

COMPLAINT

Human Rights Council Resolution 5/1 of 18 June 2007

ON BEHALF OF:

1. **Mrs. Masako AKEO**, mother of Kazuya David SUZUKI, 24 years old, of Japanese and Canadian nationalities, who has been deprived of his mother since March 2005;

The following minors are legally represented by their fathers:

2. **Yohei and Yuna BABA, 13 and 9 years old**, of Japanese nationalities: deprived of their father Mitsuru BABA since 17 November 2018;
3. **Brian and Alisa BALZER 14 and 8 years old**, of Japanese and US nationalities: minimal access to their father Michael BALZER since 2014;
4. **Masato BECATTINI, 12 years old**, of Japanese and Italian nationalities: deprived of his father Michele BECATTINI since 8 March 2014;
5. **Claire DE FOURNAS, 7 years old**, of Japanese and French nationalities: deprived of her father, Emmanuel DE FOURNAS, since 11 April 2015;
6. **Tsubasa and Kaede FICHOT, 3 and 1 years old**, of Japanese and French nationalities: deprived of their father Vincent FICHOT since 10 August 2018;
7. **Nathan LAMBERT, 6 years old**, of Japanese and French nationalities: deprived of his father Stéphane LAMBERT since 30 July 2016;

8. **Mana MIWA, 2 years old**, of Japanese nationality: deprived of her father Hiroshi MIWA since 27 November 2016;
9. **Hokuto Marcello and Ai Sofia ONUMA (PERINA), 6 and 4 years old**, of Japanese and Italian nationalities: deprived of their father Tommaso PERINA since August 2017;
10. **Kotone TANAKA, 6 years old**, of Japanese nationality: minimal access to her father Diasuke TAKANA since 31 March 2016.

As representing violations suffered by approximately 150,000 victims in Japan, per year.

REPRESENTED BY:
Mrs Jessica FINELLE
Lawyer at the Paris Bar
ZIMERAY & FINELLE AVOCATS
91 avenue Kléber 75116 Paris
Tél: +33 1 82 28 14 55 / +33 6 63 08 27 56
Email: jf@zimerayfinelle.com

AGAINST:

THE STATE OF JAPAN

TABLE OF CONTENTS

I.	INTRODUCTION	5
II.	ADMISSIBILITY OF THE COMPLAINT	8
A.	The Legal Framework	8
B.	The Complaint Meets the Substantive Requirements in Paragraph 85	8
C.	The Complaint Satisfies the Requirements in Paragraph 87	11
1.	Paragraph 87 (a)	11
2.	Paragraph 87(b)	11
3.	Paragraph 87(c)	12
4.	Paragraph 87(d)	12
5.	Paragraph 87(e)	12
6.	Paragraph 87(f).....	12
7.	Paragraph 87(g)	12
III.	A CONSISTENT PATTERN OF GROSS VIOLATIONS OF CHILD RIGHTS	14
A.	The Legal Framework	14
1.	The International Covenant on Civil and Political Rights	14
2.	The International Convention on the Rights of the Child ('CRC').....	14
a.	The Importance of Relationships with Both Parents	14
b.	Access to Parents Abroad	15
c.	'The Best Interests of the Child'	16
d.	The Right to Be Heard.....	17
3.	The Hague Convention.....	17
B.	Ten Representative Cases Studies	19
1.	Masako AKEO, Mother of Kazuya David SUZUKI, 24 Years Old: No Access to Her Son since March 2005.....	19
2.	Yohei and Yuna BABA, 13 and 9 Years Old: Deprived of Their Father since 17 November 2018	20
3.	Brian and Alisa BALZER, 14 and 8 Years Old: Time with Their Father Limited to 5 Hours Total for Brian, and Very Restricted for Alisa since 2014.....	21
4.	Masato BECATTINI, 12 Years Old: Deprived of His Father since 8 March 2014 (When His Mother Died)	21

5. Claire DE FOURNAS, 7 Years Old: Deprived of Her Father since 11 April 2015	22
6. Tsubasa and Kaede FICHOT, 3 and 1 Years Old: Deprived of Their Father since 10 August 2018	23
7. Nathan LAMBERT, 6 Years Old: Deprived of His Father since 30 July 2016	24
8. Mana MIWA, 2 Years Old: Deprived of Her Father since 27 November 2016	25
9. Hokuto Marcello and Ai Sofia ONUMA (PERINA), 6 and 4 Years Old: Deprived of Their Father since August 2017	25
10. Kotone TANAKA, 6 Years Old: Minimal Access to Her Father.....	26
C. A Consistent Pattern of Gross Violations Exists in Japan.....	27
1. Parental Child Abductions Violate International Human Rights Law	27
2. Parental Child Abductions Occur on a Massive Scale	28
a. Domestic Child Abductions	28
b. Cross-Border Child Abductions	30
3. Parental Child Abductions are of International Concern	31
D. Japan is Responsible for the Violations.....	32
1. Police Facilitate Abductions.....	32
2. Domestic Law Sets the Stage for Violations of the CRC	34
a. Shared Custody Does Not Exist after Divorce	34
b. Shared Parental Authority Does Not Exist after Divorce.....	36
3. Courts Routinely Violate the CRC	38
a. Judges Reward Unlawful Abductions	39
i. Misapplying the ‘Principle of Continuity’	39
ii. Misapplying Allegations of Domestic Violence.....	42
b. Judges Fail to Protect Visitation Rights	44
c. Judges fail to Consider Properly the Child’s View	46
d. State Authorities Fail to Enforce Decisions in Favour of Non-Custodial Parents	48
4. The Damage Caused by the Violations is Severe	51
IV. CONCLUSION	52
V. SUGGESTED MEASURES	53

I. INTRODUCTION

*‘Unfortunately, when children are involved, in some cases they **have become victims** in which the relevant laws and judicial decisions do not appear to be fully enforced. [...] [W]e wish to draw your attention to the issue of the right of a child, in accordance with the UN Convention on the Rights of the Child, to which Japan is a party, to **maintain contact with both parents** on a regular basis, in order to signal the importance of the enforcement of the rulings of Japanese Courts. Moreover, the UN Convention requires that **the State parties must act in the best interest of the child** and shall use their best efforts to ensure the recognition of the principle that both parents have common responsibilities for the bringing and development of the child.’*

**(Joint Letter from 26 European Union Ambassadors
to Japanese Minister of Justice) ¹**

*‘Only 2.6% of the **245,000 children being affected by divorce** [in 2008] will be allowed visitation’. Regarding the remaining 97% of children of divorced couples, **‘the most likely result [...] is that noncustodial parents will no longer be able to meet with their children following divorce. Even if they are able to meet, once a month is an abysmal state for visitation rights.’***

(Professor Takao Tanase, Ph.D. in sociology from Harvard University, professor at the University of Kyoto) ²

1. This Complaint exposes a pattern of gross violations of the rights of the child in Japan (‘Complaint’). The evidence demonstrates that Japanese authorities violate the rights of at least 150,000 children each year, ³ by allowing, facilitating or even supporting their abduction by one parent, and thereafter failing to act in the ‘best interests of the child’.

¹ Joint letter from the 26 European Union Ambassadors in Tokyo to the Japanese Minister of Justice, dated 6 March 2018 <<http://www.moj.go.jp/content/001257587.pdf>>.

² See below, para. 90.

³ See below, para. 88 and footnote n° 59.

2. For the purposes of this brief, ‘abduction’ shall mean:
 - a. circumstances where one parent (‘the abductor parent’) removes a child from the family home, without permission, upon initial separation;
 - b. circumstances where a child was initially taken by one parent with the agreement of the other parent, but the first parent (‘the abductor parent’) has since cut off all access to the child by the other parent (‘the excluded parent’).
3. Either of these circumstances leads to the same gross violations under the Convention on the Rights of the Child (‘CRC’) as well as the Hague Convention on the Civil Aspects of International Child Abduction (‘Hague Convention’), including the deprivation of contact with one parent for many years, sometimes until they reach the age of majority.
4. These tragedies affect both Japanese and binational children, whether abducted by their mothers (in most cases) or their fathers, within Japan or from abroad to Japan, regardless of their social class.
5. The situation has been neatly summed up by Akira Ueno, a lawyer with the firm Nihonbashi Sakura in Tokyo, in the following terms:

‘Every year in Japan, 150,000 minors are kidnapped by one of the parents who cuts off all contact. The second parent, often the father, then has no recourse to the authorities to maintain a link with his children. [...] The main problem is that justice is on the side of the parent who kidnapped the children. The child is considered the property of the home not like an individual with rights; it is an object that is moved like a piece of furniture’. During the course of the proceedings, Japanese justice will not help the excluded parent maintain contact with his children, ‘out of respect for the new home based around the single parent’.⁴

6. This Complaint utilises ten representative examples (‘case studies’) to expose this pattern of gross violations. In each one of these examples, the children have suffered multiple breaches of their rights under the CRC and other international laws aimed at protecting the welfare of children. In all ten examples, the children have become victims of abduction by one parent who then prevents the excluded parent visitation rights, or even simple contacts.

⁴ Akira Ueno, ‘Japan’s Child Abduction Issue’ - Press conference at The Foreign Correspondent’s Club of Japan (FCCJ) (Video, 20 December 2018)) <<https://www.youtube.com/watch?v=6R8KBWtvLY>>; Johann Fleuri, ‘Au Japon, de nombreux parents kidnappent leurs enfants en toute impunité’, Les Inrockuptibles (02 January 2019) <<https://www.lesinrocks.com/2019/01/02/actualite/monde/au-japon-de-nombreux-parents-kidnappent-leurs-enfants-en-toute-impunite/>>.

7. Despite considerable efforts by the excluded parents to ensure visitation, the Japanese authorities have consistently failed to consider properly the best interests of the child and, effectively, have blocked the child's relationship with the excluded parent. These ten are examples only. For the purposes of considering the gravity of the violations, the Human Rights Council ('HRC') should consider the entire victim pool, namely, at least 150,000 children per year.

8. The consequences of violations of this nature cannot be overstated. Multiple studies⁵ outline the devastating trauma that may cause long-term risky behavior such as school failure, hypersexuality and self-destruction.⁶ Professor Noriko Odagiri, a professor of clinical psychology at the Tokyo International University, denounces the practices as '*extremely harmful to the development of the child who imagines being rejected by her second parent. Last year [in 2017], the number of children who committed suicide reached a record for thirty years*'.⁷ **Considering their scale and systemic nature, the violations may have left several million Japanese children traumatized for life.**

9. As outlined below, the excluded parents have made every effort to address these violations through the Japanese legal system, to no avail. This situation is now so pervasive that '*it can no longer [be] regarded as falling exclusively within the domestic jurisdiction of States*'.⁸ The HRC must step in to protect the children.

⁵ See below, Part III. C. 4., paras. 170-173.

⁶ Noriko Odagiri, 'Japan's Child Abduction Issue' - Press conference at The Foreign Correspondent's Club of Japan (FCCJ)' (Video, 20 December 2018) <<https://www.youtube.com/watch?v=6R8KBWtvLY>>.

⁷ Johann Fleuri, 'Au Japon, de nombreux parents kidnappent leurs enfants en toute impunité', Les Inrockuptibles (02 January 2019) <<https://www.lesinrocks.com/2019/01/02/actualite/monde/au-japon-de-nombreux-parents-kidnappent-leurs-enfants-en-toute-impunite/>>.

⁸ OHCHR, 'Complaint Procedure of the Human Rights Council - Frequently Asked Questions' <https://www.ohchr.org/Documents/HRBodies/ComplaintProcedure/FAQComplaintProcedure_en.pdf>.

II. ADMISSIBILITY OF THE COMPLAINT

A. The Legal Framework

10. Pursuant to HRC Resolution 5/1, dated 18 June 2007, the Complaint procedure was ‘*established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances*’ (paragraph 85). The admissibility criteria are as follows:

‘87. A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible, provided that:

(a) It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;

(b) It gives a factual description of the alleged violations, including the rights which are alleged to be violated;

(c) Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;

(d) It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non-governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence.

(e) It is not exclusively based on reports disseminated by mass media;

(f) It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;

(g) Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged’.⁹

B. The Complaint Meets the Substantive Requirements in Paragraph 85

11. The rights of the child under the CRC are unquestionably human rights for the purposes of the admissibility. To be admissible, Complaints must also demonstrate ‘*consistent patterns of gross and reliably attested violations*’ of those human rights.

