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Citizens' Rights and Transformation of Child Guidance Centres into Apparatus of State Power

The Child Abuse Law as a Functional Security Law Paving the Way for Preventive Detention

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■ 1 From Provision of Benefits to Surveillance: Shift of Japanese Welfare Policies under Neo-liberalism

The Law for the Prevention of Child Abuse (Child Abuse Law) was enacted in May 2000 and came into effect in November of the same year. Since then, there has been a succession of 'welfare' enactments such as those concerning domestic violence (2001), the insane or incapacitated (2005) and independence for the handicapped (2005). Given that Japan has forsaken Fordist welfare policies and come under the domination of neo-liberalism, which aims for 'small government', what is the purpose of this string of welfare enactments?

The answer lies in the clear qualitative shift in state welfare policies in Japan. Fordism is focussed on monetary and service benefits, the best known being the provision of the livelihood protection assistance. In contrast,

neo-liberalism shifts the focus of the policies to controlling and surveillance. Neo-liberalism preaches the *laissez-faire* gospel and holds that human nature is inherently evil, corresponding to the assumption of human nature in neo-classical economic models. Thus, it creates a surveillance society, which involves the use of security cameras and identification numbers, continually increasing the power of the state. This paper focuses on the Child Abuse Law because it is singular among the various laws enacted in this vein, and thus poses a grave danger to citizens' rights.

The Child Abuse Law was created by the ruling coalition of the Liberal Democratic Party (LDP) and the Komeito Party acting as the conservatives. Opposition parties were also included in the process, and the bill was railroaded into law through a unanimous vote in the Diet.¹ Prior to the passage of the law, the Ministry of Health, Labour and Welfare (MHLW) ran continuous campaigns about the dramatic rise in child abuse as well as in serious cases involving deaths and other incidents caused as a result of abuse.

¹ *Asahi Shimbun*, 18 May 2000.

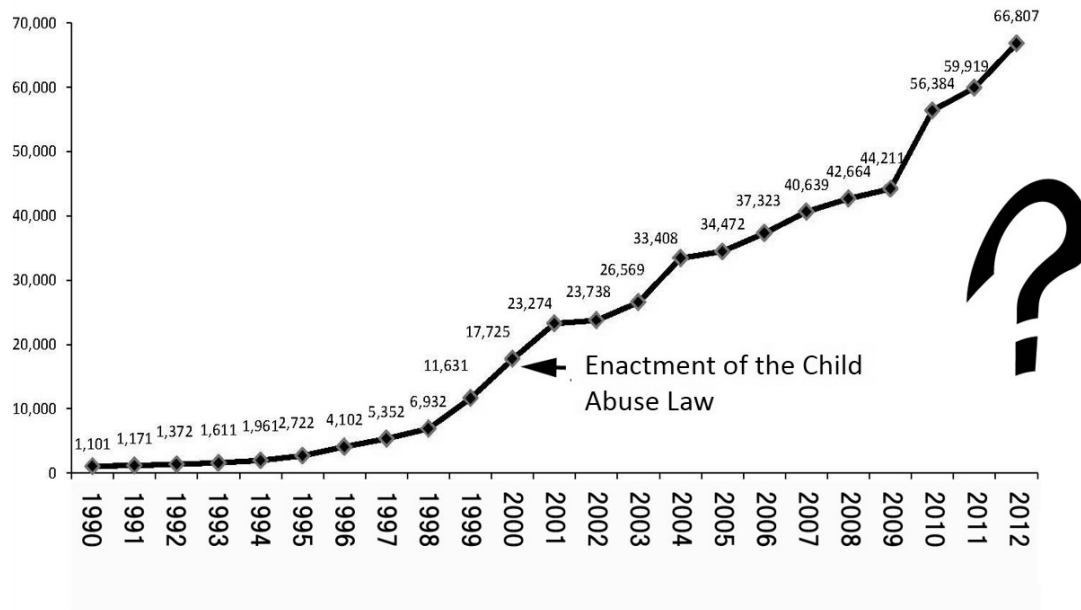


Figure 1: Child abuse counselling incidents at Child Guidance Centres

Source: MHLW media release 'Results of Validations of Mortality Cases Due to Child Abuse' (Summary of 9th Report) and 'Child Abuse Counselling Incidents', July 2013 (the figure for 2012 is preliminary) <http://www.mhlw.go.jp/stf/houdou/2r985200000037b58-att/2r985200000037ban.pdf> (partially modified by the author)

In 1999, the ministry expanded ² its definition of child abuse, which was later incorporated into the Child Abuse Law. In this way, the MHLW meticulously paved the way for the passage of the law. Among these activities was a proposal for a bill restricting parental authority, which is central to the current Child Abuse Law and is tied to fundamental revisions to the system of temporary custody set forth in the Child Welfare Law. This proposal would restrict parental visitations and communication and expose children to the state power for an extended period. Despite its potential to infringe human rights, media at the time received the law enactment favourably.³ The MHLW became the primary agent in manipulating public opinion to facilitate the passage of the Child Abuse Law, and it is evident that the ministry threw all its weight

into enacting the law once it thought that a consensus had been reached.

What was the result? According to an announcement by the MHLW regarding 'Child Abuse Counselling Incidents at Child Guidance Centres' (Figure 1), abuse cases dramatically increased after the enactment of the Child Abuse Law. Although it would be reasonable to expect child abuse cases to decrease after the law's enactment and effective implementation, it appears that the effect has been exactly the opposite.

■ 2 Children's Rights and the Arbitrarily Defined Concept of 'Abuse'

² *Asahi Shimbun* Evening Edition, 5 July 1999.

³ *Asahi Shimbun*, 19 December 1999.

