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**Child Ombudsman Japan**

- NGO for Protection of the Rights of the Child -

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The Japanese Government’s noncompliance of the Hague Convention on the Civil Aspects of International Child Abduction, Problems of Child Abduction and CRC.

1. **Relevant Articles of the Convention on the Rights of Child, recommendations of the concluding observations (CRC/C/JPN/CO/3) and statements of the Government Report (CRC/C/JPA/4-5)**

* Articles 9, 18,19 and 20of the Convention on the Rights of Child
* Paragraphs 51,53 and 69 of the concluding observations (CRC/C/JPN/CO/3)
* Paragraphs 87 and 92 of the Government Report (CRC/C/JPN/4-5)

1. **The Japanese Government’s noncompliance of Hague Convention**

Japan was recognized as a noncompliant state of the Hague Convention on the Civil Aspects of International Child Abduction by the United States Congress in May 2018. This is the State of Japan has been very reluctant in dealing with child abductions by Japanese parents married to non-Japanese citizens.

This was the first time ever, since the establishment of the Convention, that the United States Congress recognized any state as a noncompliant of Hague Convention, and it is very dishonorable of an advanced state to be recognized as a noncompliance of the Convention. However, this incident is not discussed within Japan, nor none of the Japanese Diet members seem to care a bit about it.

Indeed, it would appear that the Government of Japan trivializes the rights of children and we cannot expect the Government of Japan to fulfill its international responsibilities to earnestly perform Hague Convention, as things are.

Regarding Japan’s so-called noncompliance with Hague Convention, not only American parents, but also those in many other countries in the world are disadvantageously affected to a great extent. Children living in EU countries like Italy and France, and Asian countries like China and Korea have been abducted by Japanese parents. Today forcibly separated parents and children endure the pains of being unable to see each other as they with.

The Japanese Government and courts, rather, vindicate the cruelties of child abduction instead of stopping them.

To put an end to such sad circumstances, we must demand that the Japanese Government thoroughly enact the Hague Convention. It is not enough, however, just to have the Hague Convention enacted within Japan to save all the parents and children who are victims of parental child abduction.

This is because the Hague Convention is directed against child abductions that take place across borders, and does not apply to parents and children living in Japan. Even in cases of marriages to foreigners, when one parent abducts the child to go to a different place within Japan, even if the abductor is of another nationality, the Hague Convention does not apply. The other parent is left with trying to get his or her child back using Japanese laws, to no avail.

In the Japanese Diet, Prime Minister Abe clearly stated, “The Hague Convention does not apply to child abduction which takes place within Japan.” The Prime Minister said that there are differences in addressing the abduction issue, between cross-border and domestic cases. Can Japanese laws really protect the rights of children? Among advanced countries, Japan is the only one that strictly maintains a system of “one parental authority after a divorce.” And the parent living with the child is granted parental authority and protected as such. Although there may be any serious problems as to “single parental authority system”, it is questionable that the responsibility of actual child raising is thought identical with parental authority.

This is called “Continuity Principal.” Even if the parent and the child came to live together following the abduction, it is no problem so long as the abductor is the legal custodial parent. And if the custodian is a mother, she has far more advantageous when it comes to acquiring parental authority. This is said to be “Principle of maternal priority.” However, the parent who does not have parental authority does not have any right to see his or her child and is not considered by society as a parent.

Japan ratified the Convention of the Rights of the Child. However, when it comes to deciding parental authority and custodial responsibility, the child’s rights and wishes are not at all taken into consideration. The spirit of the Hague Convention on the Civil Aspects of International Child Abduction comes from the spirit of the Convention on the Rights of the Child. However, the Japanese Government does not take the latter into consideration. This double standard has become a matter of course. This is the present circumstances in Japan.

Even with the potential of interfering with internal policies, unless Japan changes its constitution, which vindicates parental abduction of children, children all over the world will not be able to return to their parents.

Traditionally in Japan, raising children was considered maternally and a female responsibility. This concept, though, wrongly assumes that it involves the protection of women’s rights. This traditional concept, furthermore, distorts the idea of gender equality.

