

Annex 3

An Alternative Report to the State
Report 'Combined Fourth and Fifth
Periodic Report of Japan on the
Convention on the Rights of Child'
June 2017

Severe Infringement on the Human Rights of Children and Families by the Child Guidance Centre and Alternative Care Facilities in Japan

The Concerned Japanese Citizens for the
Rights of the Child to Eradicate Child
Guidance Centre Sufferings (JCREC)
jcrec@hit-u.ac

November 2017

Contents

1. Preface: The Making and Background of this Alternative Report.....	3
2. A Brief History of the Japanese Child Guidance System.....	4
3. The 2010 Concluding Observation on Japan and the CGC	5
4. Galapagos-like Isolation from International Norms and Practices CLUSTER 'GENERAL MEASURES OF IMPLEMENTATION'	9
5. The CGC Detains Children without Judicial Review CLUSTER 'FAMILY ENVIRONMENT AND ALTERNATIVE CARE'	11
6. Arbitrary and Prolonged Detention of Children in CGCs CLUSTER 'SPECIAL PROTECTION MEASURES'	18
7. The CGC, Originally a Welfare Institution, Is Increasingly Assuming the de facto Juvenile Judiciary Role CLUSTER 'CIVIL RIGHTS AND FREEDOMS'	22
8. The Alternative Care System Run for Economic and Political Motives CLUSTER 'FAMILY ENVIRONMENT AND ALTERNATIVE CARE'	27
9. The CGC's Total Denial of Parental Visitation Rights CLUSTER 'FAMILY ENVIRONMENT AND ALTERNATIVE CARE'	34
10. Institutional Abuses in CGC Detention quarters and ACFs CLUSTER 'VIOLENCE AGAINST CHILDREN'	38
11. The CGC Deprives Detained Children of their Right to Education and the Development CLUSTER 'EDUCATION, LEISURE AND CULTURAL ACTIVITIES'	43
12. The Japanese CGC and ACF System is Destroying Familial Bonds CLUSTER 'GENERAL MEASURES OF IMPLEMENTATION'	50
13. The CGC Infringes on the Rights of Parents to Provide Directions to their Child CLUSTER 'FAMILY ENVIRONMENT AND ALTERNATIVE CARE'	53
14. Concluding Remarks	55
Appendix: Glossary of Abbreviations and Their Equivalent Japanese Terms	56

1. Preface: The Making and Background of This Alternative Report

1 The child guidance centre¹ (*jido sodansho* in Japanese, CGC hereafter) has increasingly become a source of worry and fear among Japanese families and children alike. Searching Google using two key words '*jido sodansho*' and '*rachi*', which translate into 'child guidance centre' and 'abduction' in English, shows more than hundred thousand hits. The 'Child Guidance Centre' entry of Wikipedia in Japanese now has a section specifically devoted to the human right infringements committed by the CGC. In the Japanese version of 'Yahoo answers', worried pregnant women write posts about their fears and the measures they need to adopt so that the babies in their womb are not to be taken away immediately after they give birth by the CGC. Their fears are not unwarranted, since it came to light that on 11 July 2017, a new-born was separated from the mother right after its birth; and this brought the new mother to bay into throwing a Molotov cocktail at Kagawa Child and Woman Guidance Centre.

2 So far, the appalling issues on CGC has not spread in overseas. The concerned citizens and victims of the child guidance centres got together in April 2017 on the occasion of a lecture meeting in Tokyo to organise themselves into an NGO called 'The Concerned Japanese Citizens for the Rights of the Child to Eradicate Child Guidance Centre Sufferings' (JCREC). The main objective of the JCREC is to ensure that the concerned international human right community becomes aware of the human right infringement on children and families committed by the CGC in contravention to the Convention on the Rights of the Child, and directives of the Ministry of Health, Labour and Welfare (MHLW hereafter) and alternative care facilities (ACF hereafter). The JCREC has so far produced and uploaded some YouTube videos, and prepared this alternative report as one of our important activities. Cases quoted in this alternative report are either the direct experiences of the JCREC members, those reported in reliable mass media or the reports submitted by the general public, carefully selected on the criteria of comprehensiveness and credibility.

3 We would sincerely hope that the members of the UNCRC would kindly read our report carefully, nourish deep understand the problem in depth, although it may seem unbelievable at the outset, and issue apt recommendations in the forthcoming concluding observations to Japan to provide relief offer salvation to those on whom a grave infringement of human rights has been committed due to these actions of the MHLW, CGC and ACF.

¹ In Annex 3 of the Government Report, CGC is referred to as 'Child counselling centres' (p.2). They are the same government institution. The number of the CGCs is listed after Annex 3.

2. A Brief History of the Japanese Child Guidance System

4 The CGC is a local government body set up by the Child Welfare Act (CWA). It is under the jurisdiction of either the prefectural or ordinance-designated city governments in charge of local governance. Currently, there are 207 CGCs across the nation.

5 After Japan's defeat in World War II, the General Headquarters (GHQ) of the Allied forces occupying Japan ordered the establishment of the CGC. It was to be modelled on a similar American government body. Its original aim was to take care of numerous war orphans and waifs who were starving on the streets. They were placed under 'temporary custody' by the CGC, as stipulated in Article 33 of the CWA.

6 Due to a large number of cases where parents had died or were missing on the battlefield, these children had lost their living parents and were thus sent to orphanages (alternative care facilities, ACF). Compared with life as a starving waif on the streets, living in an orphanage, in spite of its poor facilities, must have been heavenly for these children. There was no irrationality or infringement of human rights in this measure.

7 However, in spite of Japan's independence from Allied occupation and the declining number of war orphans or children needing the protection of the CGC and orphanages, Japan's child guidance system remains largely intact. The CGC and former orphanages were indeed no exception to the natural instincts of bureaucracy: self-preservation. During the era of rapid economic growth, the CGC dealt mainly with school truants.

8 Influenced by the advent of Thatcherism, the Japanese government launched the Ad Hoc Commission on Administrative Reform in 1981, aiming towards neo-liberal restructuring of its government structure. Under the mantra of the 'rehabilitation of the Japanese government finance without tax increases', the Commission took the initiative to privatise government-owned corporations and to scrap welfare measures. The Ministry of Health and Welfare

(MHW), in defying this neo-liberalist structural adjustment, spotted the child abuse issue and began to propagate child abuse prevention as the new task of the CGC².

9 Under MHW's new initiative, the Child Abuse Prevention Act (CAPA) was legislated in 2000 as the de facto supplement to the CWA. The enactment of CAPA was extremely rudimentary because it was stipulated upon the provisions of the CWA to meet the needs of war orphans and waifs. This legal arrangement contributed not only to rapid reinforcement, but also to further drastic expansion of the vested interests of the CGC and former orphanages (ACF). In short, the Japanese child abuse prevention policy was created out of the motive to protect the vested interests of the CGC and ACF, rather than to protect the rights and welfare of children.

3. The 2010 Concluding Observation on Japan and the CGC

10 As a result, it was inevitable that the child guidance system would perpetrate various human rights infringements in Japan. These problems were noted in the discussion of the UN Committee on the Right of the Child (UNCRC) and the Concluding Observations on Japan (document number CRC/C/JPN/CO/3).

11 In the session that took place on 27 May 2010, considerable doubts were raised by committee members regarding the nature and working methods of Japan's CGC and if they complied with the Convention on the Rights of the Child (Convention hereafter). Professor Lothar Krappmann, then a member of the UNCRC from Germany, made many stern comments

² This is evidenced by the abrupt publication of a full-volume special issue on 'Child Abuse' in Child and Family Division, MHW ed., *Jido Sodan Jireishu [The Collection of Child Cases]*, Nippon Jido Fukushi Kyokai, 1981, in exactly the same year as the Ad Hoc Commission for neoliberalist structural adjustment was set up. This journal normally published abundant cases of truancy in this period, as it was the mainstay of the CGC activities then.

to the effect that Japan's CGC undertook a de facto juvenile judiciary role and that its working methods sometimes infringed on the rights of children.

12 Professor Krappmann was informed that CGC staff were sometimes without competent qualifications. This was confirmed four years later in a report by the Human Rights Watch, a US-based human-rights NGO.³ It revealed that, '[o]ften, educational backgrounds [of the CGC staffs] *have little to do with child care*: the head of one Tokyo-based child guidance centre, for example, is a doctor, but a surgeon. It is also not uncommon to find that child guidance centre staff members previously worked in a completely different field, such as *construction or waterworks*'.⁴ Since the CGC is a body of the prefectures or ordinance-designated cities, the appointment of CGC staff is determined by the prefecture-wide personnel system. Therefore, experts who have professional post-graduate degrees in disciplines related to child affairs are seldom appointed to CGC positions.

13 The following excerpt from a journal article⁵ is a typical example of how the CGC truly operates in Japan with such poorly qualified staff who inflict the power bestowed upon them by the CWA and CAPA on children and their families:

◆ Case 1: A Secondary 4 Girl was Removed from Her Family and Detained by the CGC during the Period that she was to Sit for Her Senior Secondary School Exam

When I was first taken to [Kumagaya] CGC, a staff member told me, 'wait here until we finish talking with your mother'. I therefore thought that 'I should wait for only two or three hours and then I can return home'. Yet I was taken to the detention quarter of the [Saitama Central] CGC. On the way, I was forced to visit a gynaecology clinic against my will, under the guise that 'we are anxious and believe that you may have some illnesses'. Later, when I found out that they examined me to see if I was a virgin, I was so shocked that I was rendered speechless.

³ Human Rights Watch, *Without Dreams*, 2014. This report is available online at: http://www.hrw.org/sites/default/files/reports/japan0514_ForUpload_0.pdf

⁴ Human Rights Watch, *op. cit.*, p. 65, (emphasis mine).

⁵ *Shukan Kin'yobi (Friday Weekly)*, 24 July 2014, No. 1001, p.33. The information in square brackets was added based on a personal report provided by the girl's parents.

[The staff member in charge at Kumagaya CGC was Oikawa, the division chief.] He did not give me any explanation for my detention (temporary custody). He did not reply when I asked, ‘where is my mother?’, instead, he asked me for my dress size. I told him ‘I want to return home’, then he replied, ‘once you are here, you cannot return home for some time’. I screamed. My heart was filled with anger and sadness. I told him, ‘I was merely joking when I said I was abused’, yet he would not listen to me.

He told me ‘if you want to cry so much, do it here!’ and stuffed me into a room alone. He lied to me further and said, ‘the telephone call to your mother did not go through. Even if she picked up the phone, your mother was confused and the conversation did not go very far’. In reality, my mother repeatedly called the CGC and tried to discuss the matter with the staff. They turned her down, claiming that ‘we’re not at that stage now’. When my mother asked, ‘how can I get my daughter back?’, the CGC staff was said to have replied, ‘that is your business!’ [Later, the CGC demanded that my parents **get a divorce**. My parents followed the CGCs instruction because they wanted to get me back.] The CGC staff must have falsified information to make me think that my mother did nothing to try to get me back and induced me into hating my mother. [In the detention quarter, I was forced to take a pill, which must have been psychiatric drugs, after each meal.]

I was longing to return home all the time. I do not want to go anywhere like the ACF, and I cannot even think of going back to the CGC detention quarter, which is like a prison. I want to live with my loving mother!

14 This is a good manifestation of what Ms. Marta Mauras from Chile, a member of the CRC in 2010, pointed out. At Japan’s CGC, the excessive deprivation of freedom from children and youths have been inflicted on the pretext of ‘protection’. Ms. Mauras pointed out that this very measure was their *raison d’être*.

15 When interrogated by Professor Krappmann and asked if it was possible to file a lawsuit in such a case, a delegate from the Ministry of Health, Labour, and Welfare (MHLW),⁶ which placed the CGC under its jurisdiction, replied that she knew of no such case. Yet this was out of her ignorance, since a family in Shizuoka had sued the government for removing their children from them in 2009.⁷ Court cases against the actions of the CGC have been on the increase ever since.

⁶ MHLW, renamed from MHW upon its amalgamation with the Ministry of Labour in 2001.

⁷ Heisei 21 (wa) 25349, Tokyo District Court.

16 Paragraphs 62 and 63 of the 2010 Concluding Observation to Japan were devoted to the human rights problems in relation to the CGC:

62. The Committee observes with concern that **children who do not meet the behavioural expectations of school are transferred to Child Guidance Centres**. The Committee is concerned about the lack of information about standards of professional treatment, including the implementation of the child's right to be heard and his or her best interests to be considered and regrets that no systematic evaluation of outcomes is available.

63. The Committee recommends that the State party commission **an independent investigation of the child guidance system and its working methods**, including an evaluation of the rehabilitative outcomes, and include information on the results of this review in its next periodic report.

17 Paragraphs 52 and 53 on alternative care:

52. The Committee notes with concern the lack of a policy on alternative, family-based care for children without parental care, **the increase in the number of children taken into care away from their families, the inadequate standards of many institutions**, in spite of efforts to provide small-group and family-type care, and the **reportedly widespread abuse of children in alternative care facilities**. In this regard, the Committee notes the establishment of a complaints procedure which, regrettably, has not been widely implemented. The Committee welcomes the fact that foster parents receive mandatory training and receive an increased allowance, but is concerned that some categories of foster parents are not financially supported.

