Annex 1

The Adachi Child Abduction Incident, 2007

I. Summary

In the early morning of 19 April 2007, Adachi CGC broke into the house of family U without the parents' knowledge and abducted their son, K, in primary 3, with his mouth covered as he cried out, in the name of 'temporary custody'. During the lunch break of the school on 7 December 2006, K was accidentally hit with a tyre by another child who was playing with tyres which were piled up in the schoolyard. K injured the back of his head. The doctor diagnosed it as cervical spine injury and since then K has been forced to wear a corset. K developed a fear for tyres and refused to go to the school in fear; at the time, K was treated for an injury that occurred at school and he fell into a state of truancy. When the family asked the school for compensation for the damage caused by this incident, the school principal immediately reported 'abuse' of father U, and K was thus separated from his parents. The father was alleged to have been in 'breach of parental duty to send their children' to school and 'excessive medical care'. After that, the CGC did not tell whereabouts of K and the parents, grandparents and even lawyers were continuously denied access to K. The father had high hopes to the judiciary and asked for the cancellation of the consignment to the ACF, but he lost in all court trials. Thus, the father lost all means to recover his son K.

II. The details of the case

A serious injury to the child at the schoolyard

In 2005, his father U (at the time, he was aged 42), was working as a computer instructor and lived in Adachi-ku, Tokyo, with his only son K, and his grandparents. It was 8 December of the same year, at Mutsuki Elementary School

established by Adachi-ku. K, who was seven years old at that time, was playing in the schoolyard during lunch break. When another child threw a tyre, it hit K the back of his head, and unfortunately K was seriously injured. The diagnosis was 'atlanto-occipital subluxation', which meant that an important joint connecting the head and neck had been subluxated. K suffered from chronic numbness and pain in his hands and feet. The orthopaedic surgeon asked K to wear a corset around the neck to secure the affected area telling, "If you leave it as it is and it becomes a dislocation, there is a possibility of sudden death". K became a truant from the fear of having another accident at school. U, did not force K to go to school.

About half a year after the accident, his doctor recommended an operation so that K could live without the corset. However, even if the surgery is successful, K would not heal completely, and there was a possibility that the numbness of the limbs would remain. U wrestled with the choice. It was possible to wait for the natural healing to set in, but there was a risk of dislocation, and K would always have to face the fear of sudden death. Considering that it was injury of an important part of his neck called atlas, and worrying about the future of his child, with the help of his family doctor, U took K to four specialist doctors, including a university hospital doctor, to get a second opinion. U found that many specialists recommended surgery.

U started working from home and worked hard to raise K. He told the school, "K is unable to attend school due to the fear tyres and has a 'atlanto-occipital subluxation' in the neck bone, which, if completely dislocated, could lead to his sudden death; and, K was 'diagnosed by family doctor as needing surgery'".

Father sought damage compensation to the school, which triggered the school principal to report 'abuse' to Adachi CGC

Concurrent with the treatment of K, U filed a civil arbitration petition with the school. In the civil arbitration, not as grandiose as the court trial, the school would discuss the matter with lawyers and experts in court to find a way to solve the case. U intended to request for damage compensation from the school.

From around this time, the staff of Adachi CGC started to show up to the family, claiming to see the K's situation in truancy. In retrospect, the principal of Mutsuki Elementary School, who was afraid of taking responsibility for the tyre incident, reported 'abuse' to Adachi CGC through the municipal Child Support Centre in order to protect his own interest. The school and the CGC discussed the matter without the family's knowledge, and decided to accuse U of 'abuse' as he did not send his son K to compulsory education. The staff of Adachi CGC, who had taken three interviews since 18 May 2006 said, "It can be *abuse* to take K around to a number of hospitals and have them operate him when there is a chance of natural healing". The CGC staff even scorned K in a corset, "You look like Ultraman! If I were a child, I would bully you at school". It was later found out that the CGC staff came to check the layout of U's house, and the route, to abduct the child.

However, U worked hard to cure K's post-traumatic stress disorder, receiving counselling together with his son K at a psychiatry clinic, and dedicated to K's rehabilitation by making him study at home and playing light sports with K, watching carefully how things would go with K. As U was busy taking care of his child, he did not pay much attention to the CGC staff. To tell the truth, U did not even imagine the frightening operations of the CGC or that his family was on the CGC's list for forced child separation.

Crying K was abducted by the CGC staffs with his mouth covered

The time and date for the first arbitration with the school had been decided, where an explanation of the circumstances in which K's accident happened and compensation of JPY 1.6 million would be demanded. Soon after, on 19 April 2007, the doorbell of his father's house rang. At that time, his father, U, was working on the 2nd floor, and K's grandmother responded and opened the door. About 10 men burst into the house. It was a complete abuse of the authority of temporary custody and the power of the CGC to investigate the private house. The grandmother did not understand what was informed in difficult legal terms. Then,

all at once, they took K away by force. The grandmother desperately appealed, “Don’t take my grandchildren away without permission”. Yet it was totally ignored.

U, having felt something odd, came down to the first floor, only to find that K’s bed was empty. The grandmother cried out and said, “K was taken away with his mouth covered so that he couldn’t make noise”. At that time, Adachi CGC was accompanied by a police officer. Of course, the police officer abided by what Adachi CGC claimed. The police officer was to support the CGC staffs who might be opposed by U. If U had attempted to defy on behalf of K, U could have been arrested for charge of obstructing the performance of official duties.

The rationale for this outrage to abduct his 8-year-old son K, without knowledge of the parents was claimed to be ‘temporary custody’. Hiromi Maekawa, Director of Adachi CGC, gave the rationale for the temporary custody as ‘violation to the obligation to send a child to school and medical overload’. Maeda always adopted the opinion of the hospitals that were purveyors of the CGC by making diagnoses in favour of CGC, while completely ignoring the opinions of independent hospitals and family doctors that parents trusted. The CGC claimed that ‘parental abuse’ means abstaining the child from going to school because of illness or considering the surgical operation recommended by specialists. No one would agree with this claim. Even after six months to a year had passed, neither the parents nor the lawyer, who is a third-party, were allowed to see K, and the situation and whereabouts of K was not informed to the family.

III. In pursuit for salvation in the justice

U, who could not give up, filed a lawsuit at the Tokyo District Court on 31 August 2007, demanding a stay on K’s ‘temporary custody’. The National Liaison Society for Protecting Children from School Disasters and other organisations supporting the victims of the CGC offered support to U. The support organisations cooperated, did their best to collect signatures and asked related

people to observe the trial. However, after a year and 10 months since K was separated, the family court colluding with the CGC approved the Article 28 plea. U filed an appeal to the Tokyo High Court, but it was rejected. K was thus forcibly consigned through the ruling of the Article 28 plea to an ACF. Even though the family court ruling did not admit child abuse, the court twisted the grounds for consignment to the 'inappropriate parenting' and ruled to consign K to an ACF. In July of the following year, 2008, U filed another lawsuit at the Tokyo District Court, seeking a stay on execution of K's consignment to an ACF under Article 28 judgment, as well as state compensation. U said in tears, "Our family is having a hard time both mentally and physically, wondering how long we should continue to endure this. My grandparents are also suffering from accumulated fatigue. We ask for your understanding and cooperation so that my son could come back to our family as soon as possible and hug us".

The JH#100 and other members of the civil society organisations kept appealing, "Considering the life and safety of the child K, we will respect the opinion of the attending physician that immediate examination and surgery are necessary to not worsen K's health while he is forcibly consigned in the ACF and not to let the Adachi CGC ignore its responsibility for this matter. We request you to understand that it is necessary for the sound growth of mind and body of child K to grow up at home with his parents and make a fair judgment".

However, the court procedure ended with only one hearing on 21 October. Everyone present in the court was taken aback by judge's refusal to duly hear the claim of the parents. The adjudication was issued in December of the same year. The plaintiff (U)'s claim was dismissed; and U appealed to the high court in the same month. U fought with all his might for his child K up to the supreme court. However, as with the fate of other CGC victims seeking judicial remedy, no impartial adjudication that would immediately release the child from the absurd 'administrative measures to consign to the ACF' without evidence of abuse was ever delivered.

This incident was one of the most absurd of the CGC suffering cases around that time. It was featured in a weekly magazine article on CGC sufferings written by a journalist, but Adachi CGC refused to give any account, under the claim, “We can't answer individual cases”.

Thereafter…

After the trial ended, U was so much discouraged that he stopped talking to and contacting with other CGC victims and supporters. A few years later, worrying about the family, the members of the JH#100 visited U’s home. After ringing the doorbell several times, haggard U finally showed up and laughed feebly, “Nothing has changed since then”.

Please do not forget that there are parents who have been victimised by the CGC as many as the number of beds in the ACFs in Japan and they live quietly in the corners of Japan without any justice to rely on.

Annex 2

A Case of Prenatal 'Abuse' Charge in Toride, 2016

I. Introduction

Ms. M is in her twenties and lives in Toride, Ibaraki. She is the mother of two boys, both of whom have been taken away by the CGC right after their birth. The elder brother is 3 years old and the younger is 1 year old, but they are separated from their mother.

M is a single mother who experienced child abuse in the past. When her child was born, the CGC took her babies away from her citing reasons such as "She worked during pregnancy". She has been struggling to get her family back.

II. The candidates of forced child separation are determined through 'abuse risk assessment'

M's parents had passed away early, so she was raised by her adoptive parents who abused her. When she was a high school student in 2008, she felt physically, psychologically, economically, and neglectfully abused. When she felt her life was in danger (a kitchen knife was thrown at her once), the police intervened, and she has lived separately from their adoptive parents since then.

III. Consultation with the city government as she could not afford the maternity expenses due to discriminative dismissal of her application for maternity support

In February 2016, M found out that she was pregnant. When she informed this to the firm she was working with, they unilaterally fired her because her health condition was not well due to pregnancy. This was terrible in itself, but M reluctantly agreed to this.

Under these circumstances, M went to the Toride City Health Centre and consulted the person in charge, Shimomura, telling that she wanted to apply for midwifery support because she could not afford childbirth. This midwifery support is provided by the Child Welfare Act (CWA) that offers full support for childbirth expenses when a pregnant woman is in financial difficulty. However, Shimomura claimed, “There is no midwifery support system in our city”. It was a surprise for M that Toride city does not offer this national system which is to be implemented by local governments nationwide. M, thus had no way of obtaining an application form for it. She then requested Shimomura for the expense of medical examination by adding, “It is difficult to pay more than JPY 420 thousand for childbirth” over and over, but the request was never entertained. Since it was her first pregnancy, M asked various questions as to how she should spend her time during pregnancy and her desire to transfer to another hospital, but they were all ignored. At this point, the CGC began to intervene for the forced separation of the new-born baby from M in secrecy and decided that such support should not be offered to her.

M also told Shimomura that without the midwifery support, she would not be able to afford the delivery fee, so she had to work to earn money for the delivery. She also asked questions like “Can I ride my bike?” and they replied that they didn’t mind. However, this was later alleged as M’s ‘abuse’ of the foetus.

IV. What happened to the health administration of Toride city government?

By this time, M had been secretly registered in the Toride Regional Council of Countermeasures for Children Requiring Aid’s (Council, hereafter) ‘specified expectant mother’ ledger, and the baby had been earmarked for transfer to the ACF for infants. Despite the declining birth rate, there has been a rush to establish ACFs for infants as a part of the MHLW’s plan, (with eventual transfer of the babies to the ‘special adoption’ scheme or de facto child trafficking in sight). The Council assumes duty of designating women identified by the CGC, municipal government, hospitals etc. as ‘specific expectant mother’ who needs ‘support’.

And the fact that they have been registered in the 'specific expectant mother' ledger is not disclosed to the pregnant women themselves. This is a kind of 'support' that no citizens are willing to receive.

After all, two government bodies, the CGC that wants to capture more babies motivated by the financial incentive created by the MHLW to receive more unit custody allowance and the local governments in financial difficulty that do not want to pay for the genuine assistance to maternal and child support come to share their interests of fulfilling the financial incentive of each party.

M was designated as 'specific expectant mother' probably on the occasion of applying the 'maternal and child health handbook' for the first time to the health administration of local government. In fact, local governments across the nation now ask pregnant women to provide a lot of personal information in the form of a questionnaire when they apply for the handbook and induce them to agree with a clause written in small letters 'to receive support from the Maternal and Child Health Centres and information sharing with the related organisations'. Most pregnant women blindly sign it and do not even remember that they did it. There would be no clear answer to the question what the 'relevant organisations' are, even if they asked. Moreover, there is no way of knowing what the 'support' means: in fact, it includes something neither parents nor children want, such as forced separation by the CGC.

M, by answering the personal information questionnaire honestly, about her becoming a single mother, her anxiety about pregnancy and child rearing, her economic difficulties, completely fell under the criteria for 'specific expectant mother' which put her under surveillance. In recent years, the mere complaint of anxiety about raising children is considered a reason for separation of the baby from his/her parents. M told the Toride city administration, "If you don't offer the midwifery support, I'll have to give birth at home" and asked for an alternative support. In the case study session of the Council, there was no objection to Toride city administration not offering the midwifery system to M, while the CGC

insisted, “never give birth at home”. This is a session in which each government body irresponsibly attempts to fend off whatever is troublesome to its own administration.

The second possible occasion for the designation is a report to the Maternal and Child Health Centre that she has mental illness. It was found later, in 2012, M’s adoptive parent reported to the Toride Health Centre, “We suffered violence from M, we felt abused”. The adoptive parents probably attempted to put M in a psychiatric hospital as ‘involuntary hospitalisation’ under alleged ‘fear of harm to oneself or to others’. M’s defence against violence from adoptive parents, and the accusation of the adoptive parents had no hard evidence. Yet, when M applied for the maternal and child health handbook and the Toride City Health Centre found out that she was pregnant, she was marked for ‘specified expectant mother’.

V. The children were separated from M for ‘temporary custody’

Amidst worry, M gave birth to her first child safely at Ryugasaki Saiseikai Hospital on 23 September 2016. Then, for an unknown reason, on 27 September, a medical social worker at the hospital and a public health nurse at the City Health Centre suddenly showed up in her hospital room without an appointment. Then they intervened and began to complain, “No crib, no bath, no milk box. There is no waterproof sheet”. M said that when she asked them questions during pregnancy, they ignored her questions, yet they took the contrary attitude all of a sudden.

