

<p>Children with Separated or Divorced Parents are Suffering in Japan.</p> <p><i>A Critique of Japan's Second Periodic Report on The Convention on the Rights of the Child By Japan</i></p>	Original: English
<p><u>Submitted To:</u> Committee on the Rights of the Child The United Nations</p>	
<p><u>Submitted By:</u> Children's Rights Council of Japan and A Coalition of Ten NGOs</p>	January 12, 2004

Section 1. Summary and Introduction

1. On the occasion of the submission of Japan's Second Periodic Report (the "Report") on its implementation of The Convention on the Rights of the Child (the "Convention") for consideration by the Committee on the Rights of the Child, we, a coalition of Japan-based and Japan-focused NGOs (the "Coalition") led by the Japan Children's Rights Network (the "JCRN") and the Children's Rights Council of Japan (the "CRCJ"), offers its congratulations both to the Committee and to Japan on their efforts in this important field of children's rights and welfare.
2. However, while acknowledging that the government of Japan has made considerable efforts to protect the rights of children in Japan, we would like to bring to the attention of the Committee what our Coalition believes to be a systematic failure on the part of Japan to uphold the rights of children of failed marriages and other forms of parental separation. This continuing and persistent failure on the part of Japan in this area has had tragic results for the parents and children that our Coalition represents.
3. The Coalition consists of ten groups, including the CRCJ, the JCRN, the Fathers' Website¹, the Center for Japanese-Filipino Families, United For A Multicultural Japan, The Community, Japan With Kids, and others. Together our organizations represent thousands of Japanese children and one of their parents, who in the course of marital dissolution, separation or parental abduction have been denied virtually all access to each other. A brief description of each Coalition member group appears in Appendix A. In addition to its members in Japan, the Coalition represents members who are nationals of and/or resident in nations around the world including other Convention signatories.
4. In the experience of our members, the denial of children's access to both parents is the result of Japan's failure to adopt and implement laws and regulations that faithfully carry out the Convention's requirements that, among other things, signatory nations:
 - A. Recognize the rights of children to know **both** parents, **regardless of marital status**.
 - B. Ensure that children are able to maintain personal relations and direct contact with **both** parents on a **regular** basis, even in the event of separation from them.

¹Despite the name, this group represents parents of both genders and is not just a website. Copyright 2004, The Children's Rights Network of Japan (www.crnjapan.com). Some portions copyright Father's Website (www.fatherswebsite.com) and The Center for Japanese-Filipino Families. This document may be reproduced in its entirety provided that this copyright notice including the websites are included on every copy.

- C. Ensure that, absent other circumstances, a child is raised primarily by his or her parents, **regardless of marital status**.
- D. Allow development of a child's respect for his cultural identity, language and values; and for the national values of the country **from which he or she may originate, regardless of marital status**.
- E. Implement these rights and obligations **without discrimination**, regardless of gender, national origin, marital status or other factors.

5. In our Thematic Review of the Report, we indicate several areas where Japan has either failed to adequately report on the situation or has omitted problems of which it should be aware. Following this, we present five Subject Reviews of areas in which our Coalition believes that Japan is failing significantly to uphold its obligations as a signatory.

6. The following is a summary of our principal issues:

- A. Child custody and visitation grants in Japan routinely deny a child all meaningful contact with one parent, and for all practical purposes, both are unenforceable.
- B. The Japanese legal system discriminates against children and their parents based upon gender, ethnic origin, marital status and legitimacy.
- C. Child abuse and other psychological factors are not adequately recognized in court decisions on custody.
- D. Japanese Immigration regulations deny a foreign parent the long term residency in Japan necessary to maintain contact with his or her child, and hinder reporting of child abuse.
- E. Japanese laws and Family Court practices legitimize international parental child abduction.

7. To remedy these deficiencies, the five detailed Subject Reviews encourage the Committee to urge that the following measures be taken by the Government of Japan immediately, in accordance with its obligations as a signatory nation:

- A. Enact national laws requiring adequate visitation between a child and his or her non-custodial parent. Establish visitation guidelines including but not limited to (i) minimum unsupervised visitation hours per week; (ii) weekly overnight stays; (iii) separate vacation time per year allowing overseas travel when one parent is not a Japanese citizen, subject to adequate protections to ensure return; and (iv) permissible conditions for denial of any of these guidelines. Consult the many publicly available reference guidelines, such as those referenced at www.crnjapan.com/foreign_law/usa/en/sample_visitation.html
- B. Combine visitation proceedings with custody proceedings. Require it to be standard practice that preliminary visitation rights are awarded immediately upon commencement and enforced throughout. Absent special circumstances, a child should not go without seeing a parent for more than two weeks while proceedings are under way. Whether the parties respect such rights must be a key factor in the ultimate custody award.
- C. Completely separate custody and visitation determinations from divorce, to prevent access to children from being used as a bargaining tool in divorce.

- D. Enact national laws that criminalize denial of visitation, interference with custody, and concealment of children from a natural parent. These national laws must require government agencies to assist a natural parent in finding his or her child.
- E. Require that all judicial custody and/or visitation determinations state specifically why the determination is “in the best interests” of the children it affects.
- F. Modify Articles 818 and 819 of the Civil Code to permit joint custody of any child, not only children who parents are married. Enact a national law guaranteeing this right to joint custody after divorce or birth out of wedlock, except in cases of documented threat to the safety and welfare of the child as determined by independent qualified experts.
- G. Fill Family Court mediator and examiner positions only with candidates who have studied divorce, child custody mediation and child psychology, have served as an intern and have proven competency through examination.
- H. Enact national laws that (i) give a natural parent clear legal priority over other relatives in custody determinations, should the custodial parent become unable or unwilling to care for the child; and (ii) require notification and permission of **both** natural parents before an adoption or change of custody of a child can be completed.
- I. Maintain a national registration database of contact information for foreign parents of Japanese children in order to facilitate notification and granting of permission for adoptions and custodial changes. Require courts to consult this database before allowing any legal change of status of a child, and increase the maximum amount of time before a status change becomes permanent from the current 6 months to 3 years, in the case of a parent being un-contactable.
- J. Enter contact information for a foreign parent either into a child's Family Registration or into an alternate national registration database so that a Japanese child is always able to locate a foreign parent who has registered.
- K. Enact national laws clearly establishing the non-preference for a parent of a particular gender or national origin, to counter the Japanese judiciary's current obvious yet unstated preference for female parents in custody decisions.
- L. Gather and make public a breakdown of statistics with regard to custody and visitation awards based on citizenship of the parents involved, as Japan does for marriages, divorces, births and deaths.
- M. Investigate in conjunction with one or more NGOs, claims of discrimination based on ethnic and national origin in the Family Courts. Provide a determination, statistics supporting such determination, and measures taken to correct any problems found in the Third Periodic report to the Committee.
- N. Reform Article 819 of the Civil Code of Japan, to give the father and mother shared custody of an acknowledged child born out of wedlock, rather than just the mother, as is the case under current law. In consideration of the similarities to post-divorce situations, existing articles of the Civil Code should apply to such cases.

