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# HUMAN RIGHTS RATIONALE BEHIND THE UNITED NATIONS RECOMMENDATIONS ON THE CHILD GUIDANCE CENTRES OF JAPAN

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## I. *Introduction: UN Recommendations in 2019*

The Child Guidance Centre (CGC) is a public body established by the local states (prefectures and ordnance cities) under the jurisdiction of Japan's Ministry of Health, Labour and Welfare (MHLW). As of 2019, there are 215 centres across Japan. According to the domestic law of Japan, the CGC can exercise state power to intervene in family affairs, especially to remove children from families and place them in their detention quarters without judicial review and eventually for placement with alternative care facilities (ACFs).

Most ACFs are former privately run orphanages and were established immediately after Japan's defeat in the World War II (WWII) to cater to children victimised by the war. After the orphans reached adulthood, ACFs attempted to retain their vested interest corresponding to the MHW's vision of defying the neoliberalist curtailment of welfare that began in Japan in the early 1980s.

Through the CGC's neoliberalist operation, many human rights infringements ensued, and the United Nations Committee on the Rights of the Child (UNCRC) has issued strong recommendations to redress them (UNCRC 2019). Concerned Japanese citizens have been resisting the CGC's transformation into the 'welfare police' and its concomitant on human rights infringements for almost two decades.

### 1. Concluding Observations of the UN Committee on the Rights of the Child

On 5 March 2019, the UNCRC issued the 4th and 5th combined Concluding Observations. Of 54 paragraphs, two — 28 and 29 — are devoted to addressing grave human rights infringements committed by the CGC and the ACF in Japan. The UNCRC specified six recommendations listed in Paragraph 29 as those of the '*urgent measures* [that] *must be taken*' (Para. 4).

Furthermore, Paragraph 7 demanded the Japanese governement to '*... take steps to fully harmonize its existing legislation with the principles and provisions of the Convention*', indicating that the domestic laws are in discord with the Convention on the Rights of the Child ('Convention' hereafter) in essential aspects.

UNCRC's scepticism regarding the CGC's human rights situation emerged as early as the

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late 2000s. Lothar Krappmann, a German pedagogic sociologist, visited Japan four times while he served as a UNCRC member during 2003–2011. He heard the appeals of parents whose children had been removed by the CGC. Initially, he could not 'believe that such a thing really happens in "a country as advanced" as Japan, since the essential wisdom developed by humankind since the Middle Ages holds that human freedom should not be arbitrarily deprived by state power, which applies to adults and children alike' (Personal Interview, 2 February 2018). In 2010, during a UNCRC session to review Japan's commitment to the Convention, Krappmann underscored that the CGC uses its quasi-judicial power to transcend the scope of the law, to remove children from their families, thus constituting a human rights infringement (The Liaison Group for Reporting to the UNCRC 2011).

The 3rd Concluding Observations of the UNCRC was chaired by Krappmann and was issued in June 2010. This document comprised the maiden recommendations concerning the CGC's human rights violation. In Paragraph 62, '*[t]he Committee observes with concern that children who do not meet the behavioural expectations of school are transferred to Child Guidance Centres*.' Further, in Paragraph 63, '*[t]he Committee recommends that the State Party commission an independent investigation of the child guidance system and its working methods,... and include information on the results of this review in its next periodic report*.'

However, the Japanese government scornfully ignored these recommendations. The 'next periodic report' submitted to the UNCRC in June 2017 lacked any results of 'an independent investigation,' as stipulated in Paragraph 63.

This omission is likely to have prompted the UNCRC to issue even stronger recommendations in 2019. The first of them (Paragraph 29(a)) reads (bold-faced emphases are by the author throughout):

> *Introduce 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**.*

## 2. Breach of Domestic Child Welfare Laws against the UN Convention

These UN recommendations evince that the current domestic laws and the MHLW's administrative orders on 'child abuse' and practices of the CGC are in serious violation of the Convention, as demonstrated in the following articles.

### a) *Article 9 (1): Removing a child from his or her family without Judicial Review*

Article 9, Para. 1 of the Convention stipulates as follows:

> *[S]tates 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. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents,....*

This article prohibits, in principle, the removal of children from their families against their parents' will and permits the separation of both parent and child only in exceptional cases,

wherein the best interests of the child are satisfied and a judicial review is conducted. Because there is a 'need to monitor and evaluate the grounds, processes, and consequences of the exercise of authority in anticipation of unnecessary intervention by the governing authority', a judicial review is an indispensable (Shinohara 2018, p.119) in the procedure. Conversely, according to Japan's domestic law, Article 33 Paragraph 1 of the Child Welfare Act (CWA) allows the CGC to remove a child from their family if the director of the CGC merely 'deems it necessary'. That is, the Convention has stringent and clearer stipulations than the CWA concerning the human rights protection requirements.

The CWA Article 33 has existed since its 1947 enactment to protect war orphans but remained in a dormant state. When Japan ratified the Convention in 1994, the Japanese government should have declared its reservation to the UN or deleted the article; however, the Ministry of Health and Welfare (MHW)[1] acted in absolute contrast and issued the Administrative Order Jihatsu No.434, to be discussed in Section II-5, and enacted the Act on the Prevention, etc., of Child Abuse (CAPA). The CAPA has Article 8 (2), which adopted the provisions from the CWA Article 33 and stipulates '*shall* take temporary custody pursuant to the provision of paragraph (1), Article 33'. However, the CWA Article 33 employed the wording '*may* provide temporary custody to children'. By abrogating the voluntary nature of the CWA Article 33 (2), the Japanese government clearly set the nation against the Convention.

