

THE HUMAN RIGHT ISSUES IN THE PROPOSED 'CHILDREN AND FAMILIES AGENCY' IN JAPAN

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

16 June 2022

■ 1. The 'Child and Family Agency' Bill Has Been Tabled in the Parliament

1. The Japanese government currently carries forward the plan to establish the '**Children and Families Agency**' (CFA hereafter), with a claimed objective of 'realising a society in which children can grow up as independent individuals in an equally healthy manner, based on the importance of the role of the family in child rearing and in accordance with the age and degree of development of the child'. The CFA is expected to be established as an external organ of the Cabinet Office in April 2023.

2. The Agency was initiated by the Member of Parliament (MP) **Taro Yamada**, a member of the House of Councilors (Upper House) in 2021. Currently, Yamada along with Hanako Jimi, another Upper House MP, hosts 'Study Groups for "Children First" Way of Government Administration' as the core organisation to formulate the policy principles for the CFA.

3. Yamada was a venture capitalist with a vigorous business mind. He entered politics as an MP of 'Your Party', which inherited Anglo-American neoliberalism from former Prime Minister, Jun-ichiro Koizumi. Yamada is, therefore, a **hard-core neo-liberalist**.

4. In August 2013, he stood in front of a comic market in scorching heat to speak against the ban on child pornographic comics, which have a market among adults with paedophile drive. Ms. Maud de Boer-Buquicchio, a Special Rapporteur of the UN Human Right Council, visited Japan in October 2015 to investigate the trafficking and sexual exploitation of children, including the manufacture and sale of child abuse materials (CAM). The outcome was the March 2016 release of the UN Human Rights Council's report A/HRC/31/58/Add.1. Paragraph 74(b)(ii) demanded, '[c]riminalize the production, distribution, dissemination, offering, selling, accessing, viewing and possession of *virtual images* and representations of children...'. Yamada, however, vehemently opposed it and has stood in favour of the production and publication of child pornography comics under the pretext of 'freedom of expression'. Learning that the Japanese government did not abide by it, the UN Committee on the Rights of the Child (UNCRC hereafter), in its Paragraph 47 of the Concluding Observations No. 4 and 5 in 2019 (CRC/C/JPN/CO/4-5)

(Recommendation hereafter), insisted that the Government of Japan ‘[i]mplement the recommendations made by the Special Rapporteur on the sale of children, child prostitution and child pornography’.

5. He defies that the statements in the UN’s concluding observations are ‘views of the members participating as the capacity of an individual; they are not the official views of the United Nations or legally binding’¹, **openly alluding that Yamada has no intention at all to respect or abide by the UN human right recommendations.**

6. Yamada's attitude of thinking of children only as a source of business at the cost of the human rights of the children and their families is thereby clear.

■ 2. The CFA and the Human-Rights Infringing Child Guidance Centre

7. This thought by Yamada has profoundly impacted the nature of the proposed CFA. His initial intention had been to integrate all the child-related departments of the Government into a single government agency; yet his priority has shifted to the ‘child abuse’ issue. Although the mandates of the CFA are supposed to cover a wide range of child-related issues, the current focus rests on the plan to reorganize the Child Guidance Centre (*jido sodansho*, CGC hereafter) into the ‘Child Support Centre’ and augment the number of staff and facilities by 10 times², as stated by Toshihiro Nikai, the former head of the CFA project office. Former Prime Minister Suga's remarks, reported on 23 April 2021, also clarified that strengthening the CGC is the core of the CFA plan.

8. CGC is, nevertheless, an extremely problematic organisation from the standpoint of human rights. For details, please see the Alternative Report that our organisation submitted to the UNCRC in 2017 (**Annex 3**). Its acts of human rights infringements have been reviewed by the UNCRC in 2010 (CRC/C/JPN/CO/3) and 2019, which provided urgent recommendations to rectify them, as shown in Paragraphs 28 and 29 of the Recommendation. Specifically, the UNCRC alleges ‘a *strong financial incentive* for the child guidance centres to receive more children’ (Para 28(c), emphasis by JCREC), indicating the CGC is operated under the strong neo-liberalist financial motive, *not* under welfare.

9. Article 33 of the ‘Child Welfare Act’ (CWA hereafter) of Japan grants the CGC the power to remove a child from their families at the sole discretion of the CGC director. Once the CGC gets custody of the child, s/he is detained in a detention quarter (*ichiji hogosho*) where the children are subject to violence and sexual abuse by paedophile CGC personnel and are administered unprescribed psychiatric drugs. The CGC does not allow children in the quarter to attend school or meet their parents. Due to bans on visitation, a child whom Hiroshima West CGC detained in a children’s home with a similar environment committed

¹ <https://twitter.com/yamadataro43/status/1471734559763238914>

² <https://news.yahoo.co.jp/articles/db9e0c60adc7d62704d1ec9ada3e80cda9a22901>

suicide on 31 October 2020. The UNCRC recommended in Para. 29(c) to '[a]bolish the practice of temporary custody of children in child guidance centres', that is, the UNCRC, thereby, urges to close all the detention quarters attached to the CGC, which harshly infringe upon the rights of the child.