- O. Amend the Law for the Prevention of Child Abuse to establish within the national framework, that denial of a child's access to a parent constitutes a form of child abuse.
 - P. Sanction lawyers who persist in recommending that their clients deny access to the other parent as a bargaining chip or tolerate this sort of behavior in their clients.
 - Q. Amend immigration laws so that foreign parents of a Japanese child qualify for residency visas, including permanent residency visas, without the letter of guarantee currently required for the granting of such visas.
 - R. Amend immigration laws so that a non-married and non-custodial parent of a Japanese child is eligible for a long-term visa permitting employment, without the letter of guarantee currently required for the granting of such visas.
 - S. Grant permanent residency to a non-married and non-custodial parent of a Japanese child under the same accelerated time frame and favorable conditions applicable to a spouse of a Japanese citizen.
 - T. Promptly accede to the Hague Convention on the Civil Aspects of International Child Abduction and implement its provisions in domestic civil and criminal legislation.
 - U. Expedite the court processing of foreign child custody and visitation orders when a Japanese parent has removed the child from a foreign home or otherwise fails to respect such orders.
 - V. Release statistical information broken down by gender and citizenship, citing the number of arrests under the provisions of the law cited in paragraph 241 of the Report.
8. To substantiate the Coalition's assertions, the experiences its members and, more tragically, their children have suffered with the Japanese judicial, criminal justice and immigration authorities are available for review on the Internet web pages noted here, as articles published in international press and as personal narratives. There are hundreds of other similar stories that remain undocumented.
- <http://www.crnjapan.com/pexper/en/> (English)
<http://www.crnjapan.com/articles/en/> (English)
<http://www.fatherswebsite.com/history.html> (Japanese)
9. Sadly, the Coalition notes that a number of non-Japanese parents, are afraid to identify themselves in connection with this submission because they fear retribution by the Japanese government in the form of denial of visas to enter or remain in Japan -- visas which are necessary in order to continue with legal proceedings in Japan regarding custody and visitation rights, and necessary in order to maintain contact with their children.
10. Our Coalition welcomes the opportunity for further dialogue with both the Commission and the relevant authorities in Japan. In light of the concerns regarding potential reprisals from the Japanese immigration or other authorities noted above, the Coalition hopes that such dialogue would include clear assurances from the Japanese government that none of its members will be subject to any direct or indirect sanctions or reprisals by any agency of the government of Japan or by any legal arm of Japan for participation in such dialogues.

Section 2. Table of Contents

Section 1. Summary and Introduction.....	1
Section 2. Table of Contents	5
Section 3. Thematic Review of Japan's Report	6
Introduction	6
I. GENERAL MEASURES OF IMPLEMENTATION.....	7
A. The position of the Government of Japan with regard to its decision to make reservations	7
B. Measures to harmonize national laws and policies with the provisions of the Convention (art. 4)	7
K. International cooperation for implementation of the Convention.....	7
2. Educating civil servants who have duties concerning children	7
II. DEFINITION OF THE CHILD (art. 1)	8
B. Age limitation applied to legal capacity in Japan.....	8
III. GENERAL PRINCIPLES	8
A. Non-discrimination (art. 2).....	8
B. Best interests of the child (art. 3).....	8
IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17, and 37 (a))	8
A. Name and Nationality (art. 7).....	8
V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE	9
A. Parental guidance (art. 5)	9
Progress and problems in implementing article 18, and future goals	9
4. Ensuring the provision of information about the whereabouts of absent members(s) of the family	10
VI. BASIC HEALTH AND WELFARE	10
VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES	10
VIII. SPECIAL PROTECTION MEASURES	10
Section 4. Child custody and visitation grants in Japan routinely deny a child all meaningful contact with one parent, and for all practical purposes, both are unenforceable.	11
Section 5. The Japanese legal system discriminates against children and their parents based upon gender, ethnic origin, marital status and legitimacy.....	17
Section 6. Child abuse and other psychological factors are not adequately recognized in court decisions on custody.....	20
Section 7. Japanese Immigration regulations deny a foreign parent the long term residency in Japan necessary to maintain contact with his or her child, and hinder reporting of child abuse.....	21
Section 8. Japanese laws and Family Court practices legitimize international child abduction.	23
Section 9. Conclusions	25
Section 10. Dedication	25
Appendix A: Description of this NGO Coalition Members.....	26

Section 3. Thematic Review of Japan's Report

INTRODUCTION

“The greatest fear that attacks fathers facing divorce is that they may never see their children again.”

Hiroshi Yamaguchi, THE RITUAL OF DIVORCE (*Rikon no Saho*), PHP Shinsho, 2003, page 110. (Translation from Japanese by CRCJ).

11. The additional statistics from the Japanese Ministry of Health Labor and Welfare² cited below show that several major social trends in Japan have been omitted. Critically, while the total number of marriages actually decreased in the eight years from 1995 to 2002, the rise in divorces over the same period in excess of 45% is striking. Tables 1 and 2 include figures for international marriages, defined as marriages in which only one partner possesses Japanese nationality. Note that in both international marriages and divorces, the non-Japanese partner is a woman greater than 75% of the time.

Table 1
Trends in Marriages and Divorces in Japan

	1995	2002	Change
Total Marriages	791,888	757,331	- 4.4%
Total Divorces	199,016	289,836	+45.6%
Number of underage children whose parents divorced (some couples have more than one child)	205,901	299,525	+45.5%
International Marriages	27,727	35,879	+29.4%
Foreign Partner is Female	20,787 (74.9%)	27,957 (77.9%)	--
International Divorces	7,992	15,252	+90.8%
Foreign Partner is Female	6,153 (76.9%)	12,087 (79.2%)	--

Table 2
Birth Trends in Japan

	1995	2002	Change
Total Births	1,187,064	1,153,855	- 2.8%
Births Out of Wedlock	14,718	21,631	+47.0%
Births to International Couples	20,254	22,251	+ 9.9%

12. These figures highlight new social problems for children that are emerging as relationships dissolve, yet are not being adequately addressed in Japan. These include different expectations of reasonable contact with children, international travel to see relatives, etc.

13. The Coalition asserts that updated versions of these statistics, already existing in government-published statistical collections, deserve inclusion in future reports by Japan.

² <http://www.mhlw.go.jp/toukei/saikin/hw/jinkou/suii02/> and other places on this website without a static URL.

I. GENERAL MEASURES OF IMPLEMENTATION

A. The position of the Government of Japan with regard to its decision to make reservations

14. Japan's declaration on paragraph 1 of article 10 impairs the ability of a Japanese child "...to know and be cared for by his or her parents" (Article 7) when one parent is a non-Japanese citizen. The establishment of a visa category enabling parents of Japanese nationals to reside in Japan solely by virtue of the fact of such parentage, or a policy change to allow such residency *ipso facto*, constitutes one of the Coalition's legislative requests to the Japanese government. Such changes in the framework by which residency status is granted mitigates in part the effects of this declaration while allowing the Japanese government to retain the final approval of who is granted such a visa status. Section 7 provides further elaboration on this topic.

B. Measures to harmonize national laws and policies with the provisions of the Convention (art. 4)

15. Japan has a detailed corpus of substantive and procedural family laws, a network of family courts, and a constitution and other statutory legislation which in many ways reflects the provisions of the Convention and other international conventions to which Japan is a party. Yet despite this, it is the almost unanimous experience of our members that none of these institutions or any other public body functions in a manner which fulfills the obligations of Japan under the Convention, or protects the rights of children of failed marriages and other forms of parental separation in its jurisdiction. The ineffectual nature of the Japanese family court system has been commented on both by Japanese legal professionals, and in the international press.

16. Links to many relevant articles in English and some in Japanese are available on the website of JCRN and Fathers' Website. The extensive deficiencies of the Japanese court system in the case of divorce and custody disputes have been written about by Japanese lawyers in mass-media books. See, e.g. *Rikon no Saho* (The Ritual of Divorce), by Hiroshi Yamaguchi, PHP Shinsho, 2003.

- A. <http://www.crnjapan.com/pexper/en/> (English)
- B. <http://www.crnjapan.com/articles/en/> (English)
- C. <http://www.fatherswebsite.com/history.html> (Japanese)

17. Therefore, it is the Coalition's view that national laws and policies in Japan are not harmonized with this Convention in the areas described in the Report. The Coalition includes several legislative requests to the Japanese government in Subject Review sections.