Domestic laws granting the state the authority to separate a child from their parents without judicial review had also existed in former Yugoslavia. However, Yugoslavia explicitly declared its reservation to the UN regarding Article 9 (1) of the Convention upon its ratification to prevent its application to the country in January 1991. Following the country's break up, independent Slovenia revised its domestic laws, which it had inherited from the former Yugoslavia, and complied with the Convention. Subsequently, Slovenia notified the UN regarding its withdrawal of the reservation in January 2004 (United Nations 2020).

Conversely, Japan has never declared such a reservation. Therefore, the UNCRC finally issued the above urgent recommendation Paragraph 29 (a) to Japan to halt the CGC's arbitrary removal of children by imposing multiple restrictions.

**b)** ***Article 37 (b): Placing children in ACF should be the last resort for the shortest period***

UNICEF's commentary on Article 37 of the Convention states, '[t]he provisions related to the restriction of liberty do not simply cover children in trouble with the law (in many states, the restriction of children's liberty is permitted for reasons unrelated to criminal offences – "welfare", mental health, and in relation to asylum seeking and immigration)' (Hodgkin and Newell 2007). Therefore, this article should protect the human rights of children detained in the CGC or ACF in the name of 'welfare'. The detention of a child should only be allowed as a 'last resort measure and for the shortest appropriate period of time'.

Contradictorily, Hatano (2005), a jurist close to the Japanese authority, proposed another interpretation — Article 37(b) that only applies to criminal cases. Indeed, the CGC continues sending children removed from their families to the ACF for longer stays without regard of Article 37 (b). A comparative study of the average duration of a stay during 2002–2012 indicates that the number of children with shorter stays (less than '3 – 4 years') has decreased in the last 10 years, whereas the share with longer-term stays (longer than '4 – 5 years') has

[1] The MHW was combined with the Ministry of Labour in 2001 to form the MHLW.

increased. The number of children staying for '12 years or more' is 1.4 times greater, and the average period of detention has extended from 4.4 to 4.9 years (MHLW 2002, 2012a). These data reveal that a child's placement into an ACF is 'for the longest period' in Japan. The MHLW induces an ACF to reposition and project itself as a 'family home', perpetuating the impression that it is a 'family-like environment' and similar to a child's home, to protect the ACF's vested interests.

In response, the UN made an urgent recommendation in Paragraph 29 (e) for '***deinstitutionalisation***'.

## 3. Disrespect for Biological Families and Poor Living Conditions of the ACF and CGC Detention Quarters

Besides the aforementioned violations, the MHLW administration breaches the Convention in many aspects. The Preamble to the Convention recognises the (biological) family as the fundamental unit in society and stipulates that children should be provided protection and assistance in the natural environment, wherein they can grow up and be cared for.

Based on the provisions of the CWA Articles 33 (2) and 47-3, however, the director of the CGC effectively deprived parents of almost all parental rights and obligations, including the right to education and medical care, thereby turning a child who has living parents into an '**artificial orphan**'. Consequently, ACF-detained children suffering from developmental retardation do not receive a second opinion on medical care, are denied the opportunity to go to a school commensurate with their abilities and forbidden from seeing their parents for years. This mistreatment violates the child's rights to seek education and development provided for in Article 28 (1) and the enjoyment of health and full medical care stipulated in Article 24 (1) of the Convention.

Article 37 (c) of the Convention stipulated, '*[e]very 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*.' However, living conditions of CGC detention quarters and the ACF are exceedingly poor (News Every 2015). Additionally, psychotropic drugs are administered in breach of Article 33, that is, '*States Parties shall take all appropriate measures ... to protect children from the illicit use of narcotic drugs and psychotropic substances*', and cases of child abuse, such as sexual assault, violence and indecency, by the CGC and ACF staff are rampant.

Four lawyers of a third-party investigation team prepared a detailed position document on the conditions of the CGC detention quarters and submitted to the Bureau of the Social Welfare and Public Health, Tokyo Metropolitan Government (Third-party Investigation Team 2019; the page numbers in this section are those of this document). Congestion was noted as a significant problem with 150.8% of boys and 138.4% of girls above the official capacity being detained at the quarters in 2016; this overcapacity is a norm rather than an exception. On some days, the actual detainment per actual capacity ratio increased to 200%. Even clothes-drying areas of the quarters are converted into bedrooms; yet, the government does not control this congestion. 'Children are suddenly removed from their homes, schools, and various local resources, and come to a detainment quarter.... [T]he detainment ... can be extended and there is no legal limit to the extension' (pp.7–8). Those detained are forbidden from talking to one another all day long. To suppress the defiant attitudes or sorrow demonstrated by children, the wardens keep

yelling abusive words such as 'you're a good-for-nothing!' and place the disobedient children in *kobetsu* (personalised discipline):

> 'a screen is kept so that they cannot see other children in the group, to write repeatedly Chinese characters, to run many laps in the gymnasium and on the ground.... This can only be seen as a punishment in the name of guidance...' (p.16).

The detained children are thus placed under undue stress. They cannot attend school; part-time instructors, often without a teacher's licence, provide inadequate lessons for a limited duration than in regular schools. There are cases where learning is not done according to children's cability or needs. For example, '...elementary, junior high, and high school students [sit together in one class, thus the learning contents] can be too easy for a child and too difficult for another. In addition, when a child about to take an entrance examination for a junior or a senior high school is brought to the detention quarter, the insufficient opportunities to study in preparation for the entrance examination makes it difficult for the child to pass the examination' (p.14). A detained child claimed, '**It's just like a prison**, we lose our feelings, we want to escape.... Why are only the children deprived of their freedom?' (p.25). The lawyers concluded, 'unless one is aware of the underlying sense of human rights, the detention quarters should have no future' (p.40).