53. The Committee recommends, in light of Article 18, that the State party:

- (a) Provide care for children in family-like settings, such as foster families or small group settings in residential care;
- (b) Regularly monitor the quality of alternative care settings, including foster care, and take steps to ensure the compliance of all care settings with appropriate minimum standards;
- (c) **Investigate and prosecute those responsible for child abuse in alternative care settings** and ensure that victims of abuse have access to complaints procedures, counselling, medical care, and other recovery assistance as appropriate;
- (d) Make sure that financial support is provided to all foster parents;
- (e) Take into account the **United Nations Guidelines on Alternative Care of Children** (see General Assembly resolution 64/142).

18 These paragraphs clearly indicate that the UNCRC has suspected the infringement of human rights in relation to ‘the child guidance system and its working methods’ and the alternative care system in Japan. These suspicions are indeed correct.

4. Galapagos-like Isolation from International Norms and Practices

CLUSTER ‘GENERAL MEASURES OF IMPLEMENTATION’

19 The Japanese government just shelved these paragraphs and neglected to put the UNCRC recommendations into practice. It has been seven years since those recommendations were made in 2010. The ‘Combined Fourth and Fifth Periodic Report of Japan on the Convention on the Rights of the Child’ (‘Government Report’ hereafter) touches on paragraph 63, yet merely claims that the Japanese Government is considering ‘establishing a system to implement third party evaluations of temporary child protection facilities [=the “detention quarters” in this report] operated by child guidance centres’ (paragraph 106). However, what the CRC Concluding Observation of 2010 recommended was a third-party investigation of the child guidance system **as a whole**.

20 The Japanese Government is scornfully ignoring the UNCRC. Responding in parliament to an MP (member of the House of Representatives) Takako Suzuki’s question on 13 May 2016⁸ if the Japanese Government conducted the ‘independent investigation of the child guidance system’ in compliance with paragraph 63, Prime Minister Abe confessed that no ‘independent investigation of the child guidance system’ had been carried out, since the UNCRC’s ‘Concluding Observation is not legally binding’.

21 The response to paragraph 53 (c) is largely out of focus. The Japanese government refrained from mentioning anything about the recommended investigation into and prosecution of child abuse cases in alternative care settings.

22 The reaction to paragraph 62 is even worse: total negligence, including the misuse of the CGC by Japanese schools under malicious intent to expel pupils who do not behave to the satisfaction of the school authorities.

23 Unlike other State Parties that set up committees to amend domestic laws to make them compatible with the Convention, the Japanese Government has made scant effort to make the Convention an indispensable component of its legal system or to make their

⁸ House of Representative, No. 275 of the 190th session.

domestic legal provisions related to child abuse and the child guidance system compatible with the Convention, except for recently adopted window dressing—they have added the empty phrase ‘in the spirit of the Convention on the Rights of the Child’ to Article 1 of the CWA. The ‘Government Report’ makes no mention of the CWA in the section on ‘Measures taken to harmonize national laws and policies with the provisions of the Convention’. This is because the majority of articles are still in full of breach of the Convention.

24 The ‘Government Report’ makes only six mentions to the CGC, with few results on reviewing its system and working methods in compliance with the CRC Concluding Observation of 2010.

25 The half-hearted attitude of the Japanese Government towards the rights of the child and the family is also manifested in its recommendation of a committee member to the UNCRC. It is known world-wide that Japan has been quite reluctant in ratifying the Hague Convention. In this respect, we would like to point out that Mikiko Otani, an incumbent member of the UNCRC, has been blacklisted by the Japanese Children’s Rights Network⁹ on charges of having acted as an attorney on behalf of a Japanese mother who had abducted her son from his overseas father, and unilaterally supported his mother’s claim without proper legal authorisation in terms of the default international standard.

26 The MHLW prepares an instruction book titled *The Manual on Responses to Child Abuse* (hereinafter referred to as *Manual*),¹⁰ the authoritative practical guideline to the CGC across the nation, with scant regard to the Convention. In fact, this manual is the only government measure that is mentioned in Annex 2 of the ‘Government Report’.¹¹ Brief

⁹ Japan Children’s Rights Network, ‘Japan Lawyer Blacklist - Mikiko Otani’ http://crnjapan.net/The_Japan_Childrens_Rights_Network/law-blkota.html (accessed on 14 October 2017).

¹⁰ General Affairs Division, Equal Employment, Children and Families Bureau, MHLW, *Kodomo Gyakutai Taio no Tebiki [The Manual on Responses to Child Abuse]*, Yuhikaku, 2014.

¹¹ Annex 2, p.28, the line of MHLW.

mention is made of this *Manual* in paragraph 63 of the 'Government Report', without confessing that little attempt has been made to make it compatible with the Convention.

27 Although the *Manual* very briefly refers to the 'Convention on the Rights of the Child (CRC)'¹² in the beginning, it is merely an excuse, as the Convention is never used as the legal guiding principle for the administrative measures that are stipulated in the *Manual*. The MHLW's negligence towards the Convention is evidenced by the fact that the *Manual* does not contain the text of the Convention in its 'Reference Material' section. Furthermore, the *Manual* does not make a single reference to the UNCRC nor does it mention of the Concluding Observations.

28 The MHLW is not a legislature, nor has it received the legal right of the interpretation and operation of legislation from parliament. The *Manual* is not a law that passed a parliamentary vote. Although not legally binding and containing statements that are in breach of the Convention, it is used by all CGCs across the nation as well as other governmental bodies as their essential guideline with de facto authoritative power. Hence, the *Manual* is essentially a government document supporting the power of the CRC and ACF, instead of supporting the rights of the child. This is an important cause of the human rights infringements.

29 In what follows, we take up the violations of the domestic legislature to the Convention in relation to the CGC and ACF. Our alternative report should therefore function as a surrogate for the result of the 'independent investigation of the child guidance system and its working methods' that clause 63 of the Concluding Observation in 2010 demanded from the Japanese Government.

5. The CGC Detains Children **without** Judicial Review

CLUSTER 'FAMILY ENVIRONMENT AND ALTERNATIVE CARE'

30 Article 9, Section 1 of the Convention stipulates as follows:

*'States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities **subject to judicial review determine**, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child...'*

31 Article 37, Section d of the Convention stipulates:

¹² MHLW, *Manual*, *op. cit.*, p. 12

*‘Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other **competent, independent and impartial authority**, and to a prompt decision on any such action’.*

32 This should be the severest breach, or even betrayal, of the Convention by the Japanese Government. The ‘judicial review’ stipulated in Article 9 of the Convention must be made BEFORE the children are removed from their parents and detained by the CGC, as is clarified in this article prepared by UNICEF:¹³ ‘removing children from their parents is as serious a step as depriving them of their liberty, and **merits a fair hearing** conducted under the rules of natural justice’.

33 In countries such as the former republics of Yugoslavia, their social work authorities had the power to take children into custody without prior judicial review. Yet **these countries expressed explicit reservation to Article 9 to the United Nations**¹⁴. The CRC in return systematically encouraged these countries to withdraw all such reservations through amending their domestic laws.

¹³ *Implementation Handbook for the Convention on the Rights of the Child*, Third Edition, UNICEF, 2007.

¹⁴ For Slovenia, Endnote 57 of the UN website on the Convention on the Rights of the Child (https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv11&chapter=4&clang=_en#EndDe) reads as follows: ‘On 19 January 2004, the Government of Slovenia informed the Secretary-General that it had decided to withdraw its reservation made upon succession. The reservation reads as follows: “The Republic of Slovenia reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Slovenia provides for the right of competent authorities (centres for social work) to determine on separation of a child from his/her parents without a previous judicial review.”’ (accessed on 12 November 2017)

34 In case of Japan, the Government has never expressed its reservation to Article 9; instead clandestinely ordered, that the CGC take children into detention as per Article 33 of the CWA in Japan:

‘A Child Guidance Centre’s **director may, when he/she finds necessary, take temporary custody of a child...**’

35 The law does not require objective evidence or grounds for the director’s judgement. No court reviews are involved. The CGC does so based on their internal criteria that were set up by the CGC and were never made public. This clause allows for the arbitrary detention of children by the director of the CGC, with few legal limitations. Without the direct involvement of the judiciary, i.e. detention of the child without a court-issued warrant, the CGC director, who could be an amateur with regard to child affairs, decides to detain the child for months or even for more than a year.

36 Consent from parents or the child is not a precondition of detainment, either. In the *Manual* of 2013, the MHLW blatantly confirmed this working method as follows: ‘It is possible to implement temporary custody by authority even if there is no consent of the child or parents’ and ‘consent of the child him/herself or parents is not a requirement in the discretion of temporary custody’.¹⁵

37 The MHLW made a premeditated admission in the 2007 edition of *Manual* that ‘this sort of coercive system carried out against the will of those concerned normally requires judicial review, yet the temporary custody in CWA requires no permission from the court, either *ante* or *post factum*. The system attributing such strong power to the administrative body is singular in the child abuse system overseas, or there is no other system comparable to this in Japan, either.’¹⁶ The MHLW does know that this catch-as-catch-can system of children detainment does not exist anywhere in the world – it happens only in Japan because the State Parties all honestly abide by the Article 9 of the Convention! The Japanese Government later changed its position somewhat, stating that it is legal from the standpoint of the Convention because parents could sue the Government for the revocation of administrative dispositions

¹⁵ MHLW, *Manual*, pp. 113-114.

¹⁶ MHLW, *Manual*, 2007 version, Chapter 5, 5 1(1), <http://www.mhlw.go.jp/bunya/kodomo/dv12/05.html> (accessed on 05 November 2017.)

*post factum*¹⁷. However, as UNICEF's above explication stresses, this excuse is absurd, if only because the legal procedure at court normally takes years, whereas the detainment lasts only two months, at least initially. As the above explication of UNICEF stresses the existence of this legal procedure does **not** make it compatible with the principle of the Convention.

38 Given the dismal qualifications of CGC staff, it is unsurprising that the removal of children from their families is rarely seen as just and fair. Instead, CGC staff often employ forgery, exaggeration, and distortion or resort to the intimidation of parents. Their decisions are made without regard to due process and are finalised without independent judicial review of the veracities of the allegations made by the CGC. Needless to say, the structure of the child guidance system in Japan is indeed infringing on the human rights of children and families.

◆ Case 2: Two Children of the Yasuhara Family Taken into CGC Custody on False Charges of 'Abuse'¹⁸

My daughter (Primary 2) and son (five years old) have been detained under 'temporary custody' of the Kumamoto Prefectural Central CGC in Kumamoto, Kyushu and have not been returned to my family for more than a month. On 7 September 2017, my children were suddenly removed from their elementary school and kindergarten around 2 pm. My son was deluded by CGC personnel with the deceiving words, 'you can see your sister', and was taken by car to the CGC detention quarter.

The CGC had received reports of 'abuse' from April 2017. I suspect these reports came from a mother at my son's kindergarten who had been in trouble with me over an activity in the school's parent association. The mother has been notorious for reporting anyone who antagonised her at the kindergarten to the CGC. Despite the reports, the CGC had not summoned me or visited my family, apart from a few phone calls that were made to a family who took care of my children on my behalf. I responded to the CGC inquiry and assured them that there was no problem. I would have naturally accompanied my husband and visited the CGC or have accepted their request for an interview or home visit had the CGC observed any problems with my family.

Upon the detention of my children, the Kumamoto Prefectural Central CGC summoned me on 8 September. The division chief, section chief, and a CGC social worker were present. They claimed

¹⁷ Otsu-I No. 3 Brief by the Ministry of Justice in *Mizuoka v. Minister of Justice*, Saitama District Court, Heisei 27 (Gyo-U) No. 9, 2016, p.12.

¹⁸ A narrative provided by the mother in the Yasuhara family to JCREC.

that the cause of the detention were abuse reports of which I had no knowledge. The CGC staff accused me without any concrete evidence, saying ‘you slapped your son at your daughter’s music recital in March!’ ‘You slapped your son when he asked you to buy him something!’. Their words had a tone of intimidation, claiming, **‘you may be unable to see your children until they are 18 years old!’** and **‘your children’s detention period could be prolonged unless you remain on good terms with the Child Guidance Centre!’** They had no concern for the welfare of a child who would be negatively affected by prolonged detention, but instead repeatedly claimed, ‘you are bugged up and panicked!’ In reality, I did not take my son to my daughter's recital nor had I ever slapped him. I told them it was untrue, but the CGC did not release my children. In a summons, the CGC also accused me of having an absent husband. He had been posted to a position in the Tokyo Metropolitan Area since July 2017.

Taking the situation seriously, my mother, mother-in-law, and husband rushed to Kumamoto. The CGC department chief and social worker claimed that they had used every possible means to persuade me that I had indeed ‘abused’ my children. The CGC even fabricated new abuse cases. For example, ‘I slapped my daughter since she was late for her piano lesson’, ‘I kicked and beat my son when sending him to and receiving him from the kindergarten’, ‘I dressed my son in wet clothes’ etc. These claims were completely unwarranted. My daughter could not have been late for her piano lesson because her piano teacher takes the students on a first-come-first-served basis without a fixed schedule. Other parents would have stopped me if I had kicked and beaten my son at the kindergarten bus stop, and the bus driver would not have allowed my son to board the bus if he had been wearing wet clothes. Consequently, the CGC vacillated back and forth on ‘the decisive factor for detaining my children’, with false charges always adulterating the story.

The ‘Notification of Decision for Temporary Custody’, issued by the Director of the CGC on 14 September, did not mention anything about the charges of abuse that I was told in the summons was the reason for the detention. It simply stated that it was ‘to determine the ways to organise support’. What was the point off forcibly detaining my children, to ‘determine the ways to organise support?’ What kind of ‘support’ is it? I cannot see anything rational about the situation.