Children have rights as citizens. Their healthy and civilised growth environments must be protected. However, as children are in development, they have both rights uniquely different from those of adults as well as obligations in relation to adults. For example, children cannot vote; thus, their participation in the democratic process is limited. On the other hand, they are obligated to receive a primary and lower secondary level of education in order to become full-fledged citizens. Furthermore, children must be subject to parental authority. In addition, the state has created administrative apparatuses and laws such as juvenile acts specifically for children. Child Guidance Centres (CGC) and juvenile homes are two such examples.

Thus, children grow and develop under the supervision of and in conflict with various agents attempting to influence their will and limit their rights. The primary agents exerting tangible power on children are parents, schools and the state, and when too much tangible power is exercised, the rights of children are infringed, depriving them of a healthy development.

Of these exertions of tangible power, provisos to Article 11 of the School Education Law, enacted immediately after World War II, clearly forbids the use of corporal punishment in schools, not only the direct use of tangible force, such as hitting and kicking, but also punishments such as placing a pupil in confinement for being late to school, thus forcing the pupil to miss class and infringing the pupil's right to learn. Schools in which corporal punishment has been banned fall under the jurisdiction of the Ministry of Education, Culture, Sports, Science and Technology (MEXT).

As to the parents' use of tangible force, Article 822 of the Civil Code of Japan has long recognised the rights of those with parental authority (parents) to discipline children. The Civil Code was revised in 2012, after the enactment of the Child Abuse Law, to remove the anachronistic right of parents to place children in a disciplinary institution. However, parents' disciplinary right was retained, though the

associated punishments were more clearly defined as being 'in the interest of the child'. Because parents' disciplinary right is legal, no agency exercises control in this area. In other areas, the Penal Code, which is under the jurisdiction of the police, governs violent and injurious crimes, such as those committed against adults, as well as the exercising of tangible power on children.

The Child Abuse Law, under the jurisdiction of the MHLW, has intruded on the trinitarian system of laws governing the exercising of tangible power on children in the form of parental discipline, corporal punishment and violence. The exercising of tangible power by parents has thus become the sole interest of the CGCs, a local government apparatus under the jurisdiction of the MHLW.

Article 2 of the Child Abuse Law defines 'abuse' in four paragraphs, and the definition includes verbal abuse such as 'strikingly violent speech with children'. Taken at its face value, this definition could imply that parents trying to make children do their homework, for example, could be abusing them simply by using strong words or spanking them. However, this definition conflicts with parents' disciplinary right acknowledged by the Civil Code. Thus, in reality, the precise definition of abuse is left to the broad discretion of the administration. How this discretion will be used cannot be known by simply reading the text of a law; therefore, for citizens, the definition has become a black box.

In other words, by allowing the state to delineate the line between the rights to discipline and abuse, the number of child abuse incidents can be increased on the basis of the government's discretion. This is how the vague and arbitrary definition of abuse in Japan came into effect.

■ 3 'The Best Interest of the CGC is the Best Interest of the Child': The Vast Authority Grabbed by CGCs

On the basis of the arbitrary definition of abuse, the CGCs under the jurisdiction of the MHLW have been given vast authority that is unprecedented throughout the world. When a CGC receives a notification or conducts an investigation and views something that can be classified as abuse under its arbitrary definition (a single cut or bruise on a child's body is sufficient), it can exercise its power to take custody of a child without a court order according to Article 33, 'temporary detention', of the Child Welfare Law. A CGC has the authority to cut off children's ties with their legal guardians without obtaining the guardians' consent as well as to place the child in confinement. The state apparatus does not allow democratic discussions regarding this arbitrary definition of abuse, but imposes it on children and guardians by exerting tangible power of abduction and detention.

The temporary detention system was set forth in the Child Welfare Law, enacted immediately after Japan's defeat in World War II. War orphans and abandoned children were a major issue at the time, and the government humanely respected the relationship between parents and children, enabling the detention of these children while the government searched for parents and returned their respective children to them. The enactment of the Child Abuse Law fundamentally transformed this practice into an authoritarian legal devise.

In Paragraph 3, 'forceful nature of temporary detention of a child' of *Child Guidance Centre Operation Principles*, the MHLW states the following: '1) in principle, [CGC] shall obtain the consent of the guardian or child for temporary detention. However, this shall not apply in cases in which leaving a child in place is thought to

harm the welfare of that child. [...] 3), temporary detention can be invoked even in cases in which the consent of a minor's parents or guardians cannot be obtained. This shall be allowed in exceptional cases in which temporary detention is short term and lasts only until the ultimate aid. Further, even in these cases, a sufficient effort must be made to coordinate with and obtain the consent of the minor's parents or guardians'.⁴ However, the employees in charge of the CGCs believe that they are given the legal power to abduct a child without the consent of the child or parents. Still, the MHLW has not been making an effort to improve this state of affairs by requesting the CGC employees to obtain parental consent before implementing the temporary detention. In other words, the MHLW acknowledges that the exception of 'shall not apply in this case' is actually the primary acting principle. The phrase 'agreement of the guardian or child' merely acts as a smokescreen to hide the forceful nature of the system.

Sometimes the CGC engages in deception to obtain the 'consent of a child'. As we explain below, once a CGC abducts a child, it does not allow the child to attend school institutionalised by the School Education Law for extended periods, even though it is compulsory under the Constitution of Japan. The CGC capitalises on children's preference of playing to studying and tells the child, 'If you get in this car, you can't go to school'. Most children prefer play to study, so the child, with candy dangling before his face, is led to think that he no longer needs to go to school and gets in the car. The CGC then claims that they 'obtained the consent of the child for detention'.

The temporary detention initially spans two months, but it can be extended. Once a child is abducted, he/she is normally detained for a considerably longer period. The MHLW, in the aforementioned *Child Guidance Centre Operation Principles*, states that these are 'exceptional cases

⁴ Equal Employment Opportunity, Children and Families Bureau attachment number 0214003, titled 'Revisions to Child Guidance Centre Operating Policies' from the MHLW Equal Employment Opportunity, Children and Families Bureau Chief, Chapter 5 Paragraph 1, 'The Purpose and Nature of Temporary Detention', 14 February 2005.

deviating from the norm of short-term periods until assistance can ultimately be provided'. However, in reality, the norm involves detentions lasting more than half a year without parental consent. Further, parents can lodge an objection at the beginning of a temporary detention period, though they are deprived of even this right during extensions of the detention. Thus, the use of the term 'short-term period' is merely another smokescreen erected by the MHLW in order to avoid criticism.