K. International cooperation for implementation of the Convention

2. Educating civil servants who have duties concerning children

18. It is the Coalition's view that most civil servants involved in institutions that oversee the welfare of children are well-meaning. However, based on our experience they tend to be (i) generally unaware both of the rights and obligations enshrined in the Convention; (ii) unaware that these rights and obligations take precedence over what they individually may believe to be "the Japanese way", (iii) lacking in formal training or qualifications regarding child psychology and other relevant fields, or lacking in access to professionals with such training and qualifications, (iv) focused on the formalistic goals of the systems in which they function (e.g. making a custody determination in accordance with specified procedures), rather than on

whether those goals and procedures will serve the best interests of the children subject to them. Section 4 provides further elaboration on this topic.

19. The Coalition suggests that NGOs be involved in the creation and review of the future materials used to educate civil servants on the Convention.

II. DEFINITION OF THE CHILD (ART. 1)

B. Age limitation applied to legal capacity in Japan

20. The Coalition would like to ask if there are any restrictions on a lawsuit being brought on behalf of a child by a non-custodial parent? In the absence of any other effective remedies, some of our members have considered bringing lawsuits on behalf of their children.

III. GENERAL PRINCIPLES

A. Non-discrimination (art. 2)

21. **General Comment on this Section.** A child born whose parents are not married, either because they never were, or because of divorce, is routinely discriminated against by being denied the right “...to know and be cared for by his or her parents” (Article 7). There is no joint custody, court ordered visitation is inadequate, and court ordered visitation is not enforced. Section 4 provides further elaboration on this topic.

B. Best interests of the child (art. 3)

2. Consideration for the principle of “best interests of the child”

22. The Coalition requests clarification of the following criteria.

- A. What specific criteria are used by judges and other authorities to determine whether a set of circumstances is for or against the best interests of the child?
- B. If such criteria exist, are they made public?
- C. To what extent are judges, mediators and judicial investigators of the Family Court required to articulate the rationale for the determination beyond simply stating it is “in the best interests of the child”.

23. **Comment on Adoptions.** When the parents of a child are not married, either because they never were, or because of divorce, the permission of the non-custodial natural parent is not required for the child to be adopted by either a new spouse or relatives of the custodial parent. This raises many questions about the future well being and custody of the child should the custodial natural parent die or become incapable in the future.

5. Expert training concerning the principle of “the best interests of the child”

24. See previous comments on “Educating Civil Servants...”

IV. CIVIL RIGHTS AND FREEDOMS (ARTS. 7, 8, 13-17, AND 37 (A))

A. Name and Nationality (art. 7)

25. **Comment on *Status of an illegitimate child.*** An additional difference is that the custody of an illegitimate child goes by default to the mother, without the father having an equal right to custody without a civil trial. (Japanese Civil Code, Article 819) This is especially important given the fact that Japanese law does not allow joint custody, and even court ordered visitation can not be enforced if the custodial parent is defiant. Section 4 provides further elaboration on this topic.

26. Comment on Paragraph 174. Currently, the name of a foreign parent, is entered into a child's Japanese Family Registration, even if the head of that Family Registration would rather it was not. But when the parent is non-Japanese, there is no system of registering the foreign parent's contact information, and the Japanese parent may not be willing to volunteer the information to the child.

27. The "right to know one's parents" as evidenced in the Convention consists of more than just the ability to obtain a name and address from a public registry. It is the Coalition's view that Japan is extremely deficient in providing its children with the opportunity to know and have meaningful, loving relationships with both parents in the event of parental separation.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance (art. 5)

28. Comments on Paragraph 213. The Japanese Civil Code, Articles 818 and 819 prohibit joint child custody except during marriage. This neither permits the "joint exercise of parental power" nor "joint responsibility" described in paragraphs 112 of the initial report, referred to in the Report, after a divorce or a birth out of wedlock. **This paragraph in Japan's Report is grossly misleading as it only applies to children whose parents are married.**

29. Further, there are no laws ensuring adequate visitation for a non-custodial parent, and court orders for visitation cannot practically be enforced. Section 4 provides further elaboration.

30. Additionally, the Report refers again to Paragraph 112 of the initial report, which says, "Article 24 of the Constitution prescribes essential equality of the sexes with regard to matters pertaining to the family." Another key Coalition claim is that Japanese laws concerning children do not reflect this equality of sexes for parental care. As the statistics in Section 5 show, in mediation of custody disputes among parents in Japan, custody is granted to the mother greater approximately 80% of the time. This is certainly far from equality.

31. Finally, sole custody of an illegitimate child goes by default to the mother, without the father having an equal right to custody without a lengthy civil trial. (Civil Code, Article 819), in clear violation of the non-discriminatory principles of the Convention. The same is true for a child conceived in matrimony, born after a divorce. Based on this, other discriminatory acts are then legally protected, as described previously in the Comment on Adoptions. Sections 4 and 5 provides further elaboration on this topic.

Progress and problems in implementing article 18, and future goals

32. This section fails to mention that Japanese laws protect the right of one parent in the upbringing and development of the child, but do nothing to protect the right of two parents to do the same. Joint custody is not legal in Japan. Child visitation is inadequate and court ordered visitation cannot be enforced. Section 4 provides further elaboration on this topic.

33. Comment on Paragraph 228. Article 766, paragraph 1 of the Civil Code, which is used to determine custody and visitation rights, reads as follows. "In cases where the father and mother effect a divorce by agreement, the person who is to take custody of their children and **other matters** necessary for the custody shall be determined by their agreement, and if no agreement is reached or possible, **such matters** shall be determined by the Family Court." This gives no assurance of any visitation at all. Further, joint custody is legally prohibited in Japan. Section 4 provides further elaboration on this topic.

4. Ensuring the provision of information about the whereabouts of absent members(s) of the family

34. Comment on paragraph 234 (paragraph 129 of initial report). Japan takes no measures to assure that a child separated from a parent due to denial of visitation by the custodial parent is able to maintain contact with the non-custodial parent. Conversely, Japanese officials are typically unhelpful to a non-Japanese parent trying to trace down a missing Japanese custodial or even an abducting parent. The Residency Registration for Japanese citizens would seem to be a mechanism to always make finding a child possible. But a parent who wishes not to be found will simply not update their Residency Registration. Although there are fines for this, they are rarely imposed, even when the deception should be obvious.

35. The government continues to provide services to a parent whose Residency Registration is not accurate. This is true even when these services, such as health insurance, national pension, etc are obviously being provided from a local government office in a different area from the Residency Registration. Such a parent often instructs the Post Office to forward mail for an indefinite time, or changes the address for the service, yet is not required to change their Residency Registration. Government providers of such services will typically not release information about the location of the person receiving these services, nor will the Post Office release forwarding address information.

VI. BASIC HEALTH AND WELFARE

36. Comment on Paragraph 241. Notwithstanding the Japanese government's reference to its Law for Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children, the Coalition is aware of only one instance where this type of law has been used: an instance where a non-Japanese man was seeking to remove his own child from Japan.

37. Furthermore, the more common offense in Japan, unfortunately, is when a Japanese parent abducts a child from another country back to Japan, sometimes in contravention of custody orders in that country. Other times, they simply know that they can use Japanese laws to indefinitely maintain physical possession of the child to establish a new status-quo, while they seek divorce. In our experience, Japan almost always fails to honor foreign custody and visitation orders, particularly when one parent is Japanese.

38. Not only are there no apparent sanctions for this type of behavior, but the Japanese system actually provides an incentive to parents to unilaterally abduct their children, whether internationally or within Japan. This is because due to the issues we describe, the parent who suffers the initial abduction of his or her child has limited or no recourse other than a counter-abduction. The Coalition hopes that it goes without saying that a system which provides an incentive parents to abduct and re-abduct their own children unilaterally cannot be functioning in the best interests of any child.