A couple of weeks passed without any improvements. My husband came back from the Tokyo Metropolitan Area to our home in Kumamoto. My mother-in-law and mother stayed with us to show that my family could support the rearing of my children. To refute the claims made by the CGC, I met a psychiatrist on 25 September and obtained a diagnosis that stated that I did not have a dissociative identity disorder. The CGC refused to accept my appointment for an interview with myself and my husband until October 2017. Although they initially told me that they would return my children after the completion of psychological tests, they did not do so even after they were notified of the results. The result was very much subjective, something like ‘they feel the fear of oppression’.

Whenever I said anything during the interview that was not amenable to the CGC staff, they thought I was ‘defying them’. It seems they are attempting to force parents to accept their views.

In vain, the principal of the kindergarten and I together solicited the CGC to allow my son to join an athletic meet on 7 October. Our request was denied on one pretext or another. Opposing my claim that they did not allow my children to go to school or kindergarten, they even made the absurd proposal of having a foster parent raise my children and sending them to other schools and kindergartens.

I cannot tolerate the CGC. They relied on a report that lacked credibility and deprived my family of our two beloved children. I realised that the decision and the subsequent development of the situation was very much dependent on the individual capacity of the CGC staff in charge, which means that the fates of children are dependent upon the whims of the CGC director and staff, who have abducted tens of thousands of children from innocent families with undaunted attempts to justify their actions. Lately, the Kumamoto Prefectural Central CGC staff began to lose their composure, asserting, ‘we never err!’

Nevertheless, the manoeuvring of reporting maniacs who report false ‘abuse’ cases with the malicious intent of harassing neighbours has been tolerated in the child guidance system in Japan. The system lacks proper third-party investigation and judgement of the operation of the CGC that infringes on human rights.

39 Unfortunately, this is normal working procedure for CGCs across Japan. Robust judicial review for the detainment of children based on hard evidence is replaced with arbitrary cases fabricated by CGC staff and social workers without proof. Intimidation functions as a surrogate for persuasion based on rational logic and hard evidence.

40 Even in the case where the judiciary is involved, the judiciary never works in a just, independent, or impartial manner. The MHLW has been trying to bring the court proceedings to their side, and away from real justice and objective judgement, to minimise court decisions that are adverse to the CGC. The CGC and ACF are therefore left to freely inflict various human rights infringements upon children and their parents.

41 In some cases, family court proceedings do involve consigning the detained children to an ACF under disagreement from the parents, which is called ‘Article 28 pleading’. Here, the family court judge must prove that ‘the care by parents significantly harms the welfare of the child’. The family court investigators conduct investigations by interviewing a variety of stakeholders, including the child and the parents.

42 Here, the *Manual* asks the CGC for ‘**smooth cooperation with the family court investigators** and the network of relevant organizations around the child with the CGC staff at

the centre'.¹⁹ In other words, the *Manual* bluntly orders the CGC to co-opt the family court investigators to avoid investigation outcomes that would be adverse to the CGC. In Japanese family courts, the court investigators have the de facto decisive role that leads to the final sentence.

43 The court procedure itself is rigged, because **CGC staffs have the right to negotiate with the court judge** before and during the trial. They naturally take advantage of this, while the child and parents are not given this sort of opportunity. Consequently, the family court accepts the allegations based on the CGCs vague justifications, such as, 'there is a welfare violation against the children',²⁰ without confirming that there is objective evidence of 'abuse'. Due to this collusion between the CGC and the family courts, the acceptance rate for the placement of children in ACFs is as high as 78.4%.²¹

44 For those children consigned to an ACF by family courts, the CGC must plead the court for renewal every two years. However, the rate of upholding the initial decision is almost 100%. Once a child is placed in the ACF, the reality is that the child will be forced to live there until the child is no longer a minor.

45 Even among jurists of Japan, 'opinion to adopt judicial review into the system has been strong from the standpoint of ensuring the due process of administrative measures'.²² These jurists must have in mind Articles 31, 33, and 34 of the Constitution of Japan that require, as a measure to protect human rights, a warrant to be issued by a court before bringing a person into detention. Yet the MHLW has not paid attention to their policy proposals so far.

46 In summary, in Japan the involvement of the family court is scant, and even when it is involved, its involvement does NOT mean that children and families can enjoy

¹⁹ MHLW, *Manual* p. 263.

²⁰ MHLW, *Manual* p. 158.

²¹ Family Division, The Secretariat of the Supreme Court, *The Trend of Article 28 Pleading and the State of Affairs*, January to December 2014, p.6.

²² Machino Shuo and Iwase Toru, ed., *Jido Gyakutai no Boshi [Prevention of Child Abuse]*, Yuhikaku, p. 204.

independent and just third-party reviews of the actions of the CGC. The family court and the CGC are, to a considerable extent, in collusion: in Japan, the judiciary is merely a formality.

47 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations on Japan:

Recommendation 1: The Japanese Government must introduce judicial review as an essential precondition BEFORE the Child Guidance Centre (CGC) performs any acts of removal of the child from the parents.

Recommendation 2: All court procedures in relation to the child guidance centre and the alternative care system should be made totally independent of the CGC. All prior consultation between the CGC and family court judges and investigators should be abrogated and banned.

6. Arbitrary and Prolonged Detention of Children in CGCs

CLUSTER 'SPECIAL PROTECTION MEASURES'

48 Article 37 of the Convention stipulates in section (b) as follows:

*'No child shall be deprived of his or her liberty unlawfully or **arbitrarily**. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only **as a measure of last resort and for the shortest appropriate period of time**.'*

49 Clause 14 of 'Guidelines for the Alternative Care of Children' which was adopted by the 64th Session of the UN General Assembly in 2010, states that:

***removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration**.'*

50 This stipulation by the CRC imposed on the State Parties that the restriction of the freedom of a child shall be: (1) exceptional, (2) the last resort, and (3) for the shortest appropriate period.

51 The Japanese Government does not accept Article 37(b) of the Convention as a rule that is applicable to children detained by the CGC, claiming that it applies only to the detention of a child who committed a criminal offence.²³ However, the explication of the

²³ Otsu-I No. 3 Brief by the Ministry of Justice in *Mizuoka v. Minister of Justice*, Saitama District Court, Heisei 27 (Gyo-U) No. 9, 2016, pp.14-15.

Convention by UNICEF clearly puts forward, 'The provisions relating to the restriction of liberty do not just cover children in trouble with the law (in many States restriction of the liberty of children is permitted **for reasons ...'welfare'**, mental health, and in relation to asylum seeking and immigration)',²⁴ making it clear that this provision also applies to the kind of detention that is performed by the CGC.

52 The 2013 edition of the *Manual* asks the CGC 'to utilize temporary custody without hesitation **and then** investigate the facts, etc. of the abuse',²⁵ which in effect, orders the CGC to remove a child from his/her parents NOT as the last resort, but prima facie, without scrutiny of evidence or examining the possibility of false accusations. The MHLW virtually admits that at least some of the children who have been taken into 'temporary custody' were removed from their parents and detained with a lack of evidence.

53 In line with this MHLW statement, Article 33 of the Child Welfare Act of Japan was recently changed for the worse, allowing the CGC to detain children merely to 'obtain data for the situation of children's mind and body, its environment, and other situations'. The CGC can now remove ANY children from their parents as they like.

54 Once the children are taken into the CGC detention quarter (of which official name is '*ichiji hogosho*'), the period of detention is virtually unlimited. Although initially it is supposed to be limited to two months, this is already very long and can be extended for an unlimited number of times. During the first period of detention, parents are instructed that they have the right to 'petition the administration for redress of a grievance'.²⁶ On renewal, the CWA has recently been changed to require judicial review, however, this change has a fatal loophole exempting the CGC from applying for the review of the renewal if the CGC pleads for the consignment of the child to an ACF, i.e. 'Article 28 Pleading'.

55 Once the CGC detains children, it is normally reluctant to return them to their parents. The economic reason behind this is explained in Chapter 8. The CGC can extend the period of detention for unlimited period, in pursuance of Section 4 of Article 33 of the CWA, that stipulates that 'notwithstanding the provision of the preceding paragraph [limiting the

²⁴ UNICEF, *op. cit.*, p.548.

²⁵ MHLW, *Manual, op. cit.*, p. 107, emphasis mine.

²⁶ This is not a lawsuit, as HRW misunderstood on p. 13 (note 15) of *Without Dreams*. It is merely a petition within the administrative system.

detention to two months], a Child Guidance Centre's director or a prefectural governor may, **when he/she finds necessary, continue the temporary custody...**, this time subject to judicial review for limited cases. This legal provision means that the working principle of Japan's CGCs are in complete contravention of the stipulation of 'the shortest period' in the Convention.

56 Prolonged detention is also carried out once the child is consigned to an alternative care facility (ACF, former orphanages). Although the CWA stipulates that the consignment at an ACF shall be two years, this could again be extended for an unlimited time until the child is no longer a minor. The court review for this extension is almost automatic without much objective judgement.

◆ Case 3: The Sorrowful Cry of a Mother, Suffering from Cancer, Whose Bond with Her Son Was Severed for More Than Ten Years by the CGC and ACF²⁷

In August 2005, my son was placed in the Koyama Jido Gakuen, an ACF in Higashi Kurume run by the Tokyo Metropolitan Government, because he ran over an elderly person with a stolen bicycle. Shinagawa CGC, having removed my son from me in late July 2005, fabricated that his consignment to the ACF was due to my 'abuse' towards my son, and asked me to sign a document stating this for his ACF consignment. The CGC staff scolded me, 'Just sign it, right away, because you abused your son!' I signed the document, consenting to the placement of my son in the ACF, crying out of fear. I protested repeatedly, yet the CGC claimed that everyone would be afraid of my son if they knew that he had committed a crime.

Thereafter I contacted the CGC several times to see my son. Yet the CGC never arranged the meetings. The social workers in charge frequently changed in quick succession, and when I called, would always claim that they were attending meetings or have gone out, and thus I was unable to contact them. The CGC staff never contacted me back either. The CGC did not allow me to see my son, who must have misunderstood the situation. I did not see him by choice, but because I was banned from seeing him! The CGC never allowed me to contact him.

My son left Koyama Jido Gakuen in March 2015, yet the CGC did not tell me where he went and what he was doing, although Koyama Jido Gakuen should have known of his whereabouts. I could also not be my son's guarantor, again against my will. The true reason was that I suffer from cancer. I cannot contact my son or have Koyama Jido Gakuen tell him about my illness on my behalf. In responding to my request to see my son, staff of Koyama Jido Gakuen threw nasty words at me, 'if you

²⁷ A report submitted by a mother to JCREC.

want to die, die early! It would be more pleasing to us. Since your son is not here and you are a perfect stranger to us, our ACF has nothing to do with whatever may happen to you. There is no need to tell us about your son!

I want to see my son. He is very important to me. I want to know what he is doing and where he lives. I want to ask him not to repeat the same crime again. I want to say that I have been unable to see him because I was not given the opportunity.

I have heard rumours that the staff of the Koyama Jido Gakuen ACF administer a drug equivalent to narcotics to detainees. It is ubiquitous for the ACF to administer psychiatric drugs to detained children. I questioned with trepidation if the ACF would not help anyone if a disaster breaks out. The reply was, 'we will not help anyone, even the children who stay in our ACF'.

The staff were unable to understand the importance of the familial bond. They were also not concerned with my life. They ignored me, even though they knew that I needed my son's certificate of residence for house rent exemption. Since mandatory procedures were not carried out, I was forced to pay an unnecessary fine. They ignored whatever I said. It is the absolute truth that whether the children did something wrong or if the parents did nothing wrong, both are suffering in Japan. The CGC will not allow children and parents to see each other. They may not see each other for years. Even if the parent dies, the child will not be notified. The CGC promotes the rupture of the child--parent bond.

This is the reality of juvenile institutions in Japan. I would like to convey to the world that CGC social workers destroyed our parent-child bond and that the ACF staff cannot and do not understand the importance of an individual life.

57 This far-reaching cry of the Japanese old mother infested with cancer coalesces into the cry of the Aboriginal mother whose child was taken away by the Aborigines Protection Board in Australia which until 1961 had the powers to remove Aboriginal children from their families. A South Australian government publication writes this in reflection²⁸:

For the last 50 or so years of that period, many Aboriginal children, mainly of mixed descent, were **arbitrarily removed from their parents and communities** [to foster parents or ACFs]. **They were rarely allowed contact, or reunited with their parents.** Often they were abused physically, psychologically and sexually. The saddest aspects of these appalling events are that those responsible were generally **well intentioned** and had the support of a society that was largely indifferent to Aboriginal people.

²⁸ Department for Education and Child Development, *We Took the Children: A Contribution to Reconciliation*, Government of South Australia, 2014, p.36 (emphasis mine).

58 Unlike South Australia, The Japanese CGC, which has acted in the same way for more than half a century after South Australian Government stopped doing it, never reflects its conduct. Overall, the unilateral abduction and detention of a child is, even if it is carried out with well-intentioned motives, likely going to result in the infringement of human rights and in the wilful negligence of the well-being of children and their parents.

59 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations on Japan :

Recommendation 3: The period of detention of the child in the CGC should be limited to maximum of two weeks, with no provision of for extension.

Recommendation 4: Japan should admit that Article 37 of the Convention as well as the Beijing Rules are also applicable to children detained by the CGC and ACF, and act accordingly.

