Child Guidance Centre (Japan)

Contents

General Description

The **Child Guidance Centre** (CGC) is a local government body set up by the Child Welfare Act (CWA) of Japan. It is under the jurisdiction of either the prefectural or ordinance-designated city governments in charge of local governance. Currently, there are 207 CGCs across the nation.

After Japan's defeat in World War II, the General Headquarters (GHQ) of the Allied forces occupying Japan ordered the establishment of the CGC. It was to be modelled on a similar

American government body. Its original aim was to take care of numerous war orphans and waifs who were starving on the streets. They were placed under 'temporary custody'(*ichiji hogo*) by the CGC, as stipulated in Article 33 of the CWA.

Due to a large number of cases where parents had died or were missing on the battlefront, these children had lost their living parents and were thus sent to orphanages (alternative care facilities, ACF). Compared with life as a starving waif on the streets, living in an orphanage, in spite of its poor facilities, must have been heavenly for these children. There was no irrationality or infringement of human rights in this measure.

However, in spite of Japan's independence from Allied occupation and the declining number of war orphans or children needing the protection of the CGC and orphanages, Japan's child guidance system remains largely intact. The CGC and former orphanages were indeed no exception to the **natural instincts of bureaucracy: self-preservation**. During the era of rapid economic growth in 1960s, the CGC dealt mainly with school truants.

Influenced by the advent of Thatcherism, the Japanese government launched the Ad Hoc Commission on Administrative Reform in 1981, aiming towards neo-liberal restructuring of its government structure. Under the mantra of the 'rehabilitation of the Japanese government finance without tax increases', the Commission took the initiative to privatise government-owned corporations and to scrap welfare measures. The **Ministry of Health and Welfare (MHW), in defying this neo-liberalist structural adjustment, spotted the child abuse issue** and began to propagate child abuse prevention as the new task of the CGC..[1].

Under MHW's new initiative, the **Child Abuse Prevention Act** (CAPA) was legislated in 2000 as the de facto supplement to the CWA. The enactment of CAPA was extremely rudimentary because it was stipulated upon the provisions of the CWA to meet the needs of war orphans and waifs. This legal arrangement contributed not only to rapid reinforcement, but also to further drastic expansion of the vested interests of the CGC and former orphanages (ACF). In short, the Japanese child abuse prevention policy was created out of the motive to protect the vested interests of the CGC and ACF, rather than to of protect the rights and welfare of children.

Evaluation of the CGC of Japan by the United Nations in 2010

As a result, it was inevitable that the **child guidance system would perpetrate various human rights infringements in Japan**. These problems were noted in the discussion of the UN Committee on the Right of the Child (UNCRC) and the Concluding Observations on Japan[2].

In the session that took place on 27 May 2010, considerable doubts were raised by committee members regarding the nature and working methods of Japan's CGC and if they complied with the **Convention on the Rights of the Child** (Convention hereafter). Professor Lothar Krappmann, then a member of the UNCRC from Germany, made many stern comments to the effect that Japan's CGC undertook a de facto juvenile judiciary role and that its working methods sometimes infringed on the rights of children.

Professor Krappmann was informed that CGC staff were sometimes without competent qualifications. This was confirmed four years later in a report by the Human Rights Watch, a US-based human-rights NGO. It revealed that, '[o]ften, educational backgrounds [of the CGC staffs] have little to do with child care: the head of one Tokyo-based child guidance centre, for example, is a doctor, but a surgeon. It is also not uncommon to find that child guidance centre staff members previously worked in a completely different field, such as construction or waterworks'[3]. Since the CGC is a body of the prefectures or ordinance-designated cities, the appointment of CGC staff is determined by the prefecture-wide personnel system. Therefore, experts who have professional post-graduate degrees in disciplines related to child affairs are seldom appointed to CGC positions.

When interrogated by Professor Krappmann and asked if it was possible to file a lawsuit in such a case, a delegate from the Ministry of Health, Labour, and Welfare (MHLW, renamed from MHW upon its amalgamation with the Ministry of Labour in 2001), which placed the CGC under its jurisdiction, replied that she knew of no such case. Yet this was out of her ignorance, since a family in Shizuoka had sued the government for removing their children from them in 2009. Court cases against the actions of the CGC have been on the increase ever since.

Paragraphs 62 and 63 of the 2010 Concluding Observation to Japan were devoted to the human rights problems in relation to the CGC:

- 62. The Committee observes with concern that children who do not meet the behavioural expectations of school are transferred to Child Guidance Centres. The Committee is concerned about the lack of information about standards of professional treatment, including the implementation of

the child's right to be heard and his or her best interests to be considered and regrets that no systematic evaluation of outcomes is available.

- 63. The Committee recommends that the State party commission an independent investigation of the child guidance system and its working methods, including an evaluation of the rehabilitative outcomes, and include information on the results of this review in its next periodic report.

Galapagos-like Isolation of CGC of Japan from International Norms and Practices

The Japanese Government has scornfully ignored various recommendations of the UN human rights committees. Responding in parliament to an MP (member of the House of Representatives) Takako Suzuki's question on 13 May 2016 if the Japanese Government conducted the 'independent investigation of the child guidance system' in compliance with paragraph 63, Prime Minister Shinzo Abe confessed that no 'independent investigation of the child guidance system' had been carried out, since the UNCRC's 'Concluding Observation is not legally binding'. The reaction to paragraph 62 is even worse: total negligence, including the misuse of the CGC by Japanese schools under malicious intent to expel pupils who do not behave to the satisfaction of the school authorities.

Unlike other State Parties that set up committees to amend domestic laws to make them compatible with the Convention, **the Japanese Government has made scant effort to make the Convention an indispensable component of its legal system** or to make their domestic legal provisions related to child abuse and the child guidance system compatible with the Convention, except for recently adopted window dressing—they have added the empty phrase 'in the spirit of the Convention on the Rights of the Child' to Article 1 of the CWA. This is because the majority of articles are still in full of breach of the Convention.

The MHLW prepares an instruction book titled *The Manual on Responses to Child Abuse* (hereinafter referred to as *Manual*)[4], the authoritative practical guideline to the CGC across the nation, with scant regard to the Convention.