To correct such a misunderstood concept, it is necessary to let the Japanese people understand the global concept of gender equality and human rights and child rights, and at the same time, to give punitive sanctions against the violation of these rights. The current custom has such a long-standing history that it will take vigilance to effect change.

1. **The problems of child abduction**

1. **Child abduction in Japan and an outline of the mechanism that prompts the destruction of parent-child relationships**

To gain an advantage in obtaining parental authority, a wife (or husband) who decided on getting a divorce abducts their child, without the other’s consent, and goes to live somewhere unnoticed with the child, thus separating the child his or her other parent. In many cases, such an intentional separation leads to mediation or a lawsuit for a divorce. This often takes place, instigated by so-called “divorce lawyers”, who work solely for the sake of profit. This is a “divorce-winning” racquet in which divorce lawyers evade legal nets and cunningly use the constitution of the Japanese Family Courts and the police, which can be called a crime-like technique employed by a lawyer.

1. **The constitution of the Japanese Family Courts**

In Family Courts and other courts in general, “familial continuity” holds and even in a case of unilateral child abduction, if the parent who has custody of the child takes care of the child, regardless of the fact that an abduction in the first place or whether the custodial parent is at all fit to fulfill parental responsibilities, the court rules that the parent in custody of the child has parental authority over the child.

Furthermore, in the case where the child is abducted by his or her mother, “Principle of maternal priority” is applied, thereby increasing the likelihood that the mother will gain parental authority. Moreover, following “the concept of marital failure,” if the couple lives apart for about two years, and one of them asserts that she or he has no intention of fixing the relationship, even if there are no problems such as domestic violence, extramarital affairs or financial difficulties, the marriage is deemed a “marital failure” and a divorce is granted. On that occasion, no consideration is taken of the child, and the parent with custody of the child at the time of the divorce is automatically designated as the “authorized parent.”

1. **Lawyers’ technique for winning divorces**

Cunning use of knowledge of the construction of the determinations of Family Courts, the scheme is to first to abduct the child, make false allegations against the other parent, such as history of domestic violence, and following the allegation, go into hiding with the child for a period of time such that this period of time can be claimed as time spent as the parent with custody. As a result, after two years or so, the Family Court grants the divorce and the parent obtains “authority”. The Japan Federation of Bar Associations knows all about this questionable legal practice, but they acquiesce for the sake of lining their pockets with money.

1. **The actual response by the police, Child Consultation Centers, and schools**

If either wife or husband abducts the child while husband and wife live together, the police do not investigate the case. However, after the couple separates, if the husband or wife gets his or her abducted child back, he or she can be arrested for “kidnapping.” Under such a circumstance, the parent, whose child had been abducted, can do nothing to retrieve the child.

At the time when a child was first abducted, the act surely constituted a crime, as stipulated in Article 224 of the Criminal Laws, like a kidnapping of an underaged person. However, when either parent abducts his or her own child, the police acquiesce, without any clear explanation. The Child Consultation Centers respond almost identically, in the same manner as the police. No cooperation is extended to the other parent who had his or her own child abducted. Regardless of motive or reason for abduction, the parent who abducted his or her child is protected.

Following the request of a parent who has custody of the child to not allow the other parent see the child, even if the divorce is not yet settled, schools do not allow the separated parent to see their own child. If the parent forcibly tries to see his or her own child, the school calls the police.

1. **The length of time allowed for the separated parent and child to see each other ruled by mediation or divorce proceedings**

In mediation or a lawsuit for a divorce, contribution to child support and child-parent interviews after a divorce are decided. Contribution to child support is decided according to calculations published by the court. As for child-parent visitations, even when there is no problem at all between the separated parent and his or her own child, in most cases, visitations are to be held for two to three hours, once a month. Moreover, without the cooperation of the custodial parent, it is difficult to realize child-parent visitations. If either the contribution to child support or child-parent visitations are not duly performed, the parent can file such matters with the court. In this case, sometimes, the court orders “indirect enforcement.” In the case of failure to provide child support, a part of the negligent’s monthly salary and savings can be seized. In the case of indirect enforcement on the failure of allowing a child-parent visitation, a fine of ten to thirty thousand yen is imposed, which is a small amount of money and can be offset by child support contributions, hardly affecting the parent with custody. Practically, there is no effective means of enforcement to provide opportunities for the separated parent to see his or her own child.