7. The CGC, Originally a Welfare Institution, Is Increasingly Assuming the de facto Juvenile Judiciary Role

CLUSTER 'CIVIL RIGHTS AND FREEDOMS'

60 Although not explicit, the Convention presupposes that the actions of government welfare bodies must be supervised by an independent judiciary body to protect and promote the rights of children and families.

61 However, the CGC in Japan is functioning as the de facto juvenile judiciary in itself, due to the persistent policy orientation of the MHLW. The fact that the CGC makes judgments on detention without judicial review is just a case in point. The CGC in Japan is now assuming the role of the 'family police'.

62 The 'Government Report' pays no attention to the CGC's shift to the de fact juvenile judiciary role. For example, the CWA was recently amended so that every CGC has a full-time lawyer (Article 12, Clause 3). This is a big change, yet no mention is made of it. It seems that the MHLW is transforming the CGC into the de facto judicial power and concealing it from international scrutiny.

63 First, a recent survey carried out by the Tokyo Bar Association²⁹ revealed that CGC staff maintain constant contact with prosecutors and courts, which the lawyers there take part in, in addition to preparing for Article 28 pleading.

64 Second, the CGC is now beginning to consign the ‘juvenile with a criminal bent’, as stipulated in Article 3-iii of the Juvenile Act, to a juvenile reformatory. ‘Preventive detention’, having been enacted to detain adults who had a propensity to commit ‘ideological crime’, was abrogated from the Japanese criminal law system after WWII. This clause in the juvenile act is an exception to it and is applicable only to children that are younger than 19 years of age. Some jurists in Japan claim that this clause should be applied very prudently in view of the rights of the child.³⁰ The lawyers at the CGC are, in contrast, now assigned to promote a more aggressive application of Article 3 of the Juvenile Act, by asking family courts to judge that any child removed from their family who is ‘likely to commit a crime or violate laws and regulations of a criminal nature in the future’ to be consigned to a juvenile reformatory. It is suspected that young political activists will also likely be subject to confinement through the CGC in case of a national emergency.

65 Nevertheless, this provision of preventive detention is likely to contravene Article 17-1 b and c of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules):

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

66 Furthermore, when the legal procedure stipulated in the Juvenile Act is pursued by the CGC, the rights of the child expressed in Article 7.1 of the Beijing Rules are unlikely to be fulfilled.

67 In short, the general policy orientation of the Japanese Government has been precisely what Professor Krappmann worried about: the conversion of the CGC to the de facto

²⁹ H. Higuchi, F. Makita, M. Okazaki, “The CGC with attendant full-time lawyer and protection of the rights of the child,” lecture held in Tokyo, 27 October 2017.

³⁰ e.g. G. Sakata, *Gakko Kyoiku Funso: Jiken no Gaiyo, Hanketsu, Soten* [School Education Disputes: Their Outlines, Court Decisions and the Issues], Shumpu Sha, 2007, p.237.

juvenile judiciary to the degree that it inflicts even more power on children and families than the police.

68 Everyone understands that the police embody and manipulate state power, thus policemen have been trained to exercise their power more prudently, strictly based on legal provisions. For example, the Japanese police has its own ‘temporary custody’ law. It is in ‘The Police Duties Execution Act (PDEA)’, enacted around the same time as the CWA. Article 3 of the PDEA stipulates that the period of ‘custody’ of a ‘lost child’ shall be for 24 hours only, and its renewal requires permission from a summary court with the reasons for the extension clearly stated on the permit. Even if it is granted, police custody shall not exceed five days. This PDEA stipulation is more compatible with the Convention. However, currently Japanese police simply ignore this Article and pass along almost all children that they find to the CGC detention centres, where the period of detention is indefinite. This comparison shows the irony in that the CGC, which claims to be an institution of welfare, infringes on human rights far more than the police.

◆CASE 4 : Police Inadvertently Passed Children to the CGC without Abuse Evidence, Which the CGC Attempted to Fabricate Later³¹

At two-months-old, my youngest daughter passed away on 15 February 2016. My husband and I were taken to the Kawaguchi Police Station. While being interviewed, a policeman on duty looked after my three-year-old son and five-year-old daughter. I thought my child’s nappy needed to be changed, so I handed them over to the policeman.

After the interview, I asked the policeman for my children. Much to my surprise, the children were not there, since the police had passed both to the CGC without informing me. The reasons for this was the almost bursting nappy that I had not changed as I was upset due to my daughter’s death , and a scratch on my son, which he got from his sister while I was doing housework.

I protested that there were no grounds for the police to pass my children to the CGC, and demanded their return. The police replied that ‘it was the decision of the CGC, so ask the CGC for details’, and intimidated me by saying that if I continued protesting, they would arrest me for obstructing a police officer in the performance of their duties. I could do nothing but go home without my children.

On the same day, Onozato and Suzuki of the Minami CGC came to my home. They investigated my house, took pictures, and saw how I was raising my children. They said that the police

³¹ A narrative by a mother, submitted by the family to JCREC.

had not decided if there was any criminality in the death of my younger daughter, thus the CGC could not disclose the place where my children were detained. I got the impression that the CGC would return my children once the police's suspicions had been cleared up.

Forensic dissection was then performed on my daughter. Although I had not heard the result of the dissection in detail, it was clear that the police had dispelled any suspicion of the criminality of my daughter's death, as they did not send the case to the prosecutors.

On 24 March, the CGC staff pointed out that my children had been smelly and had lice. I argued that I was in a hurry to go to police station the day after my daughter's death, so I did not have time to bathe them. As for the lice, neither my husband nor I had lice and my children never scratched their heads like they would if they had lice. The doctor had never found lice on health inspections at the hospital either. Even though I contested their claims, on 15 April, the CGC extended my children's detention for another two months without any closer investigation of the matters in the dispute.

On 19 May, when we had our interview with the CGC staff, they claimed that my children had nappy rash. On 24 May, the CGC transferred my son to an ACF and my daughter to a foster family. My children were separated from one another.

As late as 26 October, the CGC 'disclosed' the result of the medical examination at the Children's Clinic attached to the Kawaguchi Kogyo General Industrial Hospital, which they claimed took place one week after the detention of my children, i.e. *eight months before*. The doctor was said to have commented that the children did not have nappy rash, but that it was the result of boiling water being poured onto their bodies. Of course, we never did such a cruel thing to our children, and if there was a rash it would certainly have been caused by their nappies. We suspected that even the medical doctor was in collusion with the CGC to fabricate an 'abuse' story.

In retrospect, we regret bringing our children to the police station. We should have had someone take care of them at home. Once the police handed our children over to the CGC, without giving us any chance to say goodbye, the CGC has kept adding reasons for their detention to justify their attempts to detain them and to extend the date that they would be returned to us. The CGC staff never listened to our explanations nor conducted robust investigations based on our claims. The CGC has not allowed me to visit my son detained in the ACF for more than a year and a half, nor have they told me of the whereabouts of my daughter, except that she was with a foster family in Kawaguchi. We are worrying that my daughter might be forgetting our family and her real parents. We are longing for the day when our children will be returned to us.

69 The MHLW offers shabby excuses for the transformation of the CGC into the de facto judiciary as follows: it 'institutionalised the temporary custody and concomitant separation of a child from his/her familial tie as an extension of consultant-based assistance

based on spontaneous solicitation from the client'.³² The concept of the welfare services offered by the CGC when responding to the spontaneous requests of a client in trouble and visiting for consultation, has been directly transferred to the de facto judiciary measures of the CGC to remove a child from its parents and to detain him/her by the 'authority and responsibility of the CGC',³³ even though the parents never solicited such an action.

70 The MHLW is still trying to adopt the child guidance system that was created immediately after WWII—the protection of war orphans—which most of their parents would have appreciated had they been alive. Yet, the current policy is to utilise the CGC to function as a sluice gate, taking children under the pretext of 'abuse' into 'social care' where **vested interests** inherited from the post-WWII period dominates (Figure 1).

71 In contrast, in the case of the Netherlands, in contrast, the welfare function with respect to child abuse is vested with the *veilig thuis* (safety house) run by local governments, whereas the judicial role is assumed by the Child Care and Protection Board, a branch organisation of the national Ministry of Justice and Security. Any arbitrary mishandling of the child abuse cases at the lower instance is bound to be redressed at the higher instance, in this clearly bifurcated organisational structure. Whereas in Japan, the jumble of the welfare and judiciary functions in the CGC keeps putting a lid on this serious infringement of human rights that entails from the CGC assuming a de facto judicial role in the name of 'welfare'.

72 If the CGC truly want to be an institution of child welfare, it should assist parents with ways to improve their parenting, through a sense of mutual trust. However, the MHLW and CGC have destroyed this sense of trust as a result of the CGC's to shift from welfare to de facto judiciary. 'The best interest of the child' has now clearly been replaced with '**the best interest of the bureaucrats and ACFs**'.

73 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations on Japan:

Recommendation 5: The de facto juvenile judiciary function of the CGC should be removed and transferred to the police department of each prefecture. The CGC should purely be an institution of child welfare in a much reduced size.

³² MHLW, *Manual*, p. 364.

³³ MHLW, *Manual*, p. 364.

8. The Alternative Care System Run for Economic and Political Motives

CLUSTER 'FAMILY ENVIRONMENT AND ALTERNATIVE CARE'

74 It should be clear by now that the CGC in Japan has a strong propensity for removing a child from the care of its family as a measure of **first** resort and for the **longest** possible duration.

75 The key to explain this behaviour of CGC is in Clause 20 of the 'Guidelines for the Alternative Care of Children':

'The provision of alternative care should never be undertaken with a prime purpose of furthering the political, religious or economic goals of the providers.'

76 Firstly, CGC staff are civil servants who are constantly in fear of receiving negative evaluations of having taken children into detention by mistake. This would affect possible promotions and would give rise to the risk of lawsuits against the detention of children without cause by parents who make claims for government compensation. Therefore, after the detention of a child, the CGC staff tend to fabricate 'abuse' claims, force children into 'confessing to being abused', or fabricate substantiating evidence to justify their decisions.

77 The CGC also wrings confessions out of parents by using their children as 'hostages', something like 'if you want to see your child and get your child returned, you must admit the charge of 'abuse''. This is unconstitutional according to Article 38 of the Constitution: 'Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence'. In case defying parents refuse to fall into this trap, the CGC intimidates or actually proceeds with the consignment of their children to an ACF. Through this action, the CGC minimises the cases of false charges of 'abuse', and uses the confessed 'abuse' as propagation of increasing abuse issues in their attempt to expand their bureaucratic turf. One of the outcomes of such a CGC action is the ever 'increasing' figure of abuse, as shown in I-3 of Annex 3 of the 'Government Report' (p.4).

78 Secondly, we have to take economic motives into account to explain why the CGC aggressively removes children from parents and consigns them to an ACF often without guaranteeing due process.

79 Michiko Kobayashi, the head of the Japanese Society for Prevention of Child Abuse and Neglect, commented on this in a keynote lecture given at the 20th ISPCAN Congress held in 2014:³⁴

Social care in Japan is characterised by privately run orphanages originally founded to take care of war orphans, where tens of children live together in a single room. **The issue of child abuse was given more attention when the war orphans and poor children in the poverty-stricken period after WWII grew up and closing down former orphanages became an agenda due to diminishing number of children to be housed there.**

80 Due to the dwindling birth rate, the CGC sometimes tout their beds just like a hotel advertising agency to fill the detention quarter. Every November is promotion month, under the banner of '*Jido Gyakutai Boshi Suishin Gekkan*' (The Month to Promote Child Abuse Prevention). Yet, the CGC is neither a hotel nor a nursery. Here is the consequence of a family in Okayama who fell for their honeyed words:

◆CASE 5: A Betrayed Mother Who Had Once Trusted the CGC as an Institution to Assist Families in Difficulty³⁵

Having divorced before my second son was born in 2005, I have raised two children alone. My oldest son, born in 2003, was diagnosed with ADHD while in nursery school, while my second son also received a diagnosis of an autism spectrum. Working full-time, I was quite busy with overtime work and suffered from remarkable stress. Therefore, I sometimes punished my oldest son with tangible force. Faced with these difficulties, I consulted with the Okayama General Child Guidance Centre, which occasionally invited my children to stay in their detention quarter.

After my children entered elementary school, my job became less busy and my work stress decreased considerably, yet my children's difficult behaviour persisted. Gradually, my oldest son had learned that he could steer the CGC staff as he desired, thus he became fond of staying in the detention quarter whenever he was in trouble at home, for example, because of truancy. I gradually came to feel that it was a problem that my son used the CGC detention quarter as a kind of refuge.

³⁴ M. Kobayashi, 'Let's Learn from the Past and Act for the Future' (keynote lecture), delivered in Nagoya, 16 September 2014. (emphasis mine)

³⁵ A report submitted by a family to JCREC.

When he was in Primary 6, he stole JPY some hundred thousand from his grandmother and spent it. Although I admonished him and asked him to tell the truth, he flatly refused and acted up for about a month. I thus contacted Eda, the deputy director of the CGC whom I trusted, on 12 December 2015.

Eda advised me to keep my son in custody in the CGC and to live apart for a while, for us both to calm down. My son was crying the day before going to the CGC. In retrospect, he must have suspected that he would get separated from his mother for good. The younger son went with him, feeling as if he was going camping at the CGC detention quarter.