Indeed, the UNCRC recommended in Paragraph 29 (c), '*[a]bolish the practice of* ***temporary custody of children in child guidance centres***,' that is, to close down all the detention quarters attached to the CGC.

## II. *From Protection to Welfare Police: History of the CGC and ACF Under Neoliberalism*

### 1. Oriental Neoliberalism

The shift from Fordism to neoliberalism drastically changed the nature of welfare. The Foucauldian *pouvoir pastoral* (Foucault 1994) ideology has been replaced with a Smithian invisible hand of a laissez-faire approach and neoclassical economics, which denies the allocation of resources to entities beyond the market and forbids the allocation of public resources for social relief. The transition to neoliberalism is supposed to signify the structural adjustment toward a 'small government.' Neoliberalism also entails the strong surveillance by state power, because socioeconomic agents operating independently tend to deviate from the conduct assumed by neoclassical economics.

The welfare bureaucrats were relieved from the burden of the *pouvoir pastoral*, as during the Fordist regime. Japanese bureaucrats nevertheless redefined 'welfare' and continued to impose unreasonable restrictions on the society. Their strategy for maintaining their vested interests entailed the pretext of welfare for transforming the actual function into something akin to the police's role for surveillance over families.

Koga, a former Japanese bureaucrat unique in his adherence to the generic neoliberalism, once wrote, 'although the official claim was "to protect the people" and "to improve Japan"', it was actually 'the revival of the vested interest' (Koga 2013, p.8) of bureaucrats and pork-barrel politicians. In this interpretation of neoliberalism, governments swell with the appropriation of

tax monies, and in this article, with the aforementioned children.

This version of neoliberalism is also evident in the People's Republic of China (PRC), wherein a local state under the socialist power structure attempts to maximise the interest of bureaucrats by promoting its regional economy (Deng, 2016). Therefore, we classify this version of neoliberalism as 'Oriental' rather than Japanese. 'Oriental neoliberalism', typically observed in East Asia, is where the ideology of self-interest maximisation in market fundamentalism goes beyond those agents named in economics textbooks. For example, households seek to maximise utility and income, corporations maximise profits, while the bureaucracy maximises its self-interest by attempting to expand its vested interest by exploiting the taxpayers' money. Although the government assumes the appearance 'for the benefit of the people' through the bureaucracy, its actual operation is extremely irrational and detrimental to the people's welfare. Oriental neoliberalism is deeply rooted in the tradition of Oriental society, wherein the sustenance of existing organisations becomes its sole and own goal; they adjust their functions, not the organisational entity, to sustain their existence in shifting the socioeconomic environment.

## 2. Welfare: Child Classification Centres and the CGC before Neoliberalism

The first CGC was established in 1917 in Osaka, Japan. By 1937, 107 CGCs had opened nationwide to provide health and education consultations and were mostly visited by the urban middle and the impoverished classes (Shimura 2012). Tokyo was home to a 'Protection Centre for Infants and Juveniles,' which provided services to juveniles who had migrated from the countryside for work but were unable to find employment and had to live on the street. The custody period lasted approximately 15 days. The protection and district welfare committee members asserted, 'we bring only those hard-to-handle children into confined custody facilities; and we will do our best by ourselves in guiding them' (Fujita 2015, pp.29–31). Before WWII, these institutions were more aligned with real welfare.

After WWII, the child classification centre and temporary shelters were amalgamated to form the CGC, which was operated by the prefectural government, pursuant to the CWA enacted in 1947. Its primary task was to monitor petty crimes committed by war orphans, such as trespassing into railway stations and robbing passengers' lunchboxes. These children were eventually sent to orphanages, which later changed their function to that of the ACF.

## 3. Campaign for More Children to Maintain ACF's Vested Interests

Many of these orphanages were under the jurisdiction of the MHW and accommodated children sent exclusively from the CGC and operated through a 'placement allowance (措置費 *sochihi*)' paid by the government in almost exact proportion to the number of children accommodated therein. If the number of children decreased substantially, the placement allowance could not cover the fixed costs, thus the social welfare corporations would be bankrupt. However, the ACF manager could not recover the funds invested because the property of the social welfare corporation was constructed through the donations of the manager who no longer own it (Yashiro 2002).

The consequence was that ACF management had to house an adequate number of children to prevent bankruptcy, which generated an incentive to acquire more children. Starting in the

1960s, the National Federation of Social Welfare Councils, through which the vested interest of orphanage managers was represented, launched relentless campaigns with the stated aim of 'protecting the rights of the child'. These campaigns aimed to restrict parental responsibility and transfer children to 'social care', housing the former orphanages or ACF with children who had been removed from their biological parents' care (Tsuchiya 2017).

'Child abuse' was the most instrumental pretext in justifying a child's removal from parents' care. A roundtable discussion published by ACF management in 1987 attacked parental responsibility and claimed, 'there are guests [i.e. children] but there are more people [i.e. parents] who do not send them to us.' (Jido Yogo 1987, p.10). Another case was reported in Ishikawa, where children were not released from an ACF even after their junior high school graduation. This case coincided with the MHW's new policy that advocated retaining the children in ACF for a longer period. The 'abuse' in the family was thus documented, and a proposal was made that 'specific authority to the CGC' be granted (Jido Yogo 1987, p.16). In summary, the ACF's survival strategy entailed its blatant request to the CGC for removing allegedly 'abused' children from their families and restricting parental responsibility, despite no evidence on the veracity of the claim, thereby leading to the CGC placing these children into the ACF.

