government of Japan, “There have been hundreds of parental abductions from the U.S. to Japan since 1994. Jeffery's case underscores a serious injustice. It is false to claim that it is “in the best interest of the child” to remain in Japan—or anywhere after being kidnapped and taken there. Child abduction is a daily, ongoing form of child abuse. Japan is a great country with many great people. It is a friend and important ally of the United States. But, no democratic, honorable government should allow this type of criminal act to continue.”¹⁹
- (6) In 2010 The U.S. House of Representatives passed a resolution that, “Condemns the abduction and wrongful retention of all minor children being held in Japan away from their U.S. parents. Calls on the government of Japan to: (1) facilitate the resolution of all abduction cases and to recognize related U.S. court orders; (2) include Japan's Ministry of Justice in work with the U.S. government to identify and locate U.S. citizen children alleged to have been wrongfully removed to or retained in Japan; and (3) review and amend its consular procedures to ensure that travel documents for children are issued with due consideration to any court orders.”²⁰
- (7) In 2012 The US Senate passed a resolution citing Japan three times, which was more than any other country. The resolution notes the serious harm to child victims of parental abduction. “According to the Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction of the United States Department of State from April 2010, research shows that abducted children are at risk of significant short- and long-term problems, including “anxiety, eating problems, nightmares, mood swings, sleep disturbances, [and] aggressive

¹⁷ U.S. Department of State’s 2016 Annual Report on International Child Abduction, P. 32,

<https://travel.state.gov/content/dam/NEWIPCAAssets/pdfs/AnnualReports/2016%20Annual%20Report.pdf>

¹⁸ U.S. Department of State’s 2018 Annual Report on International Child Abduction, P. 21 (PDF P.25),

<https://travel.state.gov/content/dam/NEWIPCAAssets/pdfs/AnnualReports/2018%20Annual%20Report%20on%20International%20Child%20Abduction%20FINAL1.pdf>

¹⁹ REP. CHRIS SMITH'S MESSAGE TO JAPAN, video and transcript,

<http://www.bachome.org/news/rep-chris-smiths-message-to-japan>

²⁰ H.Res.1326 - Calling on the Government of Japan to address the urgent problem of abduction to and retention of United States citizen children in Japan,

<https://www.congress.gov/bill/111th-congress/house-resolution/1326/text/eh>

behavior”²¹

- (8) In 2019 The US Senate passed a resolution reporting Japan, “as engaging in a pattern of noncompliance” and “it is illegal under section 1204 of title 18, United States Code, to remove, or attempt to remove, a child from the United States or retain a child (who has been in the United States) outside of the United States with the intent to obstruct the lawful exercise of parental rights;” They also noted, “the Supreme Court of the United States has recognized that family abduction—

(a) is a form of child abuse with potentially ‘devastating consequences for a child’, which may include negative impacts on the physical and mental well-being of the child; and

(b) can cause a child to ‘experience a loss of community and stability, leading to loneliness, anger, and fear of abandonment’.”²²

- (9) On 11 August 2020 U.S. Senators Thom Tillis (R-NC) and Diane Feinstein (D-CA) sent a strongly worded letter to Japan’s Ambassador to the United States stating, “...the facts on the ground show there is more work which must be done between our governments to bring American citizen children home to their parents.”

“Further delay by your government will only add to the anguish of left-behind American parents and the American public, and may cause us to consider additional legislative measures to resolve this issue. We thank you for your attention to this matter, and for recognizing our joint commitment to securing the return of every single American child abducted abroad. We are counting on you to secure the return of our citizen children.”²³

- (10) In 2022 The U.S. Senate passed a resolution reporting Japan’s history of, “engaging in a pattern of noncompliance.” and “international parental child abduction has devastating emotional consequences for the child and for the parent from whom the child is separated.”²⁴

- (11) Asked about parental child abduction and Japan’s lack of significant improvement during his U.S. senate confirmation hearing U.S. Ambassador Rahm Emanuel underscored his view, "Your word is your bond. If you signed into an

²¹ S.Res.543 - A resolution to express the sense of the Senate on international parental child abduction, <https://www.congress.gov/bill/112th-congress/senate-resolution/543/text/ats>