1. **Possibility for grandparents to see their grandchild**

Since even a separated parent hardly gets to see his or her own child, it is almost impossible for grandparents to see their grandchild. It often happens that aged grandparents desperately wish to see their grandchild but die without ever seeing them.

1. **The existence of shelters for victims of domestic violence, run by civilian NPOs, which facilitate child abductions**

When an unfaithful wife abducts her child, she makes up the allegation of domestic violence by her husband and uses it as an excuse for the abduction.

Once the husband is labeled by his wife as a ”wife beater”, the administration office determines that the woman requires “assistance measures”, and her whereabouts is concealed. In such a case, there is no investigation conducted by the police and only assertions on the part of the wife at an administration office are needed.

As vehicles to conceal the whereabouts of parents with abducted children, there are facilities like domestic violence shelters, where mothers and children live temporarily. Domestic violence shelters are financially supported by the Japanese Government, according to their scale of operation. The more people a shelter receives, the more money comes from the Government. So, to raise their operations, shelters have built a “child abduction system” with the cooperation of lawyers who work mainly on parental child abduction cases.

Once a husband is recorded in the “child abduction system,” no matter what he says, he will not be able to see his own child, with no means of finding the whereabouts of his wife and child. Thus, the administration perfectly separates the husband from his wife and his child.

It is said that cases of actual, physical domestic violence amount to less than 10% of all reported cases of domestic violence. However, moral harassment (or psychological violence), which is very ambiguously defined, is also included in the category of domestic violence. Once a charge of domestic violence is filed, the husband (father) and his child are completely separated from each other.

After the claim is accepted and various ensuing procedures are completed, the mother and her child are on welfare and they are offered a choice to live in public housing.

An abduction lawyer will demand that the husband to contribute child support and pay marital expenses, which are deposited monthly in the lawyer’s bank account. Taking 10% to 30% in fees, the rest is handed to the wife who is now supporting her child.

However, in many cases, even after contributing child support and paying marital expenses, fathers are not permitted to see their own child. They are forced to go through continuous court battles, for years, which can be physically and mentally exhausting, sometimes to the point of harming themselves or others. Among separated fathers, there are many who have been mentally destroyed.

As I have just explained, in Japan, there exists a system of parental child abduction perfectly contrived in unison by public and private sectors.

1. **Proposed Recommendations**

We, Child Ombudsman Japan, request that the Committee recommends to the Japanese Government to take the following measures:

1. When a charge of domestic violence is filed, a third party (the police, for example) hears out both parties.
2. Applying the friendly-parent rule (the concept of tolerance), the parent who gives more time with the child to the former spouse is given the right of custody, and a system of “shared child support” is implemented in the perspective of child happiness and future child-parent relationships.
3. If the parent with custody does not allow the other parent see the child, citing various excuses, a system that demands the transfer of the right of child support right” to the other parent should be established.
4. During Family Court proceedings or a trial, if the child is supported solely by one of the parents, it often happens that the supporting parent “brainwashes” the child. To prevent such brainwashing, except when it is feared that the other parent may abuse the child, impartial measures should be legislated such as to allow the child to stay with each parent, alternating weekly, during court proceedings or divorce case.
5. It should be made illegal for a lawyer to deduct money, in the form of legal expenses, from child support contributions, which ought to be spent entirely on child support or from marital expenses, which ought to be transferred entirely to the former spouse.
6. Consultants for women play a very important role in helping them decide their life and, therefore, rather than leaving consultative task to NGOs or lawyers who have conflicts of interests, such a task should be manned by specialists who have been trained by the Government, clinical psychotherapists or specialists in the field, and a system should be established to check up on consultants regularly, avoiding biased opinions. The Japanese Government should establish an organ to vindicate human rights and avoid partial and unfair judgments in dealing with human rights.

-NGO Report to the UN CRC by Child Ombudsman Japan-