⁹ UN Human Rights Council, ‘Institution-building of the United Nations Human Rights Council’ 18 June 2007, A/HRC/RES/5/1, <<https://www.refworld.org/docid/4ae9acbbd.html>>.

12. Since ‘Resolutions or decisions of [...] the Human Rights Council [...]do not contain any clear definition of the terms ‘pattern’ or ‘gross violation’, there is a degree of leeway in determining whether a violation fits these characteristics.¹⁰ The OHCHR suggests that patterns of gross violations are considered to be those that are so severe that they can ‘no longer [be] regarded as falling exclusively within the domestic jurisdiction of States’.¹¹ Scholars have also underlined a ‘stress on systematic behavior of the government, ‘consistent pattern’ implying not only large numbers but also repetition’.¹²

13. The *travaux préparatoires* of the 1503 procedure looks at quantitative and qualitative characteristics:

- for the qualitative aspect: the violations must inherently have an ‘*inhuman and degrading character*’.¹³ Three qualitative components can be considered: (1) the type of rights violated; (2) the character of the violation; and (3) the characteristics of the victims;¹⁴
- for the quantitative aspect: there must be a number of breaches spread over a period of time that involve more than one victim. The planning and intent of the perpetrator are also important when judging whether a violation fits in these criteria.

14. The violations outlined in this Complaint satisfy both the qualitative and quantitative criteria. In terms of quality, the violations deny children one of the most fundamental rights guaranteed in the CRC, namely, the right to maintain personal relations and direct contact with both parents on a regular basis (unless against the ‘child's best interest’).

¹⁰ OHCHR, ‘Complaint Procedure of the Human Rights Council - Frequently Asked Questions’ (n8).

¹¹ *ibid.*

¹² Dahniar, Adwani, Mujibussalim and Mahfud, ‘Gross Violation of Human Rights in ACEH: Patterns of Violence through the Indonesian Government's Policy’ (2017) 22:5 IOSR Journal of Humanities and Social Science 19, 22 <<http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue5/Version-1/C2205011940.pdf>>.

¹³ M. E. Tardu, ‘United Nations response to Gross Violations of Human Rights: The 1503 Procedure’ (1980) 20:3 Santa Clara Law Review 559, 583 ff

<https://heinonline.org/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/saclr20&men_hide=false&men_tab=toc&kind=&page=559>.

¹⁴ Cecilia Medina Quiroga, *The battle of Human Rights - Gross, Systematic Violations and the Inter-American System* (Martinus Nijhoff Publishers 1988), 13

<<https://books.google.fr/books?id=woazBwrb03MC&pg=PR4&lpg=PR4&dq=C.+Medina+Quiroga,+%E2%80%98The+Battle+of+Human+Rights,+Gross,+Systematic+Violations+and+the+Inter-American+System%E2%80%99,+Martinus+Nijhoff,+Dordrecht,+The+Netherlands,+1988&source=bl&ots=IJPrG-sbhY&sig=ACfU3U1iFg2fimYgTE0a245PBkRGxxCFeg&hl=fr&sa=X&ved=2ahUKEwin17277tnjAhUFJBoKHUvbd74Q6AEwA3oECAyQAQ#v=onepage&q=qualitative&f=false>>.

Children are recognised by law as inherently vulnerable. And it is widely accepted that they may suffer long-term psychological damage and be traumatised by abduction followed by the denial of visitation by the excluded parents.¹⁵

15. In terms of scale, whilst there is no one official figure, the best available evidence indicates that Japanese authorities violate the rights of at least 150,000 children¹⁶ each year by allowing, facilitating or even supporting, the abduction by one parent and thereafter failing to act in the ‘best interests of the child’. Children find themselves deprived of contact with their other parent for years, sometimes until they reach the age of majority. Assuming this figure of 150,000 victims has been relatively consistent over the last decade or more, then **well over a million Japanese children have been affected.**

16. Finally, there is credible evidence that Japanese authorities are aware of the violations and either actively commit them or and intentionally fail to prevent them. Not only is the issue active before the Japanese police or courts, as well as the Diet (the Japanese Parliament) but it has also been highlighted publicly on multiple occasions at the highest levels, most recently by President Macron of France and Prime Minister Conte of Italy, and previously by the 26 EU Ambassadors in Tokyo.¹⁷ Additionally, the tragedies of these children and the excluded parents have been widely relayed by civil society organizations,¹⁸ and often reported in the press.¹⁹ Japanese authorities are fully aware of this pattern of gross violations.

¹⁵ See below Part III. C. 4., paras. 170-173.

¹⁶ See below, footnote n° 59.

¹⁷ See below, Part. III. C. 3. para. 101; for the reply of the Japanese Minister of Justice, see part. III. D. 2. b. para. 117.

¹⁸ See, for instance, the letter sent by the ‘International Alliance Partners’ which includes the NGOs Kizuna Child-Parent Reunion, Bring Abducted Children Home, Sauvons Nos Enfants Japon and others, to the G7 countries on 26 April 2018, mentioning: ‘Thousands of children including our own have been kidnapped by their Japanese parent to or within Japan, and they suffer from a lack of access to both of their loving parents and families. This has been tolerated by the Japanese government and judiciary. Currently, repatriation of children or the right of access to these children kidnapped by Japanese parents is impossible to enforce without the consent of the kidnapping parent’, NGO Kizuna Child-Parent Reunion, ‘G7 Kidnapped to Japan Reunification Project’ (letter, 26 April 2018) <<https://www.kizuna-cpr.org/g7-kidnapped-to-japan>>.

¹⁹ For instance, regarding Vincent FICHOT, Emmanuel de FOURNAS and Stéphane LAMBERT, see Marie-Pierre Gröndahl, ‘Séparés de leurs compagnes japonaises, ils sont privés de leurs enfants’ *Paris Match* (20 May 2019), <<https://www.parismatch.com/Actu/Societe/Separes-de-leurs-compagnes-japonaises-ils-sont-prives-de-leurs-enfants-1626159>>; Régis Arnaud, ‘Les enfants volés du Japon’ *Le Figaro* (28 May 2019) <www.lefigaro.fr/international/les-enfants-voles-du-japon-20190627>; Arnaud Vaulerin, ‘Japon: enfants confisqués, parents abandonnés’ *Libération* (29 January 2018) <https://www.liberation.fr/planete/2018/01/29/japon-enfants-confisques-parents-abandonnes_1626000>; see also the French investigation TV program Envoyé Spécial, broadcasted on 21 March 2019, <<https://qnap01102.myqnapcloud.com/share.cgi?ssid=0RDNtbd>>; Regarding Mitsuru BABA et Tommaso PERINA, see Yann Rousseau, ‘Au Japon, à la recherche des enfants perdus’ *Les Echos* (25 June 2019) <<https://www.lesechos.fr/monde/asia-pacifique/au-japon-a-la-recherche-des-enfants-perdus-1032034>>; regarding Masako AKEO, see *CNN*, ‘Parents plea for end to parental abductions in Japan’ (16 January 2011) <<http://edition.cnn.com/2011/WORLD/asiapcf/01/16/japan.parental.abductions/index.html>>; etc.

17. It was also reported, by the NGO BacHome, that a public seminar was held on 15 May 2018 at the House of Culture of Japan in Paris, ‘*co-organized by the Ministry of Foreign Affairs of Japan and the Japan Federation of Bar Associations*’, where participants were being educated, in the Japanese language, about the Hague Convention and ‘*how to prevent having their children returned to France should they take them without consent to live in Japan*’,²⁰ which would clearly show the Japanese authorities’ intention to circumvent the application of international conventions.
18. If Japan were truly dedicated to protecting child rights according to international law, it would have ratified the CRC Optional Protocol on a communication procedure, thereby allowing cases to be brought before the UN Committee on the Rights of the Child (‘CRC Committee’). Also, the very late ratification of The Hague Convention, which occurred in 2014 after growing international pressure, is indicative of Japan’s intention to avoid international scrutiny of its abduction system.
19. The pattern of gross violations is supported by reliable evidence, as will be demonstrated below.²¹

C. The Complaint Satisfies the Requirements in Paragraph 87

1. Paragraph 87 (a)

20. This Complaint is not politically motivated, and its object – the fundamental rights of children – is clearly consistent with all ‘*applicable instruments in the field of human rights law*’.

2. Paragraph 87(b)

21. This Complaint provides ‘*a factual description of the alleged violations, including the rights which are alleged to [have been] violated*’.²²

²⁰ NGO BacHome, ‘Caught! Japan Seminar on how to abduct’, 11 August 2018 (website of the NGO), <<http://www.bachome.org/news/caught-japan-seminar-on-how-to-abduct#>>.

²¹ See below part III, paras. 30 – 173 and more particularly parts C. and D., paras. 85 – 173.

²² See below part III. B. paras. 48 – 84.

3. Paragraph 87(c)

22. This Complaint contains no ‘*abusive*’ language.

4. Paragraph 87(d)

23. This Complaint is being submitted on behalf of 13 minors, legally represented by their fathers, and one mother of an abducted child (her child has gone missing and is now 24 years old). These children are victims of ‘*consistent patterns of gross and reliably attested violations*’ of human rights and fundamental freedoms in Japan. They are representative of a much larger group. Therefore, the Complaint satisfies the requirements in paragraph 87(d).

5. Paragraph 87(e)

24. The Complainants – as demonstrated by their factual presentations and related exhibits – have direct and reliable knowledge of the violations described herein. As required, the instant communication and its supporting material have been properly addressed to the HRC’s Complaint Procedure Unit.

6. Paragraph 87(f)

25. The violations outlined in this Complaint are not ‘*being dealt with by a special procedure, a treaty body, or other United Nations or similar regional complaints procedure*’.

26. Since Japan has not ratified the Optional Protocol to the CRC, no communications could be brought before the Committee on the Rights of the Child.

7. Paragraph 87(g)

27. For most Complainants, access to domestic remedies has been denied. For example, the fathers of Nathan LAMBERT, Tsubasa and Kaede FICHOT, Yohei and Yuna BABA, Mana MIWA, Hokuto Marcello and Ai Sofia ONUMA (PERINA) have attempted multiple times to file a criminal complaint for child abduction before the police, but the police have

consistently refused to record it.²³ As a result, any further recourse to the domestic justice system would be '*ineffective or unreasonably prolonged*'.

28. One Complainant has fully exhausted domestic remedies. Masato BECATTINI's father has indeed sought a favorable decision (ordering the return of his child to Italy, previously abducted by his Japanese grandparents) enforced before the Japanese Supreme Court, in vain.²⁴

29. For all of the above reasons, the Complaint is admissible.

²³ See below, part. III. D. 1. paras. 104-109.

²⁴ See below, para. 160.

III. A CONSISTENT PATTERN OF GROSS VIOLATIONS OF CHILD RIGHTS

A. The Legal Framework

30. Japan is a State party to relevant international treaties that guarantee the protection of child rights. Those treaties are directly binding on Japanese domestic legal system.²⁵ Specifically, the CRC and the Hague Convention protect the right of the child not to be separated from one of his/her parents against his/her will, and in case of separation, the right to maintain personal relations and direct contact with both parents on a regular basis (except if it is contrary to the ‘child’s best interest’).

1. The International Covenant on Civil and Political Rights

31. The International Covenant on Civil and Political Rights (‘ICCPR’) (dated 16 December 1966) was ratified by Japan on 21 June 1979. Article 23 provides that:

‘1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. [...]
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children’.

2. The International Convention on the Rights of the Child (‘CRC’)

a. *The Importance of Relationships with Both Parents*

32. The CRC was ratified by Japan in 1994. It proclaimed childhood to be ‘*entitled to special care and assistance*’²⁶, thus granting children specific rights to ensure their healthy and safe development. It recognizes the essential role of both parents:

‘1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

²⁵ Article 98 of the Japanese Constitution (3 November 1946): ‘This Constitution represents the supreme law of the country; no law, ordinance, imperial edict or other act of government, in whole or in part, contrary to its provisions, shall be valid or legally enforceable. Treaties concluded by Japan and established international law must be scrupulously observed.’

²⁶ UN General Assembly, *Convention on the Rights of the Child* (20 November 1989), Preamble para. 5.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, **States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children**.²⁷

33. Access to both parents is a crucial right of the child and, according to the convention, should only be limited or denied if in the ‘best interest of the child’. Article 9 of the CRC states:

‘1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

[...]