Children thus detained are isolated from parents and placed directly under the vast authority of the state. The MHLW declares in its *Child Abuse Handling Handbook* that 'acts that unfairly obstruct the detention and exercise of power by the head of a CGC either directly or indirectly harm the welfare of a child'.⁵ Without hard evidence, any administrative action undertaken by the CGC is considered to be in the 'best interest of the child'. As we see shortly, these 'best interests of the child' include the prescription of psychiatric drugs with severe side effects.

In the end, while a CGC keeps children completely isolated from their parents, the head of the CGC lodges requests to family courts to gain permission to send children to an alternative care facility, the administrative positions of which are frequently occupied by retired local government welfare civil servants. Family courts are considered to be an independent judicial organ, though court auditors are favourably inclined towards the CGC and judges currently rubber stamp most CGC requests. As a result, it is not strange that many parents distrust the Japanese judicial system.

When a CGC request is accepted by the court, the child is cut off from all previous relationships with family and friends and is institutionalised alone in the alternative care facility, where they are given only obligatory meals and housing. A survey⁶ of those having lived in facilities run by the

Tokyo Welfare Protection Agency reported the following:

The majority of respondents, 58.3%, had a 'senior secondary school diploma' as their highest educational achievement, followed by 'junior secondary or vocational school diploma' at 23.4% and 'college diploma, etc. (four-year, junior or vocational college)' at 15.1%. According to the 2012 *Report on a Basic Survey of Schools* conducted by the Tokyo General Affairs Bureau, the senior secondary school matriculation rate among the general populace is 98.0%, and the university matriculation rate is 65.4%. Thus, among the respondents in this survey, those whose highest educational achievement is junior secondary school are relatively high and those who enter university are relatively low (page 12).



Figure 2: A child abuse campaign poster found on city streets. What would be there beyond the 'lifeline' offered by a snitcher?

In addition, after leaving an alternative care facility, to the question of 'anxiety for life in general or for the future', 52.1%, the highest among all questions, responded either 'I have great problems' or 'I have some problems' (page 14). This shows that children are leaving these alternative care facilities without the sufficient qualifications or education that would allow them to plan their future life. This is a natural result as these facilities take no responsibility for providing education in

⁵ *Child Abuse Handling Handbook*, MHLW Equal Employment Opportunity, Children and Families Bureau Administration Division, August 2013 revised version, p. 161.

⁶ Welfare and Health Department, Tokyo Metropolitan Government, *Survey of Those Leaving Alternative Care Facilities in Tokyo*, 2011.

specialised directions. Forced detention in these facilities takes away the right of children to grow and develop as well as hampers the blossoming of their ability and prevents them from becoming significant members of society. Indeed, this represents grave infringement of children's rights by the state.

This type of human rights infringement is attracting the attention of the United Nations Committee on the Rights of the Child (UNCRC).⁷ In the 54th Session of this committee (25 May–12 June 2010), Paragraph 52 of the 3rd Concluding Observations for Japan indicated concern for regarding 'the increase in the number of children taken into care away from their families, the inadequate standards of many institutions, [...] and the reportedly widespread abuse of children in alternative care facilities' and declared its regret that a complaints procedure for these circumstances has not been implemented. As was pointed out by the Concluding Observations, abuse in the facilities is persistent; recently, in a facility in Aomori Prefecture it was discovered that corporal punishment had been continuing for five years.⁸

The MHLW runs a child abuse prevention campaign every year, placing posters across Japan and advertising an 'abuse hotline' (Figure 2). However, nowhere do these posters mention that the CGC will use its power to abduct children, cut off all relations with their parents, detain them for long periods, and eventually send them to an alternative care facility. Some posters are also found nationwide at nurseries. While sincere phone calls by citizens concerned about children or guardians distressed about child rearing will lead to the child being subjected to state abuse, the citizens are encouraged to snitch through promises of anonymity.

■ 4 Criticisms of Japan's CGCs by the UNCRC

While they extensively discuss child abuse, the CGCs are powerless against abuse in schools. Even if a person calls the child abuse hotline to inform the nearby CGC of a child receiving corporal punishment from a teacher at school, the CGC merely brushes him/her off. As the MHLW's Child Abuse Law has been snuck in the back door of the legal system as a means to deal with tangible force against children, the ministries are bound to the existing bureaucratic turf, rendering them unable to touch the administrative rule of the MEXT over its schools.

Nevertheless, the CGC does have dubious connections. The infringement of children's rights caused by the relationship between Japan's CGCs and schools was noted in Paragraph 62 of the Concluding Observations of the UNCRC: '[t]he Committee observes with concern that children who do not meet the behavioural expectations of school are transferred to Child Guidance Centres...'. The convention criticised the corruption in the relationship between schools and CGCs, which led to schools transferring pupils seen as manifesting 'problem behaviour'.

This precise concern was played out at a private elementary school in Tokyo. A teacher, having felt that a pupil with Asperger syndrome not performing to his expectations, hit the pupil on the head in the classroom in front of other pupils almost every day. The hurt child eventually refused to attend school owing to the trauma, and the guardian harshly criticised the school. Nevertheless, the school principal neither helped the hurt pupil nor apologized to the guardian. Rather, she justified the violence of the teacher as 'a way of instruction' and concocted a story of abuse, snitched to a CGC and eventually transferred the child, the victim of the teacher's corporal punishment, to the CGC. The child is now

⁷ Consideration of reports submitted by states parties under Article 44 of the Convention. Concluding Observations: Japan, United Nations Committee on the Rights of the Child. Fifty-fourth session, May 25–11 June 2010. <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.JPN.CO.3.pdf>

⁸ *Asahi Shimbun*, Aomori Edition, 18 June 2013.

unable to attend school, and both the child, who was subjected to the teacher's corporal punishment, and the guardian, who protested against it, were eliminated from the school. Since corporal punishment in schools is illegal, the CGC's behaviour in assisting the school is also illegal. Thus, not only is the Child Abuse Law ineffective against schools that use violence but the law also promotes corporal punishment in schools and the betrayal of Christian love by infringing the child's right to an education.