Although the Manual very briefly refers to the 'Convention on the Rights of the Child (CRC)' in the beginning, it is merely an excuse, as the Convention is never used as the legal

guiding principle for the administrative measures that are stipulated in the *Manual*. The MHLW's negligence towards the Convention is evidenced by the fact that the *Manual* does not contain the text of the Convention in its 'Reference Material' section. Furthermore, the *Manual* does not make a single reference to the UNCRC nor does it mention of the Concluding Observations.

The MHLW is not a legislature, nor has it received the legal right of the interpretation and operation of legislation from parliament. The *Manual* is not a law that passed a parliamentary vote. Although not legally binding and containing statements that are in breach of the Convention, it is used by all CGCs across the nation as well as other governmental bodies as their essential guideline with de facto authoritative power. Hence, the *Manual* is essentially a government document supporting the power of the CRC and ACF, instead of supporting the rights of the child. This is an important cause of the human rights infringements.

Human Rights Issues caused by the CGC

The CGC Detains Children without Judicial Review

The 'judicial review' stipulated in Article 9 of the Convention on the Rights of **the Child must be made BEFORE the children are removed from their parents** and detained by the CGC, as is clarified in this article prepared by UNICEF: 'removing children from their parents is as serious a step as depriving them of their liberty, and merits a fair hearing conducted under the rules of natural justice'[5].

In countries such as the former republics of Yugoslavia, their social work authorities had the power to take children into custody without prior judicial review. Yet these countries expressed explicit reservation to Article 9 to the United Nations . The CRC in return systematically encouraged these countries to withdraw all such reservations through amending their domestic laws[6].

In case of Japan, the Government has never expressed its reservation to Article 9; instead **clandestinely ordered, that the CGC take children into detention** as per Article 33 of the CWA in Japan: 'A Child Guidance Centre's director may, when he/she finds necessary, take temporary custody of a child…' The concerned citizens therefore dub it into 'abduction'.

The law does not require objective evidence or grounds for the director's judgement. No court reviews are involved. The CGC does so based on their internal criteria that were set up by the CGC and were never made public. This clause allows for the arbitrary detention of children by the director of the CGC, with few legal limitations. Without the direct involvement of the judiciary, i.e. detention of the child without a court-issued warrant, the CGC director, who could be an amateur with regard to child affairs, decides to detain the child for months or even for more than a year.

Consent from parents or the child is not a precondition of detainment, either. In the *Manual* of 2013, the MHLW blatantly confirmed this working method as follows: 'It is possible to implement temporary custody by authority even if there is no consent of the child or parents' and 'consent of the child him/herself or parents is not a requirement in the discretion of temporary custody'[7]

The MHLW made a premeditated admission in the 2007 edition of *Manual* that 'this sort of coercive system carried out against the will of those concerned normally requires judicial review, yet the temporary custody in CWA requires no permission from the court, either ante or post factum. The system attributing such strong power to the administrative body is singular in the child abuse system overseas, or there is no other system comparable to this in Japan, either.'[8] **The Japanese government does know that this catch-as-catch-can system of children detainment does not exist anywhere in the world – it happens only in Japan because all other State Parties honestly abide by the Article 9 of the Convention!** The Japanese Government later changed its position somewhat, stating that it is legal from the standpoint of the Convention because parents could sue the Government for the revocation of administrative dispositions *post factum* [9]. However, as UNICEF's above explication stresses, this excuse is absurd, if only because the legal procedure at court normally takes years, whereas the detainment lasts only two months, at least initially. As the above explication of UNICEF stresses the existence of this legal procedure does not make it compatible with the principle of the Convention.

Given the dismal qualifications of CGC staff, it is unsurprising that the removal of children from their families is rarely seen as just and fair. Instead, CGC staff often employ forgery, exaggeration, and distortion or resort to the intimidation of parents. Their decisions are made without regard to due process and are finalised without independent judicial review of the veracities of the allegations made by the CGC. Needless to say, the structure of the child guidance system in Japan is indeed infringing on the human rights of children and families.

Even in the case where the judiciary is involved, the judiciary never works in a just, independent, or impartial manner. The MHLW has been trying to bring the court proceedings to their side, and away from real justice and objective judgement, to minimise court decisions that are adverse to the CGC. The CGC and ACF are therefore left to freely inflict various human rights infringements upon children and their parents.

In some cases, family court proceedings do involve consigning the detained children to an ACF under disagreement from the parents, which is called 'Article 28 pleading'. Here, the family court judge must prove that 'the care by parents significantly harms the welfare of the child'. The family court investigators conduct investigations by interviewing a variety of stakeholders, including the child and the parents.

Here, the Manual asks the CGC for 'smooth cooperation with the family court investigators and the network of relevant organizations around the child with the CGC staff at the centre'. In other words, the *Manual* bluntly orders **the CGC to co-opt the family court investigators to avoid investigation outcomes that would be adverse to the CGC**. In Japanese family courts, the court investigators have the de facto decisive role that leads to the final sentence.

The **court procedure itself is rigged, because CGC staffs have the right to negotiate with the court judge before and during the trial**. They naturally take advantage of this, while the child and parents are not given this sort of opportunity. Consequently, the family court accepts the allegations based on the CGCs vague justifications, such as, 'there is a welfare violation against the children', without confirming that there is objective evidence of 'abuse'. Due to this collusion between the CGC and the family courts, the acceptance rate for the placement of children in ACFs is unusually high, as much as 78.4% [10].

For those children consigned to an ACF by family courts, the CGC must plead the court for renewal every two years. However, the rate of upholding the initial decision is almost 100%. **Once a child is placed in the ACF, the reality is that the child will be forced to live there for many years, until the child is no longer a minor**.

Even among jurists of Japan, 'opinion to adopt judicial review into the system has been strong from the standpoint of ensuring the due process of administrative measures'[11]These jurists must have in mind Articles 31, 33, and 34 of the Constitution of Japan that require, as a measure to protect human rights, a warrant to be issued by a court before bringing a person into detention. Yet the MHLW has not paid attention to their policy proposals so far.

