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Written statement* submitted by International Career Support Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2019]

* Issued as received, in the language(s) of submission only.



Inequality of Fact Finding on Divorce Cases with Children by corrupt Judicial Authority in Japan

The judicial system in Japan stands unfair, and court process is unequal. Especially in cases that involve children, the decisions by family courts in Japan are very biased. For example, in deciding visitation right on divorce cases, Japanese judges have never taken into account voices from both parties even if there is no domestic violence or child abuse is involved. Further, the voice of children is also completely ignored or omitted. Thus, the decisions of Japanese family courts do not take into consideration of the best interest of children which is a total violation of the Convention on the Rights of Child.

Also, it is a common practice in Japan that those parents, who want to get child custody, to take away their children without the consent of the other parent. This occurs since judges have never penalized the parents who abduct children to get child custody. The judges always rule in favor of the parents who live with their children under the principle of continuity. They, however, have never considered the fact that the children's living environment was drastically changed by the abduction by the parents who live with them. Further, the judges automatically grant other parental rights to the parents who live with the children albeit they first abducted the children.

Since the lawyers know that the parents who keep children have an advantage over the abandoned parents in the Japanese judicial system, they abuse this system and recommend parents to abduct their children before the divorce. Also, divorce consultants, female support centers including DV shelters across Japan, which receive governmental subsidies every year based on their achievement from the previous year, are no different. They all recommend parents, who want a divorce, to take child/children away from their spouse and start living separately. "Most importantly, it should never give any visitation opportunity to your spouse," they whisper to parents' ears.

Divorce lawyers in Japan acquire a certain percentage of child support once their clients gain child custody. The Japan Federation of Bar Associations (JFBA), which all attorneys must belong to and pay an annual fee every year, has just started negotiation with the judicial authority to double the child support fee so that they can get more profits. The motto in the attorney industry is "taking away children from your spouse if you want the parent's right." The survey by the Ministry of Health, Labor and Welfare in 2016 shows more than 55% divorced couple did not discuss or decide the child support fee when they got divorced. What the JFBA should recommend to all the divorcing couples is to encourage them to talk about child support fee before divorce, not exploit the money for their own profit.

On the visitation conciliation at the family court, a couple of a male and a female conciliation commissioner deal with each case. A judge shows up only when the case is closed or unsuccessful. Although the commissioners must listen to and talk to both father and mother, they tend to treat a father as an abuser and a mother as a victim of domestic violence and/or sexual infidelity. They have never considered the relationship between fathers and children when they lived together. Even worse, they believe visitation is not good for children especially right after the separation because it might affect children's psychological health condition. They never considered how badly abduction influences children when they are first abducted.

After several conciliations, which might take six months to a year, they try to set up a trial visitation, which is overseen by them in a one-way mirror room at a family court. If the abandoned parents' behaviors are successfully approved in this trial visitation, they introduce a visitation support organization, which hires retired judges, and target two hours a month as the final goal of frequent visitation program. Two hours a month is the maximum the abandoned parent can get with their beloved children. Often these abandoned parents need to pay 15,000 Yen (130 US dollars) to the establishment to see their own child. This is one of the lucky cases since the majority of the abandoned parents often can no longer see their children or just receive a photograph of his/her child under the name of visitation. The relationship between the abductor and children is just like the relation between the terrorist and hostages.

At the meeting of the Convention on the Rights of Child which was held January this year, the Japanese government was answering to the committee that the government is supporting visitation and the visitations are successfully going on, however, it is a false return. Just sending a photograph of the child to the abandoned parents without physical contact is not visitation mediation.

On the divorce cases with child/children in Japan, judges mostly or 99% give all parent's rights including child physical custody to the parents who live with children, even they abducted their children without consent from their spouse. There is no consideration of the best interests of the child as well as human rights and individual dignity for children and the abandoned parents.

Daisuke Tanaka, who was taken away his 3-year-old daughter by his wife without any consent, was disappointed by the judicial authority. He said the judges did not compare the evidence and allegations from both sides and did not make decisions based on the evidences they presented. They simply listened to whatever they felt like. Moreover, the family court allowed his wife to make negotiation by using their daughter as her hostage during the visitation mediation at the court. She told to a commissioner that "if I can get divorced today, I will allow him more time to see his daughter." He felt that there is no equality before the law.

Nevertheless, his case can be considered one of the successful cases as far as visitation is concerned. The decision by the Tokyo Family Court promises the following:

- Twice a month visitations with one visitation from 10:00 to 17:00 and the other visitation of 1 night and 2 days;
- 2 nights and 3 days during the school holiday; and
- Attend school activities.

His wife, however, has allowed him to meet their daughter only 1 night 2 days every month. No negotiation was possible with her. For instance, she insisted there should not be any extra visitations during the school holiday. She has never informed him about school events at all. There was no penalty against her for not following the visitation schedule decided by the family court. And there is no recourse for Mr. Tanaka since no judges listen to him. There is no equality before the law in Japan.

During their divorce case at the family and appeal trials at the high court in Tokyo, both judges did not consider her behaviors as a problem at all. Even though he proposed more visitation days for the sake of their daughter if he regains the custody of his daughter, he still cannot get her custody while his ex-wife behaved in any way she wants since now she has a child. The judges even did not give any opportunity for him to show evidence of her malicious statement.

Eventually, the judges gave the child custody and all parent's rights to the mother. The judges justified their decision saying that the mother DID provide visitation opportunity even not 100% though. At the same time, the judge or judicial power ignored his parenting right and his life as a father.

We request the UNHRC to recommend the government of Japan to do the following:

1. Prohibit Judicial Permission toward Child Abduction.
2. Thorough Observance of Visitation Implementation Guidance.
3. Correction of Unfair Decision of Parental Authority by Judicial Authority.
4. Social Transformation toward Non-Parent-Child Separation after Divorce.
5. Introduction of Joint Custody as An Option
6. Take effective measures for any Domestic Violence cases by using police force (establishing DV section in the major police is urgently needed) who currently not intervenes in civil cases if no physical violence is involved. Then police need to listen to both sides of the story to identify whether the case is really a Domestic Violence case or not.

7. Criminalize the person who misused or falsely exploited the Domestic Violence Prevention Law for their own benefit but not child.

8. Adopt the “Friendly Parent Rule” in case one of the spouses abduct his/her child/children.

Further, we request UNHRC to send Special Rapporteur to Japan as soon as possible to listen to the voice of victimized children and abundant parents to know how the situation is inhuman in Japan when comes to the Child Abduction. It is a joint crime of Divorce Lawyers, Women’s Rights Activists, and unethical judges.
