Creation of 'Artificial Orphans' by the CGC and ACF – Issues on Article 12 of CAPA: A Supplement to our Second Alternative Report

The Concerned Japanese Citizens for the Rights of the Child to Eradicate Child Guidance Centre Sufferings (JCREC)

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Supplement to Paragraph 88:

1 Paragraph 88 of our Second Alternative Report addresses the restriction of visitation rights between children detained in alternative care facilities (ACF) and their parents. This policy is expressed in a statement from *The Handbook of Children's Rights,* a booklet supposedly issued for the children detained in ACF to 'defend' their rights: ''when it is thought that you will get harmed or cannot be protected, **you may not be able to see [your parents]**''.

2 Following an inquiry by a JCREC member,[1] bureaucrats in the Declining Birth Rate Countermeasures Division, Bureau of Social Welfare and Public Health, the Tokyo Metropolitan Government said that this statement is based on **Article 12** of the 'Act on the Prevention, etc. of Child Abuse' (CAPA). They disclosed that this statement was appended to the original text of the *Handbook* upon enactment of CAPA in 2000.

3 Article 12(1) of CAPA stipulates as follows:[2]

> In cases where the measures prescribed by item (iii), paragraph (1), Article 27 of the Child Welfare Act (hereinafter referred to as the "measures for residential care, etc.") are taken for a child who has suffered child abuse or **temporary custody is taken for such child pursuant to the provision of paragraph (1) or (2), Article 33 of the same Act**, when it is found necessary for preventing child abuse and for protecting the child who has suffered child abuse, **the director of child guidance center** and in the case of the measures for residential care, etc. being taken for the child, the head of the institution [ACF] prescribed in the same item into which the measures for residential care, etc. are taken may, as

[1] Telephone interview on 28 December 2018.

[2] http://www.japaneselawtranslation.go.jp/law/detail/?id=2221&vm=04&re=01.

specified by an Ordinance of the Ministry of Health, Labour and Welfare, **restrict the whole or part of the following acts by the custodian who committed the child abuse:**

(i) Visitation with the child; and

(ii) Communication with the child.

4 Invariably, a total ban on visitation and communication is imposed on most detained children, whom the Child Guidance Centre (CGC) has consigned to the ACF against the will of their parents. Putting it another way, the CGC manoeuvres to deploy children as hostages, forcing parents' acquiescence to their consignment in an ACF.

5 These restrictions on visitation and communication aim at de facto deprivation of parental authority of the parents. The entirety of parents' authority is thus, in essence, transferred to the director of an ACF. Alice K. Carroll, a Canadian social worker dispatched to Japan as a UN advisor, strongly urged the abrogation of this policy. Nevertheless, ACF managers have continued to exert pressure, demanding these de facto transfers of custody. The Government of Japan (GOJ), having refused to abide by Ms. Carroll's advice, has turned Japan's detained children into '**artificial orphans**', completely severing parent / child relationships for considerable time periods, often several years or longer. A ban on visitation, pursuant to Article 12 of CAPA, has been imposed on Reiryu (mentioned in Case 2), and to date the separation has lasted almost six years.

6 Away from the watchful eyes of parents, who are unable to visit the ACF and see the condition of their children, ACF administration can inflict human rights infringements arbitrarily, including administration of psychiatric drugs and physical violence, upon detained children.

7 Children who have been cruelly removed from their families by the CGC often spontaneously express the desire to live with their parents again. This is a universal instinct, innate to all creatures. Once face-to-face contact with their original parents is made, children's innate desire to regain their former family life is intensified.

8 However, ACF management is dependent on taxpayer funding. Accordingly, keeping the beds nearly full of detained children at all times is an essential fator for running their business. Therefore, reunions are the last thing that an ACF wants to happen. In this system of vested interests, the fulfilment of the Committee's urge to

deinstitutionalise these children (as expressed in the List of Issues (LOI)) is thus just a pipedream.

9 Needless to say, this is in many respects a clear breach of the Convention. As Article 9(3) stipulates, 'States Parties shall respect the right of the child who is separated from one or both parents **to maintain personal relations and direct contact with both parents on a regular basis**, except if it is contrary to the child's best interests'.