M answered that she had a milk carton, and informed them that the child care products mentioned were not necessary for a midwife in the hospital, but social worker Mami Watanabe from the hospital and public health nurse Shimomura from the Toride City Health Centre did not give her ears and continued to taunt her for more than an hour.

In addition, they forced her to put her new-born baby in an ACF for infants,

which refused firmly, as there was no reason for it.

Just as they were about to leave, M became uneasy when she saw the public health nurse at the Toride City Health Centre asking a social worker at the hospital, “Can you take care of the baby at the hospital for a while?”. A hospital social worker replied, “It is impossible to take care of a child who is not sick because we are a hospital”. M thought the conversation was about her own baby, but at that time, she had no idea that it would mean forced separation of her baby from her.

M was discharged on 28 September, but when she was about to leave the hospital, the doctor in charge told her that the baby had jaundice and asked her “to leave the hospital alone”. Later, this diagnosis turned out to be false. The hospitalisation of the baby lasted for about half a month until 12 October without any explanation from the doctor. During the time, she went to Saiseikai Hospital in the outskirts of Ryugasaki, 15 kilometres away from her home, to nurse her baby every day.

On 6 October 2016, Tsuchiura CGC, which ‘received an abuse report’ from Toride City Health Centre took temporary custody measures for M's new-born baby. Taking advantage of the fact that most of the parents had no legal knowledge of child administration, the CGC did not even give M the official notice of the administrative action for temporary custody.

VI. The horrible reality of ‘abuse treatment’ by Tsuchiura CGC

Tsuchiura CGC’s staff, Sakairi, rushed into the city office on 7 October without an appointment. M asked the director of Toride City Health Centre, Watanabe, to decline the visit of CGC staff, yet she was forced to meet Sakairi. At that time, although M had said, “My belly was too big to clean the room during pregnancy, but I cleaned it up on 30 September”, the CGC staff falsified M’s statement as “She said the room was messy” and put the baby into an ACF for infants.

At that time, M was threatened that the baby would be consigned to an ACF for infants in Mito, the prefectural capital, ca. 80 kilometres away from Toride, and if she did not sign a consent form for temporary custody she would not be able to see the baby again. M was thus compelled to sign the consent form without any detailed explanation. Even at this point, the CGC gave neither the official notice of the administrative action for temporary custody nor a copy of the consent form. There was no explanation as to what the temporary custody was for or what it meant. However, the CGC promised that they would not take the baby to Mito. This was after M requested the CGC not to deprive her of the opportunity for visitation with her baby.

On 12 October, M was suddenly called to Toride city office and interviewed by CGC officials, Sakairi and Kokata. Although the CGC had promised not to take the baby to Mito, the child had already been transferred to Mito. M had been deceived, and the CGC held her child hostage to force her to agree to the temporary custody order. There was still no detailed explanation as to why the baby was in temporary custody. When M asked why they did this, the CGC staff replied, “We have heard that you refused child care support from the Toride City Health Centre”. M replied, “No, I inquired a lot, but my inquiries had all been ignored and the Toride City government never offered me any support”. The CGC staffs looked perplexed.

VII. Confession of a hospital doctor

It was strange that there was no explanation from the doctor even though M's baby was hospitalised for more than two weeks at Saiseikai. M repeatedly inquired Saiseikai Hospital and requested the disclosure of the medical records in March 2019. At last, the doctor in charge confessed, “We had hospitalised your baby at the request of Toride City Health Centre. The jaundice was not high enough to justify two weeks of hospitalisation”. The hospital was asked by Toride City Health Centre, “We’d like you to keep the baby until we check her house. I

don't want you to tell this to M. The CGC will intervene later and bring the baby into temporary custody" (M has evidence of sound recording). More than JPY 400 thousand was spent on this illegal hospitalisation. M was forced to pay for this illegal hospitalisation expenses. The Toride City Health Centre is still trying to cover up this fact of wrongful hospitalisation.

The leaflet of Saiseikai Hospital had indicated that it would cost JPY 450 thousand for childbirth. The price was raised later, yet the hospital did not disclose it. As a result, M was unfairly charged JPY 580 thousand for childbirth expenses, which later developed into a trouble.

Even though M had consulted with a hospital social worker about riding bicycles and motorbikes and the list of necessary childcare supplies, Watanabe told the Toride City Health Centre and the Child Care Support Division, "Although she was pregnant, she rode a bike; she worked late in pregnancy; she lacked childcare equipment" in a double-tongued manner. If that was not enough, Watanabe of the city government labelled M as having 'personality and developmental disorder'. Although Watanabe of the city government apologised later to M, it was exposed that M's adoptive parents had informed that she was a 'violent psychopath'. The unfair treatment of M by the Toride City Health Centre continued even after that.

VIII. Astonishing 'guidance' of the CGC and repeated temporary custodies

More than two weeks after the CGC broke its promise to M and the baby was placed under temporary custody in Mito, the staffs of Tsuchiura CGC suddenly visited her home.

At that time, Sakairi, a staff of the CGC forced M to sign a document—neither did the CGC allow her to read it carefully, nor did they give her a copy. The CGC then forced her to sign a consent form to extend the temporary custody of the baby. She refused to sign the document.

After that, the staff walked around M's house without her permission, opened a pot in the refrigerator without asking permission and said, "It looks unappetising". In the toilet, the CGC staff said, "This must be a toilet roll that your stole from a public facility"; and in the washstand, he uttered derogatory words as, "That must be a toothpaste you stole from a sex hotel". The CGC staff also took pictures without permission. This what 'life guidance' implies as per the CGC in Japan.

Furthermore, looking at the bath, he said, "Infants cannot bathe safely in a unit bath, this is considered abuse'. In fact, M had reported the existence of prefabricated bath in her house and the floor plan of one room with kitchen of her house to Toride City government in advance, and the plan to move to a larger municipal flat with 3 bedrooms and kitchen had been confirmed. As is often in the cases handled by the CGC, once a child has been separated, endless reasons are cited for not returning the child to the original family. This was exactly the case with M.

Other reasons that Sakairi and Ogata of CGC listed are as follows:

"You sought a new job and worked late in pregnancy"; "You rode a bicycle during pregnancy"; "Your connection with your parents have been severed"; "being abused in childhood"; "a family with single parent"; and "She couldn't bathe the dolls well in her mother's class", which she had participated while her suffering from heat stroke. These rationales are all beyond acceptance to average child-rearing families.

Since Sakairi and Ogata of Tsuchiura CGC told her that the unit bath was not acceptable, M moved to a flat with one six-tatami mat room and dining kitchen, as the CGC staffs said this was acceptable. Sakairi of Tsuchiura CGC, pretended in an official document prepared at that time that the flat was 2 bedrooms with a living room and dining kitchen, and wrote, "It is large enough for a mother and child to live together". The temporary custody was lifted for the time being

because of the “improvement of living environment”.

After release the from temporary custody, the midwife of Saiseikai advised not to feed the baby formula milk, but exclusively breast milk. On the other hand, Sakairi and Ogata of Tsuchiura CGC Sakairi forced M to take care of the baby with formula milk even though the baby did not have jaundice. As the CGC noticed that M did not abide its order, the CGC twisted the truth and added that the baby had lost one kilogram of body weight. Thus, the CGC placed the baby under temporary custody once again. The truth was that the weight of the baby measured 5 days before in the ACF was 6.4 kg, which the CGC had forged to 7 kg. A few days later, the weight of the baby measured at the CGC was 6.3 kg. Even though 7 kg was a forged measure and M repeatedly pointed it out, Sakairi and Ogata of Tsuchiura CGC kept claiming, “It's abuse”.

In addition, the CGC staff forcibly interrupted M as she claimed that it was natural for the baby to reduce weight because caloric intakes are different in artificial milk (ACF) and breast milk, and the baby’s urine was clear and the baby had urinated the required number of times. However, the CGC staff said, “Anyway, it’s abuse because the weight of the baby has decreased”.

Furthermore, when her child was wearing long sleeves underneath the short sleeves in winter, they commented that “The boy wore short sleeves”, and “The child’s feet was purple” without visual inspection, and condemned, “You didn't turn on the heater”, even though heating makes the rooms too hot in her property facing South around noon.

This sort of quaint ‘guidance’ by Sakairi and Ogata of Tsuchiura CGC persisted. Although she was living separately from the adoptive parents due to the intervention of the police, the CGC forced M every year to “live together with her adoptive parents”. The scars left by M’s kitchen knife remained, and in her foster parents' house there were full of holes created by the kitchen knife. Nevertheless, the CGC ordered her “to live together”. This is a common practice in the guidance

by the CGC: intentionally forcing something that parents can hardly follow, then claiming that the parents did not abide by the guidance and therefore, the CGC would be unable to return their children.

Tsuchiura CGC claimed, “Even if M was abused by her foster parents, there is no problem to guide her to live with them because the adoptive parents have not harmed her child yet”; and “The CGC is operating not for the safety of M but that of her child”. Who would be persuaded by this sort of a quibble? The conversations of this sort have been going on and on for four years between M and the Tsuchiura CGC staffs that change every year. Around the middle of May 2020, M spoke to Kimura, a section chief of Tsuchiura CGC, claiming that this practice was inappropriate, but she did not receive any responses.

IX. Adjudication to place the baby in an ACF against the will of parents

In an interview with Sakairi of Tsuchiura CGC in May 2019, M told them, “If there is anything available, such as parent training or staying with children during the temporary custody period, I will take it”, and “I also proposed to use temporary childcare and childcare support centre every day”. M pleaded that she would sincerely comply with the guidance to solve the problem of the family separation.

However, in July 2019, M received the CGC’s Article 28 plea to consign her baby to an ACF for infants. After that, as with most cases in Japan, the family court ruling blindly admitted the CGC’s plea to separate the child and parents. In this manner, the judiciary colludes with the CGC, which undermines the impartiality of the judicial power in the government structure of Japan.

X. The second child of Mother M was also separated from her by the CGC

M gave birth to her second son in November 2018. She then went to Toride City office to apply for a day-care centre for her new baby, but the city government did not give her the application form. The city government did the same for short stays as well.

M wanted to take her baby with her when she visited the hospital; but the hospital said, “We want you to leave your child behind”. However, she had nowhere to leave her baby because the Toride city government refused to offer her the application forms for day care.

M had no choice but to leave her child in the car; she opened the window of her car a little in the completely shaded multi-storey parking lot, waited for the baby to go to sleep, left for the hospital as soon as the baby fell asleep, and came back soon after the visit, only to find that there was no child in her car. A parking lot user had called the police, as the baby had woken up and began crying after she had left. The police officer said, “I have to report to the CGC if a child is found left in a car”. Her second child was also thus moved into temporary custody of the CGC.

In the end, both her sons became parties of the Article 28 plea filed by Tsuchiura CGC in July 2019. Before that, M had been forced to sign her approval for the consignment of her babies to ACFs, but with the help of her lawyer, she withdrew the approval. This is why Article 28 plea was filed. At the court, two female family court investigators carried a considerable amount of contention, thus M hardly had a chance to say anything. All she could do was to speak up when the judge asked her at the end, “Is there anything you want to say”?

To this M replied, “*I proposed to use the temporary childcare, parent training, and childcare support centres to improve my childcare skills, but the CGC rejected all of them. The purpose of the CGC is just to place children in an ACF, so the CGC does not commit anything in terms of improving the childcare ability of the parents.* Nothing was done between the temporary custody on 7 October 2016 and the release on 5 January 2017”. However, the court proceedings ended with ‘admission to an ACF’, as if it was a daily routine.

XI. Financial incentives: the answer from a CGC staff

Not convinced, M asked Yodonawa, a staff member of the CGC, “Why is it that consent for temporary custody is not enough, but that you insist on the consignment to the ACF”? Yodonawa answered, “The ACF receives very low allowance for temporary custody. If a child is admitted to the ACF as forced consignment, the ACF receives much more money”.

There are more administrative crimes involved in this case, and the struggles of M to get her sons back are continuing.

Annex 3

The Kawasaki CGC Child Exodus Case, 2007

I. Summary

For more than a year since 2007, the Kawasaki South CGC, Kanagawa, has unnecessarily separated numerous children from their families against the will of the family members. The three children of the family K in this case were the victims of this administrative action. These children were intimidated by the CGC staffs, indoctrinated with lies, and eventually transferred from the CGC detention quarter to an ACF (alternative care facility, children's home) and kept isolated.

However, the children succeeded in their efforts to escape from detention under ACF's close surveillance. The CGC, fearing that their administrative accountability would be questioned, continued their futile attempts to separate these children from their parents once again and interfered with their going to school from home. Mother K sought assistance to the human rights organisations engaging in rescuing the CGC victims, participated in collective protest action with the CGC, and finally won an apology from the CGC and the unconditional lifting of the detention measure. However, the freed children psychologically broke down due to severe anxiety that they may be abducted again by the CGC.

II. The Details of the Case

Beginning…

The family K consisted of three children: a mother (K, in her 30s), the daughter in Form 1 (13 years old), the eldest son in Primary 5 (11 years old), and the second son in preschool (5 years old). K's ex-husband visits the family once in a while. Since K had no relatives near Kawasaki, she had consulted with the Woman Guidance Centre and the CGC of Kawasaki for the problems of her family. The family may have come under the target of separation based on the CGC's criteria with respect to child abuse.

On 4 June 2007, her ex-husband visited the family, and all the children and K were present. The ex-husband and the daughter got into a quarrel; he scolded his daughter and hit her, which caused a nosebleed. K was so upset that she could not check on her children, and she rang #119 for an ambulance. Although the nosebleed was not serious, the call for an ambulance led to the visit of the police from Rinko Police station in the neighbourhood. In addition, the detective who arrived at the scene made the obligatory report to the CGC.

On the following day, 5 May, three staffs of the Kawasaki South CGC visited the family and told her, "We'll take your children into temporary custody for a while" in a manner that did not raise suspicion. Nothing was written in the column for the reason of temporary custody notice; and K never thought that her children would be separated from her. The CGC staffs did not allow the children to show their will; and they took the three crying children into custody. A few hours later, K reconsidered the condition of her children and went to the CGC to take them back. The CGC staffs however declared, "We cannot give your children back".