On 4 January 2016, I went to the CGC for an interview. Although I managed to meet with my youngest son, the CGC claimed that my eldest son was not willing to see me. I reminded the CGC that my children would be in CGC custody for two months only and I had no intention to put them in an ACF. In the middle of January 2016, Eda came to my home alone. He informed me of the date for the return of my youngest son, who wanted to return home. I asked him to shift the date to the end of January to make it fit into my personal schedule.

Thereafter, Eda abruptly stopped contacting me. When I contacted him, he informed me that due to a sudden change in policy, the CGC would not let my younger son return home, because 'he does not want to come back'. I asked Eda why he had changed his mind, but he said nothing.

Upon expiry of the two-month detention period, I received a letter from the CGC informing me that they would put my two children in an ACF. The CGC claimed that I used the CGC temporary custody service *too often* and that my oldest son was not willing to return home, despite being repeatedly persuaded. Yet it was initially the CGC that advised me to use their temporary custody service to meet my family needs!

At a family court, the CGC pleaded for the consignment of my children to an ACF. As I did not agree with it, I submitted a statement explaining the rational reasons for my frequent use of their temporary custody service. The CGC suddenly changed their reason to my 'abuse' of the children. On 10 August 2016, the family court granted the CGC's request.

A year passed, and my antipathy towards the CGC was growing. On 1 June 2017, my oldest son rang me from a public telephone, asking me to come immediately to Minori-en in Okayama, the ACF where he was detained, because the staff had grabbed him by the chest and committed cruel abuse against him. He then kept calling me almost every day.

I consulted a lawyer, who contacted with the CGC on my behalf. I then received fewer calls from my oldest son, because, as he later told me, he came to be placed under stricter surveillance.

When I talked with the CGC staff again on 16 August 2017, they admitted that a staff member at Minori-en had committed violence towards my son, but *refused to apologise*. In my second talk with the CGC on 20 September, they asserted that the main reason for his consignment was his refusal to return home. They said that my younger son was indifferent, yet the CGC decided to place him in an ACF anyway. The previous reason for the placement of my children in an ACF, my ‘abuse’, had suddenly been replaced with their refusal to return home.

I also came to learn that the CGC had lied about my youngest son refusing to return home. I realised that the CGC attempted to evade due responsibility to cope with the institutional abuse. My oldest son called me to inform me of his intention to return home. My lawyer met him on 12 October, and my son confirmed his intention to return home, which the CGC had completely ignored. *The lawyer told them the rights of the child, yet the CGC staff replied that such a thing was not related to this affair*. I cannot tolerate the fact that my son has been deprived of his freedom and suffered violent abuse in the ACF.

In Minori-en, my children were asked to visit a psychiatrist every month and forced to take psychotropic pills. My oldest son is secretly throwing the drugs away, yet my youngest son is taking them.

I might have erred in raising my children, yet I firmly believe that children and parents must in principle live together, mutually sharing experiences and worries, and consolidating their ties. The child-parent relationship is one of supreme virtue.

81 The sense of trust that this family placed in the CGC turned sour as soon as the CGC began to impose their power. In order to cope with it, the CGC had to resort to tactics that did not satisfy the due process of the administration: falsification and lying.

82 The current budget system gives civil servants in the CGC strong economic incentives to detain ever more children. The CGC receives funding from the national government’s coffer, ‘*hogo tanka* (temporary custody per diem)’, which is a monthly allowance for administrative and operational expenses per child detained in CGC detention quarters. This ‘*hogo tanka*’ is used not only to feed the detained children and meet the utility costs and

personnel expenses of the facility, but also covers CGC office expenses. It amounts to approximately JPY 350,000/month per child in detention³⁶.

83 In case of the City of Yokohama, the TOTAL budget for its CGC was JPY 1,141,543 thousand in 2013. JPY 576,073 thousand or as much as **50.5%** of the annual total budget of the CGC consists of *hogo tanka* (Figure 2), multiplied by the expected number of children to be detained³⁷ (sometimes called an ‘abduction quota’ by concerned citizens). The ‘abduction quota’ is a target number of children that CGC personnel keep in mind to use up their allocated annual budget. *Hogo tanka* is not paid unless children are actually detained. If the number of detained children falls short of this expected number, a budget leftover arises, which would lead to a budget cut the following year, eventually shrinking their vested interests.

84 In short, the more children CGC detains, the more funds it receives to expand in arithmetic progression proportionate to the number of children detained, and the ‘iron fist’ of the CGC becomes even stronger. If the CGC stopped detaining children, its very operation would come to halt due to the depletion of its resources. This relation is well demonstrated in the Figures. 3 and 4.

85 The Human Right’s Watch (HRW) pointed out that the CGC is consigning children in ACFs by ‘deferring to the financial interests of existing institutions’.³⁸ It quotes the stark voice of an ACF director in the Tohoku region:

To be honest with you, ... it’s not exactly ideal for us if there were no more children to be admitted to our institution because our operation is based on receiving children to care for.³⁹

86 The HRW discerned the existence of ‘vested institutional interests’ in this director’s statement and commented, ‘the director’s remark is unsurprising: child care institutions in Japan operate with subsidies they receive from the government based on the

³⁶ MHLW, On the national government subsidy to child care facilities under the Child Welfare Act, the final amendment, 14 May 2014.

³⁷ City of Yokohama, Child and Juvenile Department, ‘The Budget for the Child Guidance Centre’.

³⁸ Human Rights Watch, *op.cit.*, p. 4.

³⁹ Human Rights Watch, *op.cit.*, p. 65.

number of children they admit'.⁴⁰ The HRW exposed the reality that ACFs admit children and force them to stay for long periods to ensure that it continues to receive financial subsidies from the Japanese Government.

87 In Japan, a social welfare corporation has a quaint economic problem. At the outset, the founder needs to contribute a quarter of the capital required. The rest shall be paid by the prefectural government. The founder can then generate profit and accumulate an internal reserve fund on that capital once the enterprise is in operation. Unlike regular businesses run by a limited liability company, the founder's capital is a donation, and NOT capital in reality. The founder is thus deprived of its ownership. If an ACF is forced to close due to a lack of children, the founder loses the initial donation (equivalent of investment in a limited liability company) as well as the internal reserve. Thus, a social welfare corporation craves the continuation of enterprise far more than a regular business.⁴¹

88 Japan's child abuse policy has been instrumental in the economic sustenance of social welfare corporations that run ACFs (former orphanages), thereby breaching Paragraph 20 of the UN Guidelines to achieve this 'economic goal'. According to the HRW report, 'some institution staff said that up to 90 percent of children in care may have been victims of abuse or neglect'.⁴² According to the MHLW's 2008 survey, this ratio is approximately 53.4%.⁴³ The CGC arbitrarily consigns children to the ACF so that they can fill up their capacity.

89 The ACF version of *hogo tanka* is *sochihi* (placement fee). The amount is almost the same, approximately JPY 350 thousand/month per child detained, including the ACF for babies. Since it is a flat-rate system, the corporation's profits rise in inverse proportion to cost savings. For example, putting more children in a single room and using food with a nearly expired 'best before' date donated from supermarkets in the pretext of benevolence.

90 The fact that the alternative (social) care system has been created for the economic sustenance of social welfare corporations that run former orphanages, is well

⁴⁰ Human Rights Watch, *op.cit.*, pp. 65-66.

⁴¹ N. Yatsushiro, 'Reform of Social Welfare Corporation – amidst the trend of structural adjustment', *Shakai Fukushi Kenkyu (Social Welfare Studies)*, 85, 2002, pp.19-21.

⁴² Human Rights Watch, *op.cit.*, p. 13.

⁴³ MHLW, 'The Current State of Social Care (reference material)', 2014, p. 4.

evidenced in the figures indicating the total number of children placed in social care. From 2004 to 2012, it has been almost identical to the nationwide capacity of former orphanages, which was 36,500, despite the declining birth rate (Table 1). Shiozaki, the former Minister of the MHLW, was the head of the Association of MPs for the promotion of ACFs. Children are not consigned to ACFs for their best interests, but for the best interests of the social welfare corporation running the ACFs, the MHLW, and the politicians.

91 Regularly sending children to ACFs is also very important for the life of the director of the CGC, because the management positions in the ACF have become destinations of golden parachutes for the child-related staff of prefectural governments, for example, the director of the CGC, after retirement.

92 The director of the CGC can consign a child to an ACF even though the parents oppose it by making use of ‘Article 28 pleading’ in a family court. This court procedure is treated as a ‘petition for domestic affairs adjustment’ under Article 28 of the CWA and does not constitute a regular court trial. Thus, it is not a fair trial because the position of the CGC is unequally strong, placing the parents in the vulnerable position of an ‘interested party’, unable to present themselves against the CGC, in the relationship of defendant and plaintiff. The possibility of defence for the parents is therefore quite limited. This unfairly structured family court procedure is the norm for constantly channelling children to an ACF for an extended period of time.

93 Furthermore, recently, faced with a shortage of the beds in ACFs, the CGC began to place children in juvenile reformatories⁴⁴ and psychiatric hospitals,⁴⁵ which naturally are unsuitable environments for normal children.

⁴⁴ ‘Far more children who have experienced abuse and developmental disorders have been consigned to the juvenile reformatory’, H. Ogiso, ‘The Current Situation and Tasks for Assistance Policy to Children who Enter the ACF and Juvenile Reformatory’, *Kikan Shakai Hoshō Kenkyū (Social Security Studies Quarterly)*, 45(4), 2010, p.403.

⁴⁵ ‘Gyakutai Nyūuin (Abuse hospitalisation)’, *Crozu-appu Gendai*, NHK TV programme broadcast on 20 July 2017.

94 The HRW even claimed that ‘the very system of institutional care may itself be abusive’.⁴⁶ Throwing children into institutional care that has been criticised as such, must be seen as child abuse initiated by the state in order to fulfil financial motives.

95 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations on Japan :

Recommendation 6: The government should restructure the budget system of the CGC and ACF so that the amount of fund received by them is decoupled from the number of children detained and is in NO WAY proportional to it. Since current ACFs (former orphanages), including those for infants, are run on economic motives, they should be eventually closed down. The government should provide a precise road map until their ultimate closure.

Recommendation 7: As an alternative, Japan should consider adopting the system of *ondertoezichtstelling* (OTS, supervision order) in the Netherlands, in which children are returned to their original families within, at most, a year with, when necessary, an order from the family court to obey the directions of the guardian in child rearing.

Recommendation 8: Parachuting of civil servants in the welfare sector of the local governments to the social welfare corporations after retirement should be strictly banned.

9. The CGC’s Total Denial of Parental Visitation Rights

CLUSTER ‘FAMILY ENVIRONMENT AND ALTERNATIVE CARE’

96 Article 9, Section 3 of the Convention stipulates as follows:

‘State 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’.

97 The same point is reiterated in Clause 3 of the ‘Guidelines for the Alternative Care of Children’:

⁴⁶ Human Rights Watch, *op.cit.*, p. 4.

‘the family being the fundamental group of society and the natural environment for the growth, well-being and protection of children, efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents’.

98 Although the MHLW dubs the CGC as ‘the last bastion for the rights of a child’, it should be clear by now that the actual situation is the antithesis of this statement. The CGC uses children as an effective tool for maintaining the vested interests of the CGC and ACF, with scant regard for the rights of the child and the family.

99 Once children are placed in the CGC detention quarter, as per Article 33 of the CWA, the CGC completely deprives parents of visitation rights and extends this deprivation for an indefinite period, which in many cases lasts for **more than several years**. Not restricted to just the parents, the CGC can also prohibit **lawyers and doctors** representing the parents from seeing the child.

100 The Juvenile Act, which mainly deals with minors who committed crimes, stipulates more favourable and just treatment. The children whose freedom is restrained under Juvenile Act are entitled to a ‘personal attendant system’, under which children can be assigned to a personal attendant (a lawyer, etc.) in furtherance of their human rights. Children detained by the CGC have their freedom restrained and cannot benefit from an equivalent system. The MHLW commits discriminatorily unfavourable measures to those detained under the pretext of ‘protecting the child from abuse’ when compared to those detained for criminal reasons. A child whose freedom is more severely restricted in CGC detention quarters under the CWA did not commit any misconduct, unlike the former. The child in the CGC should need protection and humanitarian treatment more than a child who is subject to the Juvenile Act.

101 The measures to prohibit children detained by the CGC from seeing their parents is the norm in Japan, as the following case demonstrates.

◆Case 6: Parents Denied Visitation Rights to Their Daughter by the CGC without being Given Any Legitimate Reasons For Almost a Year⁴⁷

In July 2016, the beloved four-year-old daughter of the Sugiyama family was taken away by the Kawagoe CGC due to an ‘abuse notice’ from her nursery. She hurt her eye in the nursery, yet the nursery claimed that the injury was caused by abusive parents, as retaliation to the father who had been in conflict with the principal over an accident in the nursery where his daughter had broken a bone.

⁴⁷ A report of an associate of the JCREC.

While she was in detention for two weeks, the CGC investigated the case by summoning the parents, then returned the daughter on the condition that the parents visit the CGC every month.

In September, the daughter started to develop self-injurious behaviour. She pulled her hair and hit her own head against a wall. The father took his daughter to the psychiatric department of the Saitama Medical University Hospital, accompanied by CGC staff, yet unfortunately there was no improvement in her symptoms. A psychiatrist and psychotherapist diagnosed the cause of her behaviour as the loss of contact with her real mother after her parents' divorce, the change of nurseries, and the poor living conditions in the CGC.