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests’.

34. The CRC Committee notes that a necessary separation must not prevent the child from maintaining ‘the linkages and relations with his or her parents and family’.²⁸ Therefore, any law ‘automatically giv[ing] parental responsibilities to either or both parents’ may be contrary to the child’s best interest. The CRC Committee stressed that: ‘**In assessing the child's best interests, the judge must take into consideration the right of the child to preserve his or her relationship with both parents**’.²⁹

35. In other words, a child’s right of access can only be denied to ensure his or her best interest, all other reasons of denial are considered violations of his/her right.

b. Access to Parents Abroad

36. The CRC aims to prohibit the abduction of children across borders. Article 11 provides:

‘1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements’.

²⁷ CRC, Article 18.

²⁸ UN Committee on the Rights of Child, ‘General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)’, 29 May 2013, CRC/C/GC/14 para. 65, <<https://www.refworld.org/docid/51a84b5e4.html>>.

²⁹ *ibid*, para. 67.

37. Further, when separated parents live in different countries, right of access must be ensured:

'A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention'.³⁰

38. In the situation of separation or divorce, the consideration of the national origin and cultural identity of the child is of primary importance. Indeed, the child growing up with two different cultures may well be deprived of one of them.³¹

c. 'The Best Interests of the Child'

39. The 'best interests of the child' is the overarching principle to guide State actors when interpreting children's rights:

'1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures'.³²

40. In its 'Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)', the CRC Committee specified:

'Article 3, paragraph 1, of the Convention on the Rights of the Child [...] expresses one of the fundamental values of the Convention. The Committee on the Rights of the Child has identified article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child, and applies it as a dynamic concept that requires an assessment appropriate to the specific context'.³³

³⁰ CRC, Article 10.2.

³¹ CRC, Article 20.3; Article 29.1.c. of the CRC also provides that 'States Parties agree that the education of the child shall be directed to [the] development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own'.

³² CRC, Article 3.1 and 3.2.

³³ CRC Committee (n28) para. 1.

41. Moreover, the CRC Committee recommends that **any decision includes an evaluation of its impact on the child**.³⁴ Judicial proceedings in particular should be justified by a legal reasoning displaying the factual circumstances, the relevant elements, their content and the way they were weighted to determine the ‘child’s best interests’.³⁵

d. The Right to Be Heard

42. International law provides for the child to be heard. Crucially, they must be able to express their views freely:

‘1. 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, the views of the child being given due weight in accordance with the age and maturity of the child.

*2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law’.*³⁶

43. As the CRC underlines, Article 12 and Article 3 provide complementary roles, since the ‘best interests of the child’ cannot be correctly applied if the child’s view is not considered.³⁷ This may require a special procedure ensuring the assessment of the child’s will, **carried out in a friendly and safe atmosphere by experts in child psychology and development**.³⁸

3. The Hague Convention

44. The Hague Convention on the Civil Aspects of International Child Abduction was ratified by Japan on 1 April 2014. However, this only happened following significant international pressure.³⁹ Japan was the last G7 country to ratify the Convention.

³⁴ *ibid*, para. 6 (c).

³⁵ *ibid*, para. 97.

³⁶ CRC, Article 12.

³⁷ CRC Committee (n28) para 53.

³⁸ CRC Committee (n28) para 94.

³⁹ CNN (n19).

45. The Hague Convention aims to ‘*protect children from the harmful effects of cross-border abductions*’, secure ‘*rights of access*’ to internationally abducted children and ensure ‘*the prompt return of children wrongfully removed to or retained in any Contracting State*’ to their habitual residence.⁴⁰ Article 3 of the Hague Convention states:

‘The removal or the retention of a child is to be considered wrongful where:
a) *it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
b) *at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State’.*

46. Accordingly, in a situation where one parent abducts a child from a third country and takes that child back to Japan, the Hague Convention applies. Japan may be required to ensure the return of that child:

‘Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention. In particular, either directly or through any intermediary, they shall take all appropriate measures:
a) *to discover the whereabouts of a child who has been wrongfully removed or retained;*
b) *to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;*
c) *to secure the voluntary return of the child or to bring about an amicable resolution of the issues*
[...]
f) *to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;*
[...]
h) *to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;*
i) *to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application’.*⁴¹

⁴⁰ Hague Conference on Private International Law, 'Outline - 1980 Hague Child Abduction Convention - The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction' (May 2014), 1 <<https://assets.hcch.net/docs/e6a6a977-40c5-47b2-a380-b4ec3a0041a8.pdf>>.

⁴¹ Hague Conference on Private International Law, *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Hague XXVIII, Article 7, <<https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bfe102911c8532.pdf>>.

47. Signatories are required to act expeditiously.⁴² And to promote parental access.⁴³

B. Ten Representative Cases Studies

1. Masako AKEO, Mother of Kazuya David SUZUKI, 24 Years Old: No Access to Her Son since March 2005⁴⁴

48. Masako AKEO, mother of Kazuya David SUZUKI, 24 years old and of Canadian and Japanese nationalities, has been deprived of her son since March 2005 (except for two brief contacts in 2008 and 2009), when he was abducted by his father, who took him from Canada to Japan in 2006.

49. In 2004, Masako AKEO, filed a petition for divorce. Her husband immediately forbade her from seeing their son again and threatened to accuse her of kidnapping if she ever tried to contact Kazuya David. From 24 March 2005, Masako AKEO did not see him for 3 years.

50. On 23 June 2006, Kazuya David's father abducted him from Canada to Japan. During the several mediation sessions, the Japanese authorities refused to grant Masako any visitation rights or even tell her the whereabouts of her child. It completely disregarded the welfare of the child, who had suffered emotionally and educationally since his abduction. On 5 March 2008, after 5 mediations for visitation rights, Masako AKEO was briefly allowed to see Kazuya David for the first time in 3 years, for one hour, in the Tokyo Family Courthouse. Notwithstanding constant efforts and requests, Masako AKEO was never able to see him again - apart from a 45-minute session on 30 April 2009 - despite being ordered to pay child support.

⁴² *ibid*, Article 11: 'The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children. If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay.'

⁴³ *ibid*, Article 21: 'An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child. The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.'

⁴⁴ Summary of Exhibit n° AKEO (factual presentation) and related exhibits 1 to 6.

51. Masako AKEO has, to this day, committed herself to the fight for justice, denouncing the pervasive phenomenon of parental child abduction in Japan, and campaigned extensively for Japan's ratification of The Hague Convention on the Civil Aspects of International Abduction.⁴⁵

2. Yohei and Yuna BABA, 13 and 9 Years Old: Deprived of Their Father since 17 November 2018⁴⁶

52. Yohei and Yuna BABA, aged 13 and 9 and of Japanese nationality, have been deprived of their father, Mitsuru BABA, since 17 November 2018, after they were abducted by their Japanese mother on 5 November 2018.

53. Mitsuru BABA's requests to the police to protect his children have failed. Not only did the police refuse to help, but they even asserted that he was not allowed to pick up Yohei and Yuna from school. He thus filed a petition before the Saitama Kuki Family Court regarding custody of the children and possible provisional measures.

54. On 17 November 2018, Yohei and Yuna's mother allowed their father to see them for only 30 minutes, and in her presence. After that, she declared that they could not see him until the settlement of the custody. Despite Mitsuru BABA's petition for arbitration of visitation rights, the Saitama Kuki family court refused to take any decision on visitation before settling the issue of custody.

55. In the meantime, his complaint against his wife for kidnapping of minors was rejected by the police, which deemed that the facts did not amount to a crime.

56. Such a situation is all the more worrying as Yohei, born with biliary atresia, was hospitalised twice in February and March 2019 without his father knowing. In both cases, he was not immediately taken to the hospital, despite showing obvious symptoms. The deprivation of support from his father has proven to be a physical health risk.

⁴⁵ Exhibit n° AKEO 6 (Masako Akeo, 'Japanese law should encourage joint custody', published in International Herald Tribune / the Asahi Shinbun', on 23.06.2010) ; see also CNN, 'Parents plea for end to parental abductions in Japan' (16 January 2011) <<http://edition.cnn.com/2011/WORLD/asiapcf/01/16/japan.parental.abductions/index.html>>.

⁴⁶ Summary of Exhibit n° BABA (factual presentation) and related exhibits 1 to 4.

3. Brian and Alisa BALZER, 14 and 8 Years Old: Time with Their Father Limited to 5 Hours Total for Brian, and Very Restricted for Alisa since 2014⁴⁷

57. Brian and Alisa BALZER, aged 14 and 8 and of American and Japanese nationalities, have been prevented by their Japanese mother from seeing their father Michael BALZER, on a regular basis since 2014, soon after they moved from the US back to Japan. On ending the marriage, their mother severely restricted Brian and Alisa's access to their father.

58. Since 2014, despite extreme pain and progressive paralysis due to a rare spinal disease, Michael BALZER has been consistently driving for 6 to 7 hours every 2 or 3 weeks, from Tokyo to the former family house, to try to see his children. Yet, he has only been allowed by his wife to visit his son for 5 hours in total in the last 5 years, while access to his daughter has been restricted to her local area only. Michael BALZER has not been allowed overnight visits with either of his children, whether in his own house or elsewhere. Brian and Alisa have thus been prevented from regular contact with their father, even on special occasions, school holidays or the hospitalisation of Brian in 2014.

59. Their mother eventually sued Michael BALZER for divorce in October 2016, concocting allegations of violence against the children, in order to obtain custody. The Family Court relied solely on Michael BALZER's wife's declarations and did not submit the children to any psychological expertise and evaluation. With the divorce procedure ongoing, it is likely that Brian and Alisa will be progressively deprived of seeing their father, whose health is deteriorating.

4. Masato BECATTINI, 12 Years Old: Deprived of His Father since 8 March 2014 (When His Mother Died)⁴⁸

60. Masato BECATTINI, of Italian and Japanese nationalities, was abducted by his Japanese maternal grandparents after his mother died, on 8 March 2014. While Masato was originally resident in Italy with his two parents, his father, Michele BECATTINI, had agreed that his son could accompany his terminally ill mother back to Japan before she died.

⁴⁷ Summary of Exhibit n° BALZER (factual presentation) and related exhibits 1 to 9.

⁴⁸ Summary of Exhibit n° BECATTINI (factual presentation) and related exhibits 1 to 11.

61. Since the death of his mother 5 years ago, Masato has been deprived of his father, Michele BECATTINI, as his maternal grandfather has consistently refused to return him to Italy, despite 3 Japanese court decisions – including one of the Supreme Court in 2017 - ordering him to do so. Instead of executing these decisions, Masato’s grandfather has prevented the child from seeing and communicating with his own father.
62. When Masato’s father acted to have the decisions enforced in Japan, his grandfather concocted spurious accusations against his son-in-law, alleging violence. The enforcement thus failed, and such failure was endorsed by a decision of the Japanese Supreme Court. Unable to be heard outside of the presence of his grandfather by the Court’s executors, Masato never had the opportunity to freely express his willingness to return to Italy with his father. He has grown up for the last five years without either of his parents.

5. Claire DE FOURNAS, 7 Years Old: Deprived of Her Father since 11 April 2015⁴⁹

63. Claire de FOURNAS, aged 7, of French and Japanese nationalities, has not seen or been in contact with her father, Emmanuel DE FOURNAS, since 11 April 2015. In August 2014, she was abducted by her mother from France, their resident country, to Japan. One day in August, while she was away in Japan, she informed her then husband that she would not leave Japan and that he would no longer be allowed to see their daughter.
64. Shocked, Emmanuel DE FOURNAS travelled to Japan to bring his family back home. He brought an action to the Japanese courts requesting for his daughter’s return to France, but, despite his wife’s medically certified psychological instability – which led her to regularly threaten to kill her daughter - the Tokyo Family Court granted her temporary custody of Claire, clearly endangering the child. Left without any hope, pending the appeal filed against that decision, he turned to the French courts.
65. On 13 December 2014, on the basis of a favourable French judgement ordering the main residence of Claire be the father’s domicile in France, Emmanuel DE FOURNAS brought his daughter back to France from Japan. Yet, the Japanese authorities continued to support the mother and even threatened Emmanuel DE FOURNAS’ Japanese lawyer, through the Court and the Tokyo Bar Association, with criminal prosecution for complicity of child

⁴⁹ Summary of Exhibit n° DE FOURNAS (factual presentation) and related exhibits 1 to 29.

abduction. He eventually refused to assist his client and withdrew the appeal filed in Japan, against his client's instructions. As a result, the Tokyo Family Court's decision granting Claire's mother custody of the child became enforceable.