To make matters worse, the staff who was in charge of family K at that time was Akemi Kitazawa, who had previously showed notorious conducts in other cases as well. Since then, K has visited Kawasaki South CGC many times, but she was told the same and turned away. The whereabouts of her children was not notified to her and K felt lost.

Forced consignment into an ACF

On 27 August, in order to consolidate this irrational measure of compulsory parent-child separation, the CGC submitted the Article 28 plea (to consign the child to an ACF despite the opposition of the parents). The family court, which in most cases colludes with the CGC, generally accepts the plea at the first instance, and even at a later instance, it is hardly possible for the parents to win i.e., rejection of the CGC's plea. It is almost a pre-determined premise that all children subjected to the plea is to be consigned to the ACF. The family court thus approved the Article 28 plea of Kawasaki South CGC, regardless of the mother's

or children's wills. A CGC staff ruthlessly told the children, "I can't let your mother see you because your mother opposed our plan to put you in the ACF", when the children wanted to go back home.

When the duration of temporary custody by the CGC prolonged, the children began to feel that they may have been abandoned by their mother K. Amidst all this, a CGC staff attempted to persuade the children by telling them, "Your mother has started a new life with a different man" and the children had no home to return; therefore this ACF was the only place for them to stay. The children were forced to live separately in the ACF so that they would not talk to each other. The staff's words brought the children to the brink of despair as they had confirmed each other's safety and encouraged each other whenever they got the chance.

Saving the children!

In June 2008, the following year, K came to know the names of the elementary and junior high schools her children went and the ACF where children were consigned. The ACF was called Shin Nihon Gakuen. K was so worried about her children's safety that she plucked up the courage and went to see them on the morning of 4 July. Luckily, K was able to find her daughter walking along a street, and she was able to talk to her for a few minutes. The conversation went like this:

Daughter: "Oh, Mom, you don't need us anymore as you have started to live with a new man, do you"?

K: "What are you talking about? How could that be? I've been worried about all of you. I'll give you money, so come back home now".

Daughter: "Yeah. Thank you!"

The ACF staffs often kept an eye on the children at the gate, and they were monitored for any irregulars. If the children were found talking to their parents, they would be immediately reported to the CGC, and consequently, the children might be secretly transferred to another ACF unknown to the parents. So it was actually dangerous and risky for K and her children.

However, this event gave the children a ray of hope. When they realised that they were not abandoned by their mother, and they were encouraged. Children then secretly communicated with each other and talked, “Let’s run away, let’s go home’. However, if they were caught in the act by the ACF staff, they would be severely punished; thus they could not make up their mind to run away. The children thought that the CGC had made it impossible for them to live with their parents. The children really wanted to live with their parents; the feeling that they didn’t want to live in such a place as the ACF crossed their mind many times. The eldest son said to his sister, “Let's get out of here”. However, she was afraid of being caught in a surveillance camera. In fact, many ACFs are built like prisons with surveillance cameras and iron bars to prevent children from escaping. Shin Nihon Gakuen was no exception, with many surveillance cameras installed. Looking up at a surveillance camera, she looked squarely at the situation and thought “I can’t go back to my parents for the rest of my life” and finally decided that “I might get caught in the surveillance camera, but I will run away”. Both the daughter and son tried hard to encourage the youngest to run away and they finally came into a decision.

Determined escape from the detainment

The children studied the positions of surveillance cameras and the movements of staff members, and found that vigilance waned on the weekends, especially on Sundays. Finally, on a Sunday afternoon, 6 July, the children, after confirming that the watchful eyes of the ACF were reduced, proceeded to escape. The daughter carried her 5-year-old brother during the escape.

They ran to Yokohama Central Station with a determined mind. During the escape, the youngest vomited due to intense fear and stress, but he kept running to escape from the hands of the CGC.

The children rang their mother from a public phone saying, “We escaped from the ACF”. K was surprised and delighted, and went to meet her children. This was

the first time in about a year and two months that they were meeting each other. K contacted a human rights organisation supporting the victims of the CGC at the time. K and the children hid in a safe place to avoid another forced separation by the CGC. After that, they left the handling of the affairs to the 'the Association for Support of Victims of the Family-destroying Laws' (ASVFL) and other organisations which supported the victims of the CGC.

On the following day, 7 July, these organisations reported to the Kawasaki South CGC that children had fled from the ACF where the condition was similar to house arrest and that it was possible to confirm the safety of children through the police. Then the family received a call from the police, to which they answered in their own voices, "We are in good shape".

Appalling child abuse in the ACF exposed

The children who managed to escape told K, "We never want to go back to the ACF". The eldest son also said, 'I would be seen dead if I go back to the ACF". Especially, the second son, who had severely been abused at the ACF, cried and begged, "I never want to go back to the ACF". The members of the human rights organisations confirmed the intentions of these children directly. The daughter said, 'I thought we had been kidnapped when a female staff of the CGC told me, "from now on, you shall go to a different place", For me, the CGC is the kidnapper.'

"I thought this was the act of kidnapping. Yet I was too scared to do anything. The CGC staffs did everything bad with a calm face", recalled the eldest son.

The children began to reveal the shocking abuse they experienced on a daily basis from the staff of Shin Nihon Gakuen. An act of violence by a female staff was reported where a child was grabbed by the head and hit on the wall repeatedly (the abuse was committed knowing the fact that bruises or wounds in the scalp are inconspicuous). A male staff threatened a child with a pair of scissors, saying, "I'm going to cut your wrist". They threatened a young child who refused to eat with a spooky animal mask. Furthermore, the children added "My friends X and Y were annoyed the staff, then they were packed into a cardboard box". The staff

threw all the toothbrushes and cups out of the window because the children were reluctant in brushing their teeth. The children were forced to live in a series of coercion; they had to abide by the strict rules set by the ACF, otherwise they would be punished in a deviant manner.

The secondary sufferings caused by the CGC

As the children's feelings gradually calmed down, K began to think of sending them to school. On 10 July, K and the grandmother went to the elementary and junior high schools where their children were sent by the ACF for their certificates of school attendance. The certificate is normally obtained without any restrictions, but Kawasaki South CGC asked the school *not* to issue the certificates to the parents. Ignoring their own administrative acts that drove these children to the point of flight, the CGC arrogantly claimed, "Put the children back to the ACF", and added, "The feelings of the children are not our concern". This was the beginning of the secondary sufferings caused by the CGC which occurred after a child returned home from the detention.

Thus on 14 July, K and members of the human rights organisations in support of CGC victims visited Kawasaki South CGC. They demanded to stop CGC's abusive infliction of power to put the three children back to the ACF and stop pressurising the schools to not issue the certificates of attendance. However, Kasuga and Furukawa of Kawasaki South CGC repeatedly said, "Bring the children back to the ACF". The dialogue thus came to stalemate. For this reason, the human rights organisation members requested to talk with Susumu Suganuma, the director of the CGC, who had refused to attend the meeting despite the gravity of the situation. The CGC director refused to think jointly with the parents and human rights organisations about the best interests of the children, but thought only of filling the beds of the CGC.

Then the director of the Kawasaki South CGC posted a 'Written Request for Appearance (announcement)' dated on 18 July, directly to K's home. According to it, unless K and her three children make an 'appearance' to the CGC on 24 July

and the children do not return to the ACF, the CGC would use its power to enter the house and bring the children back to the ACF, and threatened, “A fine of not more than JPY 500 thousand shall be imposed if the parents refused to let the CGC staff into the house”, perverting the original purpose of the Child Welfare Law.

The human rights organisations against the CGC sufferings stood up

On the morning of 28 July 2008, more than a dozen supporters gathered at Ise-cho Daiichi Park near Kawasaki South CGC to empower K and her children. Many human rights organisations and their supporters, including our JH#110, as well as local assembly members interested in the issue, headed to Kawasaki South CGC, situated close to the rally site for a collective negotiation with the CGC to lift the irrational separation of parents and children. At first, the CGC staff refused to allow the supporters of family K to enter to the CGC building, causing a row of arguments.

Shigefumi Matsubara, a member of the Kawasaki City Council, claimed, “No way! There is no room for everyone”. Then, a CGC staff urged the parents and supporters to bring the fled children to the CGC, otherwise they were not officially entitled to return home. A welfare expert among supporters then replied to the CGC staff, “No, just write the notice of termination of the consignment to the ACF on the spot here! This will do alright. You’re a liar”. Then, the CGC director Suganuma, showed up and insisted, “just the mother and only one representative” could enter the CGC building to talk with them. The conversation went as follows:
Supporters: “Why is that”?
Suganuma: “It's an issue of the building management”.
Supporters: “Are we the people who would break stuffs, act violently, or harm others”?
Suganuma: “No”.
Supporters: “Then allow all of us in!”

Director Suganuma refused to let everyone enter the building in fear of the supporters with variety of expertise and because they did not yield to the

authority of the CGC. It was a very hot day, and in this deadlock an elderly supporter collapsed. Suganuma did not even look at the elderly.

The director further threatened, “If you don't disappear, I'll call the police”, and “If you get into the building crossing this line, you would be charged with building invasion”. The supporters defiantly replied, “Call the police if that sort of quibbling works”. Suganuma then dialled #110 for the police. Watching this, K took the initiative and called a detective in the Kanagawa Prefectural Police, whom she had consulted with and asked him to come in handle this emergency. Several young policemen called by the CGC came from a local police station and were briefed by Suganuma. This was the gravest critical moment as all supporters could have been summarily arrested.

Then the senior detective in charge of a criminal case called by K arrived, listened to her explanation, and then spoke to the young policemen on the CGC side. Then the young policemen went away, saying that this was not incidental. There had been another plainclothes detective in the CGC building on that day, who claimed to be in the safety section, before the supporters arrived. The senior detective also talked to this detective. If K had not invited the senior detective, the plot between the CGC and the detective associated with the CGC might have materialised. It was a moment of great blessing that this plot could be prevented from materialising with the presence of a senior detective in a fair position. This was also a moment when the good sense of the police was preserved; and even if CGC claimed something as a state administrative body, the police would not follow it if it was unlawful, and the evil plan of the CGC as the state power would be spoiled.

Supporters entered the CGC building one after another. They demanded ‘the notice of termination of the consignment to the ACF’ for the children today. As the initial obstacle was overridden, Suganuma now insisted, “I want to see the children”. The supporter immediately replied, “No way. The children are scared of the CGC”. “Stop being mean”, another supporter suggested. One supporter

proposed, “You can meet the children outside the CGC building”. Suganuma said, “After meeting the children and confirming their safety, we will issue the termination notice”. The supporters agreed, ‘Then we will let you meet the children”. Then Suganuma asked, “Where are the children”? The supporters replied, “We won’t tell you that! They are in a safe place”.

Suganuma still insisted, “We would like to make a home visit”. Supporters replied, “No, you see the children, and lift the consignment today”! Other victim mothers who rescued their children from the CGC hounded, “Other CGCs lifted the consignment without visiting the home. Why can’t you? Does this measure apply to Kawasaki South CGC only? It’s strange”. Other supporters, while pointing out Suganuma’s strange ways of dealing with the family K and urged him to withdraw the consignment. And finally, Suganuma accepted the supporters’ demand of lifting the ACF consignment on the same day.

Children’s feelings

As per the terms, Suganuma and two other CGC staffs, who had taken care of the children, met the three children in a large shopping mall nearby. It was decided that the place of the meeting should be open so that the children would be least scared. When the children saw the three CGC staffs, they looked down and their bodies stiffened. The two older children were so nervous that they moved into tears. The second son, who is only five years old, was sitting on his mother’s lap, facing the CGC staffs, holding on to his mother’s neck. The CGC staff started asking, “How are you”? and “Are you all right now”?

The eldest daughter had written a letter that she wanted to read out to the CGC staffs, and she did it in tears. “I was shown what was written in the court documents, but they were all lies. I absolutely distrust people who wrote such lies. Do you know that there are ‘bullying’ and ‘abuse’ in the ACF as well as in the detention quarter attached to the CGC? We were forced into confinement in such places! That's why I've had such a bad time. So I never want to go there again! Please never intervene in our life again. Do not ignore the human rights of

children. Children also have human rights! We have never asked the CGC for assistance. Do not destroy our family. We have children's rights. At least we want to live with our parents. We also want to go to school from my home with parents. So don't disturb it".

The daughter and the eldest son appealed again. When the children were being sent to the ACF from the CGC, they were surrounded by the CGC staffs on the side of the road and told, "You go to the ACF". In response, they answered, "No"; yet the CGC staffs shouted "Go!" and were pushed into their car. The children wondered why they did not apologise for such a terrible act. The younger son also cried, "The ACF staffs pretended not to know it and we were even beaten by them". The staffs pointed at me with scissors. We were bullied by an older child and forced to eat rotten sweets. The staffs didn't help me even when I was locked in a closet by another child in the ACF".

Supporters joined and appealed for families based on that they heard. The daughter had grown up and her feet got bigger; yet she was forced to wear the tight shoes for more than a year, and her toes were thereby deformed. Showing her daughter's deformed toes to a CGC staff, she asked, "Why did you do this"? The eldest son had been of average height and weight, but after being taken to the CGC, he lost weight and didn't grow much. The youngest son was so scared that he vomited in the same way as he had done while running away from the ACF. He refused to meet the CGC staff at the mall and said, "I don't want to go, I hate it, I hate it". Yet K managed to soothe him and brought him. The ex-husband also came to comfort the children in tears. They are the parents, after all.

Unconditional termination of the consignment to the ACF

After this meeting, all members of the human rights organisations returned to Kawasaki South CGC to receive a notice from Suganuma to terminate the consignments to the ACF for the three children immediately. However, he insisted that only two representatives of the organisations shall be allowed to enter. Other supporters thus waited outside. The CGC staff kept a watch on the

situation from the building. The organisation members were in tension until the end. A few minutes later, the family received the notice of the termination of the consignment of the three children. It was the unconditional notice that the human rights organisations aimed for, although the reason for the cancellation was not clearly mentioned.