On 24 January 2017, she went to nursery with self-inflicted wounds. The nursery again reported the 'abuse' to the CGC, who once again took her to its detention quarter. The CGC claimed that the reasons for her detention was to avoid further self-injury, for a psychotherapist to conduct behaviour observation, and for a psychiatric doctor associated with the CGC, named Furuta, to diagnose her. The CGC initially alluded that they would return her within two months, yet later changed their mind to prohibit parental visitation, claiming that it would 'hinder behavioural observation'.

On March 2017, Furuta's diagnoses were released. She indicated the possibility of 'post-traumatic play due to her suffering either from being abused or self-injurious behaviour of her parents' as the cause of her self-injurious behaviour. Her father saw little sense in the diagnosis, since his daughter did not suffer from abuse nor did the parents themselves behave self-injurious in any way. Furuta suggested the need for long-term therapy and that she is gradually returned to her family.

On 24 March, the Kawagoe CGC gave the parents notice to extend the detention of their daughter, and proposed placing her in an ACF. The parents argued that they attempted to accept her back into the family by seeking advice from an independent psychological counsellor. Finally, the parents begrudgingly agreed to place their daughter in an ACF, hoping that they would be allowed to see her if they curried favour with the CGC staff in charge.

On 19 May, the CGC announced their decision to the parents: the placement of their daughter in an ACF and denial of their visitation rights for an unlimited period. Oikawa, the section chief of the Kawagoe CGC, told the parents that the CGC had **no intention of returning the daughter to the family**, because she was not exhibiting self-injurious behaviour in the CGC detention quarter, as she had done at home. The parents suspected that Oikawa might have given her psychotropic drugs to halt her self-injurious behaviour, as they were informed that Oikawa had done so when he was at another CGC.

Asked for reasons for depriving them of their visitation rights, Oikawa refused to answer, simply telling the parents ‘we have decided as such!’, and adding, ‘18 years of age is the upper limit of her detention!’. He alluded that the CGC would detain her for ‘**longest** appropriate period of time’.

The CGC also refused to provide the result of a detailed examination for epilepsy, again without providing due reasons to the parents. The parents demanded they disclose the result so that they could take the necessary measures for their daughter. This was in vain. The CGC later disclosed the result to the father, only after he asked a member of the Saitama Prefectural Assembly to act on his behalf.

On 8 June, the parents insisted that they needed to see their daughter regularly to judge if her behaviour had matured and if they could get her back. Yet, the CGC simply stated that ‘it was not at that stage yet’. The CGC further ordered the parents not to contact the CGC too often, even though the CGC had not completed an investigation into the cause of her self-injurious behaviour, on her living conditions, or on the parent-and-child relationship at home. The CGC should have needed detailed information to plan any kind of effective action.

To the parents, the most serious problem has been the total denial of their visitation rights, which has already lasted for a year, with no sufficient reason provided to override the stipulation of Article 9 of the Convention. They believe that their visitation rights can be exercised under the proper psychological care of their daughter. They have demanded that the CGC should set the explicit policy goal of returning her to their family, and draw a clear road map of various policies towards this goal, yet so far, this has been in vain.

102 In the infant homes (ACF for infants), the restrictions of parental visitation and the isolation of children from their parents create even more serious problems. As Sumiko Hennessy, an emeritus professor in child abuse, indicates, ‘consistent bonds of attachment with parents are important for normal growth of the brain. Bonds of attachment made within the first three months after birth and made after that period differ in depth and quality. ...We [in Japan] have been creating mentally delayed children by bringing them into infant homes’.⁴⁸ The MHLW and the CGC burden children with irreversible mental development delays through the restriction of parental visitation and the isolation of the children. Thus, the MHLW has no legitimate claim of doing what is in ‘the best interests of the child’ as it does not hesitate to perform such grave infringements on their human rights.

103 There seem to be at least three intentions behind CGC’s depriving parents of their visitation rights. Firstly, the CGC worries that the detained child might begin to pine for

⁴⁸ Human Rights Watch, *op. cit.*, p. 30.

home once that child meets or communicates with his/her parents, which would eventually result in the CGC being unable to detain the child for an extended period.

104 Secondly, the living conditions at the ACF and CGC detention quarters are miserable. If parents really see the severe living and educational conditions at the ACF, they would protest or demand improvements or even assert institutional abuse and resort to lawsuits for reparation of damages caused to their child. If this happens, troubles are bound to arise in the management of the ACF. As long as parents and their representative lawyers are completely cut off from the facilities, there is no risk of protest or lawsuits, as the lawyer cannot collect evidences.

105 Third, the CGC is fearful that parents will take their child back. The child's legal standing is not definite until the child's placement in an ACF is approved by the High Court. Once the child leaves the CGC detention facility or the ACF to return to their parents, parental authority will effectively revive and the CGC will lose their legal basis to forcefully detain the child.

106 These excuses for the deprivation of parental visitation rights have nothing to do with the best interest of the child. Turning its back on the globally established and accepted rights of children and parents, the MHLW and CGC keep isolating the child from the parents 'for the **longest** possible duration'.

107 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations on Japan :

Recommendation 9: A system of allowing for the rights of unconditional visitation and communication between detained children and their parents at least every week, and a programme with the goal of recovering familial bonds within one year should be initiated immediately.

Recommendation 10: The lawyers, doctors, or psychotherapists acting on behalf of parents should always be allowed to see detained children, without any attached conditions.

10. Institutional Abuses in CGC Detention quarters and ACFs

CLUSTER 'VIOLENCE AGAINST CHILDREN'

108 Article 37, Section (c) of the Convention stipulates as follows:

*'Every child deprived of liberty shall be **treated with humanity and respect for the inherent dignity of the human person**, and in a manner which takes into account the needs of persons of his or her age'.*

109 In Japan, the detention of children in a catch-as-catch-can manner and the propagation of the use of detention centres often results in the CGC being full of detained children. The MHLW openly admits to overcrowding in its detention quarters.⁴⁹ Accommodating people in public spaces in excess of capacity is strictly controlled by fire departments, yet the CGC does not concern itself with the potential danger of children living in excess capacity. Furthermore, if the excess capacity condition persists, the MHLW then has good reason to persuade the Ministry of Finance (MOF) to siphon more money to the CGC. In Yokohama, for example, the massive extension of CGC detention facilities is underway (Plate 1). This is a clear manifestation of how the MHLW and CGC are treating children as a tool to grab more bureaucratic interest and money by tinkering with the human rights of children.

110 There have been repeated reports concerning abuses committed by CGC staff in its detention quarters. Since the CGC detention quarter is strictly closed to the public similar to a prison, the CGC staff can effectively do whatever they want.

111 In January 2014, a former CGC staff member in Kawasaki was arrested on suspicion of having secretly taken photos of the genitals of detained children and circulating them among friends.⁵⁰ There is also a case of a CGC staff member who was convicted of committing bodily harm to a detained child. Furthermore, in 2008, a child in Hachioji CGC detention facility died of anaphylactic shock caused by food containing the allergen found in eggs.⁵¹

112 Since parental visitation rights are banned, parents do not have the opportunity to instruct the CGC personnel concerning the diets of their children or inform them about these issues. The CGC, on the other hand, tends to conceal adverse information about itself.

⁴⁹ MHLW, *Manual, op.cit.*, p. 114.

⁵⁰ *Asahi Shimbun*, 31 January 2014.

⁵¹ 'Letter of Advice', Japan Federation of Bar Associations, Sou-81, 9 December 2010.

Therefore, these exposed institutional abuse cases are likely only the tips of icebergs; there is likely a mass of similar incidents that the CGC has covered up and never exposed.

113 What follows is a case of severe institutional abuse that took place in the detention quarter of Integrated Child and Family Guidance Centre (ICGC) run by the Tokyo Metropolitan Government. The ICGC is a representative of all CGCs in Japan, as it is attached to the headquarters of the National Association of the Director of the CGC. It has been whistle-blown through nationwide TV network coverage:

◆ Case 7: The Government Abuses Children in the CGC Detention Quarter and Treats Them like Prisoners in the Heart of Tokyo⁵²

S. Namekata, once a part-time instructor at the ICGC, demanded that the director of the detention quarter change the way they took care of detained children, but was turned down. He then began recording the stories of detained children to reveal the facts to the general public. He encouraged a boot-faced child to speak up. Initially, the children would not speak, however, they gradually began to share their experiences.

After a week of his stay in the detention quarter, a child saw a warden hit another boy. The warden ordered the children to complete 100 laps of track running around a basketball court-sized gymnasium within half an hour. If a child failed, s/he had to do it again and more laps were added. The detained children were not allowed to talk to each other. The wardens scolded them sharply in a thundering voice.

A secondary 2 (grade 8) girl commented, ‘scary. I was terribly scared’, and claimed that it was just like a concentration camp. Even the position and direction of their bodies while sleeping were arranged in a certain way. The room windows were always covered with black-out curtains, even during the daytime.

Those children who failed to keep up with the warden’s orders had to, for the first offence, write an apology letter, and for the second offence, were placed under the ‘personalised discipline’. A child is then separated from the other children and his/her actions were strictly restrained. Partitions were placed on both sides of a child and a desk was placed between them. The child, facing the wall, was asked to endlessly transcribe Chinese characters and run 100 laps. A secondary 3 (grade 9) girl spoke of the experiences of a bespectacled elementary (grade) 4 boy who was placed in personalised discipline: ‘I felt sorry for him, for his suffering in spite of everything. A 100-lap run to that boy! He began to huff and puff in less than five minutes! He was so thin and small that it was extremely pitiful’.

Namekata expressly points out, ‘there is no doubt, what the CGC does here is CORPORAL

⁵² NTV ‘News Every’. Broadcasted on 07 May 2015. Available from <https://www.youtube.com/watch?v=27smKDCGC9s> (with English subtitles).

PUNISHMENT and CHILD ABUSE!

A secondary 3 boy complained about how the warden forced the children to eat their meals: ‘He forced the children to sit at the desk attached to the wall, just like in personalised discipline. A pickled plum on a plate and chopsticks—to create an authoritative situation to eat it—by any means’. ‘The Child then vomited, claiming to have stomach ache. He then asked the warden for permission to go to the toilet, but the permission was DENIED. The child thus pooped in his pants and puked as well. The warden summoned the child and asked him to submit a written apology...because the child made a mess and did not clean it up’. The child’s claim of illness was considered fake and was not entertained.

Another narrative from a secondary 3 boy about a child who attempted to defy this maltreatment and attempted to escape. ‘A warden then grabbed the child right away...then, he was placed in personalised discipline’. The warden attempted to add ‘more partitions that looked like a wall. Yet, he refused it. Then he was thrown into a room in isolation’. Now that he is alone in the room, he went on a hunger strike, ‘refusing to eat anything for four consecutive days’. He was eventually sent to a psychiatric hospital. Namekata witnessed the series of events: ‘The children said to me that today he was to be taken away by deception to a hospital and will be hospitalised there’. That is a psychiatric hospital. He was hospitalised there by deception. I saw him being taken to the hospital’.

In the letters to Namekata, detained children wrote, ‘Do they impose another set of distorted rules that have been twisted around by adults on us? I felt like a PRISONER’.

Namekata asserted, ‘the malpractice within the child guidance centre persists forever. **Child guidance centres in Japan need drastic restructuring. The system of alternative child care has to be fundamentally restructured**’.

114 In spite of the recommendation by the CRC in paragraph 53 (c) of the last Concluding Observation, The government carried out NO investigation or prosecuted no one responsible for this grave institutional child abuse, because, as a former staff of the CGC in Tokyo pointed out,⁵³ this kind of abusive practice is ubiquitous across Japan.

115 When the parent-child relation is severed with the ban on visitation, it is natural that the child's mental condition deteriorates, with some children tending to exhibit violent behaviour. Thus, the CGC and ACF prescribe psychotropic drugs to detained children to suppress rebellion against the staff. Most adults are hesitant to take these drugs because of the severe side effects and medical dependence (toxicity).

⁵³ Y. Yamawaki, *Jido Sodansho ga Kodomo o Korosu [Child Guidance Centre Kills the Children]*, Bungei Shunju, 2016, pp.41-42.

116 Yoshida, a welfare sociologist, conducted a participatory fieldwork in an ACF in Western Japan. He summarised his research outcome as follows:

although the facility [ACF] staff had reservations about the prescribing and administration of psychotropic drugs to the children, it was clear that they were resigned to doing so in order to facilitate operations and management of the facility [ACF]. Further, one staff viewed the systematic abolition of corporal punishment as an evolution in medical care and perceived psychotropic drugs to be a means of enhancing communication between children and adults -- a fact that prompted them to accept the use of such drugs.⁵⁴

117 ACFs administer psychiatric drugs to children to achieve the same objective as corporal punishment, i.e. the drugs are used to place the children under forced control in the name of 'enhancing communication'. This act is all the more malicious, because the ACF staff give the consciously administer the drugs to the children knowing about the negative side effects.

118 The MHLW *Manual* endorses this act of administration by stating that the director of the CGC or the ACF can take 'custody measures', which has been liberally extended to 'medical practice',⁵⁵ including administering psychotropic drugs. The MHLW thus encourages the CGC to have a doctor engage in the 'medical practice' of a child without parental consent. The *Manual* lists 'a medical examination in medical institutions (including psychiatry), an inspection and medical treatment (medication, disposal, operation, etc.)'⁵⁶. The MHLW allows a psychiatrist working under contract with the CGC to administer various dangerous psychiatric drugs to detained children.