In summary, in Japan the involvement of the family court is scant, and even when it is involved, the court involvement does NOT mean that children and families can enjoy

independent and just third-party reviews of the actions of the CGC. The family court and the CGC are, to a considerable extent, in collusion: **in Japan, the judiciary is merely a formality**.

Arbitrary and Prolonged Detention of Children in CGC

The Japanese Government does not accept Article 37(b) of the Convention as the rule that is applicable to children detained by the CGC, claiming that it applies only to the detention of a child who committed a criminal offence[12]. However, the explication of the Convention by UNICEF clearly puts forward, 'The provisions relating to the restriction of liberty do not just cover children in trouble with the law (in many States restriction of the liberty of children is permitted for reasons …'welfare', mental health, and in relation to asylum seeking and immigration)'[13], making it clear that this provision also applies to the kind of detention that is performed by the CGC.

The 2013 edition of the *Manual* asks the CGC 'to utilize temporary custody without hesitation **and then** investigate the facts, etc. of the abuse'[14], which in effect, orders the CGC to remove a child from his/her parents NOT as the last resort, but prima facie, without scrutiny of evidence or examining the possibility of false accusations. The MHLW virtually admits that at least some of the children who have been taken into 'temporary custody' were removed from their parents and detained with a lack of evidence.

In line with this MHLW statement, Article 33 of the CWA was recently changed for the worse, allowing the CGC to detain children merely to 'obtain data for the situation of children's mind and body, its environment, and other situations'. The director of CGC can now remove ANY children from their parents in a breeze.

Once the children are taken into the CGC detention quarter (of which official name is *'ichiji hogosho'*), the period of detention is virtually unlimited. Although initially it is supposed to be limited to two months, this is already very long and can be extended for an unlimited number of times. During the first period of detention, parents are instructed that they have the right to 'petition the administration for redress of a grievance'. On renewal, the CWA has recently been changed to require judicial review, however, this change has a fatal loophole exempting the CGC from applying for the review of the renewal if the CGC pleads for the consignment of the child to an ACF, i.e. 'Article 28 Pleading'.

Once the CGC detains children, it is normally reluctant to return them to their parents. The economic reason behind this is explained in Chapter 8. The CGC can extend the period of detention for unlimited period, in pursuance of Section 4 of Article 33 of the CWA, that

stipulates that ‘notwithstanding the provision of the preceding paragraph [limiting the detention to two months], a Child Guidance Centre's director or a prefectural governor may, when he/she finds necessary, continue the temporary custody…’, this time subject to judicial review for limited cases. This legal provision means that **the working principle of Japan’s CGCs are in complete contravention of the stipulation of ‘the shortest period’ in the Convention**.

Prolonged detention is also carried out once the child is consigned to an alternative care facility (ACF, former orphanages). Although the CWA stipulates that the consignment at an ACF shall be two years, this could again be extended for an unlimited time until the child is no longer a minor. The court review for this extension is almost automatic without much objective judgement.

The CGC’s Total Denial of Parental Visitation Rights

Once children are placed in the CGC detention quarter, as per Article 33 of the CWA, **the CGC completely deprives parents of visitation rights and extends this deprivation for an indefinite period**, which in many cases lasts for more than several years. Not restricted to just the parents, the CGC can also prohibit lawyers and doctors representing the parents from seeing the child.

The Juvenile Act, which mainly deals with minors who committed crimes, stipulates more favourable and just treatment. The children whose freedom is restrained under Juvenile Act are entitled to a ‘personal attendant system’, under which children can be assigned to a personal attendant (a lawyer, etc.) in furtherance of their human rights. Children detained by the CGC have their freedom restrained and cannot benefit from an equivalent system. The MHLW commits discriminatorily unfavourable measures to those detained under the pretext of ‘protecting the child from abuse’ when compared to those detained for criminal reasons. A child whose freedom is more severely restricted in CGC detention quarters under the CWA did not commit any misconduct, unlike the former. The child in the CGC should need protection and humanitarian treatment more than a child who is subject to the Juvenile Act.

In the infant homes (ACF for infants), the restrictions of parental visitation and the isolation of children from their parents create even more serious problems. As Sumiko Hennessy, an emeritus professor in child abuse, indicates, ‘consistent bonds of attachment with parents are important for normal growth of the brain. Bonds of attachment made within the first three months after birth and made after that period differ in depth and quality. …We [in

Japan] have been creating mentally delayed children by bringing them into infant homes'[15]. The MHLW and the CGC burden children with irreversible mental development delays through the restriction of parental visitation and the isolation of the children. Thus, the MHLW has no legitimate claim of doing what is in 'the best interests of the child' as it does not hesitate to perform such grave infringements on their human rights.

There seem to be at least three intentions behind CGC's depriving parents of their visitation rights: Firstly, the CGC worries that the detained child might begin to pine for home once that child meets or communicates with his/her parents, which would eventually result in the CGC being unable to detain the child for an extended period.

Secondly, the living conditions at the ACF and CGC detention quarters are miserable. If parents really see the severe living and educational conditions at the ACF, they would protest or demand improvements or even assert institutional abuse and resort to lawsuits for reparation of damages caused to their child. If this happens, troubles are bound to arise in the management of the ACF. As long as parents and their representative lawyers are completely cut off from the facilities, there is no risk of protest or lawsuits, as the lawyer cannot collect evidences.

Third, the CGC is fearful that parents will take their child back. The child's legal standing is not definite until the child's placement in an ACF is approved by the High Court. Once the child leaves the CGC detention facility or the ACF to return to their parents, parental authority will effectively revive and the CGC will lose their legal basis to forcefully detain the child.

These excuses for the deprivation of parental visitation rights have nothing to do with the best interest of the child. Turning its back on the globally established and accepted rights of children and parents, the MHLW and CGC keep isolating the child from the parents 'for the *longest* possible duration'.

The Japanese CGC and ACF System is Destroying Familial Bonds

Even if the parents committed ephemeral faults in the child's upbringing, parents with affection for their children have a natural instinct of earnestly reflecting and striving towards future improvement. This being the case, nobody can prevent parents and children from trying to recover their familial bond.