III. The Sufferings After Children's Return to Their Family

More than ten years have passed since the children were rescued. Ever since, the JH#110 has been working along with the family K. Regrettably, the children continued to fear that they might be kidnapped by the CGC again. This is what it means when the CGC, the state power, earmarks a child for separation from his/her family. Many people said to K, "Because you had such a terrible experience, you should sue the Kawasaki South CGC and have them compensate the damages". However, K replied, "I just don't want my children to be earmarked for removal and harassed by CGC staffs again. While they are children, the CGC can always claim any reason for separating them from our family". K also added that she wants to live quietly with her family until her children attains 18 years old and be out of the legal reach of the CGC.

The daughter struggled with social phobia until senior high school; yet her fear of strangers, especially male, (like the CGC staffs), did not disappear. After she reached adulthood, this eventually developed into a mental illness and she is now living quietly as a disabled person.

The eldest son was such a bright child that K expected that he could be a medical doctor in the future. The JH#110 heard that due to the stumbles over the past few years and poverty of a single-mother family, he is now working for an agency after graduating from senior high school.

The second son was psychologically hurt that he could no longer go out. He became almost truant from elementary to junior high schools. During that period,

K made him study at home as much as possible, and although he managed to go on to a senior high school, he had a rough life such as playing with friends late into the night.
, as the reaction.

Isn't the CGC supposed to be a government welfare body offering real consultation and assistance to such a family?

Annex 4

2020 (*Gyo-sa*) No. 81

STATEMENT OF REASONS FOR FINAL APPEAL

12 October 2020

To the Supreme Court

Appellant Father: X
Appellant Child: Y

Appellee: The Prefecture of Saitama
Appellee: The Government of Japan

With regard to the case of the filing of administrative appeal of 2020 (*Gyo-sa*) No. 81, between the aforementioned parties, the appellants of final appeal jointly submit the reasons for final appeal as follows:

The Reasons for Final Appeal

Chapter I: Reason for final appeal: Violations of the Constitution

1. This is a serious case in which the illegality of grave human rights infringements is questioned.

Seven and a half years have passed since Appellant Child Y (Hereinafter referred to as “Appellant Child”), who was in the fourth grade at K Elementary School, was taken into temporary custody by the Tokorozawa Child Guidance Centre (hereinafter referred to as "Appellee Prefecture (CGC)") on 1 May 2013. Following repeated notice from the non-litigant private K School, the Appellant Child was subsequently confined in an alternative care facility (“ACF” hereafter)

by the Appellee Prefecture (CGC).

Since the Appellee Prefecture (CGC) made a comprehensive administrative disposition to prohibit visitation between the Father and Child, they have not been able to meet during this period [for seven and a half years].

The Appellant Father X (Hereinafter referred to as "Appellant Father"), protested against repeated abuse of the Appellant Child by the homeroom teacher at K Elementary School. In order to cover up this abuse (school corporal punishment), the principal of K Elementary School laid blame of the abuse with the Appellant Father.[1]

The Appellee Prefecture (CGC) created the information on the 'abuse notification' of the Child and several documents that were used as grounds for the measures of temporary custody and confinement in an ACF. A piece of documentary evidence that the Appellee Prefecture submitted to the family court was the voluminous 'elementary school life account,' of which the Appellee Prefecture claimed that K Elementary School had been the preparer. In the lawsuit against K School (Tokyo District Court, 2014 (*wa*) 18754), the administrators of the School testified, 'I have not seen this "elementary school life account"', and 'I was not involved in preparing it' in the court testimony given under oath. It is [therefore] considered that the 'elementary school life account' was fabricated by the Appellee Prefecture (CGC).

The Appellant Father argues that the 'abusive behaviour' itself was a false notification for the purpose of covering up the fact of abuse in the Child's school, as mentioned above, and that there was no act of abuse committed by the Appellant Father. Furthermore, no past rulings of the family courts (of so-called

---

[1] In 2010, the UN Committee on the Rights of the Child (UNCRC) issued its Concluding Observations to the Government of Japan. Paragraph 62 of the said Observations recommended, 'the Committee observes with concern that children who do not meet the behavioural expectations of school are transferred to Child Guidance Centres'. The notice of abuse by the Principal of K Elementary School in the present case, in which the blame for abuse was shifted from the homeroom teacher to the Appellant Father by the principal, can be regarded as a typical example of human rights infringement that merits attention [of the UNCRC] and concern.

Article 28 plea) acknowledged the 'abusive behaviour' of the Appellant Father, even though they approved confinement [of Appellant Child] to an ACF.

Under such circumstances, the Appellant Father longed for the return of the Child to the family as soon as possible. However, for the past seven and a half years, the Appellee Prefecture (CGC) continued to prohibit visitation between the Father and the Child, let alone the Child's return to the family.

It is likely that the Appellant Child graduated from junior high school and went on to senior high school. The Appellant Father has not been informed of the high school the Appellant Child attends. On the other hand, the Child has been unable to meet the Appellant Father and has been unable to communicate freely. For the Appellant Child, the time passed in vain without significant opportunity to develop Appellant Child's intellectual and athletic capacities. Under the custody of the Appellant Father, the Child was [receiving awards for scholastic achievement, trekking a mountain, and skiing], activities which Appellant Child enjoyed when he lived with the Appellant Father.

This is a serious case in which the illegality of such human rights infringements under the State Redress Act is questioned.

2. Background to the human rights violations

Why did this result in serious human rights infringement?

To put it simply, the Appellee Prefecture (Tokorozawa CGC) insisted on forcing the Appellant Father to admit the charge of abuse of the Appellant Child, whom the CGC removed from the family upon receiving a notice from K Elementary School under the intention of expelling the Appellant Child from the school. Thereafter, the Appellant Child was treated like a hostage.

The Appellee Prefecture (CGC) clung to the ban on any visitation between the Appellant Father and Child and denied the reintegration programme for the Appellant Father and Child (unless the Appellant Father admits to abuse). As a result, detention of the Appellant Child and the ban on visitation were prolonged for as long as seven and a half years. Family ties were severely dwarfed and remain difficult to recover.

3. Reasons for final appeal: unconstitutional

The adjudications in the first and the second instances basically admit the acts of the Appellee Prefecture (CGC), the direct actor of the infringement of human rights, as well as the nonfeasance of the Appellee State, which neglected to correct the act of infringement on human rights. There are several errors, not only in the fact findings, but also in the interpretation and application of the Constitution in the judgements. These errors are described below:

First, the rules of due process (Article 31 of the Constitution) apply not only to criminal but also to administrative proceedings. An administrative body is required to undergo a prior judicial review to place a child under physical restraint. The [current] system of temporary custody that allows a child to be placed under physical restraint without going through a prior judicial review procedure (Article 33 of the Child Welfare Act) is itself in violation of Article 31 of The Constitution. Leaving the temporary custody system as it is by the Appellee State and bringing the Appellant Child into temporary custody by the Appellee Prefecture (CGC) violate Article 31 of the Constitution.

Furthermore, the Appellee Prefecture (CGC) demanded the Appellant Father to acknowledge his past acts of abuse. As soon as the Appellant Father, who did not commit such acts of abuse, rejected the acknowledgment, the Appellee Prefecture (CGC) comprehensively banned the visitations of the Appellant Father to his Child and did not carry the family reunification procedure forward. These acts are in violation of Article 38 (1) of The Constitution, which prohibits forced self-incriminating testimony.

Furthermore, the Constitution ensured that family members would not be unduly interfered with by authorities and that the autonomy of the family, which includes the parents' right and obligation to care for their own child as part of respecting the autonomy of each individual (First sentence of Article 13 of the Constitution). It is therefore unconstitutional for the Appellee Prefecture (CGC) to refuse to carry out the family reunification programme and to impose an indefinite and complete prohibition on visitation.

4. Supplementing the Constitution with Human Rights Treaties

The guarantee of specific rights in the above provisions of the Constitution shall be replenished and supplemented in the treaties ratified by the State.

Thus, in what follows, while clarifying what is protected as the rights of parents and children and their families in the relevant treaty provisions (Chapter II), violation of the provisions of the Constitution shall be discussed (Chapter III and thereafter).

Details shall be discussed below.

Chapter II: Protection of the rights of parents, children, and their families under the Treaties

1. Introduction

Article 98 of the Constitution of Japan provides that 'The treaties concluded by Japan and established laws of nations shall be faithfully observed.' The failure to comply with the provisions of the International Covenant on Civil and Political Rights ('Covenant' hereafter) and the Convention on the Rights of the Child ('Convention' hereafter), both of which have legal power to impose obligations on human rights in Japan (Shen Hui-Feng, 'Interpretation and application of international human rights law by domestic courts' In: *Contemporary Development of Human Rights Treaties*. Shinzansha, 2009, p.378ff.). Such failures constitute a violation of Article 98 of the Constitution; in particular, the provisions of the Convention in which compliance is explicitly required pursuant to Article 1 of the Child Welfare Act ('CWA' hereafter).

Article 43 of the Convention establishes the Committee on the Rights of the Child ('ommittee' hereafter) as a 'treaty body' to monitor compliance in States Parties.

'Under human rights treaties which establish a treaty body to monitor the domestic implementation of a State Party, special authority should be given to the interpretation of the treaty made clear by the treaty body' (Shen, pp. 374-375). 'In interpreting and applying human rights treaties, it is requested that full

consideration be given to the interpretations made by treaty bodies in … "views", etc.' (Shen, p. 389). Therefore, the Convention itself, as well as the Committee's Concluding Observations that audit the compliance of States Parties established under the Convention, must be faithfully observed.

Paragraph 7 of the 2019 Concluding Observations states that 'the State party … take steps to fully harmonize its existing legislation with the principles and provisions of the Convention.' This clearly indicates that existing domestic laws and regulations of Japan do not conform to the principles and provisions of the Convention. Their amendments are required.

2. The Rights of Parents, Children, and Families Ensured in the Treaties

(1) Respect for 'the best interests of the child'

Article 3, paragraph 1 of the Convention provides for respect for 'the best interests of the child'. Respect for 'the best interest of the child' must be satisfied on both short- and long-term time scales. That is, in the short term, children should be provided with food, clothing, and shelter necessary for the maintenance of their mental and physical development. In the long term, children should be provided with the right to develop according to their characteristics ("developmental right" hereafter) and the right to develop themselves according to their characteristics. This can be regarded as a part of the guaranteeing the right for the pursuit of happiness set forth in Article 13 of the Constitution; thus, an administrative act that disregards the child's best interests can be judged unconstitutional.

In addition, Article 5 of the Convention summarises the relationship between children, parents, and the State. 'States Parties shall respect the responsibilities, *rights* and duties of parents …to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.'

(2) State 'intervention' should be exceptional and temporary

Since the primary responsibility for raising a child rests on the parents, the international codes of human rights recognise *'intervention' by the State to be exceptional and temporary*. That is, the principle here is to 'aid' parents, who

hold primary responsibility for raising their own children. It should be confirmed that 'intervention' to remove children from their parents is an exception and should only be used as a last resort for the shortest appropriate period of time (Article 9 (1) and Article 37 (b) of the Convention).

Furthermore, it should be noted that even in the case of 'intervention' to fulfil 'the best interests of the child', especially for the short-term, action should only be taken when it does not jeopardise the long-term 'best interest of the child'.

(3) The family reintegration obligation

Even in the case that a child is removed from his/her parents as an 'intervention', the parents continue to occupy the position of the primary caretaker of the child, as provided in Article 18, paragraph (1) of the Convention, unless the parent is deprived of parental authority. The State therefore must 'aid' towards restoring the position of the parents, so that the parents can resume responsibility for raising their children. This obligation that the state has to bear is called 'the obligation of family reintegration'.

(4) Summary

For a child, being nurtured and cared for by biological parents is an essential condition for growing up into a personally independent adult.

Therefore, the right of a child to demand reunification of the family, so that the separated child is returned to the biological parents [who guarantee the development of the child into a personally independent adult] should be guaranteed under the right of the pursuit of happiness (first sentence of Article 13 of the Constitution). Similarly, for biological parents, the right to demand family reunification to restore their children to their original care environment should be guaranteed as part of the right of the pursuit of happiness (first sentence of Article 13 of the Constitution) to be enjoyed by the parents [as long as they guarantee the long-term best interest of their children].

3. Fundamental Allegation about Motives of CGC Administration Revealed by the Committee

The Committee further stated in its 2019 Concluding Observations, para. 28 (c), 'There is *allegedly* a strong *financial incentive* for the child guidance centres

to receive more children'. This raises suspicions that the actions of the government authority for child abuse and child affairs, the Ministry of Health, Labour and Welfare of the Japanese government is being carried out not for the real welfare of children, but to benefit the financial interests of its institutions - child guidance centres.

Although more than a year and a half have passed after the Concluding Observations was issued. The Japanese government has never made any official protest or rebuttal to the UN in response to this allegation. The suspicion raised by the Committee is valid. It is suspected that the confinement of the Appellant Child for more than seven and a half years since being admitted into 'temporary custody,' as well as the total ban against visitation of the Appellant Father since, was not for the 'just cause' of guaranteeing the rights of the child's welfare, but for the 'financial incentive' of the securing the authority's budget for the next fiscal year.

4. Summaries

Based on the above understanding, this appeal explains that the system and the specific dispositions in this case are in violation of the provisions of the Constitution. Therefore, the acts of the Appellee State and Prefecture (CGC) are illegal under Article 1 of the State Redress Act.

Chapter III: The temporary custody system and the temporary restraining order in this case are in violation of Article 31 of the Constitution

1. Introduction

The system of temporary custody (Article 33 of the CWA) is in violation of Article 31 of the Constitution in that it permits the removal and physical confinement of a child from his/her family by the Child Guidance Centre ('CGC' hereafter), an administrative body, without prior judicial review.

In addition, the administrative act of the temporary custody order (in this case performed by the Appellee Prefecture (CGC)), which commenced without sufficient investigation or adequate verification of the allegations of abuse reported by K Elementary School, violates Article 31 of the Constitution.

First, this appeal argues that the system of temporary custody is in breach of Article 31 of the Constitution (2 to 4). The temporary custody in this case was implemented without due process and it also violates Article 31 of the Constitution (5).