39. Accordingly, the Coalition does not believe that the law cited is actually being used in any meaningful way to protect the rights of children in Japan in cases of parental abduction, or that this portion of the Report accurately describes Japan's implementation of the Convention.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

40. No comments.

VIII. SPECIAL PROTECTION MEASURES

41. No comments.

Section 4. Child custody and visitation grants in Japan routinely deny a child all meaningful contact with one parent, and for all practical purposes, both are unenforceable.

A. We urge the Committee to ask the Government of Japan about this Situation

42. During Family Court legal proceedings, which can often take years, no provisional visitation or other access is granted between a child and the parent without physical possession of the child. Because these proceedings are usually very lengthy, a “status quo” is typically established by the time they are completed. This status quo, by default, is typically determined to be in the “best interests of the child,” even if it was achieved through child abduction, denial of access or other conduct on the part of one parent that would actually constitute criminal behavior in many other Convention States. In any case, such behavior should be a clear indicator to authorities that the parent engaging in it may not be acting in the best interests of their child.

43. Japanese law does not legally guarantee visitation. So a child in Japan is not assured the right to know and be cared for by **both** parents and to maintain personal relations and direct contact with **both** parents on a **regular** basis.

44. When granted, which is less than 20% of the time, the periods of visitation are not sufficient for the child to “know and be cared for” nor to “maintain personal contact on a regular basis” with the non-custodial parent. Visitation is often measured in terms of a few hours per month and is very often supervised, in a sterile environment, with the frequently hostile custodial parent nearby. There is little opportunity to establish meaningful relationships with children who have to survive with the custodial parent. Visitation rulings further discriminate against a child with foreign family by not allowing the child to leave Japan for vacations or to see distant or ill relatives unable to travel to Japan.

45. The Japanese Civil Code, Articles 818 and 819, legally prohibit sole custody after dissolution of a marriage or after the birth of a child out of wedlock. Despite this, due to the desire for shared custody by Japanese citizens, government websites, such as the one in Okayama City have statements such as, “We will not accept applications for joint child custody between mother and father after a divorce.”³ Although joint custody has been deemed the solution most beneficial to children in a number of countries, Japan rejects it, even when separated parents desire it.

46. The Japanese Family Court system rarely produces satisfactory results in contested custody and visitation actions. However even parents who spend months or years fighting for their parental rights and the rights of their children may continue to be denied access to their children. Even after court orders for custody and visitation are issued, they cannot be enforced. Japanese courts do not have contempt powers nor marshals empowered to physically enforce custody or visitation orders. Japanese police will also not enforce custody or visitation orders.

47. The Civil Code of Japan allows a custodial parent who wants to prevent the other natural parent of a child from gaining custody in the future, to independently approve adoption of the

³ Translation by CRNJ. Source: <http://www.city.okayama.okayama.jp/shimin/shimin/koseki/rikon.htm> (A copy is available on request to CRNJ if the source version ever becomes unavailable.)

child by a new spouse or a relative. Contrary to Article 21 Paragraph (a) of the Convention, this does not require the consent of the both natural parents.

48. Currently Family Court mediators consist primarily of well-meaning “private citizens with common sense” but who are nevertheless civilian amateurs without formal academic training⁴.

B. We request the Committee to ask the Government of Japan to Take These Measures

49. Enact national laws requiring adequate visitation between a child and his or her non-custodial parent. Establish visitation guidelines including but not limited to (i) minimum unsupervised visitation hours per week; (ii) weekly overnight stays; (iii) vacation time per year allowing overseas travel when one parent is not a Japanese citizen, subject to adequate protections to ensure return; and (iv) permissible conditions for denial of any of these guidelines. Consult the many publicly available reference guidelines, such as those referenced at www.crnjapan.com/foreign_law/usa/en/sample_visitation.html

50. Combine visitation proceedings with custody proceedings. Require it to be standard practice that preliminary visitation rights are awarded immediately upon commencement and enforced throughout. Absent special circumstances, a child should not go without seeing a parent for more than two weeks while proceedings are under way. Whether the parties respect such rights must be a key factor in the ultimate custody award.

51. Completely separate custody and visitation determinations from divorce, to prevent access to children from being used as a bargaining tool in divorce.

52. Enact national laws that criminalize denial of visitation, interference with custody, and concealment of children from a natural parent. These national laws must require government agencies to assist a natural parent in finding his or her child.

53. Require that all judicial custody and/or visitation determinations state specifically why the determination is “in the best interests” of the children it affects.

54. Modify Articles 818 and 819 of the Civil Code to permit joint custody of any child, not only children who parents are married. Enact a national law guaranteeing this right to joint custody after divorce or birth out of wedlock, except in cases of documented threat to the safety and welfare of the child as determined by independent qualified experts.

55. Fill Family Court mediator and examiner positions only with candidates who have studied divorce, child custody mediation and child psychology, have served as an intern and have proven competency through examination.

56. Enact national laws that (i) give a natural parent clear legal priority over other relatives in custody determinations, should the custodial parent become unable or unwilling to care for the child; and (ii) require notification and permission of **both** natural parents before an adoption or change of custody of a child can be completed.

57. Maintain a national registration database of contact information for foreign parents of Japanese children in order to facilitate notification and granting of permission for adoptions and custodial changes. Require courts to consult this database before allowing any legal change of

⁴ CRNJ Translation from Internet site of the Japanese Supreme Court, entitled "Saiban Tetsuzuki: Kaji Jiken Ni Tsuite".

status of a child, and increase the maximum amount of time before a status change becomes permanent from the current 6 months to 3 years, in the case of a parent being un-contactable.

58. Enter contact information for a foreign parent either into a child's Family Registration or into an alternate national registration database so that a Japanese child is always able to locate a foreign parent who has registered.

C. Background and Details of the Current Situation

59. **Family Court Settlement Time.** Most family law matters (including visitation) must first be submitted to court-overseen mediation, which generally involves one session every 4-6 weeks until one party asks for a judgment and the presiding judge agrees to terminate the mediation. The issuance of the judgment may itself take several months or even years and is immediately suspended if appealed. Data from the Supreme Court of Japan's Yearly Legal Statistical Report (Shipou Toukei Nenpou – translated by JCRN) show how long this took, for custody cases in 2002.

Table 3
Length of Time Required for Family Court Settlement of Custody Cases in 2002

Total Cases	Within 1 month	Within 3 months	Within 6 months	Within 1 year	Within 2 years	Longer than 2 years
18,605	2,449 (13.2%)	7,218 (38.8%)	5,258 (28.3%)	2,725 (14.7%)	797 (4.3%)	158 (0.8%)

60. **Provisional Physical Custody.** Physical custody of a child is frequently awarded on a provisional basis until the couple is reconciled or divorced. During this time typically no provisional visitation or any other access is granted between child and parent (and any orders that are granted are unenforceable in any case). Motions can be made for provisional visitation but these are generally rejected or simply not acted upon.

61. Accordingly, some Coalition organizations represent parents who have had virtually no contact with their children for months or years while proceedings are under way. And because custody and visitation are separate causes of action, one parent can be awarded sole custody and leave or move within Japan while actions for visitation are still pending. As a result, the Japanese legal system allows a child to have all contact with one of his or her parents denied for no reason other than that the legal process is time consuming.

62. Because custody and visitation determinations are typically entangled with issues related to marital dissolution – splitting of marital assets, for example, there is a definite incentive to use visitation as a tool for obtaining financial benefits as part of this process. Separation of custody issues from marital issues would also render unnecessary the current system that effectively discriminates against the children of unmarried parents and their fathers, described Section 5.

63. **Joint Custody.** The following translations of Japanese law are from “The Civil Code of Japan” published by Eibun-Horei-Sha, 2001, as the official translation of the Ministry of Justice.