²² S.Res.23 - Supporting the goals and ideals of Countering International Parental Child Abduction Month and expressing the sense of the Senate that Congress should raise awareness of the harm caused by international parental child abduction, <https://www.congress.gov/bill/116th-congress/senate-resolution/23/text/ats>

²³ SENATORS' LETTER TO JAPAN - RETURN EVERY ABDUCTED AMERICAN CHILD, <http://www.bachome.org/news/senators-letter-to-japan-return-every-abducted-american-child>

²⁴ S.Res.568 - A resolution supporting the goals and ideals of "Countering International Parental Child Abduction Month" and expressing the sense of the Senate that Congress should raise awareness of the harm caused by international parental child abduction <https://www.congress.gov/bill/117th-congress/senate-resolution/568/text/ats>

agreement to be trusted as a partner and ally, you must uphold the principle of that agreement."²⁵

- (12) Warnings for PCA in Japan on the travel warnings website of many countries
- United Kingdom²⁶
 - Germany²⁷
 - Canada²⁸
- (13) A letter signed by 26 Ambassadors of EU Member States to Japan was served to Japan Minister of Justice Yoko Kamikawa in March 2018. It raised the issues that Japanese laws were not being fully enforced, Japanese courts have an important role, and Japan shall ensure that children have access to both parents according to the UN Convention on the Rights of the Child (UNCRC).²⁹
- (14) The UN Convention on the Rights of the Child (UNCRC) Concluding observations on the combined fourth and fifth periodic reports of Japan was issued on 5 March 2019. Article 31 pertains to the Illicit transfer and non-return of children with respect to the Hague Convention on the Civil Aspects of International Child Abduction. “The Committee recommends that the State party take all necessary efforts to prevent and combat illicit transfer and non-return of children, harmonize its legislation with the Hague Convention on the Civil Aspects of International Child Abduction and ensure the proper and expeditious implementation of judicial decisions on the return of children and contact rights.”³⁰

2-4. Testimony by Japan Federation of Bar Associations (JFBA) on PCA

The Japan Federation of Bar Associations (JFBA), one of the NGOs reporting to the ICCPR session, reported the facts of PCA in Japan in the past.

i) JFBA published a 60th anniversary book in 2009 that admits frequent occurrences of PCA. As we see later, the situation has not largely improved even after Japan entered into the Hague Convention in 2014.

²⁵ EMANUEL CONFIRMATION HEARING: JAPAN MUST UPHOLD PRINCIPLE OF HAGUE ABDUCTION CONVENTION, video excerpt, <http://www.bachome.org/news/emanuel-confirmation-hearing-japan-must-uphold-principle-of-hague-abduction-convention>

²⁶ Information on child abduction in Japan <https://www.gov.uk/government/publications/japan-child-abduction/information-on-child-abduction-in-japan>

²⁷ Japan: Reise- und Sicherheitshinweise <https://www.auswaertiges-amt.de/de/aussenpolitik/laender/japan-node/japansicherheit/213032>

²⁸ Japan Travel Advice; International Child Abduction <https://travel.gc.ca/destinations/japan>

²⁹ EU Ambassador letter <https://www.moj.go.jp/content/001257587.pdf>

³⁰ UNCRC report on Concluding Observations of combined fourth and fifth periodic review of Japan <https://www.ohchr.org/en/documents/concluding-observations/crcjpnco4-5-concluding-observations-combined-fourth-and-fifth>

"2. Child abduction

In divorce disputes, situations often arise where one parent unilaterally takes a child away upon separation, or where the separated non-custodial parent unilaterally takes a child back. In principle, disputes between parents on custody of a child shall be resolved through negotiation or, in the case where they do not come to an agreement therethrough, the disputes shall be resolved under legal procedures at a family court. **It is illegal that one of the parents unilaterally take their child away from the other without any actions subject thereto. However, in Japan, even in the case of such illegal abduction, under the practices emphasizing the status quo, such illegal act is not regarded as a problem at all, but rather the parent who has illegally taken the child away generally wins a favorable/beneficial position in determining the person who has parental authority.** [*Emphasis added by editor]

