

CRC Japan Presentation to FCCJ Press Conference March 11, 2004

In January of this year, the Japanese government submitted their Second Periodic Report to the United Nations Committee on the Rights of the Child. FWS and CRC Japan, in a coalition with 8 other Japanese NGO's submitted one of over 15 additional commentaries on Japan's report.

According to the official Japanese government report, Japan has thoroughly educated her judiciary and members of the legal profession about the requirements of the Convention. But it would be difficult to convince CRC Japan member, Sam of this.

In 2001, Sam's Japanese wife was jailed in the United States for spousal abuse. Sam then got a custody order for their son. Soon after being released from jail his wife abducted their son to Japan. Sam eventually got Japanese courts to recognize his sole custody order. The Supreme Court refused to hear his wife's appeal. But his wife had his son, and there was no legal way for him to get his son out of the "physical" custody of his wife. Family Court orders are simply not enforceable in Japan. Then, to add insult to injury, the Osaka Family Court, recognizing his sole legal custody, ordered a single 3 hour visitation per year with his son.

So even if you have custody affirmed by the Supreme Court of Japan, you not only cannot get your child, but the Family Court, believes that you should have only one day of visitation per year. This is the same Family Court who is about to take over jurisdiction of all divorce cases.

Now can you imagine what happens if you DON'T have legal custody? In fact, perhaps you never even got a chance to negotiate the choice with the other parent. According to Ministry of Health Labour and Welfare statistics, in 2002, there were 21,631 children born out of wedlock in Japan. But in Japan, article 819 paragraph 3 of the Civil Code gives sole custody of a child born out of wedlock to the mother. This is clear gender discrimination, in violation of the United Nations Convention on the Rights of the Child, which Japan ratified in 1994, and in violation of the Japanese Constitution, Articles 14 and 24.

I can think of no better way to describe the sum of these situations in Japan than to call them "**Legal De-Facto Abduction**." One parent, with the help of the Japanese courts, can prevent the other parent from any kind of meaningful contact with their child for up to 20 years. This **is** abduction with the consent of Japanese Law.

Now my heart goes out to the relatives of all the Japanese citizens who were abducted to North Korea and those who still have family there. I'm sure they feel hopeless against a foreign government who will not let them have their day in court. A foreign government who ignores their pleas for justice. I literally feel the same pain. But with all due respect, how much better is it when a parent knows that the outcome of a court battle, all the way to the Supreme Court of Japan is hopeless. The result is guaranteed to be the same. Except that instead of there being 15 Japanese kidnapping victims by North Korea, there are hundreds of Japanese kidnapping victims, every year, in Japan, for all practical purposes, kidnapped by Japanese parents.

Unfortunately, this is only half the story, and half the reason that the Japanese government should be paying just as much attention to **Legal De-Facto Abduction** within Japan as it is to the North Korean abductions.

Again according to Ministry of Health Labour and Welfare statistics, in 2002, there were 35,879 international marriages between a Japanese and a non-Japanese citizen. Significantly, in the same year, Japan also saw 22,251 births to international couples and 15,252 international divorces. Many of these couples, of course with children, are of course living outside Japan, where Japan's **Legal De-Facto Abduction** has a different name. It is called simply "Parental Abduction", and it is not legal. Parents go to jail for it. Children are returned to the original custodial parent when it happens.

In this age of quick and easy international air travel, countries around the world recognize how complex Parental Abduction can become. So they have created an international treaty, called the **Hague Convention on the Civil Aspects of International Child Abduction**. This Convention brings some uniformity to the handling of such crimes when they cross international borders. The convention went into effect in 1980, and currently has 70 nations on board. Japan is the only major industrialized country in the world that has not signed and ratified it.

One of our handouts covers a few more details of the Hague Convention. But in brief: The Hague Convention is designed to help return an abducted child to its place of habitual residence. It requires participating countries to find and to return children who have been wrongfully removed from their country of habitual residence. It does not address how to assign custody or visitation. But **after** return, these rights are determined by the laws of the country of habitual residence of the child – typically where the child **was**, not where he or she was taken to

Japan refuses to sign this treaty.

I mentioned earlier the NGO commentaries to the UN concerning Japan's implementation of the Convention on the Rights of the Child. One of these came from the Japan Federation of Bar Associations. In a scathing 218 page report, they said that...

In reality, only one case has been made public, where a foreign spouse could successfully retrieve a child from a Japanese spouse (judgment at the Supreme Court, June 29, 1978). On the contrary, failed examples include the judgments ruled by the Supreme Court on February 26, 1985; Tokyo High Court on November 15, 1993, etc. One of the grounds for these judgments is that a long time had passed since the child was brought to Japan. However, this was due to the time it took for the parents deprived of their child to find the child by themselves and file a suit.

This is EXACTLY the situation that the Hague Convention tries to prevent and why Japan needs to sign it. The Hague Convention says that if the parent from whom the child was taken files a report within a year, it is **mandatory** to return the child to the place of habitual residence.

Since Japan has not signed the Hague Convention, more and more non-Japanese are choosing to use the kidnapping laws of countries outside of Japan. In fact, the Japanese spouses of the

several CRC Japan members have been indicted by Federal Courts in the United States, and will be arrested if they ever step into the United States. They are also wanted by Interpol, so will be arrested if they try to enter any of a number of other different countries around the world. But when the United States tries to extradite one of them from Japan, the Japanese government claims that there has been no crime.

So when confronted with accusations, the Japanese government denies that any abductions have taken place. Does this remind you of anything? Perhaps of the North Korean government denying for years that any Japanese citizens had been kidnapped?

But the analogy goes even deeper. One way that a foreign country will try to stop a Japanese parent from abducting a child out of the country is to confiscate their passport and the passports of the child. In countries with joint custody and enforceable visitation, this is supposed to allow the Japanese parent to have meaningful access to their child. Well, it is common knowledge in the overseas Japanese community that a Japanese citizen can obtain a special same day permit from the Japanese consulate, for the parent and child to return to Japan. All they have to do is show a photo id and have their air tickets in hand. It's a quick and easy plan to get back to Japan despite any court orders to the contrary.

So now we have the Japanese government not only denying the crime, but helping to commit it in the first place. The parallels with the North Korean abductions are clear. National government complicity. Except again, there are hundreds of parental abductions by Japan and there were only a handful by North Korea.

But there is a growing risk that many Japanese are not aware of. Groups like Father's Website and CRC Japan are making sure that the situation gets known, worldwide, via the Internet. As it does, parents are getting smarter. Let me emphasize that we do not condone the following in any way. But these smarter parents know that Japanese Family Law will completely cut them off from their children if they stay in Japan. So some have started to pre-empt the situation and leave Japan with their children before Japanese Family Law can kick in. So if there are no changes, Japan's future holds only more international abductions.

In summary, what we have here are two governments, Japan and North Korea, who are both making their own rules that violate international standards of decency, and violate international laws. North Korea is a poor, under-developed, and desperate country. But Japan is not. So it is time that Japan joins the rest of the economically powerful world, by ratifying the Hague Convention. Japan must also **really** implement laws in accordance with the Convention on the Rights of the Child. TATEMAE compliance is no longer enough. Japan must reform Family Law to remove discrimination and to enforceably protect the rights of children to meaningful access by **both** parents.

Sam, the member whose case I described is not here today, but he speaks fluent Japanese and English, and is available for interviews. To briefly go over another very recent case with you, I'll turn things over to David Brian Thomas, co-founder of CRC Japan.