■ 5 CGCs Deprive Japanese Children of Many Constitutional Rights

The MHLW and CGC are infringing many rights of children as citizens, which are protected by the Constitution of Japan.

First, Article 34 of the constitution states that no person 'shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel'. If simple cuts and bruises on a body are sufficient reason for temporary detention, an average citizen with blood on his/her clothing due to an injury could be stopped at a police station and hauled off to a police cell, with the policeman claiming that he/she either inflicted bodily harm or committed murder. Both of the policeman's actions are extraordinary displays of authority. Article 33 of the constitution states that the arrest or detainment of a person must be based on a directive (e.g. an arrest warrant) issued by a court that specifies the offence with which the person is charged. Thus, it is against this constitutional requirement for administrative apparatuses such as CGCs to detain a child without such a court

directive. Tetsu Iwase noted that 'From the standpoint of protecting due process in the administrative action of temporary detention, many are of the opinion that a system should be adopted complete with judicial review' and that 'in terms of future direction, the involvement of the judiciary [...] should be considered'.⁹ Although this is a reasonable proposal, the MHLW does not consider it seriously.

Once a child is detained, the CGC does not allow the child to attend school. Any education received by children in the facility is not based on the MEXT's official guidelines for school teaching, and lessons are given in short periods over the course of the day by workers or part-time help who, in many cases, do not possess the required credential or teaching license. The rest of the time, children are left to play; thus, the duration of instruction does not fulfil the time requirements mandated in the official guidelines for school teaching. The MEXT insists that the official guidelines are legally binding to teachers who aim for more independent and democratic instruction, arguing that the Supreme Court recognised legal authority (legally binding power) in a 1976 ruling.¹⁰ However, the MEXT, although a government apparatus with authority, does nothing to another apparatus within the bureaucratic community, the CGC, even if the CGC disregards their legal requirements of school teaching. If, as the MHLW insists, the head of a CGC is assumed to serve the 'role of custodian' to the children under the temporary detention at the CGC, then he/she is 'obligated to ensure that all boys and girls under his/her protection receive ordinary education' according to Article 26 of the constitution. However, the MHLW is silent about this constitutional obligation. With regard to children detained for longer periods, the MHLW notes that 'special steps [...] and] specific measures must be considered from multiple angles in cooperation with the education

⁹ Machino, Saku and Iwase, Tetsu, *Jido Gyakutai no Boshi: Jido to Katei, Jido Sodan Sho to Katei Saibansho* [Preventing Child Abuse: Children and the Home, Child Guidance Centres and Family Courts], Yuhikaku, 2012, pp. 204–205.

¹⁰ 'Gakushu Shido Yoryo o Meguru Kyoiku Saiban' [Court Ruling on the Official Guidelines for School Teaching], http://www.mext.go.jp/b_menu/hakusho/html/others/detail/1318314.htm

committee'.¹¹ This wording, too, is short and vague, and it does not concretely state the constitutional obligations regarding education. The anti-constitutional nature of the education provided by the CGCs also stands out in stark contrast against Article 4 of the Juvenile Home Law, which guarantees children interred in juvenile homes a normal education.

However, under the pretence of 'the best interests of the children', the MHLW justifies the administration of psychiatric drugs without the consent of parents to children causing a ruckus or fighting with other children in the CGC detention facilities. Compared to the eloquence¹² of justifying the right of 'the heads of CGC or alternative care facilities to medical care such as checkups, tests and treatments (pharmaceutical or other treatments, surgeries, etc.) at healthcare organisations (including psychiatric units) under its authority, the MHLW's stance toward education appears to be both irresponsible and weak. This effectively demonstrates that what the MHLW refers to as the interest of children is in fact merely an attempt to expand the bureaucratic turf of the MHLW.

Detained children are confined for long periods and are not allowed to play sports outdoors. Thus, the longer detainment, the more children decline mentally and physically. In addition, the children are administered psychiatric drugs. This is against Article 25 of the constitution, which sets forth laws for a 'wholesome and cultured living'.

On the other hand, children in alternative care facilities get away with not having their parents rebuke them every day, telling them things like 'Study! If you don't study, you will be of no use to society in the future!' For children, a CGC is, in a sense, heaven on earth. Children get accustomed to this type of lifestyle, and parents cannot provide the education to guarantee the development of these children. The CGC, in an attempt to institutionalise children to alternative care facilities, can easily

manipulate their mind. Eventually, the habit of not studying has adverse results as described in the aforementioned Tokyo alternative care facilities survey (see p. 5 of this translation). Children are then burdened with this habit that they acquired during detention for the rest of their lives, while the CGC takes no responsibility for orienting the child's entire life in this manner. This is in conflict with Article 13 of the constitution, which sets forth 'the right to life, liberty, and the pursuit of happiness'.

■ 6 CGCs in Japan Gravely Violate the UN Convention on the Rights of the Child

The MHLW and the CGCs are in breach of the UN Convention on the Rights of the Child, which was adopted by the General Assembly of the United Nations in 1989 and ratified by Japan in 1994.

Article 37(b) of the Convention states, '[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'. However, Japan's CGCs abduct children not as a 'measure of last resort', and they detain the children for long periods.