2. Specific normative content of Article 31 of the Constitution

Article 31 of the Constitution applies directly to both criminal proceedings and administrative proceedings.

This article calls for the 'procedure established by law' and since the 'law' naturally includes Article 9 (1) and Article 37 (b) of the Convention, which are valid as domestic law, the principle of due procedure requirement (Article 31 of the Constitution) dictates that the system of temporary custody, which restricts physical freedom, one of the most important human rights, should undergo due judicial review before it is imposed. In the *ex post* judicial review, the appropriate judicial review had not been conducted prior to or at the time of the physical constraint, which cannot be deemed to comply with Article 31 of the Constitution.

Article 9, paragraph (1) of the Convention provides for the so-called 'judicial enforcement principles', which means that, in light of the significant human rights consequences of removing the custody of a child from the parents for a substantial period of time, a fair and impartial judicial review is required prior to physical restraint. Thus, the legitimacy of removal should be checked during this review. This judicial review, to be conducted under due judicial proceedings, is the only means to confirm the legitimacy of physical constraint of a child by the state authority and it is, needless to say, extremely important from the viewpoint of ensuring human rights.

3. No prior judicial review provided under the system of temporary custody (Article 33 of the CWA)

However, Article 33 of the CWA does not require judicial review *ex ante* before a child is placed under the physical constraint of temporary custody. This is in violation of the requirement of the 'procedure established by law' set forth in Article 31 of the Constitution, which embodies the provisions of the Convention, to go through judicial review *ex ante*.

The Appellant Father has argued, even at this stage, that the temporary custody system without *ex ante* judicial review violates Article 9, paragraphs (1) and (2) and Article 37 (b) of the Convention.

This statement of the Appellants is endorsed by the urgent recommendation of Paragraph 29 (a) of the Concluding Observations of the Committee issued in 2019. That is, '[i]ntroduce a mandatory judicial review for determining whether a child should be removed from the family, set up clear criteria for removal of the child and ensure that children are separated from their parents as a measure of last resort only, when it is necessary for their protection and in their best interests, after hearing the child and its parents.'

Here, the Committee requested not only the judicial review but also 'clear criteria' and 'hearing the child and its parents' as prerequisites, and recommended to the Japanese Government that 'temporary custody' should only be made 'as a measure of last resort only'

4. Adjudication by the court of second instance

(1) Introduction

The high court finds that the system of temporary custody does not violate these provisions for the following reasons:

(2) **A**. First, the court of second instance stated, 'temporary custody, as an administrative disposition, may be the subject of judicial review through actions for revocation under the Administrative Case Litigation Act, etc. and may be the subject of provisional remedies.' Furthermore, it stated that 'it is obvious to this court that a determination can be made within two months under the stay of execution system.' 'Even if such determination is made after two months have passed, this does not mean that there was no judicial review of temporary custody.'

B. However, what is required here is an *ex ante* judicial review.

The question is whether or not the system of temporary custody, which enables removal of a child from his/her parent for two months without prior judicial review, complies with the provisions of the Convention and Article 31 of the

Constitution. It is obvious that the system of appeal proceedings and the suspension of execution under the Administrative Case Litigation Act does not satisfy this requirement.

(3) **A**. Moreover, the court of second instance stated, 'considering that further introduction of judicial review on top of the existing procedures raises concern that heavier procedural burden may hinder the ready implementation of temporary custody and the interests of children would thereby be harmed, it is considered to be a matter of legislative policy'.

B. However, it is obvious that no matter the legislative policy the Japanese government cannot continue operating this system, which is in violation of the Convention and the Constitution to such a degree that it has received urgent recommendations from the international community, the UNCRC, to do away with the practice.

If temporary custody is truly needed in the interests of the child, the need can readily be demonstrated in *ex ante* judicial review.

The 'temporary custody' that could not stand *ex ante* judicial review is either a 'temporary custody' that the CGC did not fully investigate in accordance with the law, or it is unworthy as 'a measure of last resort,' as provided in Article 37 (b) of the Convention. At worst, [as in this case,] it is an action taken on false charges and false pretences that do not consider the best interests of the child. From the viewpoint of ensuring human rights, such temporary custody should not have been arbitrarily implemented.

In foreign countries where human rights prevail, when an administrative authority removes a child from his/her parent, an *ex-ante* judicial review is conducted in all cases. The judicial review procedure has not caused any known problems in dealing with child abuse. In Japan, however, many children are removed from nurseries or schools by CGC and placed in 'temporary custody' solely on the grounds of unproven accusations of abuse, which are not fully investigated or confirmed.

There is no reasonable and justifiable evidence to support that all such removals in Japan are in the best interest of the child.

In the [Japanese] criminal justice system, *ex ante* judicial proceedings are

implemented in all cases without exception. There is no valid reason to consider it as an 'excessively heavy procedure' or to consider such procedures as unnecessary, particularly regarding cases as serious as those concerning the temporary custody of children.

(4) **A.** Furthermore, the court of second instance ruled that it does not violate Article 37 (b) of the Convention on the ground, that 'as a general rule, temporary custody should not exceed two months and is not expected to last for a long period of time.'

B. Considering the fact that a child and his/her parents are physically separated by a sudden removal, and in many cases, even visitation to the child is not permitted thereafter, the restriction on the human rights of the affected child and his/her parents for even a period of two months is, in principle, extremely severe. Furthermore, in this case, such separation without visitation lasted for seven and a half years. In contrast to the fact that detention questioning (i.e., judicial review) is usually conducted within 72 hours of arrest in criminal cases, the two-month period is unreasonably long and difficult to justify.

(5) Summary

As described above, these rulings of the second instance are not appropriate.

The system of temporary custody violates Article 31 of the Constitution, which requires due process. Thus, it is unconstitutional. The temporary custody measures in this case were taken based on this faulty system and are judged to be illegal under Article 1 of the State Redress Act.

5. The procedures of temporary custody in this case have not been properly implemented, such as fulfilling the obligation to conduct sufficient investigation. This is in breach of Article 31 of the Constitution.

As a result of the Appellant Father's protests against the acts of abuse committed against the Appellant Child by the homeroom teacher in the classroom of K Elementary School, the school planned to cover up the abuse by expelling the Appellant Child from the school by reporting 'abuse' to the CGC [and thereby having the CGC remove the Appellant Child from the school as well as Appellant Father]. The Appellee Prefecture (CGC) blindly accepted the reports and took the

Appellant Child into 'temporary custody'.

When the CGC receives notice of abuse, it must investigate the accusation. In particular, the act of starting temporary custody without sufficient investigation unilaterally villainizes the living environment and the parents. Although the authority claims it is acting in the name of protecting the children, careful investigation should be conducted to comply with all due procedures.

In this case, the Appellant Child was taken into CGC custody [on 1 May 2013] without careful investigation. The Appellee Prefecture (CGC) accepted the [repeated] reports [made from December 2011 to April 2013] from K School without proof and immediately commenced temporary custody; temporary custody transformed into confinement of Appellant Child into an ACF based on Article 28 of the CWA [on 28 July 2014]. The familial tie of Appellant Father and Child have thus totally been severed for more than seven and a half years.

Consequently, the temporary custody order in this case is contrary to Article 31 of the Constitution in that it fails to examine carefully the required procedures and conditions for the commencement of temporary custody. This should be judged illegal under Article 1 of the State Redress Law.

6. Summary

The system of temporary custody (Article 33 of the CWA) is in breach of Article 31 of the Constitution. Thus, it is unconstitutional, as it allows for the arbitrary detention of children.

In addition, it is in breach of Article 31 of the Constitution and, therefore, unconstitutional that the CGC did not sufficiently investigate the allegations of abuse and it did not conduct a thorough investigation of the merits of temporary custody. In this case, the CGC blindly accepted reports from K Elementary School, without corroborating the allegation with well-documented medical or oral testimony to support the initial claim.

Therefore, the disposition of temporary custody in this case is illegal under Article 1 of the State Redress Act.

Chapter IV. The system of comprehensive visitation prohibition violates the first sentence of Article 13 of the Constitution, providing respect for individual autonomy.

1. Introduction

The prohibition of visitation stipulated in Article 12 of the Child Abuse Prevention Act ('CAPA' hereafter) unjustly infringes upon the provision of 'respecting individual autonomy' (the first sentence of Article 13 of the Constitution) and is, therefore, unconstitutional.

2. The normative content of the first sentence of Article 13 of the Constitution

The family is the most natural and fundamental social unit. Each individual family member chooses his/her own way of life without undue interference from others, including the public authorities. This is the right of autonomy of the family [provided in Paragraph 1 of Article 23 of the Covenant and Article 5 of the Convention].

The right of autonomy of families include freedom from unjust interference from government authorities in relation to the parent-child interaction. This is essential because, only when there is free exchange of ideas between parents and children can each member of the family individually make his/her own decisions on various lifestyle matters and, thus, satisfy their individual right to pursue happiness.

Therefore, the first part of Article 13 of the Constitution guarantees the autonomy of the family as part of the autonomy of the individual.

The preamble of the Convention guarantees the rights of 'the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community', and of the relationship between the parents and children.

Pursuant to this, Paragraph 28(e) of the Concluding Observations of the Committee in 2019 expressed serious concern that '[c]hildren placed in

institutions are deprived of their right to keep contact with their biological parents'.

These provisions in the Convention and the Concluding Observations embody the comprehensive fundamental rights of individuals, namely their rights to autonomy and the pursuit of happiness.

3. The system of comprehensive prohibition of visitation (Article 12 of CAPA) is in breach of Article 13 of the Constitution.

Article 12 of CAPA, which prohibits visitation of children by their parents, is unconstitutional.

Under this system, the Appellee Prefecture (CGC) imposed the administrative disposition to prohibit visitation and to comprehensively ban interaction between Father and his child. As a result, to date, the Appellant Father has been unable to see the Appellant Child for more than seven and a half years.

4. Summary

The system of comprehensive visitation prohibition (Article 12 of the CAPA) unjustly intervenes in the autonomy of an individual in prohibiting communication among family members. It is, therefore, in breach of Article 13 of the Constitution, which protects the autonomy of an individual, and is considered unconstitutional.

The visitation prohibition disposition in this case should inevitably be judged to be illegal under Article 1 of the State Redress Act.

Chapter V: The CGC asked the parents if they abused the child; once the parents denied the allegation, the CGC disallows their visitation or stops initiating reunification procedures for the family. These acts are in breach of Article 38 (1) of the Constitution, prohibiting the coercion of self-

incriminating testimony.

1. Introduction

This case is not a criminal investigation in which the authority demands the Appellant Father to confess that he committed an act of abuse.

However, once the Appellant Father denied the charge of abuse, the Appellee Prefecture (CGC) disallowed the visitation to his Child and did not initiate the family reunification process. This administrative act is in violation of Article 38, paragraph (1) of the Constitution, which prohibits coercing self-incriminating testimony.

2. The normative content of Article 38 (1) of the Constitution

Article 38 (1) of the Constitution stipulates that '[n]o person shall be compelled to testify against himself.'

This guarantee applies 'not only in genuine criminal cases, but also in other proceedings. It is appropriate to conclude that the procedure generally applies directly to cases leading to the acquisition and collection of materials for pursuing criminal liability' (Supreme Court Grand Bench adjudication, 22 November 1972).

3. Ruling in the second instance ('sentence' p. 19 and thereafter)

(1) Introduction

The court of second instance copied the position of the Appellee Prefecture (CGC) that the Appellant Father's defiance toward self-incrimination was grounds for justifying the prohibition of visitation and the nonfeasance of initiating family reunification.

(2) **A.** As for the CGC's approach to preface resolution upon the parents' admission of abuse, the court of second instance ruled that parents who commit abuse should '"admit the fact of the abuse and solve the problem" [this] is a matter that should be taken into account in order to judge the appropriateness of returning the child to his/her home' (p.37). Therefore, the ruling unconditionally endorsed the administrative position of the Appellee Prefecture (CGC) that had requested a confession of abuse as a condition of returning the child. In addition,

it ruled the word 'respect' in Article 9, paragraph (3) of the Convention regarding visitation rights to be interpreted such that it 'does not mean to seek the assurance that the rights provided for in the said paragraph would be fully exercised' (p. 36); thereby, this ruling denied the legal power of the Convention.

B. However, this adjudication of the court of second instance precludes *a priori* the possibility of the CGC staff (such as Kiyoshi Okano, in this case) of coercing the parents into self-incriminating confessions of abuse. This case included adhering to false or retaliatory reports out of motivation for 'financial incentives'. Therefore, it can be generally concluded from the above adjudication that the CGC deployed the system of restricting visitation as set forth in Article 12, paragraph (1) of the CAPA towards the Appellant Father beyond the limit permissible under Article 9, paragraph (3) of the Convention to force him to confess that he abused the child. In addition, 'respect' in a provision of the Convention sufficiently containing 'strong obligation' (Shen, p.366), the court of second instance did not correctly understand the interpretation of the Convention, as applicable to this case.

(3) **A.** Furthermore, the court of second instance ruled that 'there is no evidence to prove that the CGC used the system of restriction of visitation set forth in Article 12, paragraph (1) of the CAPA as a means to induce the confession of child abuse' (p.38).

B. However, the following ruling given by the court of original instance, quoted the court of second instance: 'the CGC tried to arrange the schedule for an interview with the Appellant Father, in order to hear from the Appellant Father how he had reflected on his past ways of raising the Appellant Child and how he was making efforts to change. However, the Appellant Father immediately requested the commencement of unconditional visitation and interaction with the Appellant Child. He repeatedly requested to meet with the Appellant Child without any further restrictions. There is seemingly no evidence that the Appellant Father looked back on his own behaviour and showed an attitude of reflection in line with the sentiment of the Appellant Child' (pp.30-31). This is nothing more than an unjust affirmation of the Appellee (CGC)'s coercion to force Appellant Father to reflect on his 'abuse' adversely, in conditional exchange for

visitation with the Appellant Child and as a basis for familial reunification.

Furthermore, the Appellee Prefecture (CGC) has acted to 'arrange the interview' only once during the seven-and-a-half-year period of detention of the Appellant Child. If it had been irrelevant for the Appellee Prefecture (CGC) to make the Appellant Father confess the 'abuse' as a pre-requisite to the visitation and familial interaction, then the Appellee Prefecture (CGC) would have made far more frequent efforts to schedule the visitation interview.