## 4. Neoliberalism: MHW Began Focusing on 'Child Abuse' to Protect CGC's Vested Interests

In 1960's, the CGC was barely successful in its scant operation to cater to truancy and disability. As neoliberalism gained momentum in Japan, the CGC became an inevitable target of structural adjustment. The MHW bureaucrats were quick to react, as the Second Extraordinary Commission for Administrative Reform was established in 1981, for 'fiscal reconstruction without a tax increase'. The MHW's Child and Family Bureau featured child abuse in 1981 special issue (Volume 13) of the *Child Guidance Casebook*, a collection of cases handled by the CGC; it included a case evincing the Article 28 plea provided in the CWA, which legalises placing a child into an ACF without parental consent, but had been largely dormant since the war orphans reached adulthood. The MHW thus intended to use the child abuse cases — for many of which the charges were either venial or false — as leverage to increase the number of children under the alternative care and to promote the CGC's and ACF's vested interests. A confession of a CGC staff evinces the following: '*the MHLW is adjusting ... lowering ... the standards*; thus, a [venial] case may be labelled as abuse to maintain its vested interests' (Wakabayashi 2007, emphasis mine). To give it a legal endorsement, the CWA Article 33 was amended in 2016, so that the CGC may remove a child from their family merely 'to understand the physical and mental conditions of the child, their environment and other circumstances'; i.e. in this vague removal criteria, a child can be removed and detained in the CGC *without any hard evidence of abuse*.

Notably, only families were the targets of child abuse allegations, although Article 19 of the Convention includes the alternative care institutions staff as possible candidates who abuse children. In Japan, many acts of abuse occurred in ACF, and the MHW failed to protect the victims. The UNCRC therefore issued an urgent recommendation in Paragraph 29(d): '*[p]revent, investigate and prosecute those responsible for child abuse in alternative care settings*'.

A dreadful case occurred in Oncho-en, Chiba, in the 1990s. The record of abuse submitted to the court described: 'older children are forced to stand upright or seated, beaten with bats,

iron pipes, sickles, and wooden swords by the director, until they shed blood' (Record from Chiba District Court, 11 March 1999). The MHW took an extremely lenient stance toward the perpetrators; and the MHLW or the Prefecture of Chiba have never issued the closure orders but continued paying the allowances to cover its costs. Tsuzaki (2009, p.75) asserted that the bureaucrats were 'fully immersed in the protection of their [ACF's] vested interests, which provide a convenient means for prioritizing their [bureaucrats'] vested interests'.

In 1994, Richard Krugman, who succeeded in problematising child abuse in the United States (US), was invited to Japan for a symposium. Krugman commented that child abuse would not be resolved simply by removing children from their parents. He suggested the development of a child abuse prevention system led by experts that focused on prevention, raising awareness, and persuasion, following the European model, rather than that of the US, which is enforced by law and controlled by the police (Tokunaga 1995).

The MHW took advantage of these moves in the private sector but did not implement Krugman's suggestion. In 1994, the parliament (Diet) ratified the Convention; however, the MHW did not adopt the human rights norms contained therein as the standard for their child policies. Instead, the MHW endeavoured to bring child abuse cases in families into the CGC's jurisdiction.

Whereas in the US, child abuse discourses in the 1990s were critically examined by Hacking (2000) from the social constructionism perspective. 'Child abuse' is not a natural phenomenon such as a mental or physical disability but a social construct to fulfil certain purposes. Ueno echoed this claim in Japan in the early 2000s: 'The claims against child abuse issues are simultaneously combined with claims to expand the size and authority of organisations, increase their budget and personnel, and provide new job opportunities' (Ueno and Nomura 2003, p.29). Ueno even used the term 'child abuse market', to which 'the interests and expectations of the stakeholders and the industry were excessively attached.'

## 5. 'Welfare Police': Transformation of Child Welfare into State Power

A decisive turning point in the CGC's transformation was the MHW Administrative Order Jihatsu No.434 'On the Proper Operation of the CWA Concerning Child Abuse' in 1997. The MHW deployed Article 33, providing 'temporary protection', to justify detaining children because of 'child abuse committed by the parents'. The order stated: 'if a parent or guardian requests the child's return from temporary protection, which occurred against the parents' will, *the CGC should refuse the request*' (emphasis mine). The MHW thereby ordered the removal of children without judicial review and enabled the virtual restriction of parental responsibility, despite the provision in Article 9 (1) of the Convention. Even in circumstances where 'abuse' were only suspected and hard evidence had not been collected, children were still forcibly removed and detained by the CGC.

Furthermore, for cases wherein the parents disagree with the CGC's plan to place their child in an ACF, the CGC submits a plea to the family court in pursuance to Article 28 of CWA (Article 28 plea). In 2017, the upholding rates of this plea in the family court were 74.7% for the initial placement of a child in an ACF and 98% for the subsequent periodical reviews (The Supreme Court 2018, p.4), demonstrating that the court provides blind approvals to the CGC's plea, another manifestation of 'rigged' Japanese judiciary, known in the international community since Carlos Ghosn fled from Japan in December 2019.

The CAPA enacted in 2000 was an extension of the Administrative Order No.434; however, it included a clause to give the CGC power to suspend parents' visitation rights to see a child placed in an ACF (Article 12), ignoring Article 9 (3) of the Convention. The UNCRC thus made recommendations against it in Paragraph 28 (e) of the 2019 Concluding Observations: '***Children placed in institutions are deprived of their right to maintain contact with their biological parents***'.

Katsumi Ishibashi, former director of the Shizuoka Chuo CGC, confessed that parents had begun perceiving the CGC as 'an annoying existence that intervenes in the family without consent' and that 'the CGC that once made cookies and accessories with beads has disappeared, and has instead transitioned to an identity as the "**welfare police**"' (Ishibashi 2015, p.10 and Saimura 2005). The problem of empty beds in ACFs was thereby quickly resolved (Yamano 2006).