66. On 11 April 2015, Claire's mother thus managed to bring their daughter back to Japan. Emmanuel DE FOURNAS then informed her of his intention to exercise his visitation rights in Japan. The two eventually agreed upon an appointment, but upon arrival, Emmanuel DE FOURNAS was met by policemen who arrested him and held him in custody in inhuman conditions for 19 days in May 2015, forcing him to sign a very unfavourable agreement. Despite his continued commitment to the agreements, Claire's mother, who acted menacingly and uncooperatively, continues to have custody of the child, who Emmanuel DE FOURNAS has neither seen nor heard from in over 4 years.

6. Tsubasa and Kaede FICHOT, 3 and 1 Years Old: Deprived of Their Father since 10 August 2018⁵⁰

67. Tsubasa and Kaede FICHOT, 3 and 1 years old, both of French and Japanese nationalities, have not seen or been in contact with their father, Vincent FICHOT, since 10 August 2018, when they were abducted by their Japanese mother. On that day, when Vincent FICHOT returned from work, he found that his children had been abducted without prior notice or his consent.

68. Since that date, the children's mother and her lawyer have refused to provide any information on the children's whereabouts. They have even refused to allow Vincent FICHOT to speak to them.

69. On 20 August 2018, while Vincent FICHOT was at work, his wife came back to the family home in order to retrieve some belongings. A camera placed in the garage captured her placing their daughter, who was less than a year old, in the boot of her vehicle in the full summer heat between a pushchair and bags. She left the house driving her car, with the baby still in the boot.

⁵⁰ Summary of Exhibit n° FICHOT (factual presentation) and related exhibits 1 to 10.

70. Vincent FICHOT repeatedly tried to denounce the abduction of his children and the abuse on her daughter to the Japanese police authorities, but they systematically refused to record his complaint. On 20 July 2019, the Court of Tokyo denied him custody of his children, mainly arguing that their mother had been an important figure so far in their education. Additionally, the judge pretended that the children were affectionate with their mother and that such affection could not be observed with their father, since they had not seen him for a year.⁵¹

7. Nathan LAMBERT, 6 Years Old: Deprived of His Father since 30 July 2016⁵²

71. Nathan LAMBERT, 6 years old, of French and Japanese nationalities, has not seen or been in contact with his father, Stéphane LAMBERT, since 30 July 2016. He was abducted by his Japanese mother, on 22 July 2015. On that day, Stéphane LAMBERT discovered that his house had been completely emptied of his son's and wife's personal belongings and that his wife had left no information on their whereabouts.

72. Stéphane LAMBERT turned to the Japanese police authorities, who refused to register his complaint, arguing that the events were part of a private family dispute and that the mother of the child was acting within her rights.

73. On 25 November 2016, while acknowledging that Nathan's mother had left the marital home with the child on 22 July 2015, without the Complainant's knowledge and without informing him of her new address, the Yokohama Family Court attributed sole custody of the child to his mother. The court prohibited Stéphane LAMBERT from approaching his wife's house and his child's nursery. He was granted a monthly visit, lasting only 4 hours, in the building of an association, in the presence of association members, under particularly inhuman conditions (no right to meet with his child outside a dedicated room, no right to feed his child or bring him a toy etc.). To make matters worse, Nathan's mother repeatedly refused to respect the terms of the decision, without facing any sanction from the courts.

74. Nathan has not seen or been in contact with his father since 30 July 2016.

⁵¹ The ruling was issued by Ms. Takako Muramatsu from 1B Subdivision, 3rd Division of Family Division of Tokyo Family Court.

⁵² Summary of Exhibit n° LAMBERT (factual presentation) and related exhibits 1 to 6.

8. Mana MIWA, 2 Years Old: Deprived of Her Father since 27 November 2016⁵³

75. Mana MIWA, aged 2 and of Japanese nationality, has been deprived of her father Hiroshi MIWA, since 27 November 2016. On that day, Mana's mother abducted her daughter without her husband knowing. She later informed him that she would raise Mana alone. She subsequently filed a petition requesting divorce and sole custody.

76. On 4 July 2018, the conciliation procedure finally failed after more than 17 months. During this time, the court did not order visitation rights to enable Mana to see her father. As the procedure moved to a litigation phase, Hiroshi MIWA asked to be granted a progressive right of visitation. Mana's mother objected and refused to let her daughter see her father, despite previous agreements. Hiroshi MIWA was only allowed to watch Mana play, for five minutes, through a one-way mirror.

77. Despite Hiroshi MIWA's parental authority on Mana, the Osaka Family Court refused to grant him any right of visitation. In an astonishing decision, dated 29 March 2019, the court reasoned that Mana had not seen her father since her abduction and was very close to her mother. The court permitted him to send her gifts twice a year. Mana's mother was urged to send him photographs and videos in lieu of visitation.

78. In April 2019, the police refused to accept his complaint for child abduction. Tragically, Mana has not seen nor had contacts with her father since she was 2 months old.

9. Hokuto Marcello and Ai Sofia ONUMA (PERINA), 6 and 4 Years Old: Deprived of Their Father since August 2017⁵⁴

79. Hokuto Marcello and Ai Sofia ONUMA (PERINA), aged 6 and 4, of Italian and Japanese nationalities, have been deprived of their father, Tommaso PERINA, since August 2017, after they were abducted by their Japanese mother in December 2016.

⁵³ Summary of Exhibit n° MIWA (factual presentation) and related exhibits 1 to 3.

⁵⁴ Summary of Exhibit n° ONUMA (PERINA) (factual presentation) and related exhibits 1 to 12.

80. Tommaso PERINA filed requests for the immediate return and custody of his children or, alternatively, a right of visitation. The Sendai Family Court decided, in November 2018, that there was no reason to return the children, despite the mother's abduction, her efforts to deprive the children of their father for 2 years, and her mental illness (she was treated at a psychiatric clinic from January to June 2017). This decision was confirmed by the Sendai High Court in March 2019.⁵⁵
81. Since August 2017, Hokuto Marcello and Ai Sofia have not been able to see or be in contact with their father, while they had only seen him for 5 hours and 30 minutes since December 2016. This is despite the Family Court's ruling, which authorised him to visit them. His 3 criminal complaints for child abduction against his wife have not led to any action by the police.

10. Kotone TANAKA, 6 Years Old: Minimal Access to Her Father⁵⁶

82. Kotone TANAKA, aged 6 and of Japanese nationality, has had very restrictive access to her father Daisuke TANAKA since 31 March 2016, when she was abducted from the family home by her Japanese mother. Her father was informed by way of letter in which her mother threatened to make matters worse if he commenced legal action. She stayed true to her word.
83. Following Daisuke TANAKA's requests for mediation regarding visitation rights, Kotone's mother concocted allegations of domestic violence against him as part of her effort to convince him to give up meeting Kotone. In August 2016, the Tokyo Family Court rejected his proposition of visitation program, refused to address the issue of child abduction, ignored the child's life before the separation and her relationship with both parents, granting Kotone's mother full custody on the ground that she had been taking care of her since 1 April 2016. Since this decision, Kotone has only been able to see her father once or twice a month. Indeed, despite a new decision of the Family Court in January 2018, Kotone's mother only respected half of the visitation program agreed upon, without facing any repercussion from the Japanese authorities.

⁵⁵ This decision was issued by Chief Judge Mr. Hiroshi Ogawa, Judge Mr. Naoyuki Shiomi, and Judge Mr. Akira Saito. The Sendai High Court also ignored the fact that the children's mother tried to mislead it, by falsely alleging that the Italian Embassy had supported her in denying her husband his visitation rights (see the statement sent to the Court clerk Hashimoto Yukari by the Head of the Italian Consular division - equally ignored by the Court, exhibit n° ONUMA (PERINA) 13).

⁵⁶ Summary of Exhibit n° TANAKA (factual presentation) and related exhibits 1 to 6.

84. In July 2018, the Family Court declared the divorce between Maika and Daisuke TANAKA. It did not rule on the abduction of Kotone and excluded any debate on parental authority as well as child custody rights. Despite a complete lack of evidence, the court accepted the mother's baseless assertions that Daisuke TANAKA had been violent.

C. A Consistent Pattern of Gross Violations Exists in Japan

'The 250,000 children a year who lose contact with one of their parents will continue to live with the scar of their parents' divorce their whole lives'⁵⁷

1. Parental Child Abductions Violate International Human Rights Law

85. The above case studies demonstrate the nature of the violations associated with cases of child abduction. The Japanese State, through its legal framework, with the active complicity of the police, judges and court executors, violates its international human rights obligations by allowing, facilitating or even supporting a parent (the abductor parent) to:

- (1) Remove the child from the family home without prior notice or consent of the other parent (the excluded parent);
- (2) Keep the excluded parent in the ignorance of their whereabouts and threaten him/her of prosecution if he/she attempts to contact the child;
- (3) File a complaint (when the mother is the abductor parent) for domestic violence against the excluded parent to justify the abduction;
- (4) Cut off all contacts between the child and the excluded parent, depriving him/her of all his/her parental rights;
- (5) Refrain from cooperating and enforcing court decisions regarding custody, visitation rights and parental rights when favorable to the excluded parent.

86. These and other similar acts have caused Japan to be in breach of several provisions of the CRC, including:

- the right of the child to have his/her interests taken as a primary consideration (Article 3 CRC);
- the right of the child not to be separated from his/her parents against his/her will - unless justified by his/her 'best interests' (Article 9.1 CRC);

⁵⁷ Takao Tanase, 'Divorce and the Best Interest of the Child: Disputes over Visitation and the Japanese Family Courts' (transl. Matthew J. McCaulay, 2011) 20:3 Pacific Rim Law & Policy Journal 563, 580 <<https://digital.lib.washington.edu/dspace-law/bitstream/handle/1773.1/1028/20PacRimLPolyJ563.pdf>>.

- in the case of a separation, the right of the child to maintain personal relations and direct contact with both parents on a regular basis (except if it is contrary to the child's best interests) (Article 9.3 and Article 10.2 CRC);
- the right of the child to express his views freely, in all matters affecting him/her (Article 12 CRC);
- the right of children to have both parents exercise common responsibilities for his/her upbringing and development (Article 18.1 CRC).

2. Parental Child Abductions Occur on a Massive Scale

87. Despite Japan's commitment to protect children abducted within Japan (domestically) and those taken to Japan (internationally), parental child abduction occurs on a massive scale.

a. Domestic Child Abductions

88. Reliable evidence suggests that 150,000 minors are abducted each year by one of the parents who then cuts off all contact. This estimate - provided by NGO Kizuna Child-Parent Reunion⁵⁸ - is taken from Japanese government, as stated by John Gomez, chairman of NGO Kizuna Child-Parent Reunion:

*'That's roughly 150,000 cases per year, and every one of those is a human rights violation. [...] I took data from the Ministry of Health, Labor and Welfare and looked at divorces in Japan from 1992-2011. Primetime NHK news program Close Up Gendai in September 2010 [also] suggested 58 percent of parents lose access to their children after divorce'.*⁵⁹

⁵⁸ NGO Kizuna Child-Parent Reunion (website), <<https://www.kizuna-cpr.org/>>.

⁵⁹ Jane Kitagawa, 'Left Behind – Parents challenge Japan's dismal child abduction laws', *Metropolis Japan* (1 February 2017) <<https://metropolisjapan.com/parents-challenge-japans-dismal-child-abduction-laws/>>; see also Anna Fifield, 'Japan signed abduction treaty but for "left-behind" parents that doesn't mean much', *The Washington Post* (16 July 2017) <https://www.washingtonpost.com/world/asia_pacific/japan-signed-abduction-treatybut-forleft-behind-parents-that-doesnt-mean-much/2017/07/14/ffb02096-677a-11e7-83d7-7a628c56bde7_story.html?noredirect=on&utm_term=.4e99a9d17231>; NGO Kizuna-Child Parent Reunion, 'In Japan, many parents kidnap their children with impunity' (English translation of a newsarticle written by Johann Fleuri, in *Les Inrocks*, 02 January 2019) <<https://www.kizuna-cpr.org/many-kidnap-with-impunity>>; NGO Children's Rights Council of Japan, 'Estimated 150, 000 children a year lose parental access rights in Japan', 30 November 2012 (website) <<https://crcjapan.wordpress.com/tag/kizuna-cpr/>>; Peter J. Brown and Jake Adelstein, 'Tragedy of children abducted from dads and taken to Japan', *Asia Times* (16 January 2019) <<https://www.asiatimes.com/2019/01/article/tragedy-of-children-abducted-from-dads-and-taken-to-japan/>>.