As soon as children are taken to the CGC detention facilities, they are prohibited from seeing parents or communicating with them through letters or telephone calls for long periods. In contrast, Article 5 of the Convention stipulates, 'States Parties shall respect the responsibilities, rights and duties of parents [...], legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention'. Likewise, Article 9

¹¹ *Child Abuse Handling Handbook*, *ibid*, p. 110.

¹² *Child Abuse Handling Handbook*, *ibid*, p. 161.

stipulates, 'States Parties shall ensure that a child shall not be separated from his or her parents against their will'. Article 16 Paragraph 3 of the Universal Declaration of Human Rights defines, 'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State'. The idea that the bonds between parents and children must not be broken is a universal concept established for the rights of children. However, as already explained, the key focus of the Child Abuse Law is in Article 12, which introduced a rule that destroys families and infringes the internationally recognised basic rights of children. When international conventions conflict with domestic laws, the former are normally given precedence; therefore, the validity of the Child Abuse Law itself is suspect because of its violation of the UN Convention on the Rights of the Child. However, domestic laws in Japan are enforced as the primary authority, and once children are abducted from parents, it can take months or even years for them to be reunified.

The provisos of Article 9 of the Convention assert 'that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence'. However, as previously mentioned, the CGCs do not rely on court orders; they unilaterally abduct children and completely separate parents and children without judicial review. Thus, this proviso provides no justification for the administrative actions of the CGCs.

The CGCs do not allow free and open meetings between abducted children and parents, their representatives or attorneys; they only relay children's opinions to the outside world through the filter of CGC employees. This violates Article 12 Paragraph 1 of the Convention, 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child', as well as Article 37 (d), '[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action'. Compared to the right of arrested suspects to meet with an attorney, it is clear that these actions of the CGCs are a striking violation of children's right of expression.

There is no end to the cases of direct child abuse by the CGCs themselves. Particularly striking are the lewd acts recently reported by the media which resulted in an arrest in Chiba Prefecture in September 2013,¹³ the repeated acts of lewdness committed against a young girl locked alone in a room in Hokkaido,¹⁴ the touching of the genitalia of multiple young boys in Shiga Prefecture in October 2010,¹⁵ and so forth; the list of similar incidents is unending. At a CGC in Tokyo, a six-year old girl was given multiple psychiatric drugs which cause dependencies without parental consent, such as Miradol, Depas and Risperdal. In other areas, there is unabashed neglect which ostensibly comes under the purview of the MHLW. A child wearing glasses prescribed by an optometrist is at risk of amblyopia if the glasses break and are not replaced; yet, the CGCs would not replace the glasses in such situations. In a CGC in a major city along the Sea of Japan, a two-year old detained child was beaten, and there have also been

¹³ *Asahi Shimbun*, Chiba Metropolitan Area Edition, 7 September 2013.

¹⁴ *Asahi Shimbun*, Hokkaido Edition, 2 February 2011.

¹⁵ *Asahi Shimbun*, All Shiga Edition, 6 October 2010. Cases of child abuse committed by CGC employees are, for unknown reasons, only reported in regional editions of the newspaper and are left unseen by citizens nationwide.

incidents of detained children being exposed to violence from other children or being forced to receive tattoos by older detained boys.¹⁶

Although with regard to the aforementioned case of beating, the CGC was pushed to issue an apology to the parents of the child in question, the MHLW has justified the administration of psychiatric drugs as being implemented under the 'care of the head of the CGC'. Thus, when the temporary detention was fortunately abolished, parents were surprised to see that the child's eyes appeared void, as if he had become another person entirely.

Such examples are merely the tip of the iceberg. Due to the spatially isolated nature of the CGCs, it is likely that lewd acts, violence, neglect, etc. remain shrouded in darkness. Needless to say, these actions are in violation of Article 37 (a) of the Convention, '[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment', as well as Article 37 (c), '[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age'. Simply put, on the basis of the slogan 'the best interest of the child is the best interest of the Child Guidance Centre', the MHLW completely takes away the ability of parents to monitor their children. This shows the type of state-sponsored child abuse that the Child Abuse 'Prevention' Law is likely to create.

The latter half of Paragraph 62 of the Concluding Observations of the UNCRC noted that '[t]he 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', showing an overarching

concern by the UNCRC regarding the infringement of children's rights by the CGCs in Japan due to their lack of professionalism, the lack of information disclosure and supervision and the suppression of the freedom of expression of the children abducted from their parents and detained by the CGCs. Paragraph 63 asks the Japanese government to assign an independent party to investigate this situation. However, the MHLW has not only neglected to come to terms with this request and implement improvement measures but has also moved ahead with restricting parental authority, further strengthening the CGCs and destroying families.

■ 7 The MHLW's Refusal to Learn from History: The Crushing Blow of a Mother and Daughter Seeking Asylum in the Netherlands

During World War II, Europe had a concentration camp for children. The Independent State of Croatia,¹⁷ a puppet state of Nazi Germany at the time, created this camp in Shisak, near the capital city Zagreb. Serbians, Jews, Roma people and others were regarded as enemies of the state, and their families were destroyed, with children forcibly taken from their parents. These detained children were beaten, murdered or sent to foster parents in Germany to be raised after undergoing re-education orienting them towards pro-Nazism. After the Axis nations lost the war, these children raised by foster parents grew up and embarked on the psychologically traumatic journey of seeking out the parents that had given birth to and raised them.

The UN Convention on the Rights of the Child contains a pledge that we must not repeat the tragedies that resulted from a

¹⁶ *Asahi Shimbun*, Harima No. 1 Edition, 9 December 2011.

¹⁷ The country was ruled by Ante Pavelić and comprised nearly the same area as present-day Croatia and Bosnia-Herzegovina, which were created after the dissolution of Yugoslavia. The government had no connection with present-day Croatia.

state infringing children's rights. Despite that, Japan's MHLW, as well as the CGCs, forcibly separate children from parents, destroying families and transferring power to the state. These children do not receive a proper education and end up in the 'concentration camps' known as alternative care facilities. The previous growth environment of these children is thereby completely destroyed, and the government is fiddling with their lives. CGC employees commit violence and lewd acts against children, and some children are administered psychiatric drugs without the consent of a parent. Although there may be a large quantitative difference between the concentration camp for children set up by the puppet government of Croatia and Japan's MHLW, it is not difficult to find qualitative similarities.

