



The main submitting organization (ECOSOC NGO):
 International Career Support Association (ICSA)
 476-14-204 Hieda-cho Yamatokōriyama Nara 639-1108, JAPAN
 TEL: +81-90-6568-2564 Email: mfhorn2002@gmail.com
 Contact Person: Shunichi FUJIKI – Director

The participating organization for the submission (NGO):
 Nakano System Care (NSC)
 Nishi Shinjyuku Mizuma Bldg.2F, 3-3-13 Nishi Shinjyuku, Shinjyuku-ku, Tokyo 160-0023, JAPAN
 TEL: +81 -70-5582-1817 Email: thetechlawyer@gmail.com
 Contact Person: Hirokazu NAKANO

14 July, 2022

**NGO Joint Statement Submission for UPR 42nd Session
Japan**

Parent-Child Severance Caused by Judicial System in Japan

International Career Support Association (ICSA) is an ECOSOC Non-Governmental Organization.

1. UPR of Japan (3rd Cycle – 28th session) Thematic list of recommendations

Recommendation	Full list of themes	Japan's Position A/HRC/37/15/Add.1
161.191 Strengthen efforts to implement the Hague Convention of 1980 on the Civil Aspects of International Child Abduction (Italy); Source of position: A/HRC/37/15/Add.1	F31 Children: definition; general principles; protection F32 Children: family environment and alternative care F33 Children: protection against exploitation Affected persons: - children	161.191. Accept to follow up.

2. Related articles

- (1) International Covenant on Civil and Political Rights: Article23-1, Article23-4 and Article14-1:
- (2) Convention on the Rights of the Child: Article 9 (1), Article 18 (1)
- (3) The principle of the Hague Abduction Convention

3. Summary

Japanese courts have not declared Parental Child Abduction while living together to be illegal.

Since Parental Child Abduction is a serious form of child abuse for the abducted child and a violation of human rights for the left behind parent, the fact that Japanese courts do not recognize Parental Child Abduction while living together as illegal is contrary to the ICCPR. In addition, the fact that Japanese courts do not declare Parental Child Abduction while living together illegal causes many more human rights violations.

Japan has been criticized both domestically and internationally for Parental Child Abduction, but there has been no improvement in the situation.

In light of the above, we request the following recommendations.

4. Recommendations

We request the following recommendations:

- (1) Directly addressed to the Supreme Court of Japan:
A recommendation to state that Parental Child Abduction is a wrongful human act in itself.



A recommendation to state that the operation of Courts, which does not consider Parental Child Abduction while living together illegal, is contrary to ICCPR.

(2) Directly addressed to the Diet and Cabinet of Japan:

A recommendation to enact a domestic law which stipulate a definition and illegality of Parental Child Abduction.

5. Location of the problem

5a. Definition

We defined "Parental Child Abduction" in this document as "the unilateral removal of a child without a consent of other parent and a reasonable ground upon divorce." Therefore, for example, an evacuation with a child from violence of a spouse does not belong to "Parental Child Abduction".

5b. Root of the Problem

5b.1 Judgment criteria in designating a custodian.

In the diet sessions, successive directors of the Family Bureau of the Supreme Court General Secretariat have stated that the family court's standard of judgment for designating the custodian of a child is a comprehensive consideration of the various circumstances of the case from the perspective of the best interests of the child (Asami Tejima, House of Representatives Committee on Legal Affairs, April 27, 2021; Hitoshi Murata, House of Representatives Committee on Legal Affairs, March 8, 2017; Yoshihiro Toyosawa, House of Representatives Committee on Legal Affairs, Special Committee on Youth Affairs, April 20, 2011, <https://www.courts.go.jp/english/about/organization/index.html>).

The standard of judgment in designating a custodian is comprehensive consideration of individual circumstances.

5b.2. Degree of Consideration of Parental Child Abduction

5b.2.1 Degree of Consideration of Parental Child Abduction by separated living parent

In the case claim for damages for inaction of legislation to regulate Parental Child Abduction, the defendant state said, "In judicial practice, there have been judgments holding that Parental Child Abduction constitutes a tort and judicial precedents awarding damages based on such judgments. (Osaka District Court, July 28, 1997 judgment - Heisei3 (Wa)No.4016, Hanrei Times No. 964, p. 192; Nagoya District Court, November 29, 2002 judgment - Heisei14(Wa)No.63, Hanrei Times No. 1134, p. 243; Tokyo District Court, Decision of April 25, 2005 - Heisei16(Wa)No.6849, published in Hanrei-Hisho; Tokyo District Court, Decision of December 22, 2006 - Heisei16(Wa) No.21574, published in Hanrei-Hisho.) In this way, it is clear that even under the current legal system, Parental Child Abduction by a person who has parental authority can be evaluated as illegal under civil law." (Brief (2) dated September 25, 2020, p. 10). Therefore, these judicial precedents should be examined.