10 UNICEF' s *Implementation Handbook* on Chapter 9 of the Convention[3] tells us that even a few months' severance of parent / child contact will likely cause problems with family reunification:

> evidence strongly suggests that c**hildren are less likely to be reunited with their parents if contact is not maintained with them during the early months of alternative care**. Planning of placements should secure that contact can be easily maintained by the parents, who may be unable to travel distances or visit at set times.

11 This legal provision of the CAPA, combined with the working method of the CGC, undermines the 'responsibilities and rights and duties' of parents in the family, which should be '**the natural environment** for the growth and well-being of all the members and particularly children' (Preamble of the Convention). In contrast to upholding the tenets established by the Convention, the CGC system in Japan is very much 'anti-family'. They are clearly in breach of **Article 5** of the Convention, which asks State Parties to respect the rights of parents 'to give appropriate direction and guidance' to their children.

12 Professor Krappmann, a former member of the UNCRC, clearly expressed his position against extended severance of parent / child parent relations in the main text of our Second Alternative Report. His comments can be found in the second paragraph of the block quote located in Paragraph 127.

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[3] *Implementation Handbook for the Convention on the Rights of the Child*, Third Edition, UNICEF, 2007, p.123.

Supplement to Cases 1 and 2:

13 The CGC adopts another measure to create 'artificial orphans'. As Cases 1 and 2 in the main text of our Second Alternative Report show, the CGC concealed the whereabouts of the children from their concerned parents. This human rights infringing measure is legalized in Japan by Article 12(3) of CAPA:

> In cases where the measures for residential care, etc. (limited to those taken pursuant to the provision of Article 28 of the Child Welfare Act) are taken for a child who has suffered child abuse or temporary custody is taken for **such child pursuant to the provision of paragraph (1) or (2), Article 33** of the same Act, when there is a possibility of repeated child abuse, such as the possibility of the child taken back by the custodian, or when it is found that the protection of the child would be disturbed if the domicile or resident of the child is identified to the custodian who has abused the child, **the director of child guidance center shall not identify the domicile or residence of the child**.

14 However, UNICEF's *Implementation Handbook* states:[4]

> **A failure to ensure that parents are told where their children have been detained**, or that children are told of the whereabouts of their parents, seems to be **an obvious abuse of human rights** and reflects international rules regarding the treatment of prisoners (see article 40, page 601).

15 Furthermore, UNICEF's *Implementation Handbook* provides that 'Circumstances in which provision of information [on whereabouts of the child] would be detrimental to the child **are likely to be rare and exceptional**'.[5] The scenarios given above in Article 12(3) of CAPA should not be significant causes for worry in considering the best interests of children. The CGC should therefore inform parents of all detained children of their whereabouts, without exception, pursuant to Article 9(4) of the Convention.

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[4] UNICEF, *op. cit*., p.131.

[5] Ibid.

Summing Up:

16 To sum up, the provisions of Article 12 of the CAPA function to orphanise children of living parents, with whom they would likely have a much better life (in accordance with Article 5 of the Convention). Article 12 is therefore not in the best interest of children, but rather functions to reinforce the vested interests of the ACF, breaching the Convention in many respects. If the GOJ desires compliance with contemporary standards of human rights that are accepted and practised in the international community, it should abrogate the entire Article 12 of CAPA immediately.

17 Recently, a women's weekly magazine popular among pregnant women and nursing mothers published an article entitled 'Frightening System'. In this article, a medical doctor confessed to the reporter that 'an irrational situation prevails in that, in order to get the child back [from the CGC] earliest, the parents should abide by whatever the CGC says'. A mother complained, 'even though it is only suspicion, the administrative measure (temporary custody) is autocratic and lasts too long', while a 'total ban of visitation is a treatment just like a punitive sanction to the parents'[6]. This 'irrational situation', which cannot help but conjure the Orwellian society depicted in the novel *1984*, should be eradicated immediately in order to permit Japan's existence as a free society.

Recommendation 7:

- All provisions of Article 12 of the Act on the Prevention, etc. of Child Abuse (CAPA) should be abrogated with immediate effect.

- All children currently detained by the CGC or an ACF and their parents should be granted the right of visitation and communication with each other, without exception.

- It should be made obligatory for the CGC to inform parents of the whereabouts of their currently detained children, without exception.

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[6] 'The Frightening System: Your hospital will report you to the CGC even if you have not committed any abuse, provided that certain conditions are met', *Shukan Josei* (*Women's Weekly*) 9 October 2018, pp.44-45.