In 2008, an event occurred that clearly showed the differences between the Japanese and other governments in their philosophies of upholding the spirit of the convention. The daughter of a lady living in Nagasaki was determined to have received abuse and was detained in the 'Nagasaki Support Centre for Children, Women and the Handicapped' (CGC). Later, a family court ruling admitted the request of the CGC to send the daughter to an alternative care facility in Omura. The mother, with the help of a volunteer organisation that supports CGC victims, saved her daughter from the facility and sought asylum in the Netherlands via South Korea. The mother created, of her own initiative, space to break free from the territory of the state that was oppressing her daughter through detainment by escaping to territory outside the authority of the Japanese state. In this process, the daughter was freed from the double spatial confinements of the state border and the facility wall. The Japanese authorities issued an international arrest warrant for this brave mother on the grounds that she 'transported a detained suspect outside the country of domicile'. This was an attempt by the state power to extend its

ability to control a human on the global scale. Although the daughter was temporarily placed in protective custody in the Netherlands because of this warrant, in late 2008, the court of the Netherlands, out of deep respect for the reunification of the family and the rights of the child, passed a decision to reunite the mother and daughter, who now live peacefully in a town in the Netherlands. The mother criticised the CGC and the courts, saying 'a proper investigation was not conducted and the courts did not listen to our defence'.¹⁸ Thus, the mother broke free of the double-layered prison of the facility and the state power of Japan to create her own '*espaces de représentation*'¹⁹ through her and her supporters' brave efforts. As a result of these actions, the MHLW, in attempting to expand its dominance over individuals on the global scale, received a miserable slap in the face.

These events also indicate that the authoritative dominance over humans created by the Child Abuse Law in Japan is peculiar from an international perspective. Even if we assume that abuse had occurred, the Dutch policy would be to take the perspective of the UN Convention and prioritise the family by returning the child if the parents are repentant. In contrast, Japan's MHLW destroys families for good and confines a child under the direct dominion of the state. Thus, the tragedy in Croatia, in which parents and children were split up, is being reproduced. Even in child welfare policy, the Japanese government has learned nothing from history.

The MHLW is announcing its policy in English for overseas consumption. However, the descriptions²⁰ related to child abuse do not include a single word about the truths of the Child Abuse Law—that the CGCs wield the power to unilaterally abduct children from their parents without a court order, completely cut children off from family ties and detain them for extended periods. Explicit announcement of these truths and having

¹⁸ *Yomiuri Shimbun*, 18 January 2009.

¹⁹ Mizuoka, Fujio, 'The Dialectics of Space Subsumption, Struggle in Space, and Position of Localities', *Localities*, Vol. 2, 2012, pp. 41–47.

²⁰ <http://www.mhlw.go.jp/english/wp/wp-hw5/dl/23010709e.pdf>

them known internationally would place the MHLW in an awkward position. One can only conclude that the MHLW is trying to fend off criticism from groups such as international human rights organisations.

■ 8 The MHLW's Desperate Attempt to Expand Its Bureaucratic Turf and Secure Additional Budget

The enactment of the Child Abuse Law offered the MHLW a green field for the expansion of its bureaucratic turf. The number of children with impediments or of youth that have committed crimes have not drastically increased. However, in the case of child abuse, if the line defining abuse is arbitrarily shifted, as it has been through the aforementioned redefinition left to the discretion of the state, child abuse cases can be arbitrarily increased. As is known,²¹ the CGCs, an administrative organ of prefectures or specially designated cities, receive funding from the national government based on the number of children detained in their facilities. The basis for this is an MHLW administrative notification²² 'In Regard to the National Contribution of the Cost of Keeping Children in Facilities etc. in Relation to the Child Welfare Law'. For each child detained in the CGC or alternative care facilities, the national government pays a 'unit custody allowance', which includes the costs to operate the CGC itself.

The more children the CGC abducts and detains, the more funding it receives. This type of budgeting system generates strong economic incentive on the part of the CGC to abduct and detain even more children. To the CGC, children serve as a 'money

tree'. Another document²³ that the CGCs are supposed to submit to the MHLW every year contains a 'year-to-year' column in which the CGC must show the number of children abducted or detained in the current year compared with that in the previous year. The larger the yearly growth rate, the more positively the MHLW evaluates the CGC for its administrative performance.

Further, we examine the local CGC budgets. City of Yokohama, for example, has a FY 2013 CGC budget of JPY 1,141,543,000, of which more than half, JPY 57,073,000, comprises the child temporary detention costs. Coupled with the JPY 180,207,000 allocated to 'child abuse prevention measures', this adds up to more than two-thirds of the total annual CGC budget. Each CGC in the Yokohama area is expanding its detention facilities²⁴ to allow it to hold more abducted children. From the standpoint of budgeting and operations, the CGCs in Japan are beginning to expose their power to operate as 'child concentration camps'.

The graph displayed at the start of this paper shows a soaring trend towards increased child abuse. This should not be taken to mean that households in Japan suddenly began treating children roughly; we must not be taken in by the MHLW's propaganda.²⁵

Part of the budget allocated to the CGCs goes to attorneys for writing statements to the family court for the placement of 'abused children' into alternative care facilities; to doctors and paediatric psychiatrists for writing medical certificates that 'testify abuse' and prescribing psychiatric drugs without the consent of parents; and to foster parents for raising children separated from their biological parents, who are accused of

²¹ Utsumi, Satoru, *Jido Sodan Sho no Kowai Hanashi [Frightening Stories of Child Guidance Centres]*, Sangokan, 2013, pp. 144, 167-168.