89. These figures are also quoted by former Japanese Minister of Justice Okiharu Yasuoka, who confirms that *‘in Japan, about 250,000 [couples] are divorced each year, and it is said that 60% have minor children. And 60% of parents who have lost custody and have not been able to meet and interact with their children, are said to have broken 150,000 children's relationships with their parents every year’*.⁶⁰

90. Professor Takao Tanase, regarded as one of Japan’s most respected socio-legal thinkers, provided a forensic analysis of the statistics relating to visitation rights generally:

‘Disputes over visitation are dramatically increasing in Japan. The number of cases has almost quadrupled over the last ten years, from 1,700 mediated divorce cases and 290 judicial divorce cases in 1998, to 6,260 mediated divorce cases and 1,000 judicial divorce cases in 2008. These disputes are never easy to resolve, and out of a combined 7,100 conciliation and judicial divorce cases that have been resolved, less than 49% resulted in any kind of visitation award’.⁶¹

91. Professor Tanase highlighted how *‘it is common for the parties not to honor their agreements even when the parties agree’*.⁶² Having examined the increased divorce rates and the authorities’ failings to ensure parental visitation, he suggested that even more than 150,000 children could lose access to a parent after divorce:

‘Over 251,000 married couples separated in 2008, and if this number is divided by the 726,000 marriages in the same year, roughly one out of every 2.9 marriages will end in divorce. Out of all divorcing couples, 144,000 have children, equaling [sic] about 245,000 children in all [...]. Even with the increase in visitation awards, only about 2.6% of the 245,000 children affected by divorce will be allowed visitation. This raises the question of whether the remaining 97% of divorced couples will be able to have smooth visitation with the noncustodial parent. [...]the most likely result in these types of cases is that noncustodial parents will no longer be able to meet with their children following divorce. Even if they are able to meet, once a month is an abysmal state for visitation rights’.⁶³

92. Those figures demonstrate the scale of the violations of child rights after divorce.

⁶⁰ Okiharu Yasuoka, former Japanese Minister of Justice, former member of the Lower House of the National Diet of Japan (Blog, 2014) <http://www.yasuoka.org/idea/idea_txt.php?fname=idea45>.

⁶¹ Tanase and McCauley (n57), 563.

⁶² *ibid*, 564.

⁶³ *ibid*.

b. Cross-Border Child Abductions

93. As shown by the case studies, the phenomenon does not only affect children living within Japan. It extends to children living abroad, who are moved back to Japan by their Japanese parent without the consent of the other parent.

94. In a hearing conducted on 11 April 2018, the US Committee on Foreign Affairs of the House of Representatives underlined that ‘*at least 300 to 400 [US] children [alone] have suffered abduction from the United States to Japan since 1994*’, and added that:

*‘In almost all cases, the child is completely cut off from contact with the left-behind parent. Most have aged out of the system without ever being reunited with their left-behind parent and, of course, then that’s a closed case. Some parents have won in court only to find that Japan’s law enforcement could not return their children unless the taking parent agreed to abide by the decision and the taking parent did not’.*⁶⁴

95. The US Committee on Foreign Affairs also denounced that if the excluded parent went to see his/her children in Japan without permission, he/she would ‘*risk arrest and being held for 23 days in jail before any changes [sic] need to be filed, after which [they] could be denied entry into Japan in the future*’.⁶⁵

96. The cases of international child abductions led to increased calls for Japan to join the Hague Convention, which it did in 2014.⁶⁶ But this has not stopped the practice,⁶⁷ despite the obligation of ‘*prompt return*’.⁶⁸

⁶⁴ US Committee on Foreign Affairs, House of Representatives, ‘No abducted child left behind: an update on the Goldman Act’ (Hearing), 11 April 2018 Serial No. 115-121, 2-3

<<https://docs.house.gov/meetings/FA/FA16/20180411/108117/HHRG-115-FA16-Transcript-20180411.pdf>>.

⁶⁵ This is demonstrated by the case of Emmanuel DE FOURNAS, who was arrested and jailed for 19 days. See exhibit n° DE FOURNAS (factual presentation) and related exhibits 23 (Emails dated 9 and 28 May 2015 from Emmanuel DE FOURNAS to Rie SAITO mentioning his arrest and being put in police custody) and 24 (Agreement signed, under duress, during Emmanuel DE FOURNAS’ custody).

⁶⁶ Fifield (n59).

⁶⁷ On the contrary, it appears that the Japanese authorities are advising on how to circumvent the application of the Hague Convention, see footnote 20. Also, Complainants Daisuke TANAKA and Tommaso PERINA reported that during the Symposium commemorating the fifth anniversary of Japan’s entry into the 1980 Hague Convention, organized by the Japanese authorities on 10 June 2019, Ms Tomoko Sawamura, Judge, Director, First Division, Family Bureau, General Secretariat, Supreme Court of Japan and Mr Shuji Zushi, Director, Hague Convention Division, Consular Affairs Bureau, Ministry of Foreign Affairs of Japan, were asked about the definition of the ‘best interests of the child’. They both replied that they did not know what it meant but applied it as requested by the Hague Convention, although not understanding its meaning (see Ministry of Foreign Affairs of Japan, ‘Symposium commemorating the fifth anniversary of Japan’s entry into the 1980 Hague Convention’ (17 June 2019), <https://www.mofa.go.jp/fp/hr_ha/page22e_000903.html>).

⁶⁸ Hague Convention (n41), Preamble, Articles 1 and 7.

97. Japan's violations are so prevalent that the US Department of State placed Japan on the list of 'countries demonstrating a pattern of noncompliance'⁶⁹ in its 2018 annual report on child abduction.

3. Parental Child Abductions are of International Concern

98. In addition to losing access to one parent, abducted children who carry dual nationality will also be denied half their cultural identity - in violation of Article 29.1.c of the CRC.⁷⁰

99. State representatives from many foreign countries have raised their concerns with Japan, to no avail. On 27 June 2019, French President Emmanuel Macron, on an official visit to Japan, addressed the issue at the highest level, during a private talk with Japanese Prime Minister Shinzo Abe himself. He also publicly declared:

'I heard these fathers. Some of our compatriots cannot be left in this situation, and I believe that the fundamental rights of children and theirs as parents must be defended,' he insisted, promising to 'work constructively with [...] Japanese justice. [...] We will do everything to be by the side of these fathers'.⁷¹

100. In a similar vein, the Italian Prime Minister, Giuseppe Conte, declared on the in Osaka, to be 'ready to plead this topic to President Abe in order to have [Japanese] laws correctly applied',⁷² while the Italian Minister of Foreign Affairs Enzo Moavero raised the issue with the Japanese Prime Minister on 5 June 2019.⁷³ In a letter dated 11 October 2018 addressed to the Japanese Minister of Justice, the Italian Minister for Family had already urged Japan, in the strongest terms, to protect the rights of Italian-Japanese children:

⁶⁹ US Department of State, 'Annual Report on International Child Abduction' (2018), 21-22 <<https://travel.state.gov/content/dam/NEWIPCAAssets/pdfs/AnnualReports/2018%20Annual%20Report%20on%20International%20Child%20Abduction%20FINAL1.pdf>>/.

⁷⁰ CRC, Article 29.1.c (Footnote 31)

⁷¹ *Le Figaro avec AFP*, 'Macron juge "inacceptables" les cas de pères séparés de leurs enfants au Japon' (27 June 2019) <<http://www.lefigaro.fr/flash-actu/macron-juge-inacceptables-les-cas-de-peres-separes-de-leurs-enfants-au-japon-20190627>>.

⁷² Italian President Giuseppe Conte, 'Press release on the eve of the G20 Summit in Osaka' (video, 27 June 2019) <<https://www.youtube.com/watch?v=hS1YLp5gukU&t=476s&app=desktop>>.

⁷³ Ministero degli Affari Esteri e Della Cooperazione Internazionale, 'Meetings of Minister Moavero with Japanese Prime Minister, Shinzo Abe and with Akira Amari, President of the Italy-Japan Parliamentary Friendship' Association, 5 June 2019 <https://www.esteri.it/mae/en/sala_stampa/archivionotizie/comunicati/riunioni-del-ministro-moavero-con-il-primo-ministro-giapponese-shinzo-abe-e-con-il-presidente-dell-associazione-parlamentare-di-amicizia-italia-giappone-akira-amari.html>

'I am writing to bring to your attention the situation of Italian fathers who have been denouncing the impossibility to visit their children for years, because of some Japanese practices on exclusive custody which in our view pose some serious legal challenges. [...]

Given the seriousness of the situation and the urgency of an intervention, we are asking you – under the fundamental principles to which Japan itself is committed – to give Italian-Japanese children the opportunity to grow with both parents, in their own interest'.⁷⁴

101. These were not the first occasions that the issue of systemic abductions had been raised at the State level. On 6 March 2018, concerned about the large number of EU citizens in Japan who had suffered child abduction, **26 EU Ambassadors issued a joint letter to the Japanese Ministry of Justice**, calling for the legal system to provide remedy to the situation:

'[T]here are many cases of divorce and separation in Japan involving EU citizens. Unfortunately, when children are involved, in some cases they have become victims in which the relevant laws and judicial decisions do not appear to be fully enforced. [...] We wish to draw your attention to the issue of the right of a child, in accordance with the UN Convention on the Rights of the Child, to which Japan is a party, to maintain contact with both parents on a regular basis, in order to signal the importance of the enforcement of the rulings of Japanese Courts. Moreover, the UN Convention requires that the State parties must act in the best interest of the child and shall use their best efforts to ensure the recognition of the principle that both parents have common responsibilities for the bringing and development of the child'.⁷⁵

102. This engagement at the highest levels confirms the level of concern internationally.

D. Japan is Responsible for the Violations

103. Japanese State authorities knowingly allow, facilitate or support parental child abductions. The abductions are the result of acts or omissions committed by a range of Japanese State actors, at various stages of a legal process. Collectively, these breaches amount to a pattern of gross violations.

1. Police Facilitate Abductions

104. Japanese police refuse to record complaints for parental child abduction and threatens the excluded parent with criminal prosecution if he/she attempts to find his child.

⁷⁴ Exhibit n° ONUMA (PERINA) 12 (Letter from the Italian Minister for Family and Disability to the Japanese Minister of Justice, dated 11.10.2018).

⁷⁵ Joint letter from the 26 EU Ambassadors in Tokyo (n1).

105. If child abduction or child kidnapping is a criminal offence under Japanese criminal law,⁷⁶ parental child abduction is not considered as such by the Japanese authorities. In fact, it is not even referred to as ‘abduction’ but as ‘removal’ of the child, as Japanese legislator Masao Ido explained in 2012:

*‘While Westerners call it abduction, it’s common among the Japanese that a mother and child return to the mother’s parents after a divorce. [...] If anything, (the Japanese) think it is not a bad thing. It’s really a custom’.*⁷⁷

106. Instead, parental child abduction is treated as a private issue to be dealt within the family, and **the police systematically refuse to intervene in that context.**⁷⁸ Kazuhiko Yamamoto, a representative of the Japanese Ministry of Justice, bluntly acknowledged in French investigation TV program *Envoyé Spécial* (recorded in 2018 and broadcasted in March 2019), that the police inaction incited to parental child abduction:

‘Imagine ... Police officers go to a mother’s house, she is there with her child. If she refuses or resists, if, for example, she keeps the child in her arms, the police are not allowed to touch the child.

*The result ... it’s true ... is that **the mother seems to have more power than the police, and ... that is sort of true.** Maybe you’re right that **it encourages kidnappings**, but that was not the goal at first ... it’s a by-product of our legal system. Here it is not viewed as a serious crime. **In Japan, we do not say “kidnapping” but “removal”. It’s not something positive but it’s not a crime either’.**⁷⁹*

107. Vincent FICHOT,⁸⁰ Mitsuru BABA,⁸¹ Hiroshi MIWA⁸², Stéphane LAMBERT⁸³ and Tommaso PERINA have experienced consistent refusals from the police to record their complaints, even when their lawyer was present. Each time, the police argued that the facts were not amounting to a crime and that the mother’s attitude was not illegal. In Tommaso

⁷⁶ Article 224 of the Japanese Criminal Code: ‘A person who abducts or kidnaps a minor is subject to imprisonment for a period of more than three months and less than 7 years’ (for the translation, see <<http://www.japaneselawtranslation.go.jp/law/detail/?id=1960&re=02&vm=04>>).

