Submission of issues by Japan Coalition for the Best Interests of Children (JCBC)

Countries practicing joint custody and shared parenting laws tend to favor these systems over allegation of domestic violence and child maltreatment from abusive fathers. With these rules in place, unfortunately, child safety and wellbeing are not the highest priority when custody and visitation decisions are made.

Consequently, in the United States, more than 60children have been killed every year by conflicts in custody or visitation by abusive parents – mostly fathers. These tragic cases are also observed in U.K., Australia and other countries.

In Japan, in 2017, there was a series of murdered cases like the above mentioned, and we constantly have children and mothers victimized by perpetrators of violence. Therefore, we, the Japan Coalition for the Best Interests of Children (JCBC) firmly believes that allowing abusive parents to visit their children is a dangerous practice, and this is a common concern all over the world as well as a significant hindrance in the implementation of CEDAW and totally against the principles of the Convention.

Based on the family law in Japan, a sole custody after divorce is granted, and the determination of visitation is decided based on mutual agreements by parents or by court orders. Under this system, the children safety and their peace of mind can be better secured when family violence is involved in the divorce, and victim of DV is trying to separate herself and children from the perpetrators.

Nevertheless, visitation rights can be granted in many cases after non-custodial parent litigate for it. Actually, parents who cannot see their children are often perpetrators who threaten children’s safety. hence at present abusive parents are supposed to see their child unless the child's welfare is at risk.

In fact, groups who are very active and vocal in Japan at the moment fighting to replace sole-custody system with a joint custody and shared parenting are composed by a high number of perpetrators. Although there are groups of domestic violence offenders who are not allowed see their children by the court orders, they are claiming parental rights. We are strongly concerned that those offenders tend to seek revenge and continuous control and violence over former partners and consider their children’s safety and peace of mind as least priority. We believe that allowing perpetrators of domestic violence to their visitation rights over the protection of children is a practice against the best interest of children. We cannot agree with a legal system where perpetrators can maintain their power, control and retaliation threatening the children's safety and peace of mind.

Japan does not have a strong legal system to control various kinds of harassments. Neither Intimate Partner Violence (IPV) nor sexual harassment is illegal. Marital rape is still allowed. Without assault threats, non-mutually consented sexual acts will not be punished. A simple declaration of misunderstanding the negation of consent can be enough to do not be prosecuted. In other words, it is a society where it is difficult for victims to raise their voices. The Me Too movement has never been successful in Japan. Victims in Japanese society prefer to stay silent in order to avoid victim blaming or to be bashed.

It seems that joint custody and shared parenting is fair and equal. However, divorced families cannot establish an equal relationship, and one parent is usually dominated. On unequal footing, parents cannot make rational decisions regarding the custody of their children. It is only a delusion to think that decisions about a child are made with free will. The power relationship before the separation and divorce directly affects the custody of the child.

In the current Japanese society, the sole custody after divorce granted by the Japanese legal system is actually one of the effective ways to prevent children exposed to danger and abuse at the shore. We believe that Japan's legal system should be maintained and that other countries should also look into ways, in which children’s safety and well-being and those of women is considered as a top priority and it is embedded in the legal and social norms and systems.

In Japan only 40,000 out of 200,000 yearly divorces go to a court. However, the lack of intervention of public institutions in this process empower the unbalanced decisions in relationship dominated by power and control.