By way of example, there is the Convention on the Civil Aspects of International Child Abduction (the so-called Hague Convention) which provides how to handle the cases of international child abduction. It sets forth that child abduction which violates the custody of one of the joint custodians is illegal and unlawful and also provides procedures for prompt return of abducted children in the event of such unlawful abduction. Not only has Japan been internationally accused of being a child-abduction paradise since Japan has not ratified the Convention, in addition, courts in other countries have ruled that it is not appropriate to designate a parent of Japanese nationality as the custodian of a child due to such non-ratification."³¹

ii) Later in 2011, however, when Japan was considering ratifying the Hague Convention, the JFBA recommended the Japanese government to exempt the Domestic Cases from the scope of the legislation related to the ratification.³² As a result, when Japan entered into the convention in 2014, the Diet only legislated a new law to deal with International Cases. While the JFBA tried to overlook the issue of the large number of Domestic Cases, the Japanese government tried to treat the problem in a different manner, but that ultimately failed. The government treatment of Domestic Cases in the run-up to the Hague Convention ratification was handled by revising Article 766 of Civil Code, which took effect 1 April 2012. However, as shown in 3.1 below, this effort resulted in a complete failure, and it demonstrated that the Japanese government was either unable or unwilling to treat domestic PCA or loss of access appropriately and prevent it from

³¹ See Appendix I for the original Japanese text.

³² Opinion of the Japan Federation of Bar Associations on measures to be taken upon the conclusion of the Convention on the Civil Aspects of International Child Abduction (Hague Convention) No. 11 (4). See the entire Japanese document from the link.

<https://www.nichibenren.or.jp/library/ja/opinion/report/data/110218.pdf>

happening or provide adverse consequences if it does happen.

iii) The new law implementing the Hague Convention was full of loopholes, and the United States in 2018 deemed Japan not complying with the convention. Although Japan improved the law in 2020 and some progress was seen in newly reported cases, still many parents are struggling to access their children wrongfully removed to Japan.

2-5. News posts on PCA

- 1) Yomiuri Shimbun (Japan), “Parental child abductions create a diplomatic headache for Japan”³³
- 2) Helsingin Sanomat (Finland), “ ‘I estimate that around 150,000 children lose contact with their other parent in Japan every year.’ Mr. Gomez's calculation is based on divorce statistics from the Japan administration [Japan's Ministry of Health, Labor, and Welfare] and surveys of divorced families by various agencies. They show that around 66% of children do not see a non-custodial parent after divorce. This was also stated by Yuko Nishitani, Professor of International Law at Kyoto University, and Noriko Odagiri, Professor of Clinical Psychology at Tokyo International University, at a seminar of the German Institute for Japanese Studies in 2019.”³⁴
- 3) The Sydney Morning Herald (Australia), Op-Ed from Japan’s Ambassador to Australia defending their single parent custody laws, “Yet I do contest the use of the term ‘child abduction’ for these cases. The word ‘abduction’ is used for the state crime committed by North Korea, which brutally kidnapped innocent Japanese men and women, including a teenage girl, from their loved ones. This should not be conflated with the removal of children by their parents, however painful the experience is for parents and children alike, as I know myself.”³⁵
- 4) The Sydney Morning Herald (Australia), “Adam Perry, a British solicitor who spent five years living in Japan studying its legal system, said Japan stands alone as the only G20 nation not to have a system of joint custody. “It is widely understood that parental abductions primarily occur for the sole purpose of obtaining custody,” he said. Perry said Japan’s family courts, in contravention to

³³ Yuki Sato, “Parental child abductions create a diplomatic headache for Japan,” Yomiuri Shimbun, 3 January 2022,

<http://www.bachome.org/news/child-abductions-by-parents-creating-diplomatic-headache>

³⁴ Irina Hasala, “Disappearing Children,” Helsingin Sanomat, 5 January 2022, English translation,

<http://www.bachome.org/news/disappearing-children>, in Finnish,

<https://www.hs.fi/ulkomaat/art-2000008442333.html>

³⁵ Ambassador Shingo Yamagami, “Japan’s Ambassador to Australia defends child custody laws,” The Sydney Morning Herald, 17 December 2021,

<https://www.smh.com.au/world/asia/japan-s-ambassador-to-australia-defends-child-custody-laws-20211217-p59iel.html>