²² <http://www.mhlw.go.jp/bunya/kodomo/pdf/tuuchi-76.pdf>.

²³ <http://www.mhlw.go.jp/bunya/kodomo/pdf/tuuchi-78.pdf>.

²⁴ <http://www.city.yokohama.lg.jp/kodomo/action/outline/file/25-636.pdf>.

²⁵ For example, one 'armchair' researcher, in critiquing a book about child abuse prevention, brought up several incidents of child deaths and claims that this is the 'current state' of the 'child abuse problem' (p. 3); however, he pays no attention to the real phases of child abuse as noted in this paper ('Reviewing Machino Saku, *The Struggle Against Child Abuse: Preventing Child Abuse, Children and the Home, Child Guidance Centres and Family Courts*', *Shosai no Mado*, No. 615, 2012).

abuse. These people get on the bandwagon of clamouring about 'dramatic increases in child abuse', scream about the current condition and demand an increase in the CGC budget, the number of CGC employees, and the number of children assigned to foster parents. The MHLW, meanwhile, aims to improve the infrastructure of facilities using 'children's human rights' as a pretext. Attorneys that work with the CGCs have no excuse for not knowing about the unconstitutional actions taken against detained children. However, nobody speaks about it publicly.

The CGC psychiatrists and attorneys are supposed to offer their professional services to the CGCs, and one would hope that they conduct objective evaluations as part of their work. In reality, however, since they are remunerated by the CGCs, it is extremely difficult for them to independently go against the wishes of CGC employees. If they do, the CGC will probably not assign them new tasks, which would mean that part of their bread would be lost. Deliberation councils and expert councils of the government bring together academics and other professionals, though eventually, the system merely gives a rubber stamp, with these professionals lending their 'weight' to the proposals made by the bureaucrats. Since the Fukushima incident, the dubious role of such councils organised by the government bureaucracy in Japan has been questioned. Even if each scientist is bona fide, the 'village community' of these scientists renders them blind to the objective facts, which eventually lead to such nuclear incidents. Even if all those working with the CGC are professionals sympathetic to the cause of children, when they are co-opted into the CGC, they treat professionalism and objectivity in a perfunctory manner and facilitate the violation of human rights and child abuse at the behest of CGC employees. Thus, the end result will be a 'village community' centred on the CGC.

In this manner, once a CGC employee in charge, many of whom neither graduated

from a university with a child welfare or child psychology major nor subsequently built a career in child welfare sections in civil service, screams 'child abuse' and 'facility placement', the professionals endorse these accusations by creating forced descriptions. For example, parents sending a child to a tutoring school to prepare for the junior high school entrance exam may be written up for inflicting 'mental abuse' on the child. This would mean that all parents in the Tokyo and Osaka metropolitan areas in Japan are guilty of child abuse for having their children take private junior high school entrance exams, and SAPIX and other tutorial schools famous in Japan would become powerful child-abuse supporting institutions. Nowadays, the danger created by concepts that can be arbitrarily altered at the whim of authority is criticised, as in the case of the arbitrariness of 'special secrets',²⁶ although this did not start with Japan's Special Secret Protection Law. Rather, it is a parlour trick played by the state as it forces its authority on citizens.

■ 9 The Child Abuse Law as a 'Functional Security Law'

Thirteen years have passed since the enactment of this system of placing unsuspected citizens of an age group between infancy and 17 years old under direct state control, isolating them from their parents and violating the constitution in the name of 'protection'. Fair precedents for expanding this administrative system to entire age range of citizens have now been stocked.

The LDP submitted the 'Draft for Constitution Revision' in April 2012. Article 13 of this draft states that '...right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare and public order, be the supreme consideration in legislation and in other governmental

²⁶ 'Himitsu Hogo Hoan: Yushikisha Kaigi no Mayakashi' [The Special Secrets Protection Bill: A Phony Council of Experts], *Tokyo Shimbun*, 16 October 2013.

affairs', implying that when 'public order' is violated, citizens will get these freedoms revoked. There are already precedents in the current constitution for an administrative organisation to abduct and detain citizens as well as to restrict their communication. The Supreme Court of Japan has never passed the decision to make a CGC request unconstitutional, including in the case of the aforementioned mother and daughter who fled to the Netherlands. Should the constitution be revised per the LDP draft, the new regulations in Article 21 Paragraph 2 state that activities considered to be against 'public order' and the members of an organisation who conduct such activities shall be arbitrarily seized and detained for indefinite periods under the authority of the state, and this state action shall be regarded constitutional, even if there are no major revisions to other articles of the current Section 3 of the constitution, 'Rights and Duties of the People'. As with the definitions of 'child abuse' and 'special secrets', the definition of 'public order' is vague; thus, there is a danger that it can be arbitrarily manipulated to enforce 'temporary detentions for maintaining public order' against those opposing the government regime.

Even preventive detention under the pre-war Administration Enforcement Law (abolished after the war) had a detainment period that ended at dusk the following day. If a unilateral administrative decision to indefinitely detain a citizen without a court warrant, forbidding detainees from meeting with attorneys or supporters, is enforced against adults who are against the authority, this would become frightening security legislation exceeding even that in the pre-war era. Of course, one would not hear obsolete pre-war terms such as 'preventive arrests'. Nevertheless, when a war breaks out, citizens may be encouraged to snitch on an 'antiwar activist' hotline, and certain leaders would be captured in the name of 'welfare' and detained in 'national protection facilities'

for the sake of 'protecting the public from bodily harm due to right-wing attacks'.