However, the MHLW and CGC, in achieving the expansion of power and budget, deny this possibility, and, rather than achieving the recovery of the familial bond through, for example, various parent training courses, merely impose complete isolation on the child and the destruction of a family over an extended period of time. The period of complete isolation is not a matter of a couple of years but rather continues in many cases for more than several years.

Even though the causes of the removal and detention of children by the CGC vary, what is common to all cases is that the parents and children wished to overcome a fault or misunderstanding and reconfirmed their familial bonds, regaining their community life as a family. Absolutely no one is allowed to obstruct this fundamental human right.

However, as a part of the MHLW's endeavour in expanding its vested interest, the Japanese Government began to offer a financial subsidy to the social welfare corporation that runs the ACF to set up 'family home' type accommodations there. The structure is something like a flat in a condominium, yet there are naturally no biological parents. This is no more than placing children in an ACF. Yet the MHLW claim that this is their way of 'complying' with the Convention by asking State Parties to give children the chance to 'grow up in a family environment'. The Japanese government does not understand the simple fact that social relation is one thing, and the built form is quite another.

The fact that the **Japanese government has been destroying this 'fundamental group of society and natural environment for the growth … of children' and thereby obstructs their 'full and harmonious development' is quite obvious** in the case where a Japanese mother recovered her daughter from ACF and subsequently took refuge in the Netherlands to restore their familial bond[16]. However, the child fled to the Netherlands could not come back to Japan for more than 10 years in the fear of being abducted again by the CGC -- a situation comparable to a country under despotism.

The CGC Deprives Detained Children of their Right to Education and the Development

It is common understanding that the 'best interests of the child' shall materialise only when the child's both short and long term best interests are both fulfilled[17]. The child is deprived of the opportunity of realising their real best interest if the government considers their short-term interests only.

Many children who are detained by the CGC are of an age that requires compulsory education for future development. These rights of children are guaranteed by the Convention and domestic law. Article 26 of the Constitution of Japan stipulates that guardians who have children in their custody, are obliged to send them to elementary or junior secondary school.

However, once the CGC removes children from their parents and detains them in a CGC facility, **the Director of the CGC does not allow the detained children to go to school** under the 'custody right' entitled to the CGC director. The HRW considers the 'custody right' and 'restricting school attendance, limiting freedom of movement' of a child as a 'potentially abusive practice'[18]. This 'custody right' is stipulated in Clauses 3 and 4 of Article 47 of the CWA for the ACF , and Clause 2 of Article 33-2 for the CGC. Ms. Alice K. Carroll, a Canadian social worker dispatched to Japan as a UN advisor on social work strongly suggested to abrogate it in 1950.

The Japanese government claims that this practice does not contravene the Convention since the duration of detention in the CGC is restricted to 2 months by the CWA, 'limited to necessary and rational' length. Moreover, the director of the CGC has the 'custody right' to send the detained child to school . Yet, the government falsifies the reality of CGC with impunity in that the detention is prolonged and the 'two months' can be extended arbitrarily (chapter 6), and the CGC director never uses his/her 'custody right' to allow the child to go to school. In other words, the Japanese government practically admitted the breach in the real working methods of the CGC to the Convention.

In a competitive social environment such as Japan, many parents send their children to a tutorial school or engage in additional lessons in addition to regular schooling, to enhance the chance of their child becoming an able member of society. With these educational provisions, children can eventually enjoy a higher chance of taking up an occupation with higher income and enjoy an affluent life. This parental educational philosophy, conforming to the long-term best interests of the child, should not be rejected. However, neither the CGC nor the ACF accepts this idea and consequently provides no extracurricular educational opportunities to detained children. The CGC even accuses parents who send children to a tutorial school of committing 'psychological abuse'.

Thus, children detained in CGCs and ACFs finish only with obligatory education, which leads to a dismal future. Due to the competitive environment of the economy and society throughout Japan, children who leave ACFs receive opportunities to take up employment that offer 'low wages for menial entry-level jobs' only[19]. '[M]any formerly institutionalized youths [=child formerly in the ACF] never complete high school and often end up as welfare

recipients, homeless, or in prison' as convicts[20]. The CGC forcibly removes children from their parents, and deprives them of the opportunity to pursue their long-term best interests based on their right to development towards the happy pursuit of life, which is guaranteed to every citizen in Article 13 of the Constitution.

Recently, the Ministry of Education, Culture, Sport, Science, and Technology, (MEXT) has begun to accommodate this policy of MHLW and changed its policy for the worse. The MEXT dispatched a notice on 31 July 2015 that those children in the CGC detention quarters who are forced to abstain from attending schools should be considered as having attended even if they have not received education as per the MEXT's official guidelines for school teaching. The MEXT thus legalised the CGC-forced truancy and deprived the children of the opportunity for education and development.

A Children's rights to education, as stipulated in the Convention, has also been infringed upon in Japan by the act of some schools that turns the CGC system to their own advantage in order to abandon unwanted pupils. This is exactly what the UNCRC pointed out in paragraph 62 of its Concluding Observation on Japan in 2010. **Some Japanese schools notify the CGC on the pupils who does not meet the school's behavioural expectations, alleging that they have 'abused'. They remove them from the school with the help of the CGC**. To achieve this, the school prevents the pupil from returning home using various pretexts and hands the child directly to the CGC staffs The staff come to the school in order to stave off the parents from expressing disagreement. This quaint mutual interest between the schools that maliciously intend to abandon the children without offering proper instruction and rehabilitation, and the CGC that wants to detain as many children as possible for the enhancement of the their bureaucratic turf, is well evidenced in the Kokagakuen Incident, where a Catholic elementary school in Tokyo acted against Paragraph 62 of the UNCRC Concluding Observation (2010) to erase a pupil and his parent who did not meet the school's expectation from the school by transferring him to the CGC[21]

The *Manual*, on the other hand, encourages schools to notify the CGC, 'when information on suspicion of abuse from a school staff is given, the school principal, etc. is obliged to report to the CGC even if it is only suspicion and cannot be determined as abuse'[22]. The MHLW is thus promoting, rather than discouraging, the human right concerns of the UNCRC.