Japan's international commitments including The Hague Convention, continue to implement and practice a child custody system that fails to put the best interests of the child first. "It accepts the first parental child abduction, fails to uphold foreign rulings and supports the refusal of contact and access by the abducting parent," he said."³⁶

- 5) The Sydney Morning Herald (Australia), "Up to 68 Australian-Japanese children have been caught up in parental abduction and child custody disputes, according to Department of Foreign Affairs figures obtained by The Sydney Morning Herald and The Age."³⁷
- 6) Chiba Nippo Newspaper (Japan), "'Seventeen men and women, including three children in their teens and 20s, filed a class action lawsuit regarding parenting time (visitation) with the Tokyo District Court on the 11th of November 2020, seeking ¥100,000 in damages from the government of Japan for parents and children separated due to divorce or other reasons, claiming that they were forced to suffer due to inadequate laws and that their basic human rights, which are guaranteed by the Constitution, have been violated."³⁸
- 7) The Washington Post (United States), "Japanese courts operate on what's known as the "continuity principle," almost always granting sole custody to whoever has physical control of the children when a case comes before them. What that means in practice is that parents seeking custody of their children need only to abscond with them to a new location and deny the other parent access. Courts almost always reward the "kidnapper" by granting sole custody. Courts in Japan lack the specific legal right to enforce visitation rights, meaning it is effectively up to the custodial parent's discretion whether the other parent gets even occasional access or news."³⁹
- 8) The Washington Post (United States), "...studies show that depriving children of access to one of their parents can be traumatic and psychologically damaging, says Noriko Odagiri, a professor of clinical psychology at Tokyo International

³⁶ Chris Zappone and Eryk Bagshaw, "'Emotions are running high': Japan and Australia face off over child abductions," The Sydney Morning Herald, 14 December 2021,

<https://www.smh.com.au/world/asia/emotions-are-running-high-japan-and-australia-face-off-over-child-abductions-20211213-p59h96.html>

³⁷ Eryk Bagshaw, "Their children were taken. Now they fight Japanese laws to get them back," The Sydney Morning Herald, 14 August 2021,

<https://www.smh.com.au/world/asia/their-children-were-taken-now-they-fight-japanese-laws-to-get-them-back-20210727-p58dbk.html>

³⁸ Staff Writer, "Japanese Government Sued for Human Rights Abuse," Chiba Nippo Newspaper, 12 November 2020,

<http://www.bachome.org/news/17-adults-children-sue-japan-govt>

³⁹ Simon Denyer and Akiko Kashiwagi, "In Japan, divorce can mean losing access to children. Many parents want that to change," The Washington Post, 19 October 2020,

https://www.washingtonpost.com/world/asia_pacific/japan-children-custody-divorce/2020/10/18/f7421d62-077f-11eb-8719-0df159d14794_story.html

University.”⁴⁰

- 9) The Asia Times (Hong Kong), “Parents from the US and around the world are firewalled from children held by estranged spouses – and Japanese parents face similar agonies.”⁴¹
- 10) South China Morning Post (Hong Kong), “Foreign parents who had children stolen by a spouse say nothing has changed because court orders to reunite families are not enforced.”⁴²
- 11) EFE (Spain), “On the parents falls a traumatic activism "to do what governments do not want to do," he (Gomez) says, to put pressure inside and outside the country so that the debate does not cease and a real solution is reached.”⁴³

3. State Party's Ineffective Action towards PCA

3-1. Systematic Failure to Prevent PCA

The State Party acceded to the UN Convention on the Rights of Children and the Hague Convention on the Civil Aspects of International Child Abduction. However, as seen in the previous chapter, there is loads of evidence of PCA still happening frequently. This is caused by the systemic failure and ineffective action of the State Party.