## III. *MHLW Bureaucrats Promote Vested Interests at the Cost of Human Rights*

As Yamano, a former CGC staff, claimed, 'because we got on policy, we cannot reduce the budget, or we cannot reduce the number of abuse cases' (Yamano 2006, p.32), the CGC's vested interests keep expanding, using variety of pretexts.

### 1. Perpetration of 'Child Abuse' through State Power

The MHLW frequently uses the parabolically increasing graph of 'Number of Child Abuse Consultations by CGCs' (MHLW 2018) to conjure an image that encourages budget increases and additional CGC offices. However, Ueno claimed that the trend was peculiar and not credible (Ueno and Nomura 2003).

Compared with criminal cases wherein serious bodily injury occurs, the number of reported criminal cases almost doubled from 19,436 in 1990 to 36,568 in 2003. However, the number decreased to 24,365 in 2016 (Ministry of Justice 2017). This peculiar increasing trend of 'child abuse consultations', lasting for 30 years in a row without a single downturn, occurs because, as discussed earlier in Section II-4, the MHLW kept lowering the definition of 'abuse' so that even venial or false charges were labelled as abuse. Specifically, the increase in child abuse cases is a manifestation of a modern PRC saying signifying Oriental neoliberalism: '*guan chu shu zi, shu zi chu guan* (官出数字, 数字出官 the bureaucrats create figures, then the figures create the bureaucrats)'.

If the CAPA had fulfilled its original aim, the graph would not have continued to surge amidst the declining birth rate. If the graph was accurate, the enactment of the CAPA was an ineffective and irrational policy choice; thus, administrative reform should have been conducted to eradicatingly restructure the CGC and the CAPA. However, the MHLW continues using this graph to acquire more budget and add additional CGC offices. The MHLW established a hotline (#189) to encourage neighbours and schools to anonymously report suspected abuse cases and launched an annual campaign entitled 'Child Abuse Prevention Promotion Month' in every November to encourage anonymous reportings. Although it conducts family surveillance reminiscent of a panopticon (panoramic monitoring facility), the CGC provides little guidance on child rearing to prevent child abuse. This has created a false notion among the public that

the only means to save children from abuse is to dial #189, inevitably leading to an increased number of abuse reports, some of which are made under the malicious intention of retaliation.

## 2. 'Abduction Quota': Financial Structure to Enhance Bureaucratic Interest

This neoliberalist intent of MHLW to inflate the vested interests of the CGC and ACF drew the UNCRC's attention in Paragraph 28 (c) of the recommendation: '*[t]here is allegedly a* ***strong financial incentive for the child guidance centres to receive more children***.'

Over 50% of the CGC's budget is allocated to the 'temporary custody' (detention) operation. As regards the City of Yokohama in FY2018, 'temporary custody services' amounted to JPY 855.35 million, or 62.7% of the total budget for the CGC, which was JPY 1,363.751 million (City of Yokohama 2019). The budget for 'temporary custody' is obtained by multiplying the 'unit custody allowance (保護単価 *hogo tanka*)', paid to the CGC for each child detained for one month, by the 'estimated number of children per year to be placed in temporary custody'. In the Yokohama case, the estimated number in FY2018 was 58,765. This amount (quota) increased 1.25 times since 2012, when it was 46,848. The 'estimated number of children' thus became the CGC's '**abduction quota** (拉致ノルマ *rachi noruma*)'.

Psychiatrists, lawyers, the pharmaceutical industry and NPOs have been attracted to the money and children flowing into the CGC and formed a 'CGC clique', where they share their common interests (**Figure 1**).

## 3. Moral Hazard to Advantage Benefit from Grave Abuse Cases

The 'abduction quota' having become the operational goal, it is inefficient for the CGC to meddle with grave cases because they could jeopardise the lives of CGC employees through abusive parents. As the amount of the unit custody allowance granted is the same for a child regardless of the case's severity, it is CGC's rational choice to shelve grave cases, which are dealt by the police anyway, and concentrate on venial and false cases. Thus, cases wherein children are murdered by their parents have inevitably been overlooked.

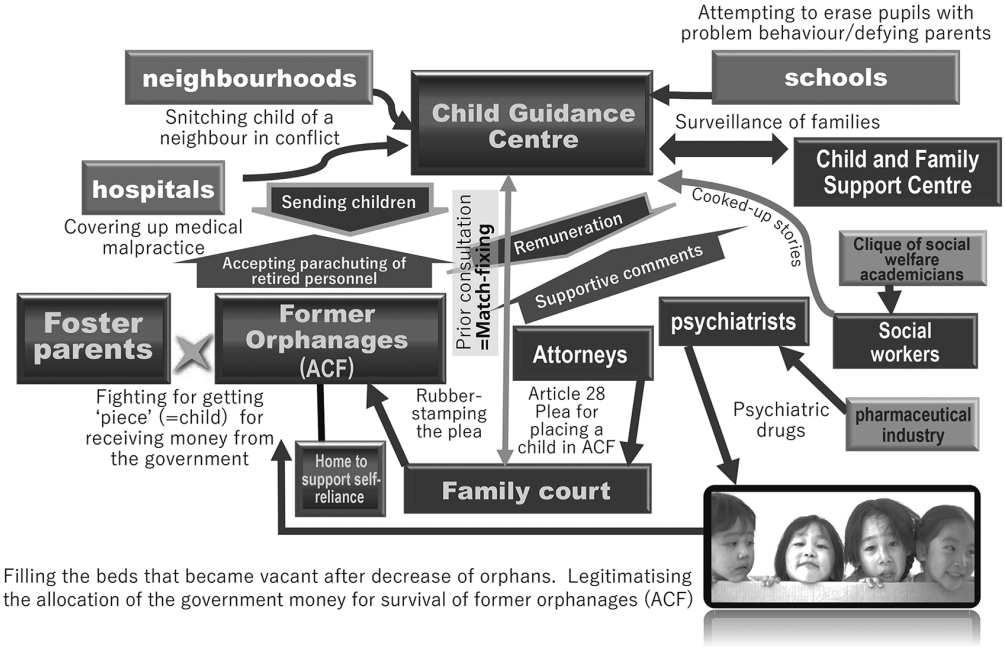
The MHLW then exploits the abuse deaths to launch a campaign to inflate the CGC's budget and enhance *Sonderrechtsverhältnis*-like authority and expand their vested interests. The major media outlets and civil society groups patronising the MHLW, however, unquestionably support the campaign. Thus, when 'other government departments have been asked to streamline and reduce staff', 'only the CGC has managed to strengthen its authority and increases the number of staff' (Yamano 2006, p.29).