⁷⁷ Daphne Bramham, ‘Japan remains an outlier when it comes to parental child abductions’, *Vancouver Sun* (1 November 2013), <<https://vancouversun.com/news/staff-blogs/japan-remains-an-outlier-when-it-comes-to-parental-child-abductions>>.

⁷⁸ Colin P. A. Jones, ‘In the best interests of the Court: what American lawyers need to know about child custody and visitation in Japan’ (2007) 8:2 *Asian-Pacific Law & Policy Journal* 166, 246 <<https://qnap01102.myqnapcloud.com/share.cgi?ssid=00WL8Gb>>.

⁷⁹ Statement of Mr. Kazuhiko Yamamoto, representative of the Japanese Ministry of Justice, French investigation TV program *Envoyé Spécial* broadcasted on 21 March 2019, between 20min32sec and 22min15sec (n19).

⁸⁰ Exhibit n° FICHOT (factual presentation) and related exhibit 8 (Testimony of Vincent FICHOT’s Japanese lawyer on 2.04.2019).

⁸¹ Exhibit n° BABA (factual presentation) and related exhibits 3 (Complaint to the police filed on 27.04.2019) and 4 (Complaint to the prosecutor filed on 30.04.2019).

⁸² Exhibit n° MIWA (factual presentation).

⁸³ Exhibit n° LAMBERT (factual presentation).

PERINA's case, the four attempts of the Italian Consulate to intervene and initiate a collaboration with the Japanese police remained unanswered.⁸⁴

108. In several cases, the police went so far as to threaten the excluded parent with arrest if they attempted to have their children back, as it was the case for Vincent FICHOT⁸⁵ and Tommaso PERINA.⁸⁶ For Emmanuel DE FOURNAS, this threat became real as he was placed in police custody for 19 days for harassment and attempted kidnapping, while he was about to visit his daughter with the agreement of her mother. In custody, he was treated as a criminal and subjected to inhuman conditions. He contracted a serious eye infection, was heard daily by the prosecutor in the absence of his lawyer and was eventually forced into signing an agreement extremely unfavourable to him, as a condition for his release.⁸⁷

109. Clearly, the police inaction underlines that State authorities endorse the abductions, giving the abductor parent no incentive to take the child back home. This violates articles 3, 9.1 and 9.3, 10.2, 12 and 18 of the CRC.

2. Domestic Law Sets the Stage for Violations of the CRC

110. Under Japanese law, the concepts of shared custody and shared parental authority do not exist after divorce.

a. Shared Custody Does Not Exist after Divorce

111. In Japan, there is no concept of shared custody between parents over a child after divorce.⁸⁸

⁸⁴ Exhibit n° ONUMA (PERINA) (factual presentation) and related exhibits 9 (Testimony of Tommaso PERINA's Japanese lawyer dated 18.06.2019) and 11 (Letter from the Italian Consulate to Tommaso PERINA dated 20.06.2019).

⁸⁵ Exhibit n° FICHOT (factual presentation) and exhibit 8 (Testimony of Vincent FICHOT's Japanese lawyer on 2.04.2019).

⁸⁶ Exhibit n° ONUMA (PERINA) (factual presentation and related exhibit 9 (Testimony of Tommaso PERINA's Japanese lawyer dated 18.06.2019).

⁸⁷ Arnaud Vaulerin, 'Japon: enfants confisqués, parents abandonnés' *Libération* (29 January 2018) <https://www.liberation.fr/planete/2018/01/29/japon-enfants-confisques-parents-abandonnes_1626000> ; see also Exhibit n° DE FOURNAS (factual presentation) and related exhibits 23 (Emails dated 9 and 28 May 2015 from Emmanuel de FOURNAS to Rie SAITO mentioning his arrest and being put in police custody) and 24 (Agreement signed, under duress, during Emmanuel de FOURNAS' custody).

⁸⁸ Article 766 of the Japanese Civil Code states that in case of a divorce, 'the matters of who will have custody over a child, visitation and other contacts between the father or mother and the child [...] shall be determined' by agreement or otherwise by the Family Court (for the translation, see <<http://www.japaneselawtranslation.go.jp/law/detail/?id=2252&vm=2&re=02>>). **In other words, only one parent can be granted custody.**

112. Takeshi Hamano, doctor in philosophy at Kitakyushu University, explained in 2017 that because Japan's current family law system flows from Japan's Emperor System, '*solo child custody-only remains, no matter how much Japanese society and cultural ideas of family and gender have shifted, and no matter how much international pressure has been exerted on Japan*'.⁸⁹ He added:

*'In this family registration system, no one, including the child, is able to simultaneously belong to plural families. (...) When a couple divorces, each member of the couple must join a new family unit (or return to his/her household of origin as a member). Insofar as the system sustains contemporary Japan, the child, both legally and normatively, has no choice, but to belong to either one or the other of the parents' families.'*⁹⁰

113. A recent reform conducted in 2011 failed to resolve the problem.⁹¹ Indeed, the UN Committee on the Rights of the Child recently urged Japan to:

'Revise the legislation regulating parent-child relations after divorce in order to allow for shared custody of children when it is in the child's best interests, including for foreign parents, and ensure that the right of the child to maintain personal relations and direct contact with his or her non-resident parent can be exercised on a regular basis [...]'.⁹²

⁸⁹ Takeshi Hamano, 'The Aftermath of Japan's Ratification of the Hague Convention on Child Abduction: An Investigation into the State Apparatus of the Modern Japanese Family' (2017) 3:1 IAFOR Journal of Asian Studies 35, 45 <<http://iafor.org/archives/journals/iafor-journal-of-asian-studies/10.22492.ijas.3.1.03.pdf>>.

⁹⁰ *ibid.*

⁹¹ HRC, 'Written statement submitted by International Career Support Association, a non-governmental organization in special consultative status - Okinawan people are not indigenous but Japanese nationals', 21 June 2019, A/HRC/41/NGO/183

<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/179/74/PDF/G1917974.pdf?OpenElement>>: Article 766 of the Japanese Civil Code was reformed in 2011 **after many voices denounced the fact that the Japanese legal system did not respect the CRC and incited to parental child abduction, as:**

- ✓ parental child abduction was not treated as a criminal offence in Japan;
- ✓ having to decide upon child custody, judges applied the 'principle of continuity', granting custody to the parent who took the child away from the family home, and hence, had custody over the child at the time of the court ruling;
- ✓ complaints for domestic violence were filed without any evidence by mothers, and routinely used by judges to restrict or deny fathers' access to their children after a separation.

While the reform was being discussed in the Diet (the Japanese Parliament), the Minister of Justice set out the reasons for amending Article 766. He explained that:

1. in order not to foster complaints of falsified domestic violence, a protection order based on Domestic Violence (DV) Prevention Law should be carried out under appropriate procedure;
2. abduction of a child should be considered as "child abuse" and the court order of parental custody should be ruled against the abductor parent;
3. consideration should be based on the 'friendly parent rule', where a parent, who suggests the greatest amount of visitation rights for the other parent, is granted parental custody;
4. the 'principle of continuity' should not be considered in a case where a parent abducts a child hoping to get parental custody;
5. the intention of the law is for the family courts to make every effort for a child to have direct contact with both parents as much as possible.

⁹² UN Committee on the Rights of the Child, 'Concluding observations on the combined fourth and fifth periodic reports of Japan', 1 February 2019, UN Docs CRC/C/JPN/CO/4-5 (Advance Unedited Version), para. 27 (b) <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/JPN/CRC_C_JPN_CO_4-5_33812_E.pdf>.

114. Such failures can be illustrated by the cases of Masako AKEO, Michael BALZER, Michele BECATTINI, Emmanuel DE FOURNAS, Vincent FICHOT, Stéphane LAMBERT, Hiroshi MIWA, Tommaso PERINA and Diasuke TANAKA, who have all been denied the custody of their children, solely granted to their abducting spouse (in application of the ‘principle of continuity’).⁹³

115. On information and belief, Japan has thus far failed to implement the UN Committee’s recommendations, in violation of Articles 3, 9.1, 9.3, 10.2, 12 and 18 of the CRC.

b. Shared Parental Authority Does Not Exist after Divorce

116. Under Article 819 of the Japanese Civil Code, only one parent may have parental authority after divorce.⁹⁴ Legally, fathers are in a particularly weak position, since ‘*a father shall only exercise parental authority with regard to a child of his that he has affiliated if both parents agree that he shall have parental authority*’.

117. In a recent Diet session held on 25 February 2019, Japanese Minister of Justice Takashi Yamashita defended the absence of shared parental authority after divorce, claiming that it was in the ‘best interests of the child’:

*‘In the case where parents are divorced and do not live in a communal life, it is thought that it is difficult to exercise communication properly between parents, eventually making it impossible to make decisions, and it is difficult to exercise appropriate parental authority in a timely manner [...], where emotional confrontation between parents is deep-rooted. [...]. In such a way, we are steadily working on the interests of this child’.*⁹⁵

⁹³ See below, part III. D. 3. a. i., paras. 126-133.

⁹⁴ Japanese Civil Code, Article 819: ‘(1) *If parents divorce by agreement, they may agree upon which parent shall have parental authority in relation to a child.*

(2) *In the case of judicial divorce, the court shall determine which parent shall have parental authority.*

(3) *In the case where parents divorce before the birth of a child, the mother shall exercise parental rights and duties; provided that the parties may agree that the father shall have parental authority after the child is born.*

(4) *A father shall only exercise parental authority with regard to a child of his that he has affiliated if both parents agree that he shall have parental authority’ [...]* (for the translation, see <http://www.japaneselawtranslation.go.jp/law/detail/?id=2252&vm=2&re=02>).

⁹⁵ Kizuna Child-Parent Reunion, ‘The 198th Diet session, House of Representatives, Budget Committee’ (Statements of Japanese Foreign Minister Taro Kono, English translation and Japanese transcript, 25 February 2019) <<https://www.kizuna-cpr.org/diet-feb-25-2019-kushida-questions->>>.

118. Seemingly, there is little appetite to change the law at the political level and little appreciation of how the ‘best interests of the child’ should be applied under international law.⁹⁶ During the same Diet session, Foreign Minister Taro Kono stated:

*‘The CRC stipulates that the State Party shall make best efforts to ensure recognition of the principle that parents are jointly responsible for the care and development of the child. There is no stipulation of an explicit statement about the introduction of a joint parental authority system’.*⁹⁷

119. As demonstrated by the cases presented above, a separation or a divorce therefore leads to the excluded parent being kept away from all decisions and events in relation to his/her child’s education, health, identity, etc. For example:

- the surnames of Masato BECATTINI and Kotone TANAKA have been changed without the consultation of their fathers;
- all Complainants were not allowed to pick up their children from school. Also, Michael BALZER’s reiterated requests to meet with his children’s school teachers were ignored, as his wife opposed to it.⁹⁸ Daisuke TANAKA faced a similar situation;⁹⁹
- Masako AKEO was not involved in the decision by which her son was placed in a ‘special school’ for children with mental or physical disabilities,¹⁰⁰ while Stéphane LAMBERT belatedly found out, through the Japanese courts’ proceedings, that his son was suffering from developmental problems;¹⁰¹
- Mitsuru BABA recently discovered that his son had been hospitalized twice in February and March 2019 (for one full month) and was therefore prevented from providing his child with the support and care of a father.¹⁰² Similarly, Michael BALZER’s son Brian was hospitalized in 2014 without him knowing.¹⁰³

⁹⁶ See also footnote 67, regarding the declarations of a Supreme Court Judge and of the Director of the Hague Convention Division confessing that they do ignore what is meant by ‘the best interest of the child’.

⁹⁷ *ibid.*

⁹⁸ Exhibits n° BALZER (factual presentation) and related exhibit 6 (Letter from Michael BALZER to his children’s school).

⁹⁹ Exhibit n° TANAKA (factual presentation).

¹⁰⁰ Exhibit n° AKEO (factual presentation).