In the Criminal Code of Japan, Article 224 regulates abduction/kidnapping of minors. The Japanese Supreme Court confirmed, in its ruling as of 6 December 2005, that application of the Article 224 is not exempted if the abductor/kidnapper has custodial rights, and one of parents may be an abductor/kidnapper thereunder.^{44 45} However, this article has never appropriately and fairly been applied to PCA. A Japanese attorney explained, from a practical point of view, the Japanese investigating authority and

⁴⁰ Simon Denyer and Akiko Kashiwagi, “Parental child abductions create a diplomatic headache for Japan,” The Washington Post, 22 August 2019,

https://www.washingtonpost.com/world/asia_pacific/parental-child-abduction-becomes-a-diplomatic-embarrassment-for-japan-ahead-of-g-7/2019/08/21/1e51a7fa-bf34-11e9-aff2-3835caab97f6_story.html

⁴¹ Peter J. Brown and Jake Adelstein, “Tragedy of children abducted from dads and taken to Japan,” The Asia Times,

<https://asiatimes.com/2019/01/tragedy-of-children-abducted-from-dads-and-taken-to-japan/>

⁴² Julian Ryall, “Is Japan a haven for parents who kidnap their own children?” South China Morning Post, 15 July 2018,

<https://www.scmp.com/week-asia/society/article/2155222/japan-haven-parents-who-kidnap-their-own-children>

⁴³ Maria Roldan, “Custody by abduction: the daily occurrence of parental abduction in Japan,” EFE 26 August 2022

⁴⁴ Supreme Court ruling on child abduction as of 6 December 2005

https://www.courts.go.jp/app/hanrei_ip/detail2?id=50081

⁴⁵ This is again confirmed in the Diet testimony on 13 April 2021 by then Minister of Justice Yoko Kamikawa. <https://kokkai.ndl.go.jp/simple/txt/120415206X00720210413/231>

criminal court press charges of criminal responsibility against an abducting parent ONLY in the case where the parent who lives separately takes his/her child back from the other parent who lives with the child. In almost all cases where one of parents takes his/her child away from the other upon separation, the Japanese investigating authority and criminal court neither appropriately apply the Criminal Code thereto nor press charges of any criminal responsibility against the abducting parent.

In the Civil Code of Japan, Article 766 provides that the interest of a child shall be taken into account on a top-priority basis in the event of consideration of deciding custody and other important aspects at a resolution of marriage. PCA definitely inflicts serious harm on the interest of the child. However, Japanese Family Courts generally ignore and overlook such harmful impact on the interest of the child and tolerate PCA. They permit and confirm *de facto* sole custody of abducting parents after PCA.. Moreover, the Family Courts are generally reluctant to change the status quo, and then, as the JFBA's 60th anniversary book revealed, the Family Courts award single custody to such abducting parents who actually reside with the children. It means a parent who commits PCA will win sole custody of the children.

On 1 April 2012, the revision of Article 766 of the Civil Code took effect. The interpretation and purpose of the revision was explained in Diet testimony in April 2011 by then Minister of Justice Satsuki Eda. He explained that child abduction is child abuse, and parents who abduct should not be granted custody under the revised Civil Code Article 766. However, in the actual legal practices of family affairs, as described above, Japanese Family Courts generally ignore and overlook the harmful impact of child abduction on the interest of the child and tolerate PCA, and they permit and confirm *de facto* sole custody of abducting parents after PCA, which violates the custodial rights of left-behind parents. The original intent and purpose of the revision of Article 766 has not been put into practice.

Furthermore, in Diet testimony on 8 March 2017, Representative Kenta Matsunami questioned Minister Eda's successor as Minister of Justice Katsutoshi Kaneda about the revised Article 766 of the Civil Code. In particular, Mr. Matsunami asked Minister Kaneda numerous times whether he agreed with Minister Eda's interpretation of the revised Article 766 described above. As seen in the video, Minister Kaneda's answers were literally handed to him on paper by a bureaucrat in the Ministry of Justice, and the answers were evasive. Mr. Matsunami persistently questioned several times, even asking "yes or no" in English. Finally, Minister Kaneda reluctantly stated that he agreed with Minister Eda's interpretation of the revised Article 766. The extreme difficulty in obtaining this response is quite telling. In spite of the revision, the legal practices of family affairs by the Family Courts have not changed, and the Family Courts still ignore and overlook the harmful impact of child abduction on the interest of the child.

This is a constitutional problem in that the courts do not abide by the guidelines of legislation, and it results in a human rights violation of epidemic proportions against children in Japan when parents abduct and/or children lose access to one of their

parents. The video has English subtitles⁴⁶.