## 4. 'Hostage CGC'

The CGC engages in aggressive removal of children from their families. 'When some risk factors apply, regardless of whether the child is uninjured or the abuse is unproven, the CGC should intervene or even regard the case as one of abuse' (Ueno 2006, p.264). The CGC then takes the child 'hostage' to force the parents to confess to 'abuse'. This practice was recently dubbed after notorious 'hostage justice (*hitojichi shiho*)' '**hostage CGC** (人質児相 *hitojichi jiso*)' in a TV news programme (Kansai TV 2020).

Examples abound for the CGC using the 'hostage CGC' tactics. The CGC discourages

FIGURE 1. THE RELATION OF BODIES FORMING THE 'CGC-ACF CLIQUE': COLLUDING TOGETHER IN AN ATTEMPT TO MAXIMISE THEIR MUTUAL FINANCIAL GAIN, POWER AND VESTED INTERESTS




parents from, for example, filing a complaint with the CGC or to quell criticism to ensure its legitimacy. In August 2018, a CGC staff summoned the parents who had filed a lawsuit against Miyazaki CGC for detaining their child over alleged shaken baby syndrome (SBS) 'abuse'. The CGC staff blatantly denied them the right to visit their child and dismissed returning the child to the family, thereby intimidating them into abandoning the plan to sue the CGC. Upon the parents' rejection, the CGC filed an 'Article 28 plea' to send the child to an ACF (Miyazaki NHK 2018). In the Koka Gakuen case, on 18 May 2020, Tokyo High Court upheld the plea from Tokorozawa CGC, which has denied a father's visitation rights for almost eight years, to extend the child's placement in an ACF for another two years, owing to the father 'taking hostile and critical attitudes' to the CGC. The CGC thus commonly exercises *hitojichi jiso* power, refusing to return children and banning defiant parents' visitation rights.

## IV. *Citizens' Struggles Against the Surveillance and Destruction of Families by the Neoliberalist CGC*

### 1. The 2000s: Rescuing Children from the CGC and Court Battle

Inspired by Ueno's book, Masako Nomaki and Kiyoshi Kosuge established 'the Association for Support of Victims of the Family-destroying Laws' (ASVFL) soon after the CAPA was

enacted. Their activity emphsised on rescuing children victimised by the CGC. Calling the CGC's removal of children 'abduction (拉致 *rachi*)', they searched the detained children, negotiated with the CGC and, in some cases, took the children back by force. They then 'engaged in a mass protest rally in front of the CGC' and 'demanded that the CGC director release the children in front of the supporters' (ASVFL 2008). Many children were able to return to their original families thanks to this mass action.

Their action had a global scope. The ASVFL assisted a family to recover their daughter who had been detained and to seek asylum in the Netherlands. Nomaki's association, jointly with 'Jiso Higai #110 (the Relief #110 for Victims of CGC Sufferings)', another CGC victim group led by Keiichi Baba, helped the mother rescue her daughter from Omura Children's Home, an ACF in Nagasaki, after a scuffle between her and the home's director. The mother and daughter then immediately departed for Amsterdam from Fukuoka Airport on 24 October 2008 (Yomiuri Shimbun 2009). The Nagasaki Prefectural Police requested extradition through Interpol to the Dutch government, but it was rejected. Upon their arrival, the Dutch family court instead opened a new inquiry into the girl's case. Once the court inquiry began in the Netherlands, Nomaki and Kosuge submitted a 'Statement of Protest and Request' to the MHLW, the Nagasaki CGC and the Prefectural Police:

> In November and December of this year [2008], the Dutch authorities began investigating the case, and they seemed astonished at the quaintness of the documents of the Nagasaki CGC. Abuse by the mother, abduction, and kidnapping were never clearly proven. On 16 December, the Nagasaki Prefectural Police requested, on behalf of the CGC, that the Dutch Police arrest the mother on charge of kidnapping her daughter and unlawfully removing her from Japan. Seeming completely disgusted at this request, the Dutch authority ignored it and did not take any action (ASVFL 2009).

The family was judged anew in the Dutch family court, under their child abuse legal system that duly respects human rights, and the court overturned the Supreme Court of Japan's decision. Both mother and daughter were allowed to settle in the Netherlands to live together as a family in exile.

This action's success proved the efficacy of the 'scale jumping' strategy proposed in critical geography (Merk 2009). It implies the effectiveness of allying with a more empowering social body prevailing on a higher, global scale beyond the spatial confines of a lower, national scale dominated by state power in winning the social struggle on the lower scale.

Since the late 2000s, parents whose children have been removed by the CGC have filed court cases. In one prominent case, a former Maritime Sheriff in Shizuoka was the plaintiff, and Kikuji Minamide was the attorney-at-law. Although the plaintiff lost the case, the Shizuoka District Court approved the plaintiff's request for the perpetuation of evidence in March 2009. An analysis of the CGC documents revealed that the CGC's removal of children is motivated by the economic incentive of acquiring the '*hogo tanka*' of approximately JPY 350,000 (ca. USD 3,350) per child per month from government coffers. This finding led to Paragraph 28 (c) of the UNCRC's Concluding Observation to Japan, quoted previously.