¹⁰¹ Exhibit n° LAMBERT (factual presentation) and related exhibit 6 (Yokohama Court decision of 25 November 2016 on the motion to obtain access to Nathan).

¹⁰² Exhibit n° BABA (factual presentation) and related exhibit 3 (Complaint to the police filed on 27.04.2019).

¹⁰³ Exhibit n° BALZER (factual presentation).

120. It is interesting to note that excluded parents are often pushed into a divorce procedure by abductor parents, who are well aware (or made aware by their lawyers) that a divorce will annihilate the rights of the excluded parents over their child. For instance, Emmanuel de FOURNAS received a letter directly from his wife's lawyer, Mrs Mikiko Otani, informing him that the '*divorce and custody decision[s]*' which he obtained in France, in his favour, were '*not legally recognized in Japan*'. '*It [was] therefore necessary that the matters [were] settled in Japan*', inviting him to start a mediation for divorce and custody in Japan.¹⁰⁴ This letter was accompanied by threats, from his wife, to cut him off completely from his daughter if he refused to commit to participating in the mediation for divorce in Japan, and by the requirement that he signed an agreement that denied him his most basic parental rights.¹⁰⁵ Even though he signed such agreement, fearful of losing his daughter Claire forever, he never saw her again.

121. Failing to recognise the concepts of post-divorce shared custody or responsibility, this domestic law framework sets the stage for courts to commit a host of violations under Article 9 of the CRC.

3. Courts Routinely Violate the CRC

122. With an inadequate legal framework to guide judicial decision-making, courts routinely violate the CRC. Notably, judges fail to tackle or even reward unlawful abductions, fail to provide for meaningful visitation rights and, thereby, fail to give due consideration to the rights of the child in their decision making.

123. These and other similar acts have caused Japan to be in breach of several provisions of the CRC, including:

- the right of the child to have his/her interests taken as a primary consideration (Article 3 CRC);
- the right of the child not to be separated from his/her parents against his/her will - unless justified by his/her 'best interests' (Article 9.1 CRC);
- in the case of a separation, the right of the child to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests (Article 9.3 and Article 10.2 CRC);

¹⁰⁴ Exhibit n° DE FOURNAS (factual presentation) and related exhibit n° DE FOURNAS 28.

¹⁰⁵ Exhibit n° DE FOURNAS 29.

- the right of the child to express his views freely, in all matters affecting him/her (Article 12 CRC);
- the right of children to have both parents exercise common responsibilities for his/her upbringing and development (Article 18.1 CRC).

124. At the 38th UN Human Rights Council (June 2018), Shunichi Fujiki – Japanese human rights activist and representative of International Career Support Association – summed up the complicity of Japanese courts in child abduction: ‘*Japanese courts tend to grant “Parental Custody” to the parent, who keeps the child, even if the parent forcefully removed the child away from the other parent*’.¹⁰⁶ He added that, after a divorce ‘*only one parent can be granted custody*’¹⁰⁷ and visitation rights of ‘*the non-custodial parents [is] left to the discretion of the custodial parent*’.¹⁰⁸ Moreover, family courts often deny visitations and refuse to help take the child out of the care of the abductor, relying on the ‘principle of continuity’ in environment for the ‘*welfare of the child*’.¹⁰⁹

a. Judges Reward Unlawful Abductions

125. According to the National Institute of Population and Social Security Research, in 2005, in 80% of cases, judges awarded all parental rights to the mothers who had abducted the child(ren) from the family home in the aftermath of a separation. In most cases, judges justified their decisions either by applying the ‘principle of continuity’, or by accepting the mothers’ claims of domestic violence, which in many cases are considered falsified.

i. Misapplying the ‘Principle of Continuity’

*‘Thorough research and consideration indicate that the Japanese judiciary is governed by implicit and explicit retention of the ‘continuity principle’ in the rulings or domestic and cross-border kidnapping cases, regardless of applicable conventions and applicable laws. **Simply put, according to this principle, whoever abducts first keeps the children**’.*¹¹⁰

¹⁰⁶ Japanese human rights activist Mr. Shunichi Fujiki, 'Child Abduction issue - 38th UN Human Rights Council Meeting General Debate' (video, 25 June 2018)

<https://www.youtube.com/watch?time_continue=40&v=qY0ukTeQdMo>; see also the article of the *Bolan Times*, 'Parental Child Abductions Are Becoming A Serious Human Rights Violation in Japan' (29 June 2019) <www.bolantimes.com/parental-child-abductions-are-becoming-a-serious-human-rights-violation-in-japan/>.

¹⁰⁷ Barbara Stark, 'Foreign Fathers, Japanese Mothers, and the Hague Abduction Convention: Spirited Away' (2016) 41:4 North Carolina Journal of International Law and Commercial Regulation 761, 772.

¹⁰⁸ *ibid*, 764.

¹⁰⁹ Tanase and McCauley (n57), 569.

¹¹⁰ See the letter of the International Alliance Partners including various NGOs to the G7 countries on 26 April 2018 (n18).

126. Under the ‘principle of continuity’, the child’s environment is maintained to avoid disturbance. In practice, judges apply this principle, regardless of the welfare of the child, whilst ignoring the circumstances of separation, including unlawful abduction. Therefore, the judges’ reliance on the ‘principle of continuity’ has the perverse effect of incentivising abduction on separation. In other words, the parent who makes the first radical move and takes the children gets to keep them.

127. Despite an apparent intention of the legislator to replace the ‘principle of continuity’¹¹¹ by the ‘friendly-parent rule’,¹¹² judges have thus far kept ruling based on the necessity to preserve the ‘continuity’ of the family, i.e. granting custody to the parent who took the child away from the family home. When, in 2016, in an exceptional move, the Matsudo Chiba District Court applied the ‘friendly-parent rule’ instead of the ‘principle of continuity’,¹¹³ its decision was overturned by the Tokyo High Court. The latter granted custody to the mother and only one visit per month for the father, on the ground that:

*‘The daughter has been living with her mother, is growing up healthy and wants to continue living with her mother in the future. [...] Taking into account what is in the best interest of the daughter, it is reasonable that custody is awarded to the mother. [...] The number of days for visitation is not the only criteria to decide who has custody and is less important compared with other conditions. [...] If the daughter, who is an elementary school student, goes back and forth between the parents’ houses for 100 days a year, it would be a physical burden and would affect her relationship with her school and her friends’.*¹¹⁴

This decision was confirmed by the Supreme Court on 12 July 2017.

128. In the ten case studies, the Japanese courts have systematically granted custody to the abductor parent, although they all had kidnapped the child(ren) and cut off all contacts with the excluded parent. The judges never considered the ‘friendly-parent rule’ and ignored any factor which would have helped assess the ‘best interest of the child’.

¹¹¹ See above, footnote n° 91.

¹¹² The ‘friendly parent rule’ is the principle by which a parent, who suggests the broadest right of visitation for the other parent, is granted parental custody.

¹¹³ The father, who had not seen his child for 6 years, was offering a significantly greater amount of visitation rights than the mother of the child.

¹¹⁴ *The Japan Times*, “‘Good parent’ ditched in custody case reversal’ (27 January 2017), <https://www.japantimes.co.jp/news/2017/01/27/national/crime-legal/reversal-high-court-ditches-good-parent-rule-granted-dad-custody-daughter/#.XT_2eaHVI1J>.

129. Specifically, Daisuke TANAKA's parental plan in court was offering his wife full access to his daughter, in application of the 'most friendly parent rule', while his wife was suggesting that his rights of visitation be restricted to the minimum. However, the Tokyo Family Court granted custody of the child to the Kotone's mother, pretending that it was in her best interest to stay with her.¹¹⁵ Similarly, Tommaso PERINA¹¹⁶ and Vincent FICHOT¹¹⁷ provided a friendly parental plan granting their children access to their mothers every other week-ends and half the school holidays, but this was dismissed by the judges. In contrast, Tommaso PERINA's wife went so far as to file an appeal against the decision only granting him 2 hours of visitation per month ... but she still obtained custody of the children and his 2-hour visitation right was confirmed in appeal.

130. Additionally, the cases of Claire de FOURNAS¹¹⁸ as well as Kaede and Tsubasa FICHOT¹¹⁹ testify to the judges' shocking indifference to the welfare of the child. In both cases, the judges have awarded custody of the children to the abducting mothers and deprived the fathers of their rights, although the mothers had exposed them to an objective situation of physical or psychological danger.

131. As mentioned above¹²⁰ and illustrated by the case of Claire DE FOURNAS, the 'principle of continuity' is equally applied by courts regarding cases of international child abductions, falling under the Hague Convention, to rule that children abducted to Japan should not be returned. In order to use this principle, the six-week Hague Convention process usually takes 2 years.

132. The Japanese State authorities are fully aware of the persisting application of the 'principle of continuity' by judges, since it is regularly addressed in Parliament. For example, MP Hon. Kenta Matsunami raised the issue before Minister of Justice Hon. Kaneda and confronted him with the statements of one of his predecessors, who had

¹¹⁵ Exhibits n° TANAKA (factual presentation) and TANAKA 3 (Judgment of divorce dated 20.07.2018).

¹¹⁶ Exhibit n° ONUMA (PERINA) (factual presentation).

¹¹⁷ Exhibit n° FICHOT (factual presentation).

¹¹⁸ Exhibits n° DE FOURNAS (factual presentation); DE FOURNAS 3 (Certificate on Rie SAITO's condition from the International Bumrungrad Hospital dated 26.03.2014); DE FOURNAS 4 (Document of Rie SAITO sent to Emmanuel de FOURNAS on 15.04.2014); DE FOURNAS 8 (Message from Rie SAITO to Emmanuel de FOURNAS dated 24.06.14); DE FOURNAS 9 (Message from Rie SAITO to Emmanuel de FOURNAS dated 3.07.14); DE FOURNAS 10 (Message from Rie SAITO to Emmanuel de FOURNAS dated 8.07.14); DE FOURNAS 13 (Conciliation report dated 18.11.2014); DE FOURNAS 14 (Decision of the family court on the request for return of the child dated 25.11.2014).

¹¹⁹ Exhibit n° FICHOT (factual presentation) and related exhibit 9 (Video dated 20 August 2018, at 10min 19sec).

¹²⁰ See above, part. III. A. 3. Paras. 44-47.

acknowledged that ‘because of the existence of the principle of continuity, **it has more advantages to abduct the child**’, which ‘should not be allowed’. Minister of Justice Hon. Kaneda responded that ‘when the Family Court makes a decision over custody and parent-rights, the criteria gives importance to the attachment between the child and parent, so it is important to continue with the same custody and care situation in order to give the most benefits to the child’.¹²¹

133. This shows that the Japanese authorities have failed, once again, to address the issue.

ii. Misapplying Allegations of Domestic Violence

134. Whilst there are undoubtedly credible and serious allegations of domestic violence that justify measures to protect children, there is a growing body of evidence to suggest that women are increasingly filing unjustified claims to control the custody and visitation agenda. According to the NGO International Career Support, mothers are often advised to do so by specialised divorce lawyers – who get a percentage of the settlement.¹²² And courts accept these claims on face value, without undertaking any meaningful investigations. As a result, many children are denied the right to see their fathers who may be completely innocent of domestic violence.

135. Colin P.A. Jones, Professor at Doshisha Law School in Kyoto, outlines how claims of ‘violence’ offer catch-all way for mothers to cut fathers out of their children’s lives:

‘The problem is that Japanese courts and other governmental agencies appear to deal with domestic violence by applying two simple rules of thumb: that domestic violence is only committed by men against women and children, and that almost any conduct (by men) constitutes domestic violence. [...]

*Based on conversations with Japanese lawyers and the cases I have heard of, **it appears relatively easy for a woman to get a restraining order against her husband** – one that prevents him from even seeing his children for up to six months – and other dispositions that prevent him from getting information about his own children from schools and government agencies, based on an assertion of violence. Combine this with the all- encompassing definition of “violence” and the fact that there seem to be few (if any) constitutional or other substantive rights in the parent-child relationship in Japan, and that relationship can be terminated with shocking ease if the right buttons are pushed’.*¹²³

¹²¹ Kizuna Child-Parent Reunion, ‘Matsunami Kenta Diet March 8, 2017’ (video, 8 March 2017) <https://www.youtube.com/watch?v=l_X0uK-IaBk>.