The Osaka District Court decision on July 28, 1997, in a case where a husband claimed alimony for violation of his parental rights against his wife, who had joined Aum Shinrikyo religious group with their two children, the court found that there were special circumstances that should make it illegal for the husband to place the two children in an environment that was extremely detrimental to their welfare, to exercise total control over them, and to completely eliminate the involvement of the husband who had parental rights.

The Nagoya District Court judgment on November 29, 2002, in a case where two children who were living with a parent were forcibly taken from their elementary school and nursery school by their separated living parent, held that the act of forcibly taking the children from their elementary school and nursery school in broad daylight without legal means was illegal and beyond the limits of what is acceptable under socially accepted norms.

The Tokyo District Court decision on April 25, 2005, in a case where the separated living parent did not return the child to the cohabiting parent after the visitation.

The Tokyo District Court decision on December 22, 2006 was a case where the separated parent took the child. Even though the child was not handed over in the previous case of this family, the court found that the child's custody rights were illegally violated by Parental Child Abduction.

Although it is a criminal case, a two-year-old child under the mother's custody was abducted by the father who had parental authority of the child while they were living separated, the court ruled that the illegality of the parental child abduction by the use of force is not justifiable (Supreme Court, December 6, 2005).



From the above judicial precedents, it appears that the courts have ruled that Parental Child Abduction by a separated living parent or in exceptional cases where the illegality is particularly high is illegal, and there is no problem with these judgments.

The following discussion is limited to Parental Child Abduction while living together.

5b.2.2. Degree of Consideration of Parental Child Abduction While Living Together

5b.2.2.a From the Supreme Court case

In case where a parent whose child had been abducted by the spouse filed a habeas corpus claim for handover of the child, the Supreme Court ruled that "where a husband and wife jointly exercise parental authority of their infant child, the custody of the infant by one of them should be lawful as based on parental authority, unless there are special circumstances" (The Supreme Court judgment, October 19, 1993). In other words, the sole custody of the infant after Parental Child Abduction while living together without the other parent's consent is "lawful in the absence of special circumstances", it means that Parental Child Abduction while living together is not illegal. Because, if Parental Child Abduction while living together is illegal, then the custody triggered by the Parental Child Abduction would be a continuation of the illegal state, but it is not that it should be.

5b.2.2.b From the Transcript of the Meeting with Supreme Court Officials

On January 20, 2020, Mr. Shunichi Fujiki and Mr. Hirokazu Nakano of ICSA attempted to "raise the issue of Parental Child Abduction" with Ms. Sawamura and Mr. Yamagishi of the Supreme Court. Ms. Sawamura and Mr. Yamagishi stated that courts would not judge Parental Child Abduction as legal or illegal (Annex1) .

5b.2.2.c A Specific Case

The following is written with the consent of Mr. Hirokazu Nakano.

Mr. Hirokazu Nakano's 3-year-old child was abducted by his wife while they were living together. He filed a preliminary injunction and a trial for handover of the child and designation of a custodian to the court.

He argued that Parental Child Abduction was illegal and contrary to the Constitution and treaties. The family court of the first instance ruled that there was no particular problem with the environment in which the child was taken, and therefore, the handover of the child was not allowed. The High Court of the second instance further ruled that "since the other party was in charge of the care and upbringing of the minor to at least the same extent as the appellant during the period of cohabitation and played an important role in the care and upbringing of the minor, it cannot be assessed that the separation eliminated the care of the minor by the primary caregiver, and in considering the cause and circumstances of the separation, the act of the other party in taking the minor cannot be regarded as an illegal removal." The Supreme Court ruled that "The reason for this appeal is an allegation of unconstitutionality, but the substantive allegation is a mere violation of the law, which is not a ground for special appeal."

It can be seen from this specific case that the court does not consider Parental Child Abduction while living together to be illegal in the overall consideration in designating a custodian.

5b.2.2.d Brief Conclusion

As mentioned above, Japanese courts have ruled that Parental Child Abduction while living together is not illegal in the overall consideration in designating a custodian.

6. The court practice of not declaring Parental Child Abduction while living together illegal is contrary to ICCPR.

Article 23, paragraph 1 of ICCPR provides "The family is the natural and fundamental unit of society and is entitled to protection by society and the State." Parental Child Abduction destroys families. The fact that the courts do not consider Parental Child Abduction while living together as illegal in the overall consideration in the designation of a custodian, means that the courts accept the destruction of families by Parental Child Abduction, which violates the right of the family to protection by the courts and is contrary to Article 23, paragraph 1 of ICCPR.

The first sentence of Article 23, paragraph 4, of ICCPR provides "States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to



marriage, during marriage and at its dissolution." If Parental Child Abduction while living together is not illegal, the fact that the parent is actually taking care of the child will give the parent who took the child during the cohabitation an advantage in obtaining custody of the child at the dissolution of marriage (the principle of continuity). By not declaring Parental Child Abduction while living together illegal, the court is not ensuring equality of rights and responsibilities of spouses during marriage and at the time of dissolution of marriage, which is contrary to the first sentence of Article 23, paragraph 4 of ICCPR.