## 2. The 2010s: Books Published on the CGC Issues, Expansion of Struggles into Multiple Spatial Scales and Questioning the Rationales of the Abduction

These movements faced various difficulties and oppression and many were forced to suspend. The activists who assisted the mother and daughter in seeking asylum in the Netherlands were arrested and imprisoned. The family who settled in the Netherlands could not return home, because the mother would face arrest and the daughter re-detainment in an ACF. The MHLW suppressed the CGC victims' freedom of expression of the parents 'handing out flyers, putting up posters, or publishing contents to defame ACF or employees on the Internet' or those who 'cause CGC employees to feel fear or anxiety...and unjustly interfere with' CGC's measures (MHLW 2012b).

However, as the coverage of the CGC's deployment of state power to remove children became widespread, new aspects of the struggle emerged in the 2010s.

To fill the scarcity of printed media in the 2000s, a psychiatrist named Utsumi (2013) published a book that aroused 'fear' among citizens toward the CGC. Since then, more publications on the CGC issue have appeared, including that coauthored by the present author (Minamide and Mizuoka, 2016).

In 2013, the government's Cabinet Office offered the 'Child and Youth Support Award' to Fujiko Yamada, the Secretary General of the Japanese Medical Society on Child Abuse and Neglect, who propagated that the CGC should intervene in families 'using SBS as a pretext for child abuse.' The SBS is defined as: 'if an infant shows any of the three symptoms (subdural hematoma, ocular hemorrhage, and cerebral edema), it is presumed that ... the last caregiver should have abused the infant by shaking' (SBS Review Project Japan, https: //shakenbaby-review.com/index_e.html). However, after a mother in Yokohama, who was charged on suspicions of SBS, won a lawsuit to get back the custody of her child, a group led by the lawyers and doctors launched the 'SBS Review Project Japan' in 2017. After examining 1,065 medical papers, they concluded that 'there is insufficient scientific evidence to link these three symptoms with shaking'; thus, 'the SBS abuse theory is ambiguous' (SBS Review Project Japan 2017). The project claims that children should not be removed from their parents solely for this reason.

In further strengthening the aforementioned 'scale jumping', human rights infringements perpetrated by the MHLW and the CGC were filed directly with the UNCRC in Geneva by the families in Japan. Since Japan has not ratified the Third Optional Protocol to the Convention (individual reporting system), CGC victims cannot bring their individual cases to the UNCRC but can only appeal by submitting alternative reports for consideration to UN committees on human rights under the umbrella of the UN Office of the High Commissioner for Human Rights. A civil society group, the Concerned Japanese Citizens for the Rights of the Child to Eradicate Child Guidance Centre Sufferings (JCREC), reviewed cases and submitted two alternative reports to the UNCRC in November 2017 and December 2018. The UNCRC duly considered the reports and issued its Concluding Observations in March 2019. The UNCRC recommendations have created a significant foothold for the victim families to dismantle the human-rights infringing CGC system.

As local states intensified their drive to establish more CGC offices with detention quarters under the initiative of the MHLW, neighbourhood protests emerged in large cities. In 2016, the residents of a condominium in Osaka won a campaign to stop the installation of a CGC in their

building, which was built as part of a municipal urban redevelopment scheme. In 2018, the 'Aoyama Future Society' in Tokyo opposed the construction of a CGC office with detention quarters in their neighbourhood, within walking distance to the UN University. The judicialisation of the CGC handling and detaining of juvenile offenders upset the residents.

To gain wider support from citizens at the national scale, the residents should ally with the CGC victim families and residents nationwide. The movement therefore needs to ascend from neighbourhood to national scales for addressing the real cause of the CGC's human rights infringements and justifying their demand to stop establishing the CGC office in their neighbourhoods.

Based on the development of these movements, the domestic mass media began covering the CGC's human rights infringements. A doctor interviewed by *Josei Weekly* stated, 'an absurd situation has emerged in which, to recover a child from CGC as soon as possible, the citizens are expected to go to Canossa on whatever the CGC demands', and 'this system must be changed' (Josei Weekly 2018, pp.44–45). A major TV station in Osaka (Kansai TV 2020) gave the term 'hostage CGC' for this human-rights infringing operation of the CGC.

## V. *Conventional Human Rights Groups in the CGC Issues*

### 1. Taking Hostile Positions

Despite these developments, conventional human rights organisations and activists, which to some extent are co-opted with the MHLW based on the neoliberalist concept of the 'new public commons' in exchange for receiving support, have accepted the MHLW's power and are reluctant to abide by the UNCRC recommendations.

For example, the Japan Federation of Bar Associations (JFBA), while it engages in criticising the government regarding national defence policies, unhesitatingly provides the MHLW with a leeway regarding the CGC. So-called 'human rights-oriented' lawyers, apart from a few who profit by focusing on the niche legal market of the CGC issues, generally remain hostile toward the CGC victims. In exchange for its support, the JFBA succeeded to get over 200 full-time lawyer positions at every CGC nationwide, thus securing jobs for its members.

Yuji Hirano (2010), who eagerly introduced the activities of the UNCRC to Japan, claimed that in the UNCRC's recommendations in 2010, 'here are many things that the committee [UNCRC] has misunderstood about the CGC'. Aramaki, the leader of Hirano's group, even intimidated the UNCRC by claiming that its urgent recommendations 29 (c) of 2019 'would deteriorate the credibility of CRC members' (Aramaki and Hirano 2019).