Due to those practices of criminal justice and family affairs as described above, quite a lot of Japanese attorneys strategically advise their clients to take their child/children away upon separation from their spouse as the first step since they do not face any criminal charge, and there is no disadvantage in obtaining custody.

Japan Law Foundation, a research institute established by JFBA's initiative, published a book which starts with a line;

“Regarding the cases of dissolution of marriage with a dispute over custody and/or parental authority, there is a common knowledge for attorneys as practitioners which is, if their client wants to be designated as the custodian or a parent who has parental authority [*translator's note: In Japan, only one parent can have custody of their children], they should first bring their child/children into their client's *de facto* custody and retain it. Then, they will make all the necessary arguments and proofs as to how problematic the other parent (i.e. either the father or the mother) is. In such a serious conflict situation, it is not easy to set up the conditions for a visitation and implement it, and it is difficult to discuss how to establish and maintain the relationship with their child/children afterwards. The parents have to continue to fight, even though they have the feeling that such serious disputes between them will not bring about a positive outcome for their child/children and may even be harmful to them. Since the main issue in the dispute is whether or not to be a custodian and a parent who has parental authority, there are few structures and systems in place to assist in how to build the relationship between the child/children and the parents.”⁴⁷

3-2. Rationale and Incentive for Abductions

Why would lawyers suggest that their clients abduct their children? Even the law and treaties as written are intended to prevent abduction or provide relief if it does occur. Lawyers should not and do not typically instruct their clients to break the law. The reason lawyers advise to abduct is that they know if a parent has the children living with him/her, that parent will win custody in Japanese domestic court cases. This strategy is also advantageous in Hague cases as seen in the Paris Seminar of May 2018. Then, after winning the legal case, the taking parent is not inclined to permit access of the child to the left-behind parent. The result is the child loses access to one of their parents, and there is no reliable legal process to restore access if the taking parent does not cooperate. This result is not only due to the action of the taking parent, but also due to the lack of

⁴⁶ Civil Code Article 766 <https://www.kizuna-cpr.org/civil-code-article-766>

⁴⁷ See Appendix II for original Japanese text.

enforcement or proper judgements based on existing Japanese laws, civil code, and international treaties by Japanese judges and the judicial system. Moreover, the ineffective action or inaction of the Japanese government for decades does not prevent or inhibit PCA but instead incentivizes PCA to the detriment of the best interests of children, their human rights and quality of life in Japan as well as countries around the world from which children are abducted to Japan.

3-3. Ineffective Action of the Japanese Administration

Then Foreign Minister Motegi Toshimitsu answered in a press conference, on the 2020 EU resolution against PCA in Japan (See 2.3), “This matter [*PCA and joint custody] is being considered by the Ministry of Justice, so I believe you should ask them about it.”⁴⁸ Two years after the press conference, however, the Ministry of Justice published in July 2022 its drafted mid-term report by the Family Law Reform Commission, which included NO countermeasure against PCA.⁴⁹

3-4. Ineffective Action of Japanese Parliament

Two parliamentary caucuses have been convened to address the issue of PCA and loss of access. The first was started about nine years ago. They held hearings and developed a bill whose purpose was to prevent the separation of parent and child. The bill was very poor and not enacted. The second caucus started under new leadership. The process by the government to develop joint custody began in earnest in about July 2018 as a response to the EU Ambassador letter. At the current time, a joint-custody-after-divorce legislative proposal has been made. It should be noted that legislation in this case must be approved by the Ministry of Justice, which is in the administration.

After four years, the parliament was not able to sort out the challenges of the issue effectively. Many entirely different options were deliberated.⁵⁰ Preliminary indications are that the current proposal will not adequately address how the implementation of joint custody after divorce would ensure joint custodial rights for both parents if divorcing couples cannot reach an agreement. Nor is it clear how rights of access for the child would be enforced either. In other words, after years of effort by the parliament, the resulting scenario may be very much like what it is now, and that would be entirely unacceptable.