■ 3. Deceptive Window-Dressing for the Child's Removal from His/Her Family by the CGC

10. The 'financial incentive' that Para. 28(c) of 2019 UNCRC addressed applies for the CGC *per se*, as well as the general 'social (alternative) care' system. The children to be placed under custody are also demanded by the managers of the alternative care facilities (ACF hereafter) in order to fill the beds emptied after war orphans, for which these facilities had originally been built, left. The ACFs are privately managed as a business, run with income from the Government in the form of *sochi hi* (placement allowance) of ca. JPY 400 thousand (USD 3.1 thousand) per child per month. Thirty percent of the allowance can be transferred to the general account of the managing body. Therefore, the intake of a sufficient number of children, who make the ACF eligible to get the placement allowance, is indispensable for the ACF managers. The intake procedure, therefore, needs to be as efficient as possible, through streamlined removal of children from their families.

11. This attempt conflicts with the international human right norms. The Recommendation 29(a) demands that Japan should '[i]ntroduce a mandatory judicial review for determining whether a child should be removed from the family, set up clear criteria for removal of the child and ensure that children are separated from their parents as a measure of last resort only, when it is necessary for their protection and in their best interests, after hearing the child and its parents'.

12. In response to this urgent recommendation by the UNCRC, the Japanese Government currently tables the amendment of Article 33 of the CWA to the parliament, which would introduce the 'temporary custody warrant' (warrant hereafter) issued by the family court for the removal of a child by the CGC from his/her parents.

13. Currently, Article 33 of the CWA allows the CGC to remove the child from his/her family in the name of 'temporary custody' and *without* judicial review. This domestic provision is in breach of Article 9-1 of the Convention, providing 'a child shall not be separated from his or her parents against their will...'. Based upon this, the UNCRC vehemently urged against this provision as expressed in the urgent recommendation of 2019. The Japanese Government thus proposed this amendment bill earlier this year. It was passed by the parliament and became a law on 8 June 2022.

14. However, the amendment has fatal flaws. A family court judge could make a judgement for issuing the warrant based solely on the documents submitted by the CGC in concern. Past experiences show that these documents are likely to be falsified or fabricated by the CGC. For example, a photo retouching software is often installed in the personal computers of the CGC

officials, most likely to doctor the evidence photos claiming ‘abuse’. In the proposed amendment, the views of the children and parents are not to be heard by the judge. Therefore, the falsifications that the CGC staff may commit have no chance to be rectified. This is in clear breach of Article 9-2 of Convention, providing ‘[i]n any proceedings pursuant to paragraph 1 of the present article [9-1], *all interested parties* [i.e., inclusive of the child and parents concerned] shall be given an opportunity to participate in the proceedings and make their views known’.

15. The Japanese court is not independent; it is **notorious for a strong propensity of collusion with the administrative body**. This problem is most acute in the case of the child guidance centre, as discussed in Section 3 of **Annex 2** as the ‘CGC Legislation’. It is, therefore, likely that the ‘temporary custody warrant’ would be swiftly issued to favour the CGC. Even if the court decision is adverse, the proposed amendment allows **ONLY** the CGC to file complaints against the decision. No complaints from the parents or children concerned are to be entertained, even if the removal of the child from his/her parents by the CGC is based on false or fabricated evidence.

16. The Government makes excuses that children and their parents could resort to filing administrative appeals and lawsuits instead. However, this claim is an unrealistic option, as there have been hardly any case in which administrative appeal against the removal of the child from their parents is successful. For administrative litigation, an adjudication can hardly be expected within two months of the ‘temporary custody’ period. They constitute therefore no effective remedy.

17. There is another serious problem: the requirements for the execution of the ‘temporary custody’ in the proposed amendment is extremely vague; a child can be removed from his/her parent whenever the CGC considers a risk of child abuse. The 2019 Recommendation stipulates that it is too broad to make a just and rational judgement and is far from providing ‘clear criteria’.

18. The outcome would, therefore, be that in almost all the cases the court would give blind approval to the decision of the CGC. This, by no means, complies with the international human rights norms that protect the rights of the child and family.

19. Furthermore, the court decision does not come immediately. The amendment stipulates that the court approval shall be requested ‘within seven days from the date of commencement of temporary custody’ and that ‘prior request for a temporary protection warrant prior to commencement of temporary custody shall not be precluded’ (amendment to Article 33, Paragraph 3). In short, the child can be detained at the CGC *without* any judicial reviews for as long as a week. This is too long compared to the similar rules in other countries that respect the international human right norms. Whereas the UNCRC urged Japan in the Recommendation to conduct a judicial review ‘for *determining whether* a child should be removed from the family’, which clearly reads that in principle the court decision should be made *prior to* the execution of removal.