(4) Conclusion: As described above, the court of second instance upheld the unconstitutional and illegal behaviour of the Appellee Prefecture (CGC) to force a confession of 'abuse,' as a pre-requisite condition to organise visitations between Father and Child.

Furthermore, as described in the next chapter, the Appellee Prefecture (CGC) has taken measures not to initiate family reunification because the Appellant Father has not admitted 'abuse.' This unconstitutionality and illegality are very serious.

4. Summary

Such an act by the Appellee Prefecture (CGC) is an administrative method of effectively coercing a confession. By requiring that the Appellant Father acknowledge reports of abuse, the CGC is attempting to take advantage of the parents' yearning for visitation and family reunification.

The administrative action of the Appellee Prefecture (CGC), which has continued such illegal administration for a long time and has continued to infringe upon the Appellants' human rights, is in violation of Article 38, paragraph (1) of the Constitution, which prohibits compulsion of self-incriminating testimony. It is illegal under Article 1 of the State Redress Act.

Chapter VI Failure to reunify the family violates the second sentence of Article 13 of the Constitution.

1. Introduction

The nonfeasance of the Appellee Prefecture (CGC) in the reunification of the

Appellant family violates the second sentence of Article 13 of the Constitution, which guarantees the right to seek the reintegration of the family as part of the right to pursuit of happiness.

2. The contents of the pursuit of happiness (second sentence of Article 13 of the Constitution) in relation to family reintegration

(1) Respect for 'the best interest of the child'

Article 2, paragraph (1) of the Child Welfare Act and Article 3, paragraph (1) of the Convention provide for the respect for 'the best interest of the child'.

Respect for 'the best interest of the child' should be satisfied over both the short- and long-term. That is, in the short-term, food, clothing, and housing that are necessary for the maintenance of the mind and body must be provided. In the long-term, the right to develop according to the characteristics of each child ("developmental right" hereafter) must be fulfilled.

In this regard, the Appellant Child, even at the time of the commencement of parent-child separation on 1 May 2013, had to be provided with clothes, food, and housing necessary for physical and mental development in the short-term and to be cared for in an environment where physical and mental safety should be ensured over the long-term, in order to guarantee the right to develop in accordance with the characteristics of the child.

(2) Confirming the 'rights and responsibilities of parents to care for children' and 'the right to be brought up by the child's parents'

It is the parent who is responsible for the fulfilment of the 'best interest of the child'. Article 3, paragraph (2) of the Convention provides that 'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, *taking into account* the rights and duties of his or her parents, legal guardians, ..., and, to this end, shall take all appropriate legislative and administrative measures' and demands that the rights and obligations of biological parents should always be taken into account when the state provides the social care necessary for child welfare. In this regard, Article 18, paragraph (1) of the Convention further provides that '[p]arents or, ...legal guardians, have the primary responsibility for the upbringing and development of the child.'

This is because the parents have the closest relationship to the child. Therefore, they are in the best position to know the characteristics of the child, and to judge what is in the best interest of the child in the short- and long-term. Parents are exclusively responsible if the best interests of the child are not met and the child cannot be adequately cared for and developed. In summarising such relationships between children, parents, and the state, Article 5 of the Convention provides that 'States Parties shall respect the responsibilities, *rights* and duties of parents … to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.' The relationship in which the right of parental care is dominant and social care is subordinate is undoubtedly explicit in the international human rights norms shown in the Convention.

In other words, parents have the right to care for their children without being interfered with by others, including the State. This point is further clarified in other international human rights treaties ratified by Japan. Specifically, Article 17, paragraph 1 of the UN International Covenant on Civil and Political Rights provides that '[n] o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation'. Article 23, paragraph 1 provides that, regarding civil liberties, the State shall respect the right of parents to care for children in their families: '[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.'

Based on the aforementioned provisions of the UN Covenant, it can be said that a child has the right to be cared for by his/her parent(s), who is aware of his/her own responsibility of caring for the child in order to actualise his/her short- and long-term best interests, as part of his/her civil liberties, without being interfered with by other parties.

The State shall assist parents so that they can exercise their rights fully. Article 18 (2) of the Convention provides that '[f]or the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of

institutions, facilities, and services for the care of children.'

From this perspective, it can be conceived that parents may claim from the State the right to receive assistance in child rearing as a social right, based on Article 10, paragraph (1) of the UN International Covenant on Economic, Social and Cultural Rights: 'The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society'. The Appellees are, of course, obliged to fully comply with the provisions of the international treaties to which Japan is a party.

(3). 'Aid' and 'intervention' by the state

The state is responsible for assisting parents so that their responsibility to care for their children is fulfilled. A child is guaranteed 'the best interest of the child' and the parent has the primary responsibility to guarantee the child's best interests. However, there are cases where the parent is unable to fulfil this responsibility to the child due to financial or other reasons.

In such cases, in order to satisfy the 'the best interests of the child', the state must provide sufficient support to the parents (Paragraph 2, Article 18 of the Convention). This must be real 'aid' from the standpoint of international human rights norms. State 'intervention' that is guided by a 'financial incentive' [as pointed out in Paragraph 28 (c) of the 2019 Concluding Observation of UNCRC] that undermines parents' rights and the best interests of the child should never be made.

3. Ruling by the court of second instance ('sentence', p.28 and thereafter)

(1) Introduction

The court of second instance ruled that because the civil servants, as employees of the Appellee Prefecture (CGC), do not have the legal obligation to reintegrate families, the exercise of their authority in this case is legal under the State Redress Act. However, the removal of a child from his/her parent was implemented by these civil servants, as employees of the Appellee Prefecture (CGC). Therefore, a civil servant of the same administrative body can actively sever family ties, and the judiciary effectively endorses the irresponsible wielding of the

administration's authority. The law does not allow such irresponsibility.

(2) **A.** First, the court of second instance ruled that 'Article 4 of the CAPA does not provide for the obligation of civil servants as employees of a local public entity to initiate the reintegration of families, in relation to wards residing in that entity'. It also states that 'Article 48-3 of the CWA is not applicable to the employees of CWA.'

However, Article 4 of the CAPA provides that the 'local government' shall 'provide appropriate guidance and support to custodians …by taking into account the promotion of the reunion of parent and child….' The substance of the 'local government' is explicitly applicable to civil servants employed by the CGC. The subject of Article 48-3 of the CWA may be interpreted as referring mainly to the ACF; however, the head of the ACF 'performs the task in a system in which the authority originally held by a prefecture is transferred and exercised for the prefecture' (Judgment of the First Petty Bench of the Supreme Court/2005 (*Ju*) No. 2335, 2005 (*Ju*) No. 2336). Moreover, the head of the ACF has the legal obligation 'to maintain close relationships with the CGC and other relevant authorities'. Therefore, in this case, the employee of the Appellee Prefecture (Tokorozawa CGC) was obliged, as the body that transferred the authority, to cooperate actively with the ACF.

(3) Therefore, civil servants who are employees of the CGC are also in a position to assume the obligation of family reintegration. They are not allowed the personal discretion to deny services or to abdicate responsibility for reintegration efforts, both of which undermine their obligation, as representatives of the State, to execute their authority in a lawful manner.

4. The obligation of the Appellee Prefecture (CGC) for reintegration of the family.

From the above, it is evident that the employees of the Appellee Prefecture (CGC) have a legal obligation to make efforts toward family reintegration in relation to the ACF and toward the guardians of a child to whom confinement measures have been taken. Even if the Appellee Prefecture (CGC) 'intervened' with a family and the parents and child were separated, those with parental

responsibility remain in the position of the primary custodian of the child. Thus, the Appellee Prefecture (CGC) has an obligation to render 'assistance' toward the reintegration of the parent and child aiming to restore the parent back to the custodial position of caring for the child (the obligation of family reintegration). For the biological parents, the right to seek family reintegration to bring the removed child back to the original family environment and to rebuild the family ties is provided as part of the guarantee of individual autonomy implied in the first sentence of Article 13 of the Constitution.

On the other hand, being cared for by the biological parents is an essential condition for a child to grow up as a self-sustaining adult. Therefore, for a child who has been removed from his/her biological parents has the right to seek the reintegration with his/her family, so his/her return to the original biological parents is taken to be guaranteed, as [long as the parents are responsible for guaranteeing] the rights for the pursuit of the happiness of the child provided by the second sentence of Article 13 of the Constitution.

5. Family reintegration has not been implemented.

As a part of the rights for the pursuit of happiness, children and parents have the right to reintegrate into their original family, and the State has an obligation to [make attempt to] reintegrate their families (Chapter II).

However, in this case, as mentioned above, the Appellee Prefecture (CGC) requested the Appellant Father to acknowledge his alleged acts of abuse. After the Appellant Father denied the accusation, the Appellee Prefecture (CGC) completely abandoned efforts to reunite the family.

The Appellee Prefecture (CGC), continued to deploy the administrative tactic of 'Hostage CGC' (Kansai TV 'Special Press' on 6 August 2020) for a prolonged period and did not initiate the reintegration of the family, infringing upon their right to seek the reintegration of the family, as guaranteed by the rights of the child and the parent to the pursuit of happiness.

7. Summary

In this case, the failure to reunify the family infringes on the second sentence of Article 13 of the Constitution, which stipulates that the individual has the right of autonomy and the right to pursue happiness.

Chapter VII General Summary

When domestic laws, such as the CWA and the CAPA, are in conflict with the provisions of international human rights laws, such as the UN International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, it is international human rights law that should be applied, not the domestic laws.

This is the legal implication derived from Section 2 of Article 98 of the Constitution, which provides that international treaties are superior to domestic laws.

However, with regard to the system of temporary custody (Article 33 of CWA), it is in breach of Article 31 of the Constitution, which requires the principle of due process; the disposition rendered under this system is unconstitutional. Furthermore, the system of comprehensive visitation prohibition (Article 12 of the CAPA) is in violation of Section 1 of Article 38 of the Constitution, which provides for the prohibition of coercing self-incriminating testimony. The prohibition of visitation in this case is also unconstitutional.

The failure to initiate family reunification violates the first sentence of Article 13 of the Constitution, which guarantees family autonomy, and is therefore unconstitutional.

As a result, temporary custody, prohibited visitation, and refusal to initiate family reintegration in this case are collectively judged to be illegal under Article 1 of the State Redress Act.

The adjudications of the original instance court, which contradicts this conclusion, should be quashed and an appropriate adjudication in accordance with international human rights law should be passed.

Annex 5

2020 (*So-ra*) No. 10430
The Appellant [Claimant]: X
[The Child Restrained: Y, the child of the Appellant]
Counterparty [Restrainer]: Kazuyuki Endo, Director of Tokorozawa Child Guidance Centre, Saitama Prefecture

26 October 2020

Statement of Reasons for Special Appeal

[for *Habeas corpus* Petition]

To the Supreme Court

The **A**ppellant pleaded a special appeal against the Tokyo District Court's decision to dismiss the case for *habeas corpus* filed in 2020 (*Person*) No.3 on **2** October 2020.

In this document, the reasons for the special appeal are stated as follows:

Chapter I: Introduction

1. The objection for the original instance is filed herewith on the grounds that 'the trial... is otherwise unconstitutional'.

The provisions of the Constitution that are in violation are Articles 32, 14, and 13, Paragraph 1 of Article 38, and Article 19.

2. Violation of Article 32 of the Constitution

First, from the right of access to the courts provided in Article 32 of the Constitution, the principle of the adversary system (First and Third theses), the basic principle of civil procedure, is derived.

The original adjudication was made through proceedings that violate the first

thesis of the adversary system and with a reasonable doubt of violation to the third thesis. In a law-abiding country, Article 32 of the Constitution guarantees the people not only access to the courts and the submission of petitions, but also the right to a fair trial in accordance with the law. This right has been substantiated by Article 14 of the International Covenant on Civil and Political Rights, which Japan ratified [in 1979]. The Covenant has prescriptive powers that prevail over domestic laws: '[i]n the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to *a fair and public hearing by a competent, independent and impartial tribunal* established by law'.

However, in the original instance court cozied up to the intention of the restrainer, Tokorozawa Child Guidance Centre, Saitama Prefecture (Hereinafter referred to as 'Tokorozawa CGC') and violated the theses of the adversary system. Thus, it was not 'a fair, … a competent, independent and impartial' trial.

3. Violation of Articles 14 and 13 of the Constitution

The original adjudication also violates the obligation of due process (right to demand fair proceedings) and the right to seek legal interpretation derived from Articles 14 and 13 of the Constitution.

4. Violation of Section 1 of Article 38 of the Constitution

Furthermore, the legal principle of rulings justifying detention of Child Y violates Article 38, paragraph 1 of the Constitution, which prohibits coercion of self-incriminating testimony.

5. Violation of Article 19 of the Constitution

In addition, the ruling of the original instance that has the effect of forcing a particular child-rearing philosophy violates Article 19 of the Constitution, which guarantees freedom of thought and conscience.

6. Summary

As described above, the court of the original instance violated a number of Constitutional provisions, and it is quite clear that the case falls under the category of 'the state of being unconstitutional'.

The details shall be described below.

Chapter II: Violation of the first thesis of the adversary system and violation of Article 32 of the Constitution

1. Introduction

Even if the Tokorozawa CGC considers that there are reasonable grounds for the measures to detain Child Y in an alternative care facility ('ACF' hereafter), Japan, as long as it is a law-abiding country, must consider the measures to detain a person in an ACF as illegal unless the Tokorozawa CGC takes administrative measures in pursuance of the law and notifies the guardian of the child of the measures [beforehand]. In this case, the Appellant has made a *habeas corpus* petition with the aim of urgently resolving the situation, in which the best interest of the child (including the right to develop and the right to pursue happiness) have already been seriously infringed. The serious procedural illegality in this regard should never be overlooked. Any nation under the rule of law should not continue to detain a person in an ACF without regard of the procedural legality. A person was detained without proper administrative disposition; that is, the notice of disposition did not reach the Appellant within the designated period of the detainment.