⁴⁸ Press Conference by Foreign Minister MOTEGI Toshimitsu, 14 July 2020
https://www.mofa.go.jp/press/kaiken/kaiken4e_000825.html

⁴⁹ Report by the Family Law Reform Commission
https://www.moj.go.jp/shingi1/shingi04900001_00153.html

⁵⁰ The Asahi Shimbun, “Joint custody eyed as option by Justice Ministry after divorce” 20 July 2022
<https://www.asahi.com/ajw/articles/14674714>

3-5. Improper Action of Japanese Justice

- (1) The Supreme Court of Japan made an inappropriate ruling on PCA. Hague case of James Cook (United States of America)

The case of James Cook, an American, is illustrative of the poor implementation of the Hague Convention in Japan. It went through a thorough process of the Hague Convention. His four children did not return when they were supposed to from a visit to Japan. An initial ruling only ordered the return of two children. Both parents appealed. Then, all four were ordered to return. The court in Minnesota also issued two mirror orders for the return of the children. There were two enforcement attempts by officers of the court to execute the Japanese Hague return orders. These both failed. Then, an appeal was made to the Supreme Court of Japan. The Supreme Court reversed the return order on 21 December 2017. The reasoning defies many precedents established in cases of other Hague signatories.⁵¹

- (2) Poor enforcement of judicial decisions is promoting loss of access.

A common response of the Japanese government has been that the new Hague Convention enforcement procedure took effect on 1 April 2020. However, as noted above, according to the status of the Hague implementation webpage, only 12.5% of the cases that occurred since the new procedure took effect reached the stage of a court-ordered enforcement.

Similarly for domestic cases, parenting agreements approved by the family court need to be enforced if the agreement is breached. According to the survey in 2016 by the Ministry of Health, Labor and Welfare on single parent households, only 39% of single parents answered that the visitation of the other parent to their child(ren) is currently carried out. The other single parents answered that the visitation never occurred or stopped even though they have a visitation agreement arranged in the Court.⁵²

4. Conclusion and Proposed Recommendations

The State Party has long been overlooking PCA and loss of access and has taken no effective measure to resolve the problem. Moreover, as seen in 2-4 and 3-1, the Japanese judicial system does not treat both parents equally in cases of PCA. The State Party has been thus failing to fulfill its obligation imposed by the ICCPR Articles 14-1, 18-4, 23-1

⁵¹ Japan Supreme Court Ruling in James Cook Hague case

https://www.courts.go.jp/app/files/hanrei_jp/349/087349_hanrei.pdf

⁵² Country-wide Single Parent Household Survey 2016 ; Table 18-(3)-7 and 18-(3)-8

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

and 23-4.⁵³

Article 14-1

All persons shall be equal before the courts and tribunals...

Article 18-4

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 23-1

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 23-4

States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Taking into consideration the State Party's long and persistent inaction and neglect of victimized families, it is too optimistic to wait for the State Party to recognize the situation and improve it voluntarily. We strongly urge the council to deliver recommendations to the State Party as listed below.

⁵³ International Covenant on Civil and Political Rights

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

PROPOSED RECOMMENDATIONS

The State Party should:

- (1) Start an annual survey of PCA, using the definition on Chapter 1, to monitor the number of PCA cases and take appropriate, effective action to decrease it.
- (2) Make explicit legislation to ban and punish PCA in the Criminal Code.
- (3) Make explicit legislation in the Civil Code to declare PCA as against the best interest of children, and a parent who committed PCA should never win custody of his/her children.
- (4) Make the Civil Code and the Criminal Code in line with the treatment against international cases of PCA as defined in the Hague Convention so that the abducted children are immediately returned to their original home and the custodial dispute of the children will be handled by the family court located in the habitual residence of the children. This involves defining criteria to distinguish PCA and evacuation from intimate partner violence and child abuse.
- (5) Make explicit legislation in the Civil Code to mandate parents to agree with a written parenting plan in order to avoid uncontrolled separation which often involves PCA and loss of access. There should be provision for adverse consequences if the parenting plan is breached.
- (6) Call for numerous laws and international treaties to be properly applied, not ignored, and properly enforced. These include the Japanese criminal code article 224, civil code article 766, the UNCRC, and the Hague Convention. The responses by the Japanese government to raising issues with these laws and treaties are typically to avoid, deny, delay, or research rather than act. In such cases, the government should be called upon to act decisively with urgency. Their countermeasures need to be compulsory rather than as they are now, optional with no adverse consequences for non-cooperation.
- (7) Raise public awareness that PCA is against the best interest of a child by public service announcements as well as by mandating education for judges and lawyers.
- (8) Change the dictionary used in the ministries and translate “parental child abduction” to “実子誘拐 (Jisshi Yukai: Parental child abduction)” instead of the current wording “連れ去り(Tsuresari: Taking Children Away)” in its official documents in Japanese so that there will be no undervaluing of the severity of PCA.