Despite their claim, the UNCRC's recommendations asking Japan to close the detention quarters attached to the CGC are just and appropriate, as it is a global human rights norm for an ACF that abused children to receive an order of closure from the government, as demonstrated in the case of Haasenburg in Germany (Tageszeitung 2013). The UNCRC simply applied this principle to the CGC detention quarters. Hirano and Aramaki were seemingly unaware of this precedence in the global human rights community.

## 2. Taking Part in Child Trafficking under the Guise of 'Special Adoption'

Child trafficking is now an urgent global human rights issue; yet a fresh scheme is emerging in Japan from the collusion of the CGC and the neoliberalist NPOs running 'social business'.

It deals mainly with newborns under the category of 'special adoption' (Civil Affairs Bureau, MOJ 2020), which is 'establishing an adoption which extinguishes the legal relationship between a child and his/her natural relatives' (Article 817-2, Civil Code of Japan). When a baby is placed for special adoption, their birth history regarding the identity of the biological parents is removed from the family register. Unlike foster parents, there is an appeal that a specially adopted baby can be raised as if they were their own children from infancy, even without a blood relationship.

Article 817-6 of the Civil Code (newly amended on 1 April 2020) provides,

> A ruling of special adoption shall only be made if both parents of a person to be adopted provides his/her consent to the special adoption; *provided that this shall not apply in cases* where the parents are incapable of indicating their intention or the parents have abused the child, abandoned the child without reasonable cause, or there is any other cause of grave harm to the interests of the person to become the adopted child. (emphasis mine).

This provision contains a gimmick. The local governments send public health nurses to visit every expectant mother with a 'Home-Assistance Common Assessment Planning Sheet' to liberally check every word and action of hers and those of her families. Anxiety about, for example, future childcare, neurologic manifestations and poverty are negatively assessed. Even frequent visits to childcare consultations offered by government offices are considered an 'evidence' for anxiety, leading to a negative assessment.

When the sum of the negatively assessed points adds up to a threshold, the CGC designates the expectant mother as a 'Specified Expectant Mother (特定妊婦 *tokutei nimpu*)' in pursuance to the Clause 5 of Article 6-3 of CWA (as amended in 2009). Whether an expectant mother is designated as such is kept confidential; however, once the expectant mother is thus labelled, the risk of the newborn baby being abducted by the CGC increases drastically. The public nurses are no longer kind advisers for expectant mothers but an agent resembling the Gestapo, for applying this labelling (Masuda 2020) for eventual removal from the family.

Immediately after a mother labelled as a Specified Expectant Mother gives birth, the CGC takes her baby without consent, for example, when she steps into the restroom while in the maternity ward, in pursuance to CWA Article 33. She returns just to find the crib empty and cries — this tragedy has been frequently occurring across Japan. In 2017, a mother whose baby was abducted by a CGC in Shikoku threw a Molotov cocktail into the yard of a CGC.

The real reason for this shifting role of public health nurses is not the increasing abuse risk of babies. The consistently reported brutal child abuse cases and needless deaths prove that the MHLW and CGC have neither the serious will nor the ability to eradicate child abuse. Instead, using 'abuse' as a pretext, the MHLW aims to strengthen the special adoption scheme for the promotion of the NPOs running social business by trafficking babies. An NPO called Florence, prominent in this field, charges ca. JPY 2 million (ca. USD 19 thousand) for special adoption, to which many infertile families apply. To continue their social business, these NPOs need a stock of babies. In today's neoliberalist Japan, all things have been commoditised; babies are no

exception. In this *de facto* human trafficking, biological mothers are relegated to the role of a 'human factory'.

### 3. Suppression of Civil Liberties through the CGC

The MHLW once attempted to expand the upper age limit of the CWA from 18 to 20 years, when the Students Emergency Action for Liberal Democracy-s (SEALDs) staged a massive rally against the national security legislation in front of the parliament building (Mainichi Shimbun 2015). The government planned the lawyers assigned to the CGC in cooperation with the JFBA to activate preventive detention measures to send the children into juvenile reformatories, pursuant to Article 3 of the Juvenile Act, which the UNCRC recommended to abolish (Para. 45(e)). The age limit being extended, approximately half the university students will be under this 'preventive detention' scheme. Shortly thereafter, as the SEALDs disbanded itself, and mass rallies in front of the parliament building ceased, the plan for an age extension was shelved. In future state emergencies, the plan may re-emerge and CGC could assume the function of a quasi-security police force to detain student activists, which is another manifestation of the CGC's transformation into an entity akin to a Gestapo; however, conventional human rights organisations have not expressed the slightest concern.

## VI. *Concluding Remarks*

The frightening facts presented so far did not exist in medieval society or Orwell's *1984* but prevail in contemporary 'advanced' Japan. In securing their vested interests and economic gain, the CGC, having transformed into the 'welfare police' under Oriental neoliberalism, is no longer an institution that protects children but rather infringes upon human rights, placing Japanese families under a surveillance system where they feel fear akin to that of Jews during Nazi Germany. The CGC is further commercialising its activity through collusion with social-business-oriented NPOs in the 'special adoption' scheme.

To counter this phenomenon, global actions to make Japan abide by the international human rights laws are gaining increasing relevance. A former CGC employee underscored that 'the MHW could not give up the confinement policy of Hansen's disease patients because the MHW could not reduce its budget' (Yamano 2006, p.29) and vested interests. The involuntary confinement of the Hansen victims was ultimately dismantled thanks to the voices in the international human rights community and concomitant domestic movements against confinement.

Thus far, the human rights movements in Japan have succeeded in prompting the UNCRC to issue severe recommendations regarding the CGC's human rights infringements and the MHLW's wrongful child abuse policy. A loose national network to contain the MHLW, the CGC and ACF and to rescue the CGC victims is assuming a clearer shape recently.

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