- A. **(Article 818, Paragraph 3)** While father and mother are in matrimonial relation, they jointly exercise the parental power.

- B. **(Article 819 Paragraph 1)** If father and mother have effected divorce by agreement, they shall determine one of them to have the parental power by agreement.
- C. **(Article 819 Paragraph 2)** In cases of judicial divorce the Court shall determine father or mother to have the parental power.
- D. **(Article 819 Paragraph 3)** If the father and mother have effected divorce before the birth of a child, the parental power is exercised by the mother. However the father and mother may determine the father to have parental power by agreement after the birth of a child.
- E. **(Article 819 Paragraph 4)** The parental power over a child recognized by its father shall be exercised by its father, if and only if the father and the mother determine the father to have the parental power by their agreement.

64. These Articles show that although Japanese Civil Law recognizes the concept of joint custody, such is only permitted during marriage. After a divorce, or when a child is born out of wedlock, legal custody must be awarded to a single parent. This is clearly a case of discrimination against a child due to the marital status of his or her parents, as well as being contrary to other articles of the Convention.

65. **Visitation Not Legally Protected.** Although grantable by a judge, Japanese Civil Law contains no legal guarantee of visitation, and hence that a child of a broken relationship will ever have contact with a non-custodial parent. Accordingly, data from a December 2003 Tokyo Bar Association Seminar (translated by JCRN) in Tables 4 and 5 illustrate that visitation is rarely granted.

Table 4
Child Support and Visitation in Custody Cases Settled by Family Court Mediation

Year	Child Custody Actions	Child Support Awarded	Visitation Awarded
1998	12,590	10,213 (81.1%)	1,696 (13.5%)
1999	13,456	10,870 (80.8%)	1,936 (14.4%)
2000	15,041	11,880 (79.0%)	2,406 (16.0%)
2001	16,923	13,220 (78.1%)	2,797 (16.5%)
2002	19,112	14,718 (77.0%)	3,345 (17.5%)

Table 5
Child Support and Visitation in Custody Cases Settled by Family Court Judgment

Year	Child Custody Actions	Child Support Awarded	Visitation Awarded
1998	1,742	946 (54.3%)	293 (16.8%)
1999	1,736	985 (56.7%)	247 (14.2%)
2000	1,986	1,059 (53.3%)	322 (16.2%)
2256	2,256	1,137 (50.4%)	434 (19.2%)
2002	2,708	1,327 (49.0%)	509 (18.8%)

66. Note that these statistics on visitation refer only to those agreed on or ordered by the court, in a situation that is already antagonistic. Otherwise neither mediation nor a civil suit would be required. Since neither agreement nor order is enforceable, as described later on, these numbers may in fact grossly overestimate the number of cases where the custodial parent actually permits the visitations to occur.

Table 6
Length of Visitations Granted in Visitation Cases Settled by the Family Court in 2002

Total Cases	1 time or more per month	1 time or more every 2 or 3 months	1 time or more every 4 or 6 months	Taking Break From Visits	Separate Consultation	Other	No Overnight Privileges
1,703	936 (55.0%)	285 (16.7%)	69 (4.1%)	64 (3.8%)	168 (9.9%)	181 (10.6%)	1,404 (82%)

67. Further Supreme Court of Japan's Yearly Legal Statistical Report (Shipou Toukei Nenpou – translated by JCRN) statistics in Table 6 illustrate that the luckiest of children are those in the classification of seeing the other parent “one time or more per month” in Japan. Yet to be adequate for a child to “know and be cared for” by a parent and to “maintain personal contact...on a regular basis” with the parent, this data would be broken down into “Hours per week” instead. So the very nature of the statistics provided in Japan help tell the story. Even with this breakdown, only about half of the less than 20% from Tables 4 and 5 who are granted visitation in the first place, are this “privileged.”

68. Lack of Enforcement. Japanese lawyer Hiroshi Yamaguchi comments on the non-enforceability of Japanese custody and visitation orders specifically in “The Ritual of Divorce” and on the limited enforcement powers of Japanese courts generally in an earlier book, “The Secret of Trials”⁵. In *The Ritual of Divorce*, Attorney Yamaguchi notes that the only practical way for a father to obtain custody is to take physical possession of the child and simply refuse to hand him over to the mother, notwithstanding whatever court orders the mother may obtain. Because these orders are unenforceable the father will ultimately be successful and may even obtain judicial ratification of the status quo after a certain point⁶.

69. Some of our members have actually been recommended to take exactly this sort of action by members of the Japanese bar specializing in Family Law - use the lack of enforcement to establish a new “status quo” that the court system can only ratify. We reiterate that a system where parents are rewarded for unilaterally stealing their children from each other cannot be functioning in the best interests of the children. The Japanese system does nothing to sanction the offending parent, instead relying entirely upon both often antagonistic parents to voluntarily respecting its authority.

70. Thus, while paragraph 228 of the Report accurately sets forth the procedures involved in granting visiting rights, in reality Japan's judicial system and other public authorities do not function in a manner, which ensures any meaningful contact with the non-custodial parent after separation. This is a clear violation of Japan's obligations under Articles 7, 9 and 10 of the Convention. It is the Coalition's view that Article 228 of the Report is materially inaccurate in its failure to report on the enforcement of court determinations in addition to the process by which such determinations are made.

71. Inadequate Mediation. Notwithstanding Paragraph 67 of the Report, it is the experience of our members that many members of the Japanese judiciary and other legal

⁵ *Saiban no Himitsu* (The Secret of Trials), Yosensha, 1997, co-authored with Takahiko Soejima, a social commentator

⁶ *Id* at 122-123.

professionals are either not sufficiently aware of, or are simply not implementing the rights and obligations of Japan under the Convention regarding custody and visitation.

72. Under the current Family Law mediation system, in most cases, all determinations of custody and visitation are made by teams consisting of judges, mediators and judicial investigators. But judicial clerks are generalist public servants, also involved in all the paper work and other procedures of any marital or other family dispute, whose other duties do not allow them to focus solely on the best interests of the child. While mediators are merely civilian amateurs without formal academic training. Whether such judicial investigators or mediators have any psychological background appears to be simply a matter of chance.

73. The inadequacies of the mediation system in the Family Court have been the source of dissatisfaction by the Japanese members of Coalition group Fathers' Website, and by other parents in our Coalition groups who have been subject to them.

74. A Note on "Best Interests". The Convention requires state parties to act in the "best interests" of the child, and the Report refers repeatedly to the "best interests" of children as a guiding principle. However, it is the experience of our members, that custody decisions and other governmental actions that in practice terminate a child's relationship with one parent are always justified as being "in the interests of the child." (See, for example, paragraph 228 of the Report.) However, why such a result is in the child's best interests is rarely if ever articulated.

75. It is the Coalition's belief that the Japanese courts and other authorities simply use the "best interests of the child" in a conclusory manner because they are the "magic words" required by the various laws and regulations, rather than because of any actual consideration of what those interests are.

76. The Coalition acknowledges that Article 9(1) provides specific examples of instances where the child's best interests may require separation from a parent, but that these are limited to cases of abuse, neglect, and the need to determine separate residential arrangements.

77. It is our view that the Japanese judiciary, mediators and other legal professionals are not properly educated about what circumstances may constitute a child's "best interests, nor about the continued right of the child to maintain personal relations and direct contact on a regular basis, despite "separation" as described in Article 9(3).

78. Adoption. As a final note on custody, when the parents of a child are not married, either because they never were, or because of divorce, the permission of the non-custodial natural parent is not required for the child to be adopted by either a new spouse or relatives of the custodial parent. This contradicts Article 21 Paragraph (a) of the Convention, and raises many questions about the future well-being and custody of the child should the custodial natural parent die or become incapable in the future.