20. Considering the enormous impact on the feelings and lives of both the children and parents, the sudden removal of the child without prior judicial review should be made *only in exceptionally urgent cases*, when the lives and

health of children is acutely threatened.

21. This human-right infringing amendment was drafted by a council of the Ministry of Health, Labour and Welfare (MHLW). Most of the members of the council had a present or past job connection with the CGC, while no parents or children who experienced the unjust separation were represented.

22. In sum, the Japanese Government is attempting to show that Japan abided by the 2019 UNCRC Recommendation through this amendment. Yet, to Japanese families, the ‘temporary custody warrant’ is more like the medieval ‘*Requerimiento*’ than the manifestation of real justice. In this mere window-dressing to deceive the international community, the CGC destroys the natural family bond that Article 23-1 of the International Covenant on Civil and Political Rights protects.

■ 4. The De Facto Child Trafficking Occurring in CGC Operation

23. Another serious issue with respect to the neo-liberal CGC is its involvement in the de facto child trafficking business. This system is officially called the ‘special adoption of the child (*tokubetsu yoshi engumi*)’ and goes as follows:

24. The CGC labels an expectant mother as ‘specified expectant mother (*tokutei nimpu*)’ if she falls within the criteria listed in the ‘assessment sheet’ prepared by the Ministry of Health, Labour and Welfare. The sheet is marked in total secrecy, *without* giving notice to the expectant mother, even when she is labelled as such. **Once she gives birth, the CGC unilaterally removes her baby from her maternity hospital bed** and detains the baby. The CGC then pleads to the family court to legally deprive the mother of parental rights over the baby and transfer the child to childless family who wants the baby under mediation of a social-business minded NPO (it is, therefore, never non-profit, since it uses social welfare as a means of making money). As the family court in Japan is quite amenable to the CGC, this process proceeds swiftly with little resistance.

25. ‘Special adoption’ is a convenient way for a childless family to adopt a child. For special adoption, the record of the parents is erased from the family register; the adopting family can raise the child as if the child was biologically theirs.

26. An NPO, Florence, headed by Hiroki Komazaki, who advocates and practices ‘social business’, plays a leading role here. Florence ‘sells’ a baby to childless families for ca. JPY 2 million (ca. USD 16 thousand). Florence set up the Japan Children's Adoption Association, of which the Baby Life, an organisation that gave up their business in July 2020 due to the disappearance of its director, was a member. The Baby Life had been engaged in the business of sending Japanese children to families, more than half of which were overseas, for money. On the part of an overseas family, this was a golden opportunity to ‘buy’ a child with a Japanese passport.

27. Yamada exchanged amicable tweets with Komazaki in June 2018: Yamada tweeted, ‘termination of parental rights ... should ... and foster parents

and adoption system be enhanced'. In response, Komazaki tweeted that 'Yamada knows well. The child has to be "taken in" into foster parents and special adoptions after s/he is separated from his/her parents through the termination of parental rights...'

28. Thanks to the CFA and an amendment under which the size of CGC will soar and its authority reinforced, Komazaki's Florence and other similar special adoption agents can expect good business prospect from securing a child as the 'raw material' for making money.

■ 5. Concluding Remarks

29. Children and families in Japan are suffering from several problems, such as poverty, bullying, and long nursery waiting lists. However, to Yamada, these are secondary issues; and the CFA should prioritise the proliferation of the CGC in order to make the net of removing children from their families much denser and to ultimately 'hunt' more children from families under the neo-liberalist motive - meanwhile deploying an ostensive pretext of 'saving children from abuse'³.

30. The outcome would be that far more familial ties are destroyed with the children placed under a poor and depriving 'social (alternative) care' environment as demonstrated in the case in **Annex 1**. The proposed procedure of issuing a 'temporary custody warrant', which removes children from their biological parents in a way that never meets the global human rights standard, would institutionalise these issues even more firmly.

31. Article 23 of the International Covenant on Civil and Political Rights provides, '*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*' (emphasis by JCREC).

32. It is obvious from the above quotations that the international human rights laws recognise the due role of the family comprising the biological parents and children, and demands the state to protect and respect the family bond. We, therefore, ardently request the UN Human Rights Council to clearly address that Japan should stop the neo-liberalist attempts in the name of setting up the 'Children and Families Authority' to destroy the familial tie in favour of making a child a mere commodity for financial gain at the cost of infringing upon human rights.

³ Taro Yamada, 'The Necessity of Child Basic Law and My Position', *Senkyo Dot Com* 15 February 2022. <https://go2senkyo.com/seijika/68604/posts/365118>