119 The MHLW attempts to legitimatise human rights infringements of this sort by stating in the *Manual* that 'the act which disturbs the custody measure of the director of the CGC wrongfully is the act which damages directly or indirectly the interest of a child'.⁵⁷ The MHLW regards the actions of the director of the CGC, even if it is abusive, and the interest of a

⁵⁴ Kohei Yoshida, 'The Use of Psychotropic Drugs at Foster Care Facilities and Staff Dilemma', *Journal of Welfare Sociology*, 10, 2013, p.147.

⁵⁵ MHLW, *Manual*, *op.cit.*, p.170.

⁵⁶ MHLW, *Manual*, *op.cit.*, p.172.

⁵⁷ MHLW, *Manual*, p. 171.

child, as identical. Thus, the MHLW confessed that ‘the best interest of a child’ in the bureaucratic language of the MHLW is nothing but ‘the best interest of CGC’. Since the CGC has such a haughty way of thinking, there is no way for them to humbly reflect on the fact that their actions towards detained children constitute abuse or the infringement of human rights.

120 It should be surprising to the international community that this sort of practice prevails in a supposedly ‘democratic’ and ‘advanced’ country. Yet, in this manner, the CGC reigns supreme over children and their parents as an absolute power.

121 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations on Japan:

Recommendation 11: The wardens who took abusive actions towards children in the detention quarter and the CGC director who did not make sufficient supervision to stop this should be severely penalised upon investigation, including dismissal from jobs.

Recommendation 12: Administering psychotropic drugs to detained children in either the CGC or ACF should be strictly banned. The psychiatric doctor working for the CGC should be selected based on a competitive application system and be replaced regularly.

11. The CGC Deprives Detained Children of their Right to Education and the Development

CLUSTER ‘EDUCATION, LEISURE AND CULTURAL ACTIVITIES’

122 Article 3-1 of the Convention stipulates,

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

123 It is common understanding that the ‘best interests of the child’ shall materialise only when the child’s short and long term best interests are both fulfilled.⁵⁸ The child is deprived of the opportunity of realising their real best interest if the government considers their short-term interests only.

⁵⁸ UNICEF, *op.cit.*, p.38.

124 For realising their longer-term interest, the stipulation of Article 28-1 of the Convention to protect and to promote the right of the development of the child is important:

'States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all ...;

125 Article 29- 1(a) stipulates as follows:

'States Parties agree that the education of the child shall be directed to:

*(a) The development of the child's personality, talents and mental and physical abilities **to their fullest potential***

126 Many children who are detained by the CGC are of an age that requires compulsory education for future development. These rights of children are guaranteed by the Convention and domestic law. Article 26 of the Constitution of Japan stipulates that guardians who have children in their custody, are obliged to send them to elementary or junior secondary school.

127 However, once the CGC removes children from their parents and detains them in a CGC facility, **the Director of the CGC does not allow the detained children to go to school** under the 'custody right' entitled to the CGC director. The HRW considers the 'custody right' and 'restricting school attendance, limiting freedom of movement' of a child as a 'potentially abusive practice'.⁵⁹ This 'custody right' is stipulated in Clauses 3 and 4 of Article 47 of the CWA for the ACF, and Clause 2 of Article 33-2 for the CGC. Ms. Alice K. Carroll, a Canadian social worker dispatched to Japan as a UN advisor on social work strongly suggested to abrogate it in 1950.

128 The Japanese government claims that this practice does not contravene the Convention since the duration of detention in the CGC is restricted to 2 months by the CWA, 'limited to necessary and rational' length. Moreover, the director of the CGC has the 'custody right' to send the detained child to school⁶⁰. Yet, the government falsifies the reality of CGC with impunity in that the detention is prolonged and the 'two months' can be extended arbitrarily (chapter 6), and the CGC director never uses his/her 'custody right' to allow the child

⁵⁹ Human Rights Watch, *op. cit.*, p.114.

⁶⁰ Otsu-I No. 3 Brief by the Ministry of Justice in *Mizuoka v. Minister of Justice*, Saitama District Court, Heisei 27 (Gyo-U) No. 9, 2016, p.13.

to go to school. In other words, the Japanese government practically admitted the breach in the real working methods of the CGC to the Convention.

129 In a competitive social environment such as Japan, many parents send their children to a tutorial school or engage in additional lessons in addition to regular schooling, to enhance the chance of their child becoming an able member of society. With these educational provisions, children can eventually enjoy a higher chance of taking up an occupation with higher income and enjoy an affluent life. This parental educational philosophy, conforming to the long-term best interests of the child, should not be rejected. However, neither the CGC nor the ACF accepts this idea and consequently provides no extracurricular educational opportunities to detained children. The CGC even accuses parents who send children to a tutorial school of committing ‘psychological abuse’.

130 Thus, children detained in CGCs and ACFs finish only with obligatory education, which leads to a dismal future. Due to the competitive environment of the economy and society throughout Japan, children who leave ACFs receive opportunities to take up employment that offer ‘low wages for menial entry-level jobs’⁶¹ only. ‘[M]any formerly institutionalized youths [=child formerly in the ACF] never complete high school and often end up as welfare recipients, homeless, or in prison’⁶² as convicts. The CGC forcibly removes children from their parents, and deprives them of the opportunity to pursue their long-term best interests based on their right to development towards the happy pursuit of life, which is guaranteed to every citizen in Article 13 of the Constitution.

131 Recently, the Ministry of Education, Culture, Sport, Science, and Technology, (MEXT) has begun to accommodate this policy of MHLW and changed its policy for the worse. The MEXT dispatched a notice on 31 July 2015⁶³ that those children in the CGC detention quarters who are forced to abstain from attending schools should be considered as having attended even if they have not received education as per the MEXT’s official guidelines for school teaching. The MEXT thus legalised the CGC-forced truancy and deprived the children of the opportunity for education and development.

132 A Children’s rights to education, as stipulated in the Convention, has also been infringed upon in Japan by the act of some schools that turns the CGC system to their own

⁶¹ Human Rights Watch, *op. cit.*, p. 57.

⁶² Human Rights Watch, *op. cit.*, p. 81.

⁶³ 27 Monkasho No. 335.

advantage in order to abandon unwanted pupils. This is exactly what the UNCRC pointed out in paragraph 62 of its Concluding Observation on Japan in 2010. Some Japanese schools notify the CGC on the pupils who does not meet the school's behavioural expectations, alleging that they have 'abused'. They remove them from the school with the help of the CGC. To achieve this, the school prevents the pupil from returning home using various pretexts and hands the child directly to the CGC staffs. The staff come to the school in order to stave off the parents from expressing disagreement. There is a quaint mutual interest between the schools that maliciously intend to abandon the children without offering proper instruction and rehabilitation, and the CGC that wants to detain as many children as possible for the enhancement of the their bureaucratic turf.

133 The *Manual*, on the other hand, encourages schools to notify the CGC, 'when information on suspicion of abuse from a school staff is given, the school principal, etc. is obliged to report to the CGC even if it is only suspicion and cannot be determined as abuse'.⁶⁴ The MHLW is thus promoting, rather than discouraging, the human right concerns of the UNCRC.

◆Case 8: A Catholic Elementary School in Tokyo Acted against Paragraph 62 of the UNCRC Concluding Observation (2010)⁶⁵

Reiryu was a pupil of Koka Gakuen, a catholic private elementary school in the Western Suburbs of Tokyo. The school principal was a Marianist catholic sister, who took a very despotic approach towards the pupils and parents. Whenever dissatisfied with something, she intimidated them by, for example, flinging the school satchel of a pupil. The views and opinions of parents and children were hardly considered, except for a very limited number of hanger-on groups of parents.

Reiryu, beloved by his father, suffered from Asperger's syndrome, and so had some behavioural difficulties. However, as it is known that many artists and scientists in history have also suffered from this syndrome, his father took great pains to bring out his talent by training him in various ways: to acquire absolute pitch in music, English language skills, and mathematics. At the beginning of Primary 4, he was capable of delivering a pitch with approximately 60% accuracy, and was able to solve simple linear equations.

⁶⁴ MHLW, *Manual*, p. 252.

⁶⁵ Based on Chapter 5, Section 2, 'Koka Gakuen Incident, in K.Minamide and F.Mizuoka, *Jiso Riken (Vested Interest of CGC)*, Hassaku Sha, 2016, pp. 280-295.

Reiryu was promoted to Primary 2 in 2011, when Takashina, his class teacher, began to inflict repeated and severe corporal punishment on him. Attempting to stop his hyperactivity disorder, the class teacher hit him on the head almost every day in front of his classmates. Reiryu got bump on his head. The principal, Sister Ishigami, not only ignored the parents' demands to remove this teacher from the class, but positively regarded this violence as 'a legitimate form of instruction', and ignored the teacher's violence, despite the fact that Japanese law strictly prohibits violence in the classroom. Reiryu began to show truant behaviour, yet the school did nothing to resolve the issue or offer rehabilitation.

Initially, the father was afraid of complaining to the authoritative principal, yet after seven months of continued violence, he finally began to demand an investigation, an apology, and a proper penalty for the teacher. To his surprise, while refusing to admit her own faults in allowing the violence committed by the teacher, principal Ishigami began to report 'abuse' by the father to the CGC in retaliation.

Thereafter, whenever the father aired his grievances against the corporal punishment, Ishigami secretly cooked up stories of 'child abuse' and reported them to the CGC. The time-series correlation between the protests against the corporal punishment at the school and her reports of 'abuse' rejects the null hypothesis that there was no causal relationship between the incidents at less than 0.001% confidence level.

On 20 April 2013, the principal in secrecy contacted Tokorozawa CGC to detain him under the false charge of 'abuse'. Presumptive evidence shows that a father in the principal's hanger-on group, being in close association with the ACF through his volunteer activity, must have suggested a way of removing Reiryu from the school, by misusing the CGC. He was kept in the school until late in the evening on that day, yet the CGC did not act as Ishigami expected. Reiryu was then allowed to return home. Ishigami then invited Nagai and other Tokorozawa CGC personnel to her school on 25 April and imbued them with tales of Reiryu's 'abuse'.

On 1 May, the school found wounds that Reiryu had gotten while trekking on a rocky route with his father two days before, while Tajima, who had just been promoted to vice-principal, kept Reiryu in the school premises on the pretext of completing Reiryu's mathematics problem sheets while they again gave the Tokorozawa CGC an 'abuse' report. This time, social workers of the Tokorozawa CGC came, and Nishikawa deceived Reiryu with the prospect of 'camping' to entice him to board a car bound for the CGC. The CGC never investigated the teacher's corporal punishment, but accepted principal Ishigami's claims at face value. Tajima knew that once Reiryu was in the CGC detention quarter he could no longer go to school, yet he nevertheless had the CGC confine him—a behaviour that a sane educator, conscious of the rights of the child, knowing their duty to develop the child to his maximum capacity, could not take. The CGC thereby abetted the attempt of the Catholic school

principal to expel the victim of illegal corporal punishment and the parent who aired grievances about it.

The following day, the father went to the Tokorozawa CGC and demanded that an investigation of the claimed 'abuse' cases at the school be duly carried out by the CGC and demanded to regularly meet with the CGC staff. Nagai refused meeting appointments and never conducted an investigation of the house of the family or of the school. Right after the detention, Reiryu had resisted life in the detention quarter with violence, but months later, he became quiet and calm—the effect of sedative drugs administered by the CGC is strongly suspected for this change.

Two months after his detention, Nagai told the father and his attorney-at-law that the CGC will plead to the family court to put Reiryu in an ACF, based almost exclusively on the information provided by Koka Gakuen, who thereby managed to expel the victim of its corporal punishment by making false 'abuse' claims to the CGC.

While Reiryu was forced to stay in the detention quarter, **Hirose, the director of the CGC, did not allow him to go to school and left him without any formal elementary education for seven months.** Even when Reiryu broke his glasses (for myopia) in the detention quarter, Hirose never replaced them and left him without glasses, generating a risk of amblyopia. The detention quarter had little space to play around, thus Reiryu, who loved outdoor activities and was an active in boy scouting, was denied any of his favourite sports. His intellectual and physical capabilities must have drastically waned, and is well manifested in the fact that his performance in secondary school level mathematics at the age of 9 degenerated into 'a little lower than average' grades in 2017. This manifested from the negligence of the ACF to ensure his right to development as stipulated in Convention Articles 28 and 29, or to do what is in the long-term best interest of the child. His father's laborious training was ruined by the thoughtlessness of the CGC and ACF.

The family court accepted in June 2014 a plea to place Reiryu in an ACF, yet did NOT recognise the existence of abuse or neglect in any form. It merely stated that there was the possibility that Reiryu's welfare might be impaired. Last March, the Tokorozawa CGC sent the father a photo of Reiryu. The father showed the photo to a juvenile psychiatrist, who suspected the symptom of drowsiness, typical to a child who is given a dosage of psychiatric drugs. The father naturally never authorised the ACF to give Reiryu such dangerous drugs.

Reiryu and his father are now in their **fifth year without any contact in the form of visitation or talking to each other**, since the CGC does not allow them to meet or talk UNLESS the father admits the false charge of 'abuse' cooked up jointly by Koka Gakuen and the CGC.

Currently, Nishikawa of the Tokorozawa CGC is attempting to detain Reiryu in the ACF for an even longer period of time by filing a renewal in the family court. This is despite Reiryu's senior

secondary school examination approaching, which can be decisive in determining his lifetime potential. This action by the CGC demonstrates that it **never** cares about the long-term best interests of the child.