79. Further References. Numerous international press accounts and personal narratives of parents trying unsuccessfully to obtain access to their children in Japan can be viewed at the following websites:

- A. <http://www.crnjapan.com/pexper/en/> (English)
- B. <http://www.crnjapan.com/articles/en/> (English)
- C. <http://www.fatherswebsite.com/history.html> (Japanese)

Section 5. The Japanese legal system discriminates against children and their parents based upon gender, ethnic origin, marital status and legitimacy.

A. We urge the Committee to ask the Government of Japan about this Situation

80. Government statistics show mothers get custody over 80% of the time. Notwithstanding paragraph 218 of the Report, which refers to Japan's "Basic Law for a Gender Equal" [sic], discrimination against fathers in awarding custody is apparent. Thus, in the context of custody proceedings, the Japanese judiciary generally does not acknowledge any equal role for fathers as caregivers to their children, as specified in Japanese domestic law and implied by the non-discriminatory principles of the Convention.

81. Japan discriminates against a child being cared for in a joint custody agreement, based on the marital status of his or her parents. Civil Code Articles 818 and 819 proscribe joint custody during marriage, yet **prohibit** joint child custody in all cases outside of marriage. This is clear discrimination based on the marriage status of the parents, prohibited by Article 2 of the Convention.

82. Civil Code Article 819 gives an unmarried mother of a child sole custody, even if the father is also unmarried and legally acknowledges the child. It also gives sole custody of a child conceived during marriage but born after divorce exclusively to the mother. Alone and especially taken together with the other claims described in this Critique, this constitutes discrimination against a child born out of wedlock.

83. Discrimination at the hands of Japanese courts making determinations regarding custody and visitation is widely reported among non-Japanese mothers and fathers.

B. We request the Committee to ask the Government of Japan to Take These Measures

84. Enact national laws clearly establishing the non-preference for a parent of a particular gender or national origin, to counter the Japanese judiciary's current obvious yet unstated preference for female parents in custody decisions.

85. Gather and make public a breakdown of statistics with regard to custody and visitation awards based on citizenship of the parents involved, as Japan does for marriages, divorces, births and deaths.

86. Investigate in conjunction with one or more NGOs, claims of discrimination based on ethnic and national origin in the Family Courts. Provide a determination, statistics supporting such determination, and measures taken to correct any problems found in the Third Periodic report to the Committee.

87. Reform Article 819 of the Civil Code of Japan, to give the father and mother shared custody of an acknowledged child born out of wedlock, rather than just the mother, as is the case under current law. In consideration of the similarities to post-divorce situations, existing articles of the Civil Code should apply to such cases.

C. Background and Details of the Current Situation

88. *Gender-Based Discrimination in Custody Decisions.* Custody decisions in Japan indisputably discriminate in favor of the female parent, particularly when the child is below a

certain age. Since Japanese law does not provide for joint custody, custody is almost always awarded to the female parent, despite the absence of any statutory basis for doing so and indeed, despite the Japanese Constitution, the recent Basic Law For a Gender Equal Society, and the Convention, which prohibit all gender-based discrimination.

89. For example, in the years 1995, 2002 and all years in between, the difference between custody awards is highly skewed toward mothers (The raw numbers for mediations do not add up properly to 100% due to mediations where multiple children in the same family were awarded to different parents.)

Table 7
Gender Differences in Custody Decisions

	1995	2002	Change
Total custody decisions (units are incidents of possibly multiple children)	122,067	174,042	+42.6%
Awards to Mother	93,326 (76.5%)	138,930 (79.8%)	--
Awards to Father	22,817 (18.7%)	28,070 (16.1)	--
Children Separated (Not included in Awards)	5,924 (4.9%)	7,042 (4.1%)	--
Mediation custody decisions (units are number of children)	NA	19,325	NA
Awards to Mother	NA	17,296 (86.5%)	--
Awards to Father	NA	2,695 (13.5%)	--
Children Separated (Included in Awards)	NA	666 (3.3%)	--

90. This form of discrimination appears to be so ingrained into the Japanese judicial system that it is simply common knowledge among most practitioners that “the mother gets the child.” This result is such a given that Japanese lawyer Hiroshi Yamaguchi has a chapter in his book “The Ritual of Divorce” entitled “Mothers Get Custody almost 100% of the Time” (*shinken wa hyaku pasento hahaoya ni*). The chapter includes the following statement about the award of custody by Japanese courts: “*Dad, you work hard and help Mom financially so that it is easier for her to raise the child*” are the rules which the Family Court has ready and which have to be complied with. Unless there are special circumstances, like the mother is addicted to amphetamines and has no hope of recovery, did something bad and is serving time in prison, or is involved in messy relationships with other men and has no time for raising children, it is not an exaggeration to say that when the child is under 15, the mother will be made legal custodian almost 100% of the time⁷.”

91. The Coalition notes that according to Ministry of Health Labor and Welfare statistics, between 1950 (the earliest available date) and 1970, Japanese fathers received custody nearly equally with Japanese mothers. It is only since then that the current discriminatory trend began and peaks in the current generation. Accordingly, the current situation is the result of a system

⁷ *Id* at page 112 (translation by CRCJ)

that is simply not functioning properly, rather than any deeply ingrained cultural factors that are unique to Japan.

92. *Gender-Based Discrimination in Existing Laws.* The following translations of Japanese law are from "The Civil Code of Japan" published by Eibun-Horei-Sha, 2001, as the official translation of the Ministry of Justice.

A. **(Article 819 Paragraph 3)** If the father and mother have effected divorce before the birth of a child, the parental power is exercised by the mother. However the father and mother may determine the father to have parental power by agreement after the birth of a child.

B. **(Article 819 Paragraph 4)** The parental power over a child recognized by its father [i.e. a child born out of wedlock but legally acknowledged] shall be exercised by its father, if and only if the father and the mother determine the father to have the parental power by their agreement.

93. These Articles discriminate based on marriage status against a child whose parents are not married when he or she is born, both when the child is conceived in marriage just before divorce, or conceived out of wedlock. Combined with the other claims in this Critique, the result is an especially harsh discrimination, the result of which is that many children born out of wedlock never know their fathers.

94. *Discrimination Against Children Based on the Marriage Status of Parents.* See Section 4, where the relevant Japanese Civil Codes are given, and joint custody is discussed in detail.

95. *Discrimination based on Nationality or Ethnicity.* Among foreign parents fighting in the Japanese courts for custody of, visitation with, and very often return from international abduction of their children in Japan, there is a perception of discrimination in favor of a Japanese parent, regardless of gender.

96. It is the experience of our members that, where one parent is Japanese and the other is not, the Japanese parent is almost always awarded custody by Japanese courts. In some cases, this discrimination is so clear that it results in favoring of a Japanese grandparent over a natural foreign parent.

97. Unfortunately, this is very hard to document as we are not aware of any publicly-available statistics regarding the nationality of parents involved in custody and visitation disputes. However the experience of many of our members, together with press reports, certainly supports the existence of such discrimination.

98. Because of the apparent absence of statistics and the serious discriminatory nature of this claim, the Coalition requests that the Japanese government compile and report such data to the Committee in future reports, and make such data publicly available.

Section 6. Child abuse and other psychological factors are not adequately recognized in court decisions on custody.

A. We urge the Committee to ask the Government of Japan about this Situation

99. It is widely reported that allegations of child abuse, both physical and psychological, are not taken into consideration in custody decisions of the Family Court.

B. We request the Committee to ask the Government of Japan to Take These Measures

100. Amend the Law for the Prevention of Child Abuse to establish within the national framework, that denial of a child's access to a parent constitutes a form of child abuse.

101. Sanction lawyers who persist in recommending that their clients deny access to the other parent as a bargaining chip or tolerate this sort of behavior in their clients.