The strong administrative power of the CGC, who may detain a child without a court decision, is not only used by schools with malicious intentions, but other malicious individuals as well. For example, there was once a website that proposed that the best way

to solve the bullying problem in a school or community would be to use the CGC: to have it take over the task of getting rid of the bully. The site suggested that parents whose children are suffering from bullying should contact the CGC and tell them that the bully 'was suffering from abuse by his/her parents'. The CGC would then take him/her to a detention centre, restoring peace and tranquillity to the school or community.

The CGC of Japan, Originally a Welfare Institution, Is Increasingly Assuming the de facto Juvenile Judiciary Role

The CGC in Japan is functioning as the **de facto juvenile judiciary** in itself, due to the persistent policy orientation of the MHLW. The fact that the CGC makes judgments on detention without judicial review is just a case in point. The CGC in Japan is now assuming the role of the 'family police'. The CWA was recently amended so that every CGC has a full-time lawyer (Article 12, Clause 3). It seems that the MHLW is transforming the CGC into the de facto judicial power.

First, a recent survey carried out by the Tokyo Bar Association[23] revealed that CGC staff maintain constant contact with prosecutors and courts, which the lawyers there take part in, in addition to preparing for Article 28 pleading.

Second, the CGC is now beginning to consign the 'juvenile with a criminal bent', as stipulated in Article 3-iii of the Juvenile Act, to a juvenile reformatory. 'Preventive detention', having been enacted to detain adults who had a propensity to commit 'ideological crime', was abrogated from the Japanese criminal law system after WWII. This clause in the juvenile act is an exception to it and is applicable only to children that are younger than 19 years of age. Some jurists in Japan claim that this clause should be applied very prudently in view of the rights of the child[24]. The lawyers at the CGC are, in contrast, now assigned to promote a more aggressive application of Article 3 of the Juvenile Act, by asking family courts to judge that any child removed from their family who is 'likely to commit a crime or violate laws and regulations of a criminal nature in the future' to be consigned to a juvenile reformatory. It is suspected that young political activists will also likely be subject to confinement through the CGC in case of a national emergency.

Nevertheless, this provision of preventive detention is likely to contravene Article 17-1 b and c of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules):

- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

Furthermore, when the legal procedure stipulated in the Juvenile Act is pursued by the CGC, the rights of the child expressed in Article 7.1 of the Beijing Rules are unlikely to be fulfilled.

In short, the general policy orientation of the Japanese Government has been precisely what Professor Krappmann worried about: the conversion of the CGC to the de facto juvenile judiciary to the degree that it inflicts even more power on children and families than the police.

Everyone understands that the police embody and manipulate state power, thus policemen have been trained to exercise their power more prudently, strictly based on legal provisions. For example, the Japanese police has its own ‘temporary custody’ law. It is in ‘The Police Duties Execution Act (PDEA)’, enacted around the same time as the CWA. Article 3 of the PDEA stipulates that the period of ‘custody’ of a ‘lost child’ shall be for 24 hours only, and its renewal requires permission from a summary court with the reasons for the extension clearly stated on the permit. Even if it is granted, police custody shall not exceed five days. This PDEA stipulation is more compatible with the Convention. However, currently Japanese police simply ignore this Article and pass along almost all children that they find to the CGC detention centres, where the period of detention is indefinite. This comparison shows the irony in that the CGC, which claims to be an institution of welfare, infringes on human rights far more than the police.

The MHLW offers shabby excuses for the transformation of the CGC into the de facto judiciary as follows: it ‘institutionalised the temporary custody and concomitant separation of a child from his/her familial tie as an extension of consultant-based assistance based on spontaneous solicitation from the client’[25]. The concept of the welfare services offered by

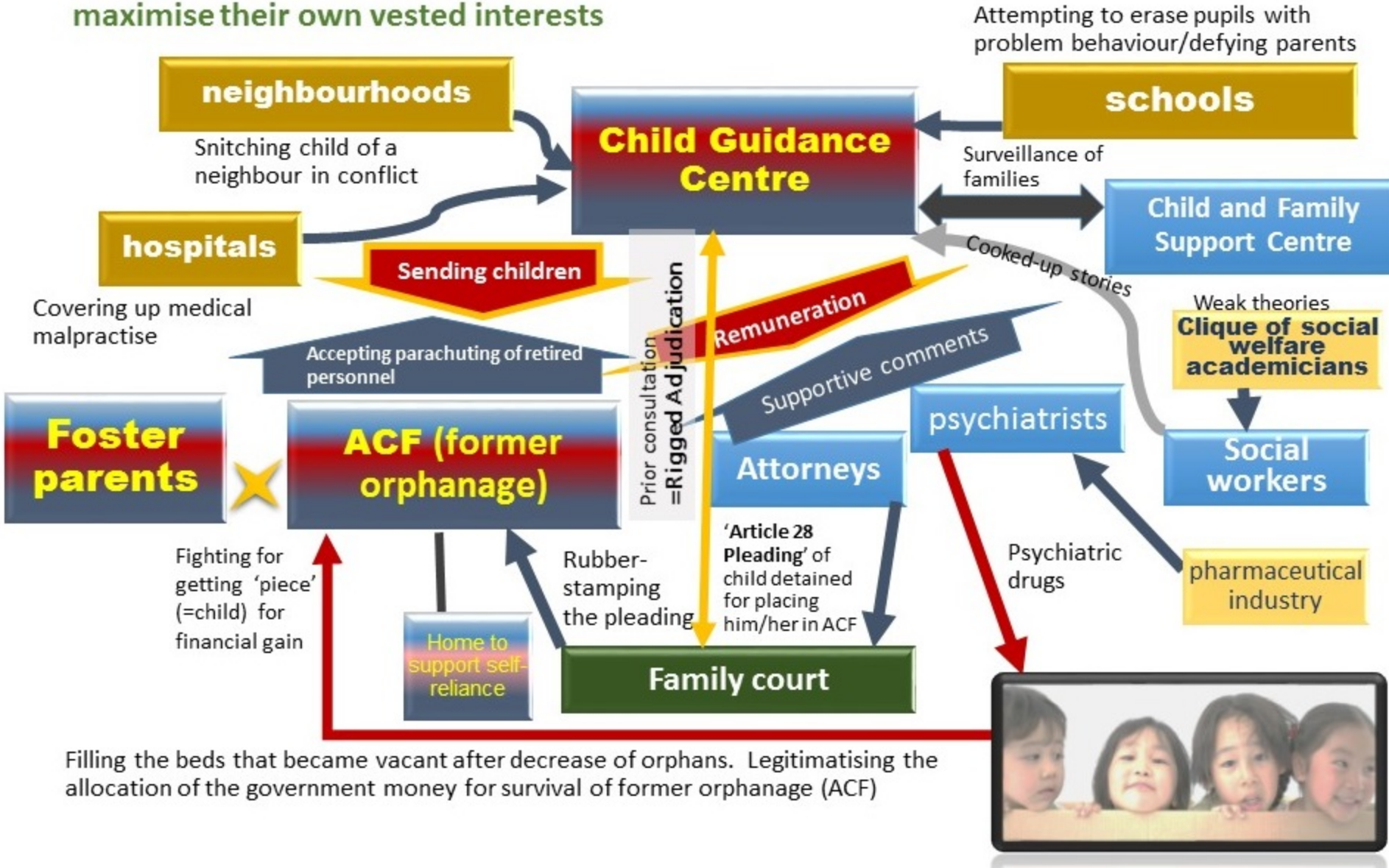
the CGC when responding to the spontaneous requests of a client in trouble and visiting for consultation, has been directly transferred to the de facto judiciary measures of the CGC to remove a child from its parents and to detain him/her by the 'authority and responsibility of the CGC'[26], even though the parents never solicited such an action.