The second sentence of Article 23, paragraph 4 of ICCPR provides "In the case of dissolution, provision shall be made for the necessary protection of any children." Parental Child Abduction can be considered child abuse, and the fact that Parental Child Abduction while living together is not considered illegal means that the court has not taken the necessary measures to protect the child when the parents dissolve their marriage, which is contrary to the second sentence of Article 23, paragraph 4 of ICCPR.

Article 14, paragraph 1 of ICCPR states, "All persons shall be equal before the courts and tribunals. In the determination of ..., or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." If Parental Child Abduction while living together is not unlawful, the taking parent will be favored in the dissolution of the marriage. Not declaring Parental Child Abduction while living together illegal violates the right of the court to a fair hearing by an impartial tribunal for the left behind parent, which is contrary to Article 14, paragraph 1 of ICCPR.

7. Requesting recommendations to the Committee on Civil and Political Rights

We believe that the reason why the Japanese courts have not declared Parental Child Abduction while living together to be illegal is that the Supreme Court, which governs all the courts in Japan, does not recognize that Parental Child Abduction is in itself a wrongful act for a human being (Annex 1). Therefore, we request the Committee on Civil and Political Rights, directly addressed to the Supreme Court of Japan, a recommendation to state that Parental Child Abduction is a wrongful human act in itself, and a recommendation to state that the operation of Courts, which does not consider Parental Child Abduction while living together illegal, is contrary to ICCPR.

We also request the Committee, directly addressed to the Diet and Cabinet of Japan, a recommendation to enact a domestic law which stipulate a definition and illegality of Parental Child Abduction.

8. Historical Background

In the past, in Japan, child-rearing was considered to be mother's job, and it was customary that fathers are incapable of taking care of child. Therefore, there was usually a rational reason for a mother to take her child with her when they divorced, as she could not entrust her child to someone who was incapable of taking care of child. Under such social circumstances, we believe that the legal culture was formed in which it was not naturally illegal for a mother to leave her home with her child.

However, it is difficult to change the legal culture once it has been formed because the system is designed so that the courts are not easily influenced by politics and public opinion. While Japanese society has been changing in accordance with international demands, the legal culture of the courts has not followed international demands.

For more information, refer to Annex 2.

9. Current Situation

In Japan, one in three couples is divorced. The number of minor children whose parents are divorced is approximately 190,000 (Ministry of Health, Labor and Welfare, Vital Statistics 2020), of which approximately 70%, or 130,000 children, do not have visitation (Ministry of Health, Labor and Welfare, National Survey of Single Parent Households, 2016), and are not able to see their separated parents.

There are no direct statistics on the number of Parental Child Abduction, and according to the Supreme Court officials, they do not intend to obtain statistics (Annex 1) .

Since a certain percentage of parents who have had their children abducted will seek judicial redress, it is likely that the number of child handover cases (Judicial Statistics, Domestic Affairs, Table 37) and habeas corpus claims (Judicial Statistics, Civil and Administrative Cases, Table 4), which are

judicial remedies for Parental Child Abduction, should not be less than the number of Parental Child Abduction cases as shown in the graph below for 20 years.

Fig.1 Minimum number of Parental Child Abduction cases

Minimum number of Parental Child Abduction cases has more than quadrupled, from 660 in 2000 to 2923 in 2019. We believe that the reason for the increase is that Parental Child Abduction is now known to be an effective means of gaining custody and parental authority in divorce. Divorce counseling offices and lawyers who receive divorce counseling have to tell their clients that the family courts in Japan do not consider Parental Child Abduction while living together to be illegal, and that the parent who actually has custody of the child is in huge advantage due to the principle of continuity.

Related Documents A/HRC/40/NGO/171 "Child Abduction Business in Japan"

10. Conclusion

The issue of Parental Child Abduction in Japan has long been the subject of criticism in Japan and abroad, as shown below.

In 2003, a court's decision on a parental child abduction case, in which U.S. Navy Captain Paul Toland was the victim, became an issue between Japan and the United States.

(<https://www.international-divorce.com/Struggle-for-Children-in-Japan>,

<https://abcnews.go.com/International/fighting-custody-abducted-children-japan/story?id=8817579>)

In February 2019, the UN CRC noted that judicial bodies do not take into account the "best interests of the child" in family disputes.

In July 2020, the European Parliament adopted a resolution condemning the "International and domestic parental abduction of EU children in Japan", which condemns Japanese government to have been leaving parent child severance issue for a long time.

(https://www.europarl.europa.eu/doceo/document/TA-9-2020-0182_EN.html)

However, there has been no move by the Japanese courts to consider Parental Child Abduction while living together as illegal, nor any move to legislate to have it considered illegal.

For these reasons, we strongly urge the above recommendation.

END