C. Background and Details of the Current Situation

102. Article 2 of Japan's Law for the Prevention of Child Abuse currently defines Child Abuse as being (in summary): (1) physical harm to the child; (2) sexual molestation; (3) significant failure to look after the child properly; and (4) verbal abuse that significantly damages the child psychologically.

103. Why other conduct that significantly damages the child psychologically, *does not* constitute child abuse is a mystery. The Coalition considers denial of access to the other parent, absent special circumstances, to be a significant failure to look after a child properly. This would also be consistent with the practice in a number of other States that are a party to the Convention.

104. At least one of our members has in the context of custody and visitation proceedings submitted expert testimony from a child psychologist regarding the profound psychological damage that can result to a child from the sudden and unexplained termination of a loving parental relationship, but such evidence was ignored and the ongoing termination of his relationship with his son was deemed by a Japanese court to be "in the child's best interest."

105. Attorney Yamaguchi comments on the practices of Japanese lawyers specializing in divorce and suggests that recommending to clients, "Whatever you do, don't let your husband see the children, okay?" is standard operating practice for such lawyers.⁸ It is our view that such lawyers, if not aiding and abetting a crime, are engaged in the perpetuation of conduct that is morally reprehensible and should be disbarred or otherwise sanctioned for encouraging it.

106. Because the law also imposes a special duty on members of the legal profession to identify and prevent child abuse, it would discourage Japanese divorce lawyers from encouraging their clients to deny access to the other parent as a bargaining chip, which is currently common practice.

⁸ See note on pages 107-108.

Section 7. Japanese Immigration regulations deny a foreign parent the long term residency in Japan necessary to maintain contact with his or her child, and hinder reporting of child abuse.

A. We urge the Committee to ask the Government of Japan about this Situation

107. The policies of the Japanese government for granting permanent visa to foreign parents of Japanese children are discriminatory. These policies require a signed letter of guarantee from the spouse in order to receive a spousal visa or permanent residency. In times of conflict, there is definitely no chance for the foreign spouse to obtain this letter of guarantee, and to be able to legally remain in Japan with their children.

108. Although the rare foreign parent who has custody of a Japanese child can usually get a suitable visa to stay and work in Japan, a non-custodial parent involved in a court battle or one who wants to be able to visit their child on a frequent and regular basis cannot get a suitable long term work visa or permanent residency guaranteeing access and other rights of the child to the non-Japanese parent.

109. The requirement for a signed letter of guarantee is an accessory to domestic violence against children with a foreign parent. If the foreign parent reports or threatens to report the violence, the Japanese spouse may threaten to withhold the letter of guarantee.

B. We request the Committee to ask the Government of Japan to Take These Measures

110. Amend immigration laws so that foreign parents of a Japanese child qualify for residency visas, including permanent residency visas, without the letter of guarantee currently required for the granting of such visas.

111. Amend immigration laws so that a non-married and non-custodial parent of a Japanese child is eligible for a long-term visa permitting employment, without the letter of guarantee currently required for the granting of such visas.

112. Grant permanent residency to a non-married and non-custodial parent of a Japanese child under the same accelerated time frame and favorable conditions applicable to a spouse of a Japanese citizen.

C. Background and Details of the Current Situation

113. Application for a long term spousal visa and for permanent residency of foreign spouses of Japanese requires a written guarantee of sponsorship by the Japanese spouse. This situation allows a Japanese spouse to deny access to children, by making the foreign spouse unable to legally stay in Japan. The children, who typically have dual citizenship, do not have to leave, and can easily be physically prevented from leaving by the Japanese spouse.

114. A non-Japanese parent who is denied access to their children, in any of the ways described elsewhere in this document, may find himself or herself without a job, and unable to stay in Japan to continue a legal fight. Although Japanese immigration will extend a visa while a non-citizen is in court, this is typically only for a short term, which does not allow a parent to work during the ensuing multi-year court battle.

115. As part of government support to every Japanese child, foreign parents should be given the right to stay permanently in Japan, to enable the child to "...maintain personal relations and

direct contact with both parents on a regular basis....” Without direct contact and ongoing personal relations with the non-Japanese parent on a regular basis, it is unlikely that the child will be able to develop “respect for the child's parents, his or her own cultural identity, language and values, ... [and].. the country from which he or she may originate.”

116. The Japanese Immigration Control Act is very much open to granting permanent residency to all qualified foreigners. However, there is a need to amend immigration policies especially on the application for permanent residency. In particular, sustaining the non-Japanese parent and his or her Japanese child should be an acceptable reason to grant the application for permanent residency visa for non-Japanese parents of Japanese children.

Table 8
Marriages, Births and Divorces between International Couples in Japan

	1999	2000	2001	2002
International Couple Marriages	31,900	36,263	39,727	35,879
International Couple Births	21,464	22,337	22,176	22,251
International Couple Divorces	11,050	12,367	13,667	15,252

117. To highlight this need, consider the marriage, birth and divorce statistics from the Ministry of Health Labor and Welfare in Table 8 where one spouse is Japanese and one is not. Each birth and each divorce when children are present is an immigration and parental abduction incident waiting to happen, given the current Japanese Immigration policies.

118. In situations involving child abuse, the foreign spouse is afraid of being forced to leave Japan, without his or her Japanese children, if the abuser will not provide the necessary written guarantee letter. This need for a guarantee letter can make it effectively impossible for a foreign spouse to report child abuse to the police. Occasionally, this has also had the reverse effect of separating children from their Japanese parent, as an abused spouse becomes highly motivated to leave Japan **with the children**, even at the risk of becoming an international parental abductor.

119. In the cases of former battered wives who have freed themselves from their husbands and are fortunate enough to get government financial support for rearing children alone, the annual visa extension application is a painful experience. The visa extension application requires a single mother to contact her visa sponsor (her separated husband) as her guarantor. This practice is redundant because the welfare office through the City Hall is providing them the means (food, shelter and clothing) to live. There is no longer a need for the husband's guarantee if it is the government that provides for her needs.

Section 8. Japanese laws and Family Court practices legitimize international child abduction.

A. We urge the Committee to ask the Government of Japan about this Situation

120. Japan has not ratified the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"). The Coalition estimates that there are fifty to one-hundred cases per year of Japanese citizens abducting children internationally to Japan or illegally retaining them in ways covered by this convention. There are also cases of parents abducting children out of Japan with the sanction of the Japanese judiciary.

121. The embassies of several nations warn their citizens about the well-known risks of parental abduction to Japan. This risk is worsened by the various factors described in other sections of this Critique.

122. A recent Japanese Supreme Court decision (Case 2002(A)No.805), validated a charge of child kidnapping against a foreign spouse of a Japanese citizen, despite holding legal custody jointly with his Japanese wife. Yet Japan refuses to prosecute Japanese citizens in similar circumstances, or extradite or otherwise sanction Japanese citizens convicted of similar offenses in other countries.

B. We request the Committee to ask the Government of Japan to Take These Measures

123. Enact national laws that criminalize concealment of children from a natural parent, and require government agencies to assist a natural parent in finding their child.

124. Promptly accede to the Hague Convention on the Civil Aspects of International Child Abduction and implement its provisions in domestic civil and criminal legislation.

125. Expedite the court processing of foreign child custody and visitation orders when a Japanese parent has removed the child from a foreign home or otherwise fails to respect such orders.

126. Release statistical information broken down by gender and citizenship, citing the number of arrests under the provisions of the law cited in paragraph 241 of the Report.

C. Background and Details of the Current Situation

127. Japan has been referred to in the international press as a "haven" for child abduction. Despite being the type of measure envisioned by Article 11 of the Convention, Japan has not yet signed the Hague Convention. CRCJ and JCRN represent a number of parents whose Japanese partners have unilaterally removed their children to Japan, including from States that are a signatory to the Hague Convention. Such abductions frequently take place notwithstanding the existence of valid custody orders in favor of the other parent in the jurisdiction from which they are removed.