The MHLW is still trying to adopt the child guidance system that was created immediately after WWII—the protection of war orphans—which most of their parents would have appreciated had they been alive. Yet, the current policy is to utilise the CGC to function as a sluice gate, taking children under the pretext of 'abuse' into 'social care' where vested interests inherited from the post-WWII period dominates **(Figure 1).**

This Figure explains how various bodies are colluded together to protect their vested interests in the alternative care in Japan.

It should be clear by now that the CGC in Japan has a strong propensity for removing a child from the care of its family as a measure of **first** resort and for the **longest** possible duration.

Figure 1: The Structure of the 'CGC - ACF community' colluding together in attempt to maximise their own vested interests



The key to explain this behaviour of CGC is in Clause 20 of the 'Guidelines for the Alternative Care of Children': 'The provision of alternative care should never be undertaken with a prime purpose of furthering the political, religious or economic goals of the providers'.

Firstly, CGC staff are civil servants who are constantly in fear of receiving negative evaluations of having taken children into detention by mistake. This would affect possible promotions and would give rise to the risk of lawsuits against the detention of children without cause by parents who make claims for government compensation. Therefore, after the detention of a child, the CGC staff tend to fabricate 'abuse' claims, force children into 'confessing to being abused', or fabricate substantiating evidence to justify their decisions.

The CGC also wrings confessions out of parents by using their children as 'hostages', something like 'if you want to see your child and get your child returned, you must admit the charge of 'abuse''. This is unconstitutional according to Article 38 of the Constitution: 'Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence'. In case defying parents refuse to fall into this trap, the CGC intimidates or actually proceeds with the consignment of their children to an ACF. Through this action, the CGC minimises the cases of false charges of 'abuse', and uses the confessed 'abuse' as propagation of increasing abuse issues in their attempt to expand their bureaucratic turf[27].

Secondly, there is economic motives for the CGC to aggressively remove children from parents and consigns them to an ACF often without guaranteeing due process.

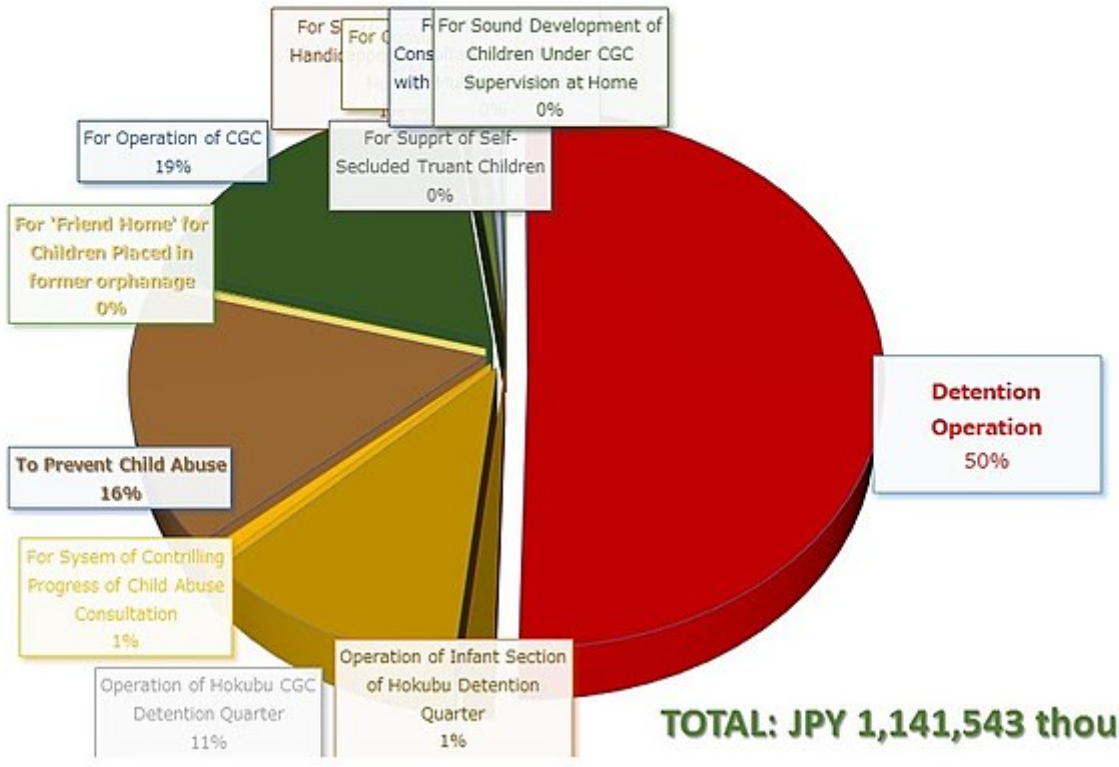
Michiko Kobayashi, the head of the Japanese Society for Prevention of Child Abuse and Neglect, commented on this in a keynote lecture given at the 20th ISPCAN Congress held in 2014[28]:

> Social care in Japan is characterised by privately run orphanages originally founded to take care of war orphans, where tens of children live together in a single room. **The issue of child abuse was given more attention when the war orphans and poor children in the poverty-stricken period after WWII grew up and closing down former orphanages became an agenda due to diminishing number of children to be housed there.**

The current budget system gives civil servants in the CGC strong economic incentives to detain ever more children. The CGC receives funding from the national government's coffer, '*hogo tanka* (temporary custody per diem)', which is a monthly allowance for administrative and operational expenses per child detained in CGC detention quarters. This 'hogo tanka' is used not only to feed the detained children and meet the utility costs and personnel expenses of the facility, but also covers CGC office expenses. It amounts to approximately JPY 350 thousand/month per child in detention[29] .

In case of the City of Yokohama, the TOTAL budget for its CGC was JPY 1,141,543 thousand in 2013. JPY 576,073 thousand or as much as 50.5% of the annual total budget of the CGC consists of *hogo tanka* (Figure 2), multiplied by the expected number of children to be detained[30] (sometimes called an 'abduction quota' by concerned citizens).

Figure 2: The breakdown of FY2013 CGC budget in Yokohama -- the most important business of CGC is to detain the children removed from families



(Source: City of Yokohama, Child and Juvenile Department, 'The Budget for the Child Guidance Centre', FY2013.)

The ‘abduction quota’ is a target number of children that CGC personnel keep in mind to use up their allocated annual budget. Hogo tanka is not paid unless children are actually detained. If the number of detained children falls short of this expected number, a budget leftover arises, which would lead to a budget cut the following year, eventually shrinking their vested interests.

In short, **the more children CGC detains, the more funds it receives to expand in arithmetic progression proportionate to the number of children detained**, and the ‘iron fist’ of the CGC becomes even stronger. If the CGC stopped detaining children, its very operation would come to halt due to the depletion of its resources.

The Human Right’s Watch (HRW) pointed out that the CGC is consigning children in ACFs by ‘deferring to the financial interests of existing institutions’[31]. It quotes the stark voice of an ACF director in the Tohoku region[32]:

> To be honest with you, … it’s not exactly ideal for us if there were no more children to be admitted to our institution **because our operation is based on receiving children to care for.**

The HRW discerned the existence of ‘vested institutional interests’ in this director’s statement and commented, ‘the director’s remark is unsurprising: **child care institutions in Japan operate with subsidies they receive from the government based on the number of children they admit**’[33]. The HRW exposed the reality that ACFs admit children and force them to stay for long periods to ensure that it continues to receive financial subsidies from the Japanese Government.

In Japan, a social welfare corporation has a quaint economic problem. At the outset, the founder needs to contribute a quarter of the capital required. The rest shall be paid by the prefectural government. The founder can then generate profit and accumulate an internal reserve fund on that capital once the enterprise is in operation. Unlike regular businesses run by a limited liability company, the founder’s capital is a donation, and NOT capital in reality. The founder is thus deprived of its ownership. If an ACF is forced to close due to a lack of children, the founder loses the initial donation (equivalent of investment in a limited liability company) as well as the internal reserve. Thus, a social welfare corporation craves the continuation of enterprise far more than a regular business.

Japan’s child abuse policy has been instrumental in the economic sustenance of social welfare corporations that run ACFs (former orphanages), thereby **breaching Paragraph 20**

of the UN Guidelines to achieve this 'economic goal'. According to the HRW report, 'some institution staff said that up to 90 percent of children in care may have been victims of abuse or neglect'. According to the MHLW's 2008 survey, this ratio is approximately 53.4%[34]. The CGC arbitrarily consigns children to the ACF so that they can fill up their capacity. The ACF version of *hogo tanka* is *sochihi* (placement fee). The amount is almost the same, approximately JPY 350 thousand/month per child detained, including the ACF for babies. Since it is a flat-rate system, the corporation's profits rise in inverse proportion to cost savings. For example, putting more children in a single room and using food with a nearly expired 'best before' date donated from supermarkets in the pretext of benevolence.

The fact that the alternative (social) care system has been created for the economic sustenance of social welfare corporations that run former orphanages, is well evidenced in the figures indicating the total number of children placed in social care. From 2004 to 2012, it has been almost identical to the nationwide capacity of former orphanages, which was 36,500, despite the declining birth rate (Table 1). Shiozaki, the former Minister of the MHLW, was the head of the Association of MPs for the promotion of ACFs. Children are not consigned to ACFs for their best interests, but for the best interests of the social welfare corporation running the ACFs, the MHLW, and the politicians.

Table 1: Total number of children placed in social care is almost identical to capacity of ACF for 8 years in a row, despite declining birthrate

The total capacity of former orphanages (ACF) in Japan 36,500

	Former orphanages (ACF)		ACF for infants		Foster parents		TOTAL	
Fiscal Year		%		%		%		%
2002	28,903	84.7	2,689	7.9	2,517	7.4	34,109	100
2003	29,214	84	2,746	7.9	2,811	8.1	34,771	100
2004	29,750	83.3	2,942	8.2	3,022	8.5	35,714	100
2005	29,765	82.5	3,008	8.4	3,293	9.1	36,066	100
2006	29,808	82.2	3,013	8.3	3,424	9.5	36,245	100
2007	29,823	81.8	2,996	8.2	3,633	10	36,452	100
2008	29,818	81.3	2,995	8.2	3,870	10.5	36,683	100
2009	29,548	80.8	2,968	8.1	4,055	11.1	36,571	100
2010	29,114	79.9	2,963	8.1	4,373	12	36,450	100
2011	28,803	78.6	2,890	7.9	4,966	13.5	36,659	100
2012	28,233	77.2	2,924	8	5,407	14.8	36,564	100

(Source: MHLW, 'Current State of Social Care', *op. cit.*, p. 22)

Regularly sending children to ACFs is also very important for the life of the director of the CGC, because the management positions in the ACF have become destinations of golden parachutes for the child-related staff of prefectural governments, for example, the director of the CGC, after retirement.