The custody in the ACF [of Child Y] in this case on or after 28 July 2018 is in itself an independent administrative disposition, and notification should have been given properly. The Appellant made this assertion in the 4th preparatory pleadings (theory of the need for notification (theory A_1)).

However, the Tokorozawa CGC disputed the Appellant's claim with the assertion that the physical restraint prescribed in Article 28 of the Child Welfare Act requires only one notice at the time of the first restraint (in this case, in 2014) and, after renewal, a separate notice was unnecessary (theory that new notification is unnecessary (B theory)) ('counterstatement').

Now the court cannot adopt a fact which neither party alleges as asserted (First Thesis of the adversary system).

In this case, the issue was whether to apply the above-mentioned theory

requesting new notification (A_1 theory) or the theory requesting no new notification (B theory); and attention was focused on which judgment the court would make in what sort of legal theory. If theory A_1 is adopted, it is considered that the restrained Child Y must be released to the Claimant as 'a person whose physical liberty is restricted without due process of law' provided by Article 2 of the *Habeas corpus* Law, because the necessary administrative measures and notifications were not taken.

2. Ruling of the original instance: Violating the First Thesis of the Adversary System

However, the court of the original instance stated, 'The Restrainer [CGC] sent the Claimant the document around 29 May 2020'. 'It is considered that the Claimant was notified of the renewal in the document' ('court decision' p. 10), indicating the idea that even though notification is obviously necessary, it is sufficient to send an administrative communication and make a judgment based on it (The theory that updated notification is necessary + the theory that *de facto* administrative communication is sufficient (A_2 theory)).

As discussed above, the Tokorozawa CGC made no such claim (as mentioned above, the Tokorozawa CGC asserted that a new notification was unnecessary). Even the attorney representing the Tokorozawa CGC was probably aware that such a claim was illegal and incompatible with the standards of the legal profession. However, the court of the second instance upheld this decision.

This is in clear violation of the First Thesis of the adversary system, which states that only facts alleged by either party can be treated as alleged.

3. Summary

The ruling of the original instance contravenes the First Thesis of the Adversary System.

The judgment of the court of the original instance was based on the theory A_2 and was caused by the fact that the court made unreasonable efforts, one after another, to dismiss the *habeas corpus* claim and to cozy up to the Tokorozawa CGC.

These unreasonable efforts violated the First Thesis of the adversary system

and resulted in a violation of Article 32 of the Constitution.

Chapter III: Violation of the Obligation to fair procedure

1. Introduction

From the principle of equality (Article 14 of the Constitution), which requires that parties be treated equally and impartially in court proceedings, and the dignity of an individual (Article 13 of the Constitution), which requires that they not be treated partially, the parties can lodge a complaint against the court to demand that the court procedures be conducted fairly. The court has an obligation to conduct fair procedures (Hiroyuki Matsumoto *Handbook for the Civil Appeal* p.123).

2. Violation of the obligation for fair procedure in the original instance

On the day of the second [*habeas corpus*] interrogation, the judge of the original instance court identified the point relating to the illegality of the disposition ('Chapter 3' in the written answer [of CGC]) as the most contentious issue, and asked the Appellant to prepare and submit a written counterargument to that effect. In response to this request, the Appellant submitted the fourth preparatory document, consisting of 13 pages.

However, after the second interrogation, the court took a sudden turn and avoided making a decision on the issue that the court identified, and instead set another issue as the 'Chapter 2 Outline of Case' of the decision. The court decided to dismiss the claim without giving the Appellant an opportunity to defend himself against this other issue.

In addition, during the interrogation proceedings, the court, without mentioning at all the CGC's 'failure to conduct a hearing procedure against the captive person' (giving us no opportunity to object to the proceeding), concluded the trial (Infringement of the Right to Request a Hearing).

Looking into the reasonable grounds for making this sudden pivot away from the request for explanation [for illegality of disposition] in the interrogation towards the dismissal of the [*habeas corpus*] claim, nothing is more probable than that there was contact between the judge and the person in charge of the

Tokorozawa CGC (a party seeking dismissal of the claim) outside of the interrogation procedure. However, such judicial intervention after commencement of the interrogation, which was not disclosed to the parties on the occasion of interrogation, is in clear violation of the 'duty of fair procedure of the court,' which Matsumoto advocates pursuant to the Constitution and the International Covenant on Civil and Political Rights (Matsumoto, p. 149). And if the judge suddenly made up his mind to dismiss the claim, based upon such contact [with CGC], it is an act equivalent to the *ex officio* detection, which is prohibited under the adversary system, violating its Third Thesis.

3. Summary

The conduct of the proceedings by the judge of the original instance is in violation of the duty of fair proceedings and also of Articles 14 and 13 of the Constitution. Furthermore, the sudden change of the direction of proceedings allows the reasonable doubt that the *ex officio* detection was made in violation of the third thesis of the adversary system, which contributed to the formation of such an impression.

Chapter IV: Infringement of the right to seek legal interpretation and violation of Articles 14 and 13 of the Constitution

1. Introduction

The principle of equality (Article 14 of the Constitution) and the dignity of the individual (Article 13 of the Constitution) lead to the right of the parties to seek an interpretation of the law applicable to specific cases in the courts.

2. Avoidance of judgment by the original instance court

Nevertheless, in this case, the court of the second instance ruled, 'it is not always easy to determine the disposition of the renewal' and 'it cannot be said that there is such an illegality that the court can immediately judge if the documents, etc. are examined promptly and easily under the *prima facie* showing' ('decision' p.10). The court did not make a clear judgment as to whether (or not) the renewal [of the detention order of the Child Y to the ACF] needs a new

administrative disposition.

Under a clear legal judgment, the Tokorozawa CGC's unlawful detention [of Child Y] would have been obvious, and the Child Y would have been released. However, by avoiding the judgment, the court of the original instance unconditionally affirmed the present state of detention [of Child Y] by stating that 'a petition for approval has been filed [by the CGC to the family court] for the renewal of the [detention] period, and it is unavoidable to continue detention of the detainee [=Child Y] until the decision for approval is made' ('decision' p. 10).

However, if the preceding disposition is illegal, the illegality is carried over, and the subsequent current physical restraint of Child Y also becomes illegal.

Nevertheless, since it would be impossible to make a positive ruling that justifies the current detention measures taken without administrative disposition or notification duly made before the expiration of the detention period, the court of the original instance made an unfair ruling of avoiding judgement in order to draw legitimacy of the detention measures taken by the Tokorozawa CGC.

3. Summary

Avoidance of a legal judgment in the original instance violates the Appellant's right to seek legal interpretation, and violates Articles 14 and 13 of the Constitution.

Chapter V: The court of the original instance, justifying the continued detention, violates the freedom of thought and conscience stipulated in Article 19 of the Constitution

1. Introduction

Article 19 of the Constitution provides that '[f]reedom of thought and conscience shall not be violated.' Based on the bitter experience of the past when even people's innermost thoughts were placed under State control, the Constitution aims to guarantee personal freedom within the realm of the inner mind. This freedom guaranteed by Article 19 also includes the guarantee of the freedom of external acts, such as the acts of worship corresponding to the

freedom of religion, and to practice their inner thoughts through external expression.

In childcare, the concept of 'childcare thoughts' also exists, and the practice of childcare can be regarded as an external expression of those thoughts. Therefore, the style of child-rearing and how child-rearing is practised belong to the realm of civil liberties. So long as actions do not conflict with the Penal Code, these civil liberties must not be infringed upon, in accordance with Article 19 of the Constitution.

2. Judgment of the court of original instance

The court of the original instance, which dismissed the Appellant's request for *habeas corpus*, has the effect of justifying the detention of the Tokorozawa CGC, which began with temporary custody seven and a half years ago. The court turned a blind eye to the illegality of the subsequent procedures [of the CGC], thereby effectively imposing on the Appellant the child-rearing philosophy and family values prescribed by the CGC.

[The child-rearing philosophy and family values prescribed by the CGC] is based on the [misogynistic] statutory view of a family that the child should be raised, so to speak, in the situation of a family complete with the parents (the mother and the father), where the father and mother share familial tasks, the former to work and earn money and the latter to play household role.

The Appellant and the detained Child Y have a father-son relationship. The father supported Child Y's education and participation in outdoor sports, based on the 'philosophy of achieving a high level of growth, both physically and mentally, by providing his son with higher goals and encouraging him to work toward them' ['decision' p.8]. While there might have been some discontent or complaint from the Child, family life was conducted under the child-rearing philosophy of the Appellant Father and was fulfilled to the best interests of the child, in that the child had achieved the results of national academic achievement and was well-trained, both physically and mentally.

Nevertheless, the Tokorozawa CGC: (1) problematised the Appellant's child-rearing philosophy mentioned above and deployed this as a basis for justifying

the Child Y's detainment in the ACF; and (2) imposed CGC's philosophy of child-rearing, 'to make the home the place of acceptance from the caretaker, in order to relieve the stress from school and tutorial school' ('decision' p.8). The family court had unquestioningly accepted these two actions by the CGC, and for this reason it has approved the continued detention of Child Y in the ACF. This means that unless the Appellant gives up his own child-rearing philosophy and its externalisation and adopts the child-rearing philosophy imposed by the Tokorozawa CGC, the CGC will indefinitely continue the detention of the Child. Furthermore, it will continue to completely ban visitation between the father and son, which has already lasted seven and a half years.

The decision of the original instance simply justified the continuation of the detention, without paying attention to the Tokorozawa CGC's unconstitutional infringement on the rights and civil liberties of both the Appellant and the Child; procedural illegality was never examined.

Such a ruling effectively compels the Appellant to amend his child-rearing philosophy and it infringes upon his freedom of thought and conscience.

3. Summary

The court of the original instance justifies the Tokorozawa CGC's continued detention on the grounds that the Appellant has practised a particular child-rearing philosophy, and thereby violates Article 19 of the Constitution, which guarantees freedom of thought and conscience.

Chapter 6. The original instance justifying the continued detention of a person infringes upon Section 1 of Article 38 of the Constitution, which prohibits coercing a self-incriminating testimony

1. Introduction

Section 1, Article 38 of the Constitution stipulates that 'No person shall be compelled to testify against himself.' The Supreme Court adjudicated that it is reasonably construed that this guarantee applies 'not only to purely criminal procedures but also to other procedures generally that have a direct effect on the

acquisition and collection of materials for pursuing criminal responsibility' (Grand Bench Judgment, 22 November 1972).

2. Judgment of the court of original instance

The court of the original instance holds that the Claimant [Appellant Father] is 'not willing to accept guidance from the Tokorozawa CGC, thus the CGC is not ready to reunite father and son' ('decision' p.7) and 'interaction between the Claimant and the Detainee cannot be established due to the attitude of the Claimant' (p.8).

However, the Tokorozawa CGC has never taken any administrative guidance measures toward the Appellant. Therefore, the claim that the Appellant is 'not willing to accept the guidance' is unfounded and false.

If anything exists in the name of 'guidance' it is measures taken by civil servants employed by the CGC to force the Appellant to admit alleged 'abuse'. However, the Appellant naturally cannot admit the alleged 'abuse', as the abuse was committed by the homeroom teacher of the Detainee [Child Y] (corporal punishment) in the classroom of K School. In attempt to avoid culpability, the K school attempted to swap the actors by reporting 'abuse' was caused by the Claimant [Appellant]. As a matter of fact, as a result of the Appellant's persistent refusal to adopt CGC 'guidance', the Tokorozawa CGC has not initiated the re-integration of the father, Claimant [Appellant], and his child [Child Y], the Detainee.

Thus, on the grounds that the Appellant does not comply with the Tokorozawa CGC's coercion to admit abuse, in the name of 'guidance', the Tokorozawa CGC denies the Detainee [Child Y] access to his father [Appellant and Claimant] and it has refused to initiate standard family reintegration procedures for as long as seven and a half years.

3. The ruling of the original instance affirming that the Tokorozawa CGC's act of coercing a confession is unconstitutional.

In various parts of Japan, CGC staff lack expertise. In this case, this is true for the Tokorozawa CGC's Kiyoshi Okano, who received false and retaliatory reports, and accepted them blindly. Administrative measures are commonly taken to force

confessions of 'abuse', by deploying the visitation restriction system provided in Article 12 of the Child Abuse Prevention Act as leverage. This fact has been reported by major media outlets using the term 'Hostage CGC', which unconstitutionally compels self-incriminating testimony.

In the original instance, the judiciary joined with the Tokorozawa CGC to demand the Appellant's unilateral allegiance to the administrative acts purporting to be 'guidance' and admission of guilt regarding allegations of 'abuse'.

4. Summary

The court of the original instance cozied up to the Tokorozawa CGC, which continues to infringe on the human rights of the Detainee [Child Y]. This decision violates Section 1 of Article 38 of the Constitution, which prohibits the compulsion of self-incriminating testimony.

Chapter VII: Summary

The original instance contravenes the First Thesis of the adversary system and the right to seek legal interpretation, the duty of fair proceedings, and the Constitutional prohibition against coerced testimony. There are also reasonable suspicions of violation to the third thesis of the adversary system.

In the [legal] cases where the CGC is involved, excessive surmising of the intention of the CGC are rampant; due process and legal compliance are neglected. This can be designated as 'CGC justice,' whereby remnants of *Sonderrechtsverhältnis* [the special power relations common in pre-Weimar Germany and pre-WWII Japan] exist. The ruling of the original instance should be a typical example. If this legal practice, under which the Child Y's detention persists and the best interests of the child continue to be trampled upon, Japan will gradually move away from being a constitutional country.

The UN Committee on the Rights of the Child issued to the Japanese government severe fact-findings and recommendations on human rights infringements [of the CGC] in its 4th and 5th Concluding Observations on 5 March 2019 (Paragraphs 28 and 29). With regard to the judiciary in Japan in this case, if 'CGC justice' deviates from the principle of constitutionality, it is certain

that international criticism will ensue from the standpoint of human rights.

Therefore, the decision of the original instance should be quashed and remanded to the original instance court.