128. On top of the dislocation and expense involved in traveling to Japan to seek access to the child, and the return of the child, the first obstacle that foreign parents often run into is an inability to contact or even locate their children. The government continues to provide services to a parent whose Residency Registration is not accurate. This is true even when these services, such as health insurance, national pension, etc are obviously being provided from a local government office in a different area from the Residency Registration. Such a parent who

instructs the Post Office to forward mail for an indefinite time and thusly changes the address for these services, can be impossible to find without help. Yet government providers of such services will typically not release information about the location of the person receiving these services, nor will the Post Office release forwarding address information. This is especially true when the parent is non-Japanese.

129. Further, Japan has not taken any steps that the Coalition is aware of to prevent the abduction of children by their parents to or from Japan. Japan acknowledges as much in paragraph 241 of the Report by referring to a Japanese law that by its title is directed at child prostitution rather than parental abduction. The Coalition is aware of only one reported instance where this law has been applied: against a non-Japanese father who was trying to leave Japan with his own child.

130. Yet Japan refuses to extradite its own citizens who have been convicted on similar charges in other countries. Nor will Japan return children kidnapped in other countries, when the offender is a Japanese citizen. The United States Department of State publishes the following warning on its website (http://travel.state.gov/abduction_japan.html):

The Department of State is not aware of any case in which a child taken from the United States by one parent has been ordered returned to the United States by Japanese courts, even when the left-behind parent has a United States custody decree.

131. Our members also include at least one parent whose child was unilaterally removed by the other parent from Japan to a non-Hague Convention party jurisdiction **while custody proceedings were in process in a Japanese court**. This parent repeatedly warned the court that this would happen and requested that the court take preventive measures. The presiding judges not only allowed such removal to happen, but subsequently ratified it after first finding that it would not happen.

132. In another recent case, Japanese grandparents, without legal custody even in Japan, traveled overseas to abducted the grandchildren from the father, who did have legal custody, two days before his ex-wife Japanese citizen died. The father had legal custody at that time in his country. Months later the father is still awaiting his first day in Japanese Family Court to try to get them back.

133. The ongoing failure of Japan to address parental child abduction both domestically and internationally, constitutes a significant breach of its obligations under Article 11 of the Convention. This is particularly egregious in combination with the issues described elsewhere in Critique, and hence another failure on the part of Japan to implement its obligations under Articles 7, 9 and 10 of the Convention.

Section 9. Conclusions

134. Based on the foregoing, the Coalition requests that the Commission endorse our recommendations to Japan. Although the national legislative requirements to comply with the Convention are significant, they are necessary, in light of the pervasive issues.

135. On behalf of the many tragic children in Japan who are growing up without the participation of loving parents and other family members, the Coalition respectfully requests that Japan consider our recommendations in light of the experience of our Coalition members, which include many Japanese citizens as well as citizens of numerous other countries throughout the world.

136. The Coalition would further respectfully submit that improvement of the issues raised in our Critique would ultimately be in Japan's best interests. Japan's long-term demographic problems – shrinking birth rates and an aging population – are widely known and reported about. Each of our members who has experienced an extended parent-child separation due to the Japanese judicial system, represents a potential disincentive to the other people in their lives, to marriage with and having children with a Japanese citizen.

137. The proliferation of the Internet and multi-lingual websites will make the situation in Japan known worldwide. It has already gained recognition among the foreign residents in Japan and is starting to change the way non-Japanese spouses handle divorce, custody and visitation. JCRN and CRCJ regularly receive requests for information from non-Japanese contemplating marriage with Japanese citizens. All these people are likely to think twice about marrying a Japanese citizen and having children of their own if they see even the smallest chance that they too may one day have to struggle with the Japanese court system to simply be able to see and talk to their own children.

Section 10. Dedication

138. This document is dedicated to Yoshiya Tateno, Y.M.O., Kazuhiro Maruyama, and all the children of the left-behind parents who contributed and helped make it possible. We want you to know that you have not been abandoned by one of your parents, but by a system that has failed to protect your fundamental rights at a time in your lives when you were completely reliant on adults for your well-being. We love you now and always.

Appendix A: Description of this NGO Coalition Members

139a. Children's Rights Council of Japan (CRCJ)

Japan Children's Rights Network (JCRN)

Website: www.crcjapan.com and www.crnjapan.com

Description: The Children's Rights Council of Japan is a 501(c)(3) IRS nonprofit organization under the group exemption of the United States national Children's Rights Council. Our Mission is to end Japanese government sanctioned international child abduction, to provide information on child custody and visitation rights in Japan, and to work to assure children in Japan of meaningful and continuing contact with both parents and both extended families, regardless of the parents' citizenship or marital status. Our members include both Japanese and non-Japanese citizens around the world. The Children's Rights Network of Japan was a part of CRCJ at the time this report was written, but later separated as a result of legal challenges to website content by the Japanese lawyer of a Japanese parent preventing visitation by a non-Japanese parent of their child.

140. Fathers' Website

Website: www.fatherswebsite.com

Description: Father's Website is a Japanese voluntary non-profit organization working to modify the Japanese Civil Code in accordance with the UN Convention on Children's Rights. In particular we support enactment of joint custody and visitation policies. We provide emotional support and information to anyone in Japan who is being denied contact with their children. We are not just a website and not just for fathers. Members are primarily Japanese, and include left-behind mothers and custodial parents in addition to fathers.

150. Center for Japanese-Filipino Families (CJFF)

Website: none

Description: Education, Training, Research and Resource and Lobbying Center for the rights and welfare of Japanese-Filipino Families

151. The Community

Website: www.debito.org/TheCommunity

Description: Founded on September 28, 1999, in Jiyugaoka, Tokyo, "The Community", seeks to represent and organize the scattered and varied peoples who are concerned about the treatment of non-Japanese in Japan. Recent Community projects include the Otaru Onsen anti-discrimination lawsuit, the subsequent appeal against the city of Otaru for violating the UN Treaty against Racial Discrimination, the "kokutai" discrimination in athletics lawsuit that reached the Japanese Supreme Court, and the "Tama-chan" sea lion Residency Registration protest.

152. United For A Multicultural Japan (UMJ)

Website: www.tabunka.org

Description UMJ is a voluntary non-profit organization in Japan committed to uniting to promote and defend the rights of foreign nationals in Japan. Our efforts involve educating the Japanese government about our needs and making recommendations as to how to improve the situation occupied by legal foreign residents.

153. Migrante Party List (MPL) -Japan

Website: none

Description: MPL is the Japan chapter of an electoral party vying for a seat in the Philippine parliament and engaged in lobbying work with Japanese parliamentarians. MPL have chapters

in Tokyo, Nagoya and Saitama and individual members (registered as Filipino voters under the Philippine law) all over Japan.

154. Filipino Migrants Center

Website: none

Description: Counseling, Education and Training for all Filipino migrants in Japan.

155. Filipina Circle for Advancement and Progress - (FICAP-Aichi)

Website: none

Description: Association of Filipino wives of Japanese for education and cooperative activities.

156. Kalipunan ng mga Filipinong Nagkakaisa (KAFIN or United Filipinos)

Website: none

Description: Grassroots organization of Filipino migrants catering counseling service to members, livelihood projects, education and training and organizing chapters in several parts of Japan currently with 4 chapters operating in Saitama, Tokyo, Nagoya, and Osaka

157. Japan With Kids (JWK)

Website: www.japanwithkids.org

Description: A support group for English speaking families living in Japan to network and advise each other on the joys and difficulties of living in Japan with children.