134 The strong administrative power of the CGC, who may detain a child without a court decision, is not only used by schools with malicious intentions, but other malicious individuals as well. For example, there was once a website⁶⁶ that proposed that the best way to solve the bullying problem in a school or community would be to use the CGC: to have it take over the task of getting rid of the bully. The site suggested that parents whose children are suffering from bullying should contact the CGC and tell them that the bully 'was suffering from abuse by his/her parents'. The CGC would then take him/her to a detention centre, restoring peace and tranquillity to the school or community.

135 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations on Japan :

Recommendation 13: The living conditions at the CGC detention quarters should be drastically improved. The children in the detention quarter should be sent to regular schools and receive humanitarian treatment, including free enjoyment of healthy sports and arts.

Recommendation 14: De facto surrogate parental rights assigned to the CGC and ACF directors in the name of 'custody rights' as stipulated in Articles 33-2 and 47 of the CWA should be abrogated.

Recommendation 15: The Japanese government should take the recommendation in Paragraph 62 of the Concluding Observations 2010 seriously and should emphasise that the schools across Japan should NOT to misuse the CGC in order to get rid of the pupils who do not meet their expectations.

⁶⁶ 'How to cope with the bullying problem – Solve it by asking the CGC to abduct the bully' <http://fukusunoyakata.blog100.fc2.com/blog-entry-57.html> (accessed 04 November 2016, currently deleted)

12. The Japanese CGC and ACF System is Destroying Familial Bonds

CLUSTER 'GENERAL MEASURES OF IMPLEMENTATION'

136 The Preamble of the Convention states that the State Party is convinced that:
*'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'*,

137 It recognises that:

*'the child, for the **full and harmonious development** of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding'*.

138 Even if the parents committed ephemeral faults in the child's upbringing, parents with affection for their children have a natural instinct of earnestly reflecting and striving towards future improvement. This being the case, nobody can prevent parents and children from trying to recover their familial bond.

139 However, the MHLW and CGC, in achieving the expansion of power and budget, deny this possibility, and, rather than achieving the recovery of the familial bond through, for example, various parent training courses, merely impose complete isolation on the child and the destruction of a family over an extended period of time. The period of complete isolation is not a matter of a couple of years but rather continues in many cases **for more than several years**.

140 Even though the causes of the removal and detention of children by the CGC vary, what is common to all cases is that the parents and children wished to overcome a fault or misunderstanding and reconfirmed their familial bonds, regaining their community life as a family. Absolutely no one is allowed to obstruct this fundamental human right.

141 However, as a part of the MHLW's endeavour in expanding its vested interest, the Japanese Government began to offer a financial subsidy to the social welfare corporation that runs the ACF to set up 'family home' type accommodations there. The structure is something like a flat in a condominium, yet there are naturally no biological parents. This is no more than placing children in an ACF. Yet the MHLW claim that this is their way of 'complying' with the Convention by asking State Parties to give children the chance to 'grow up in a family environment'. The Japanese government does not understand the simple fact that social relation is one thing, and the built form is quite another.

142 The fact that the Japanese government has been destroying this ‘fundamental group of society and natural environment for the growth ... of children’ and thereby obstructs their ‘full and harmonious development’ is quite obvious in the following case of international articulation:

◆ CASE 9: A Japanese Mother and Her Daughter Took Refuge in the Netherlands to Recover Their Familial Bond

The mother was a versatile lady, a car rally racer and an IT engineer. In August 2007, the mother's daughter was removed from her family by the Nagasaki Support Centre for Children, Women, and Disabled Persons (Nagasaki CGC).

The CGC detained the daughter in pursuance of a notice from the police. The CGC claimed that the mother hit the daughter's hips to discipline her, perhaps with a dress hanger. The child recovered and went out to play. Police received a report from a convenience store manager who found the daughter with injuries to her arms and legs. The CGC examined her hips and found red bruising. The CGC determined that it was ‘abuse’.

The mother was summoned by the CGC for an interview. She claimed that it was normal scolding and discipline. If injury was found, it must have happened after the scolding. The mother demanded the prompt return of her daughter. Having determined that this was a case of ‘abuse’, the CGC did not allow the daughter to meet the mother, and demanded she confess to the ‘act of abuse’. This is confession extortion using the child as hostage, in contravention of Article 38 of the Constitution of Japan. The mother refused to accept this unconstitutional coercion to confess the false claims of ‘abuse’. The interview led no agreements.

The CGC then pleaded with the Nagasaki Family Court to consign the daughter in an ACF. However, the Family Court rejected its plea in December. The CGC did not return the daughter to the mother, but filed an appeal to the Fukuoka High Court and continued to separate mother and daughter. In May 2008, the High Court accepted the CGC's plea without any investigation but only an examination of the documents. The daughter was then consigned in an ACF in Nagasaki Prefecture. Having twice as many former orphanages as the national average due to the stronger influence of Christianity and A-bomb suffering, the ACFs in Nagasaki have a high quota to fulfil. The Supreme Court confirmed the High Court's decision in October 2008.

On 24 October 2007, the mother succeeded in taking her daughter back from the ACF with assistance from an NPO, the ‘Association to Support the Victims of the Family-Destroying

Legislations'.⁶⁷ On the way back from school, the daughter, identifying her grandfather, rushed to him and they embraced each other. The mother and daughter then immediately fled to the Netherlands from Fukuoka International Airport on 24 October 2008 via South Korea. The grandfather and a university student of the NPO were arrested by Nagasaki police on the spot.

Upon their arrival in Amsterdam on 26 October, the Dutch authorities had already received a notice from Japan. The Dutch police took the daughter into custody and police summoned the mother. Dutch authorities decided to conduct an investigation of the 'abuse' case alleged by the Japanese CGC.

It thus became a rare international articulation where Dutch authorities investigated the alleged 'abuse' case based on the documents submitted by the CGC in Japan in pursuance of Dutch law and its child abuse prevention system to decide the fate of the mother and daughter.

The Dutch investigation started in November 2008. The authorities were perplexed by the excessive strangeness of the documents submitted by the Nagasaki CGC. The Dutch authorities could not justify the 'abuse' claim and rationale for the subsequent detention of the daughter and consignment to an ACF.

On 16 December, the Nagasaki Prefectural Police demanded, upon request from the Nagasaki CGC, that the Dutch authorities (via Interpol) arrest the mother on charge of 'kidnapping' a minor, and to deport them back to Japan. As there is no extradition treaty between the governments of the Netherlands and Japan, Dutch authorities ignored the request and continued the investigation and trial.

After four trials, a Dutch court effectively reversed the decision of the Supreme Court of Japan and adjudicated on 29 December 2008 to allow the mother and daughter to live together. The Dutch judge stated, 'NO signs of abuse either at present or in future exist' and guaranteed their family life in the Netherlands. Arresting and repatriating them to Japan were out of the question.

The daughter said to a Japanese newspaper reporter, 'it is more pleasant to live together with my mom. I do not want to return to the ACF where I was detained'.⁶⁸ The family lived for four years in the suburbs of Putten, and the mother worked for an IT company near Amsterdam Central Station. After the IT company was liquidated, the family moved to Rotterdam.

⁶⁷ http://s.webry.info/sp/constanze.at.webry.info/200901/article_24.html (in Japanese, accessed on 15 October 2017)

⁶⁸ *Yomiuri Shimbun*, 18 January 2009.

The mother claimed that the Japanese authorities were unfair, telling the news reporter, ‘What I did was a way of upbringing, not abuse. The CGC did not conduct a sufficient investigation, nor did the Japanese court listen to my appeal’.

143 This case is an excellent manifestation of how the system that deals with ‘child abuse’ in Japan is askew from the global norm of human rights.

144 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations on Japan :

Recommendation 16: In order to completely restructure the child guidance system that is at par with the international standard complying with the Convention, Japanese government should accept a group of international experts in this field (e.g. those affiliated with Daphne in the EU) as professional advisors in order to thoroughly investigate the system and should abide by their advices in restructuring the child abuse policy and child guidance system.

13. The CGC Infringes on the Rights of Parents to Provide Directions to their Child

CLUSTER ‘FAMILY ENVIRONMENT AND ALTERNATIVE CARE’

145 Article 5 of the Convention stipulates as follows:

*‘States Parties shall **respect the responsibilities, rights and duties of parents** or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, 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’.*

146 Article 14, Section 2 of the Convention further stipulates as follows:

*‘States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to **provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child**’.*

147 The rights of parents in providing direction to the child stated in the above article of the Convention is stipulated in Articles 820 and 822 of the Civil Code as follows:

Civil Code of Japan, Article 820: *A person who exercises parental authority holds the right, and bears the duty, to care for and educate the child in the interest of child.*

Article 822: *A person who exercises parental authority may discipline the child to the extent necessary for supervision and education as stipulated in Article 820.*

148 The problem is that these stipulations in the Civil Code and the working definition of ‘abuse’ as well as the working methods of the CGC are not compatible with one another. The CGC does not respect the rights that are explicitly stated in the Civil Code. Instead, the CGC removes children from parents on its own unpublished criteria. To support this action, the MHLW quotes in the *Manual* the following passage from Michiko Kobayashi: ‘Even if parents are dedicated or feel mental affection towards the child, it is abuse if it is harmful behaviour from the viewpoint of children’ (the *Manual* does not make clear the source literature of this quote). This claim is undoubtedly one of many possible child-rearing and educational philosophies, but it is not statute, no more than the view of an individual paediatrician. Civil Code Article 820 endorses the parental authority, and Article 822 admits the right to discipline the child based on the child-rearing and educational ideas that the parents have chosen. This is what the Convention accepts as part of the rights of the child. The MHLW, by providing this quote, attempts to overwrite the statute with a personal view to further its vested interests, to justify the arbitrary removal of children from their parents and their prolonged detention, without regard for the rights of the child, family, and parents.

149 This act virtually coerces a particular child-rearing and educational philosophy on Japanese citizens as an effective law without proper legislation, but with its power to remove children from their parents, which contravenes Article 9 of the Convention. A constitutional scholar in Japan commented, ‘the state power soliciting particular ‘thought’ is, although not coercion in form, functioning as coercion in reality; such solicitation by the state should therefore be understood as violating Article 19 of the Constitution of Japan⁶⁹’.

150 An administrative body using coercive power to force a particular philosophy or idea on citizens did exist in past totalitarian states, but it is unconstitutional and cannot be allowed in the modern liberal state built upon the principle of individual freedom. In our democratic society, there are always varying ideas of proper child-rearing and education, and it is important to freely allow the discussions and practices of different ideas. Forcing a particular child-rearing or educational philosophy on parents through the removal and detention of a

⁶⁹ Y. Higuchi, et. al eds., *Annotated Constitution of Japan*, Volume 1, Seirin Shoin Shinsha, 1994, pp. 388-389.

child is far from what a liberal state should do. However, by wielding ‘the iron fist’ of detaining children, this practice now forces the views of government’s own on Japanese people.

151 We thus propose the following recommendations to the Committee on the Rights of the Child in this regard for the Concluding Observations to Japan :

Recommendation 17: The CGC should respect parental responsibilities, rights, and duties to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance and should not unreasonably interfere with them.

14. Concluding Remarks

152 There is no dispute in the Japanese judicial community that international treaties surpass domestic laws in their effects. Therefore, the Japanese Government should have amended all the stipulations of the Child Welfare Act and CAPA and all the working methods of the CGC that are illegal from the standpoint of the Convention immediately.

153 In conclusion, we suggest, based on the above report, that the UN Convention on the Rights of the Child make the following recommendations to the Japanese government:

Recommendation 18: The UN Committee on the Rights of the Child should explicitly declare that there are grave breaches to the Convention in the domestic law and the working methods related to the MHLW, CGC and ACF and therefore they need urgent amendment and restructuring.

154 We appeal to the UN Committee on the Rights of the Child on behalf of those victim families and groups of people across the nation who have risen up for the salvation of their beloved children from such grave human rights infringements committed by the MHLW and CGC, to make fundamental recommendations in the Concluding Observation of 2018 to induce the Japanese Government to drastically restructure its ‘child abuse policy’ and the legislations and working methods of the Child Guidance Centre so that Japanese children and families can fully enjoy the rights guaranteed in the Convention and their human rights duly respected.

Appendix: Glossary of Abbreviations and Their Equivalent Japanese Terms

ACF	Alternative Care Facility or 'children's home', <i>Jido Yogo Shisetsu</i> . Most are formerly orphanages set up right after WWII.
CAPA	Child Abuse Prevention Act, <i>Jido Gyakutai Boshi Ho</i> .
CGC	Child Guidance Centre(s) in Japan, <i>Jido Sodan Sho</i> .
CRC	The Committee on the Rights of the Child, the UN.
CWA	Child Welfare Act, <i>Jido Fukushi Ho</i> .
JCREC	The Concerned Japanese Citizens for the Rights of the Child to Eradicate Child Guidance Centre Sufferings, <i>Jiso Higai o Bokumetsu Suru Kai</i> . Our NGO group.
PDEA	Police Duties Execution Law, <i>Keisatsukan Shokumu Shikko Ho</i> .
HRW	Human Rights Watch (a US-based human rights organisation).
MEXT	The Ministry of Education, Culture, Sport, Science, and Technology of the Japanese government, <i>Mombu Kagaku Sho</i> .
MHLW	The Ministry of Health, Labour, and Welfare of the Japanese Government, <i>Kosei Rodo Sho</i> .
MHW	Former name of the MHLW, before its amalgamation with the Ministry of Labour in 2001.
MOF	The Ministry of Finance, <i>Zaimu Sho</i> .
UN	United Nations.