Annex 6

Mother and Daughter's Flight to the Netherlands, 2008

I. Summary

In the summer of 2007, daughter G of a family in Nagasaki was separated from her mother S and taken into temporary custody by Nagasaki CGC. The CGC submitted 'Article 28 plea' to consign G to an ACF. The Nagasaki Family Court rejected the plea at first. Then the CGC secretly took her away from the CGC detention quarter, making whereabouts of G not known to the family. The CGC then appealed to Fukuoka High Court, which approved the consignment based on the 'evidence' fabricated by the CGC. The unconvinced mother asked for help to human rights organisations offering support for victims of CGC. The supporters managed to locate G, and S sought exile with her daughter in the Netherlands. The Dutch police, the government childcare agencies, and the judiciary jointly allowed S and G to settle there. However, the members of the support organisation who remained on the spot were arrested and the ACF staffs, who feared responsibility for the loss of G, accused them of "kidnapping G in collaboration with S". The supporters were charged with criminal offenses.

II. The Details of the Case

A report from a convenience store

The family of S (in her 30s), lived in Nagasaki with her daughter, G. At that time, G, 8 years old, showed a tendency of mild developmental disorder and S sometimes felt difficulty in raising her. On 7 August 2007, G took home sweets from a store without paying; S was upset and she told her daughter to pay for the sweets that she had shoplifted. A clerk at the convenience store in Omura, Nagasaki, reported to the police that G was hanging out at a convenience store in the city centre without mother's knowledge; at the time G had the money that her mother gave her. The shopkeeper reported her to the police, who forwarded the

case to the Nagasaki CGC (officially, Nagasaki Support Centre for Children, Women and Persons with Disabilities), which separated G from the family and put into temporary custody.

A long way to Article 28 judgment

According to Nagasaki CGC, she had a head injury and reportedly claimed "My mother hit me". Later, in the Article 28 tribunal, the CGC stated that it was abuse as "S had hit her daughter G in the hip area with a hanger". S denied any such acts at the tribunal. Even G herself, whose voice was concealed by Nagasaki CGC, claimed, "There was no violence. I want to go home now".

The number of ACF beds per capita in Nagasaki was the third highest in Japan; thus, it is easy to understand why the CGC forcibly consigned G to ACF against the family's will.

In the tribunal of Article 28 plea, there is a strong tendency to accept the plea of the CGC. However, in this case, the Nagasaki Family Court rejected the plea, stating that if G was placed in an ACF, "It is likely that the relationship with mother would be severed to the degree that it would become difficult to recover". According to S, "The family court investigator was a very kind woman", and showed due concern to S and her family. Even at that time, this court ruling was epoch-making, giving careful consideration to the situation of S and her family.

Rejoiced to learn that the Article 28 plea had been turned down, S went to visit her daughter at the detention quarter at Nagasaki CGC . However, before S arrived, Nagasaki CGC had secretly transferred G somewhere and her whereabouts became unknown again. Nagasaki CGC then appealed to the second instance. Then, the CGC interviewed S's father (G's grandfather) to learn S's child-rearing policies from the standpoint of S's father.

G's grandfather H was a respectable man who had devoted his life to school education, including teaching at a secondary school. The following is what H said

about the CGC interview. “A staff member of the CGC asked me about the way of child care of S. So, I explained it in detail so that the CGC would leave in peace”. Gradually, H’s hands trembled and his eyes blurred with tears. “It was beyond my expectation. I was surprised at the evidence on S’s childcare that the CGC submitted to the tribunal. It was completely opposite to what I had explained. I didn’t say such terrible things. If the judge reads such a story, the judge will surely consign G to an ACF. Terrible! It’s really terrible. It’s a forgery of evidence. No matter what, the CGC, a public body, should not do it”.

In the end, the Nagasaki CGC succeeded in forcing Fukuoka High Court, the second instance, to admit the consignment of G to an ACF through ‘fabrication of facts by any means to win in the tribunal’.

The resolution of S to give up her home country

S could not stand the forced separation of her daughter from her family. During the time, there were increasing number of CGC victims across Japan and to support them, human rights organisations countering the CGC began to form. S was one of the victims who sought help to these organisations.

The strategy of these organisations at that time was as follows: First, they created situations in which the detained children could flee from the ACF or CGC, then they were hidden in places not known to the CGC. In the meantime, the organisations negotiated with the CGC for termination of the consignment order to the ACF. This strategy achieved epoch-making successes, such as the case of Kawasaki South CGC (**Annex 3**), in which the children who would otherwise be quasi-permanently separated from his or her parents were able to return to their original family. However, the staffs and the directors of CGC, who were driven to terminate the consignment order faced tenacious questionings against the loss of the ‘sources of financial incentives’ once secured by the CGC. The government thus began to take vile countermeasures such as filing a criminal complaint against the child’s biological parent for the charge of ‘kidnapping’, claiming in the meantime that “the custody right of the CGC is equivalent to the parental

authority" even if the child escaped from the CGC or ACF to his/her biological parents.

The case of S fell in the transitionary period towards intensifying oppression from the state power to the CGC victim support organisations. Amidst this shift in power relations, the JH#100 concluded that the only way for the S to securely protect the daughter chased by the CGC would be to seek asylum in a foreign country, beyond the reach of Japanese state power.

The organisations then began to elaborate strategy in dealing with domestic laws in order to support families who were willing to flee from the CGC of Japan even if they end up with living abroad.

S had a meeting with Association for Support of Victims of the Family-destroying Laws (ASVFL) and JH#100. They figured out the following strategy: The organisations would search whereabouts of G, go to her living area and contact and empower her to run away to her mother at her own will. As S had experience living overseas, she confessed that she did not mind to flee overseas and live safely together with her daughter in peace, because she hardly had any lingering attachment to Japan, where the CGC administration dominated. It was at this moment that the idea of the organisations planning to protect children from the CGC in Japan converged with the victims who wanted to regain the family integrity through an international exodus.

Child rescuing operation

Mr. O, a friend of S and G, visited ACFs in Nagasaki area and brought intelligence that he had seen a girl who looked like G at the 'Omura Children's Home'. Although it was still not perfectly certain, the rescue operation of G launched, covering Omura and other areas. The supporters left for Nagasaki late in October 2008 with S, H, O, and a supporter from the Chubu region of the JH#100 association, K. 'Omura Children's Home' was an ACF situated in a considerably underpopulated area with a few people passing by, and many

elementary school pupils from the ACF went out and back in every morning and evening in a group. The supporters desperately searched for G in the group of elementary school students. They also went to the elementary school looking for G among the children. Two days passed and yet they could not find G. Some supporters were inclined to give up the Omura area. S said in tears, “One more day, please”!

It was Friday, 24 October 2008, the third day of their investigation in Omura. They still could not find G in the morning. They were left with nothing but to leave Omura if they could not find her in that evening either. It was in that last evening that H found G. G said that on the last weekday before the weekend, she left her slippers behind in school, so she got permission to fetch them and was on her way back to school with another friend. She was surprised to see her grandfather, “Grandfather, why are you here? Did you come to pick me up”? H replied, “That's right. Let’s go home together. Your mother is right there”. G decided to go home without hesitation. She told her friends in the ACF, “I am going home. Bye”. G knew that the friend had kept eye on her, and would report the same to the ACF staff, and the ACF posse would surely come.

G ran with all her might *towards her mother*. K, a supporter, said, “She ran to see her mother. And I could see, indeed, that the CGC had made an irrational removal”. Later, G smiled and said, “I was so lucky to have left my slippers behind at school on that day”.

G was hugging her mother to rejoice meeting her for the first time in about a year. Suddenly, the ACF director arrived, noting the unusual situation. Much to our surprise, the director suddenly started to rip G off from S. S exclaimed desperately, “Stop it”! G’s body began to hurt and she said to the director, “It hurts me. Please don’t do it”. H, O, and supporter K, all gathered their voices and shouted, “You! The child is getting hurt! What are you doing”? The director did not answer. The three supporters grabbed the director’s arm and stopped him from assaulting G. Meanwhile, G jumped into a car through the door S opened.

The supporter K remained there because he could not stand the irrational assault of the director. The other two got in the car and left to protect the mother and the daughter.

Fraud by the ACF and solitary battle

The director called the police; at the same time, K also reported the incident to the police. The ACF staff also began to assemble there. As we learned later, the supporter K was wrongly framed as 'a child kidnapper' by the director and the staffs, who reported to the police, "As G was trying to flee toward the ACF director, the mother and others forcibly abducted the child and ran away". The supporter K said with regret, "It was a mistake that we tried to pursue the wrongdoings of the CGC and ACF personnel committed, fair and square. They are much more wicked than we thought".

K appealed at the police station about the director's wrongdoings; but a detective showed up and told K that the ACF had charged him with criminal offence. K was confined in a police detention quarter and interrogation began. K, having understood the situation, did his best to save S and G. Detectives asked, "They are attempting to escape to a foreign country, aren't they? They shall be caught at once. Which airport did they go? I've heard that it would be a direct flight from Kansai Airport to Europe".

"Hey, check out all the direct flights to Europe from Kansai Airport!" Yet The passenger list for direct flights to Europe from Kansai International Airport was exceedingly long. While the police were having a hard time in searching, S and G safely left Fukuoka Airport for Seoul, then for the Netherlands.

K recalled his conversation with S:

S: "After I get my daughter back, I will take a direct flight to the Netherlands from Kansai Airport".

K: "Just a moment. If the CGC let the police search the passenger list, you will easily be caught if you are on a common route".

S: “Then, Fukuoka Airport, a blind spot. Is there a direct flight”?

K: “No, conversely, the direct flights would be their first target. First fly to a place not related to your destination”.

K, while answering to the detective searching the mother and daughter, felt like the monk pointing the wrong direction to Nazis pursuing a Jewish family, “He ran away off this road”.

All the liberation from the fetters found abroad in exile

S and G arrived in the Netherlands on 26 October. They thus successfully escaped from the fetters of ACF and the authoritarian state power of Japan, in pursuit of their happiness. Nagasaki police put them on the international wanted list through Interpol, but there was no extradition agreement between the Netherlands and Japan. This was also one of the reasons why the human rights organisations had chosen the Netherlands as their destination at the time of planning. Nevertheless, the police came to claim that “The mother has no parental authority and the child should be repatriated to Japan”, apparently following the false claim of the ACF.

The Dutch police, in doubt of this claim, investigated the parental authority of the mother on their own, and found that the parental authority had not expired; thus, the Japanese claim turned out to be a downright lie. This was a turning point for the Dutch authority, into protecting and investigating the mother and children, deploying its own state power. The Dutch police, the judiciary, and the child affairs body concluded that there were no problems between the mother and the daughter and thus they were allowed them to settle together in the Netherlands.

The decision of the Dutch administration and the judiciary was significant. Thus, the international community came to learn that in Japan, once a child was separated from his or her family forcibly by the CGC, the judiciary continues to endorse the severance of the family members semi-permanently and once they go to a country where the concepts of genuine human rights dominate, they can live together normally with the support of the government authority.

The First Division of Investigation of the Nagasaki Prefectural Police said to the news reporters, “We can’t do anything about it”. Since then, the CGCs across Japan were thrown into a state of panic and hence began to assert that CGC’s authority of custody shall be regarded as a quasi-sole parental authority, and when a detained child flees home, a criminal charge shall be imposed on the parent, rendering the support organisations to resort to the physical rescue of the detained children in Japan impossible.

The fate of the people left behind

Those engaged in rescuing the child and remained in Japan were charged unreasonably with a criminal offence of “kidnapping for overseas transfer”, which had originally been enacted for kidnapping to overseas for ransom. At first, the authority had attempted to impose the charge of “child abduction”, but they could not do it because it is an offense indictable only on complaint; while the ‘victim’ G was too happy to be approached by her mother and colleagues. It was the transitionary period during which the CGC’s quasi-parental authority over the detained children was established, so the authority is now clearly make charges without hesitation as “child abduction” like in case of "Japanese single custody" practice. Currently, intention of child is no longer respected and parents saving their children under the power of the CGC are arrested as criminals.

H and O were put in the same police cell as heavy criminals and were interrogated separately. H became so thin due to excessive stress from gangsters, exhibited fundus haemorrhage, yet was not able to receive sufficient medical treatment. Sensing the danger of his life, H was driven to bay into signing a police protocol. O, also being cornered and having lost more than 10 kg of body weight, was also forced to sign an unveracious protocol in agony. K, the supporter, protested to the end; the detective told him, “The other two have signed this protocol. If you don’t sign it, the other two won’t be released, so they shall die. Especially that old man. He is pretty weak now. Your memory is wrong! G was trying to escape towards the ACF director! That’s what everyone else says except you”. In this virtual torture through *dolus eventualis*, he had no choice but to sign

a false police protocol, bearing the situation of other two in mind.

This was the moment they were virtually determined guilty before the trial.

III. Living in the Netherlands in Exile

In the Netherlands, G had to wait in fear until she attained 18 years to avoid being recaptured by the CGC. Her grandfather and the supporters were considered criminals and S was put on the international wanted list.

G returned to Japan on 23 April 2018 to clear her name, after hiding herself in the Netherlands for about ten years before her personal safety against the CGC was assured. She said that it was something special to be able to walk in her home country freely. She also met former supporters and enjoyed Japan for the first time in ten years. Finally, she went to the police to report that her seeking exile in the Netherlands was not an act of 'kidnapping' by her mother, that she had fled on her own will and that she wanted the honours of her grandfather and her supporters be restored and her mother be deleted from the wanted list.

A month after G returned to the Netherlands, a TV news programme reported that criminal papers were filed with prosecutors against her mother. This is the sad reality of the human rights of Japan—the authority does not even listen to the claims of the victims of the incident.

On 31 October 2020, upon being informed that their act of taking refuge in the Netherlands was to be reported to the UN Commission on Human Rights, G, who still lives in the Netherlands, issued the following statement:

"*At the time of the incident, I, an elementary school pupil, told the CGC that I wanted to return home as soon as possible. My request was ignored, and I was forced into the ACF. The CGC even fabricated evidence at the trial for consigning me to the ACF to win the trial.*

I am extremely grateful to my family and the supporters of the CGC victims for helping me out.

What the CGC did to me was a crime. Don't pretend that you don't know it.

Please give me back my life and time with my family in Japan.

Please redeem the honour of my family and the supporters by admitting the fault you made in criminalising them".

Her struggle is going on.