When the state uses the term 'protection', it does so in a very paternalistic, authoritarian fashion. The capture and detainment of opposition citizens by the state power in the name of protection is nothing new. In 1923, the Temporary Earthquake Aid Agency established following the Great Kanto Earthquake had a stated policy of 'protecting ethnic Koreans who are not suspected of wrongdoing' and placing them in concentration camps in Narashino, Chiba Prefecture. 'Ethnic Koreans and Chinese were gathered in concentration camps under the guise of providing "protection," though in reality, those ethnic Koreans and Chinese who were thought to pose an ideological threat to the authorities were screened and murdered'.²⁷ Currently, children detained in the CGCs are brainwashed to hate their parents, and children who do not behave as instructed are administered psychiatric drugs. If this current situation extends to the general populace, adults who are against the authority will be forced to comply with state authority through incarceration in 'national protection facilities', where they will be cut off from all connection with attorneys or supporters and will be subjected to various re-education methods such as the administration of psychiatric drugs under the authority of the head of the facility. We cannot help but feel a shiver indicating that elements of the Soviet Union during the Stalin era are creeping into Japan.

In light of the Japanese government's decision to retain nuclear power plants and nuclear fuel processing facilities in spite of the rising number of voices who oppose nuclear power and insist that it is incompatible with human life after the Fukushima incident, many people, both inside and outside Japan, are insightful enough to conclude that the Japanese government has ambitions of nuclear armament,²⁸ although Japanese

²⁷ Chiba Memorial Investigation Committee, *Iwarenaku Korosareta Hitobito [Those Killed Without Accusation]*, Aoki Shoten, 1983, pp. 116 and 121.

²⁸ 'Japan's Nuclear Plan Unsettles U.S.'. *The Wall Street Journal*, 1 May 2013.

<http://online.wsj.com/article/SB100001424127887324582004578456943867189804.html>.

government keeps its mouth shut no matter what. When the Child Abuse Law was passed in 2000, the necessity of contingency legislation in Japan was a topic of heated discussion among the conservatives. In October of the same year, the US published the first 'Armitage Report',²⁹ which clearly demanded the creation of such 'contingency legislation' in Japan. It was in such political ambiances that the Child Abuse Law was railroaded in a mere six days, without serious parliamentary debates. Thus, it is not strange that this law, innocent on the surface and completely unrelated to the maintenance of public security, could become a vehicle for the creation of 'national protection facilities' for the preventive arrest and re-education of individuals. This would be frightening, unheard of even in the pre-war era. MPs of the Social Democratic Party and Communist Party, complicit in the creation of the Child Abuse Law and not even suspected of 'protection by the state authorities', can be rightly criticised for lending a hand to smoothen the co-optation of citizens by the authority and facilitate state domination.

With regard to the Mental Illness Treatment and Observation Law, again under the MHLW's jurisdiction, the danger of preventive arrests has already been noted.³⁰ In addition, recently, revisions to the Law for Protecting Children Against Acts Related to Child Prostitution and Child Pornography, which bans even the possession of child pornography, were submitted by conservatives, and it was opposed by citizens owing to human rights-related suspicions. It is excessively naïve to think of these as well-intentioned

welfare laws on the basis of their use of words such as 'children' and 'mentally ill'.

Ken'ichi Nakayama calls laws ostensibly oriented to welfare or 'order in the lives of citizens' and used to maintain the order of the state as 'functional security laws'.³¹ Everyone knows that nowadays it would be practically impossible to pass a law that directly enables preventive arrests. Therefore, the state, since enacting the Child Abuse Law, has created a string of precedents for capture, long-term detainment, and banning of interviews with attorneys, at the sacrifice of the human rights of Japanese children. The MHLW, at the forefront of its 'child abuse campaign' in its press releases, highlights examples³² of extremely rare cases involving death due to abuse. However, behind the scenes, the MHLW uses the campaign to acquire larger budgets and expand its bureaucratic turf. Moreover, it is important for us to discern the intent to legitimise and anchor the hidden agendas of functional security laws that can be used as contingency.

■ 10 Conclusion

It is the children's rights that we must protect, not the apparatus of the state, in this case the CGCs. The CGCs, under the guise of 'child abuse prevention', exercise undue authority and ignore the Constitution of Japan, the UN Convention on the Rights of the Child, and the UNCRC findings and recommendations in enabling state power to abuse innocent children. These CGCs are not competent enough to protect the rights of children. If we allow

²⁹ 'The US and Japan—Towards a More Mature Partnership' http://www.ne.jp/asahi/nozaki/peace/data/data_ami_j.html

³⁰ 'Shinshin Soushitsuha To Iryo Kansatsuho (Koukinho) o Yurusu na! Nettowaku' [Don't Allow the Mental Illness Treatment and Observation Law (Preventive Arrest) Law! Network] <http://nano.dee.cc/networknews.htm>

³¹ Nakayama, Ken'ichi, *Gendai Shakai to Chianhou*, [Contemporary Society and Public Security Law], Iwanami Shinsho, 1970, p. 145.

³² Application of tangible force that can truly be called abuse falls under the jurisdiction of police as a criminal case. Child abuse cases reported to the police peaked in 2011, although even then there were a mere 472 cases, which is less than 1/140 of that reported by the MHLW (*Nihon Keizai Shimbun*, 7 March 2013).

this situation to run its course, Japan will become a country where mothers do not give birth to children and where children cannot be raised, further exacerbating the issue of the falling birth rate. In addition, we may have preventive arrests of adults engaging in anti-establishment persuasion, which is the aim of the contingency legislation.

Some websites ³³ focussing on the infringement of human rights stemming from the authority of the CGCs, concerns among Japanese citizens are gradually growing. That said, children are suffering from detainment in the CGCs and other facilities, and all parents and children living in Japan face the risk of being affected by this. Further, the rights of parents and guardians who gave birth to and raised children, but who had their rights unreasonably revoked, have not been restored. True protection of citizens' rights requires careful examination of the state apparatus and the raising of voices by citizens in Japan and throughout the world in order to stop the state authority from abusing people. This is also extremely important in preventing the use of the Child Abuse Law as a functional security law in the future.

About the Author:

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³³ 'Jido Sodan Sho no Jittai (Jitsuroku)' [The Reality of Child Guidance Centres (Authentic Reports)] <http://www.boreas.dti.ne.jp/~h777m300/>.