The director of the CGC can consign a child to an ACF even though the parents oppose it by making use of 'Article 28 pleading' in a family court. This court procedure is treated as a 'petition for domestic affairs adjustment' under Article 28 of the CWA and does not constitute a regular court trial. Thus, as stated previously, it is not a fair trial because the position of the CGC is unequally strong, placing the parents in the vulnerable position of an 'interested party', unable to present themselves against the CGC, in the relationship of defendant and plaintiff. The possibility of defence for the parents is therefore quite limited. This unfairly structured family court procedure is the norm for constantly channelling children to an ACF for an extended period of time.

Furthermore, recently, faced with a shortage of the beds in ACFs, the CGC began to place children in juvenile reformatories and psychiatric hospitals, which naturally are unsuitable environments for normal children.

The HRW even claimed that 'the very system of institutional care may itself be abusive'[35]. Throwing children into institutional care that has been criticised as such, must be seen as child abuse initiated by the state in order to fulfil financial motives.

References

1. This is evidenced by the abrupt publication of a full-volume special issue on 'Child Abuse' in Child and Family Division, MHW ed., *Jido Sodan Jireishu [The Collection of Child Cases]*, Nippon Jido Fukushi Kyokai, 1981, in exactly the same year as the Ad Hoc Commission for neoliberalist structural adjustment was set up. This journal normally published abundant cases of truancy in this period, as it was the mainstay of the CGC activities then.
2. *Committee on the Rights of the Child, Fifty-fourth session. "Consideration of reports submitted by States parties under article 44 of the Convention Concluding observations: Japan".*
3. *Human Rights Watch (2014). "Without Dreams" (PDF).*p.64

4. *General Affairs Division, Equal Employment, Children and Families Bureau, MHLW (1974). Kodomo Gyakutai Taio no Tebiki [The Manual on Responses to Child Abuse] (in Japanese). Yuhikaku.*
5. *Implementation Handbook for the Convention on the Rights of the Child(3rd ed.). UNICEF. 2007.*
6. For Slovenia, Endnote 57 of the UN website on the Convention on the Rights of the Child (https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv11&chapter=4&clang=_en#EndDec) reads as follows: 'On 19 January 2004, the Government of Slovenia informed the Secretary-General that it had decided to withdraw its reservation made upon succession. The reservation reads as follows: "The Republic of Slovenia reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Slovenia provides for the right of competent authorities (centres for social work) to determine on separation of a child from his/her parents without a previous judicial review."'
7. *MHLW. Manual.*pp.113-114
8. *MHLW (2007). "Manual, 2007 version, Chapter 5, 5 1(1)" (in Japanese). Retrieved 5 November 2017.*
9. Otsu-I No. 3 Brief by the Ministry of Justice in Mizuoka v. Minister of Justice, Saitama District Court, Heisei 27 (Gyo-U) No. 9, 2016, p.12.
10. *The Secretariat of the Supreme Court,, Family Division,. The Trend of Article 28 Pleading and the State of Affairs, January to December 2014, (in Japanese). p. 6.*
11. *Machino, Shuo; Iwase, Toru, eds. (2012). Jido Gyakutai no Boshi [Prevention of Child Abuse] (in Japanese). Yuhikaku. p. 204.*
12. Otsu-I No. 3 Brief by the Ministry of Justice in Mizuoka v. Minister of Justice, Saitama District Court, Heisei 27 (Gyo-U) No. 9, 2016, pp.14-15.
13. UNICEF, *op. cit.,* p.548.

14. MHLW, *Manual, op. cit.*, p. 107, (emphasis the author of this article)
15. Human Rights Watch, *op. cit.,* p. 30.
16. *Minamide, Kikuji; Mizuoka, Fujio (2016). Jiso Riken [the Vested Interest of the Child Guidance Centre] (in Japanese). Hassaku Sha. pp. 299–311.*
17. UNICEF, *op.cit.,* p.38.
18. Human Rights Watch, *op. cit.,* p.114.
19. Human Rights Watch, *op. cit.,* p. 57.
20. Human Rights Watch, *op. cit.,* p. 81.
21. Minamide and Mizuoka, *op. cit.,* pp.280-295.
22. MHLW, *Manual,* p. 252
23. H. Higuchi, F. Makita, M. Okazaki, "The CGC with attendant full-time lawyer and protection of the rights of the child," lecture held in Tokyo, 27 October 2017.
24. e.g.*Sakata, Gyo (2007). Gakko Kyoiku Funso: Jiken no Gaiyo, Hanketsu, Soten [School Education Disputes: Their Outlines, Court Decisions and the Issues] (in Japanese). Shumpu Sha. p. 237.*
25. MHLW, *Manual*, p. 364.
26. Ibid.
27. One of the outcomes of such a CGC action is the ever 'increasing' figure of abuse, as shown in https://www.nippon.com/en/files/d00260en_fig01.png
28. M. Kobayashi, 'Let's Learn from the Past and Act for the Future' (keynote lecture), delivered in Nagoya, 16 September 2014. (emphasis by the author of this article)
29. MHLW, 'On the national government subsidy to child care facilities under the Child Welfare Act', the final amendment, 14 May 2014.
30. City of Yokohama, Child and Juvenile Department, 'The Budget for the Child Guidance Centre'.
31. Human Rights Watch, *op.cit.,* p. 4.
32. Human Rights Watch, *op.cit.,* p.65.
33. Human Rights Watch, *op.cit.,* pp. 65-66.

34. *MHLW (December 2017). "Shakaiteki Yogo no Genjo ni Tsuite (Sanko Shiryo)['The Current State of Social Care (reference material)']" (PDF) (in Japanese). Retrieved 28 May 2018.*
35. Human Rights Watch, *op.cit.*, p. 4.

External Links

- *"A news coverage on severe violence on the detained children committed by a CGC in Tokyo". News Every., NTV, Japan. 7 May 2015.*
- *Mizuoka, Fujio (April 2017). "Human rights infringements and destruction of families by the Child Guidance Centre in Japan". JCREC.*