Appendix I. Original Japanese excerpt from JFBA's 60th anniversary book in 2009 admitting PCA

https://www.nichibenren.or.jp/library/ja/publication/books/data/60kinenshi_2_4.pdf
日弁連創立60周年記念誌「日弁連六十年」p. 278 – 279

"2. 子の奪取

離婚紛争に伴い、親の一方が別居にあたって子を一方的に連れ去ったり、別居している非監護親が子を連れ去ったりするなどの事態がしばしば生ずる。本来、子の監護をめぐる紛争は協議によって解決するか、協議が整わないときは家庭裁判所の手続によって解決すべきものであり、そのような手続を経ないで子を一方的に連れ去るのは違法である。しかし、わが国では、このような違法な連れ去りがあったとしても、現状を重視する実務のもとで、違法行為がまったく問題とされないどころか、違法に連れ去った者が親権者の決定において有利な立場に立つのが一般である。

ところで、国際間の子の奪い合いが発生した場合の対処について定める条約として、「国際的な子の奪取の民事面に関する条約」(いわゆるハーグ条約)がある。これは、共同監護権者の一人の監護権を侵害する子の連れ去りは不法なものであるとされ、このような不法は子の連れ去りが発生した場合の迅速な返還の手続を定めている。わが国は、この条約を批准していないために、子の連れ去り天国であるとの国際的非難を受けているのみならず、他国の裁判所では、わが国がこの条約を批准していないことを理由に、日本国籍の親を監護権者に指定するのは相当でないとの判断もなされている。"

Appendix II. Original Japanese excerpt from the 2007 book published by Japan Law Foundation

<https://www.amazon.co.jp/dp/4817813407>

『子どもの福祉と共同親権: 別居・離婚に伴う親権・監護法制の比較法研究』

編集: 財団法人 日弁連法務研究財団

離婚後の子どもの親権及び監護に関する比較法的研究会

2007年 日本加除出版

"はしがき

実務家である弁護士にとって、親権をめぐる争いのある離婚事件で、常識と言って良い認識がある。それは、親権者の指定を受けようとすれば、まず子供を依頼者の元に確保するということである。その上で、相手方(つまり父か母のどちらか)にいかに関係があるかについての主張立証を尽くすということになる。そのような深刻な紛争状態の中で、面接交渉の条件を整えて実現すると言うのは容易なことではなく、その後の子どもとの関わり方について協議すると言うことも考えられない。こうした父母同士の深刻な争いが、当の子供にとって決して良い結果をもたらさないばかりか、むしろ傷つけることになっているのではないかの思いを抱きながら、それでも争いを続けなければならない。親権者となるかどうか争点の中心となり、子供と父母の関係をどう築くかについて援助する仕組みがほとんど存在しないからである。

一方、親権・監護法制をテーマとする研究者は、主として比較法的な観点から、諸外国では、離婚後も父母の共同による監護という法制度が取られていることや、面接交渉や共同監護の援助のための仕組みが整えられていることを目の当たりにし、これに対する日本の法制度の後進性と支援の仕組みの貧弱さについて強い問題意識を抱いていた。そして、日本における共同親権を含めた法改正の必要性を提起するなどしていた。

このような研究者の問題意識と弁護士の悩みとは、当然のことながら、共通のものとなり、本書第一章で紹介しているような経過を経て、互いに問題意識を交換しながら研究を進めていくこととなった。弁護士にとっては、共同親権・共同監護という言葉は理解できても、これを実現している諸外国の法制度はどうなっているのか、それが現実にどのように実現されているのかについて、大いに学ぶところがあった。研究者にとっても、実務家としての弁護士から見た親権争いの現状に触れて、日本の制度の問題点についても認識を新たにした。本書はこのようにして、研究者と弁護士の問題意識が交錯したところから生まれたものである。