¹²² HRC, ‘Written statement submitted by International Career Support Association’ (n91).

¹²³ Colin P.A. Jones, ‘Every husband a potential “abuser”’ *The Japan Times* (24 November 2009), <<https://www.japantimes.co.jp/community/2009/11/24/issues/every-husband-a-potential-abuser-2/#.XS23VpNKgWp>>.

136. Professor Jones found it ‘*horrifying*’ that a ‘*child can be cut off based on a barely substantiated assertion of abuse*’ and lamented that in child custody litigation ‘*this mentality is ripe for abuse, which nobody seems interested in addressing*’.¹²⁴ When Professor Jones asked the head of a child welfare agency ‘*what procedures they had to prevent spurious allegations of abuse from being used to win child custody cases*’, the answer was ‘*none*’.¹²⁵

137. Professor Takao Tanase has raised similar concerns:

*‘Recently, domestic violence claims by the custodial parent have been used to deny visitation. [...] Simply denying visitation due to allegations of domestic violence without investigating the nature of that violence or the potential effect that it would have on visitation is too crude of a method for modern family law’.*¹²⁶

138. Keiko Kondō, director of the NGO the National Women’s Shelter Network (Zenkoku Josei Sherutā-Netto), explained how separated women often take refuge in women shelters as a way to convince judges of the reality of the accusations of violence.¹²⁷

139. Merely filing a claim of domestic violence following separation, an abducting mother can severely disempower the father. Notably, the allegations:

- allows mothers, who have abducted the child, to gain support from national authorities who will refuse to reveal the mother’s address to the father;
- discourages excluded fathers from reporting abductions to the police.¹²⁸

140. Ultimately, even the most unsubstantiated allegations are relied on by the courts to grant custody and parental authority to the mother of the child, even after an unlawful abduction.¹²⁹

141. The issue is perfectly known to the Japanese authorities, since it was one of the reasons which led to the reform of Article 766 of the Japanese Civil Code in 2011.¹³⁰ However, the situation remains unchanged.

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ Tanase and McCauley (n57), 588.

¹²⁷ NGO Kizuna Child-Parent Reunion, ‘National Women’s Shelter Network’ (English translation of a news article of *Liberal Time*, March 2017) < <https://www.kizuna-cpr.org/national-women-s-shelter-network>>.

¹²⁸ Colin P. A. Jones, ‘Every husband a potential “abuser”’ (n123).

¹²⁹ Tanase and McCauley (n57), 588.

¹³⁰ See above, footnote n° 88.

142. The Complainants cases help to illustrate how this phenomenon still works in practice. While suing him for divorce in October 2016 before a Japanese Family Court, Michael BALZER's wife accused him of violence against his children, without any supporting evidence.¹³¹ Daisuke TANAKA¹³² and Michele BECATTINI (in his case, the allegations were filed by his parents-in-law and not his wife, who had deceased)¹³³ faced similar situations. In both cases, judges relied on such allegations to grant custody to the abductor parent and deny the excluded parent his parental rights.
143. By applying the principle of continuity or giving full credit to unsubstantiated (or false) accusations of domestic violence, judges have been totally ignoring the child's welfare, in violation of Articles 3, 9.1, 9.3, 10.2, 12 and 18 of the CRC.

b. Judges Fail to Protect Visitation Rights

144. Visits from the excluded parent are essential to 'maintain personal relations and direct contact with both parents on a regular basis' (Article 9.3 of the CRC). However, in Japan, there is no right of visitation *per se* for the non-custodial parent¹³⁴ and judges fail to use their discretion to ensure the child's rights are protected.
145. In practice, the restrictive visitation rights for non-custodial parents exacerbate the damage initiated by solo child custody. Professor Takao Tanase lamented:

*'In Japan, the custody rights of a parent with sole custody are very strong. This not only denies noncustodial parents their parental rights, but also suppresses the will of the child, trapping it inside and denying their rights.'*¹³⁵

146. Professor Tanase explains how easy it is for abducting parents to prevent visitation rights by being intentionally uncooperative:

¹³¹ Exhibit n° BALZER (factual presentation) and related exhibits 8 (Statements of Michael BALZER before the Family Court); 9 (Eligibility meeting conference report conducted in the US in 2013 regarding Brian BALZER, mentioning an "intact and supportive family of four", and describing Brian as in "good health", "pleasant, friendly, energetic").

¹³² Exhibit n° TANAKA (factual presentation).

¹³³ See below, footnote n° 159.

¹³⁴ See Article 766.1 of the Japanese Civil Code, which presents visitation as a faculty rather than a right: '(1) If parents divorce by agreement, the matters of who will have custody over a child, visitation and other contacts between the father or mother and the child, sharing of expenses required for custody of the child and any other necessary matters regarding custody over the child shall be determined by that agreement. In this case, the child's interests shall be considered with the highest priority (for the translation, see <<http://www.japaneselawtranslation.go.jp/law/detail/?id=2252&vm=2&re=02>>).

¹³⁵ Tanase and McCauley (n57), 570.

*‘If the noncustodial parent tries to obtain visitation through legal avenues, all the custodial parent needs to do is not respond to the arbitrator’s efforts to reach an agreement and keep the talks in deadlock. If custodial parents hold out in their refusal in court, they are sure to get a denial of visitation, or at most a “minimal visitation” of once every two or three months.’*¹³⁶

147. Professor Tanase assessed that *‘only 2.6% of the 245,000 children being affected by divorce [in 2008] will be allowed visitation’*. Regarding the remaining 97% of children of divorced couples, *‘the most likely result [...] is that noncustodial parents will no longer be able to meet with their children following divorce. Even if they are able to meet, once a month is an abysmal state for visitation rights.’*¹³⁷ The situation has apparently not changed 10 years later.

148. When judges do award visitation rights to the excluded parent, the frequency tends to be minimal – generally between 2 and 4 hours, once every month or 2,¹³⁸ as witnessed by the cases of Tommaso PERINA, Stéphane LAMBERT and Daisuke TANAKA.

149. For example, Tommaso PERINA has only been granted a monthly 2-hour visitation right by the Sendai Family Court, in the presence of a third party – which was confirmed by the Hight Court. However, his wife never allowed him to visit his children, who he has not seen for 2 years.¹³⁹ In a similar situation, Stéphane LAMBERT has not seen his son for 3 years, without Nathan’s mother facing any repercussions.¹⁴⁰ Also, Diasuke TANAKA’s ex-wife never respected the visitation rights granted to him by the Tokyo Family Court.¹⁴¹

150. In some cases, judges rule that visitation can be exercised through receiving photographs and videos of the child, excluding any meeting between the child and the non-custodial parent, as it was the case for Hiroshi MIWA.¹⁴²

151. By way of comparison, in legal systems that properly consider the ‘best interests of the child’, visitation rights are considerably more extensive. As Professor Tanase outlined, US courts tend to grant *‘two nights and three days every other week [...] as a matter of*

¹³⁶ *ibid*, 572.

¹³⁷ *ibid*, 564.

¹³⁸ Tanase and McCauley (n57), 579.

¹³⁹ Exhibit n° ONUMA (PERINA) (factual presentation) and related exhibit 8 (Judgment of the High Court dated 26.03.2019).

¹⁴⁰ Exhibit n° LAMBERT (factual presentation) and related exhibit 6 (Yokohama Court decision of 25 November 2016 on the motion to obtain access to Nathan).

¹⁴¹ Exhibit n° TANAKA (factual presentation) and related exhibit 4 (Judgment regarding visitation rights dated 19.01.2018).

¹⁴² Exhibit n° MIWA (factual presentation) and related exhibit 3 (Decision of the Osaka Family Court dated 29.03.2019).

right when the parties are unable to agree on visitation'. He emphasized that 'anything lower than this [in the US] is impossible without some showing by the custodial parent that visitation would directly harm the child.' He concluded:

'This reasonable visitation [in the US] is in stark contrast to the standard in Japan of once a month or once every two months, sold by arbitrators as "common sense" and seen even in cases awarding visitation. Even these isolated visits are often no longer than two or three hours, and in particularly contentious cases this visit must occur at a designated family center where only a formal meeting can take place. [...] A parent cannot expect to enjoy lively interaction with a child, help raise the child, or have any impact on the child's growth or character development through this "minimalist visitation." Unless visitation is made to allow parents to form essential bonds with their children and provide them emotional support, the 250,000 children a year who lose contact with one of their parents will continue to live with the scar of their parents' divorce their whole lives'.¹⁴³

152. To make matters worse, when visits do take place, it is within the building of an association in the presence of association members, under particularly inhuman conditions: the excluded parent and his child are not allowed to meet outside of a dedicated room; the excluded parent cannot feed the child, bring him any toy or present, etc. Ironically, excluded parents have to pay to meet with their children under such conditions.

153. The non-existent or, at best, meagre visitation rights ordered by Japanese courts consistently fail to meet the requirements of international law. One does not have to be a Professor in child psychology to appreciate that parental visits of 2 to 4 hours every 1 or 2 months, in the presence of strangers and under the conditions described above, is not in the child's best interest. The courts routinely breach their lawful obligation to ensure both parents 'maintain personal relations and direct contact with on a regular basis' (Article 9.3 of the CRC).

c. Judges fail to Consider Properly the Child's View

154. The CRC requires courts to provide the child 'who is capable of forming his or her own views' with an 'opportunity to be heard in any judicial and administrative proceedings affecting the child'.¹⁴⁴ The Japanese courts routinely fail to consider the child's real views.

¹⁴³ Tanase and McCauley (n57), 579-580.

¹⁴⁴ CRC, Article 12.

155. To guard against manipulation by one parent, an assessment of the child's view may need to be '*carried out in a friendly and safe atmosphere by experts in child psychology and development*'.¹⁴⁵ Indeed, the CRC Committee recommended that '*a best interests of the child assessment is always carried out in individual cases concerning the child, by a multidisciplinary team with the obligatory participation of the concerned child*'.¹⁴⁶

156. However, Japanese courts seem unconcerned. Professor Takao Tanase found that the 'will of the child' taken into consideration by Japanese judges is in fact 'the will of the custodial parent':

'Another failing of the Japanese visitation system can be said to be the principle of "the will of the child", which, while proclaiming the welfare of the child is held captive to the parents' conflict, leads to results against the child's welfare. [...]

[T]his "will of the child" is, in reality, not the will of the child, but in fact that of "the respondent refusing interaction," in other words, "the will of the custodial parent." In essence, this denial of the ex-wife that constitutes the will of the custodial parent becomes the will of the child through the control of the child in the custodial household. [...]

However, this tenet of visitation is compromised by the principle of protecting the will of the child. This principle remains uncertain due to the inability of Japanese law to effectively intervene in the process of the parent's will becoming the child's will, and to the acceptance of this constructed child's will because forcing visitation would only put a burden on the child'.¹⁴⁷

157. Professor Takao Tanase explained that, in Japan, '*noncustodial parents are seen as coming from the outside, bringing with them different lifestyles and different ways of disciplining children; they are seen as something to be guarded against*'. He added, the fact that '*the custody rights of a parent with sole custody are very strong [...]* not only denies noncustodial parents their parental rights, but also *suppresses the will of the child, trapping it inside and denying their rights*'.¹⁴⁸

158. Having analyzed caselaw (prior to 2009), Professor Takao Tanase found '*a host of cases that have similarly denied visitation based on some combination of conflict between the parents and the will of the child, and none that protect the bond between a child and both biological parents by actively recognizing visitation [...]*'.¹⁴⁹

¹⁴⁵ CRC Committee (n28) para 94.

¹⁴⁶ CRC Committee, 'Concluding observations on the combined fourth and fifth periodic reports of Japan'(n92), para. 19.

¹⁴⁷ Tanase and McCauley (n57), 573 and 575.

¹⁴⁸ *ibid*, 570

¹⁴⁹ Tanase and McCauley (n57), 569.

159. A few of the case studies illustrate this analysis. Michael BALZER was denied adequate visitation of his 2 children, on the basis that, when asked by the Court clerks whether they were willing to meet with their father, Alisa and Brian responded negatively. Despite Michael BALZER's protest, they were never heard in a '*friendly and safe atmosphere*' by '*experts in child psychology and development*', which would have likely enabled to assess whether the children had been alienated by their mother.¹⁵⁰

160. Similarly, the Supreme Court relied on the declarations of Masato BECATTINI claiming that he did not want to go back to Italy, to rule that the child would stay in Japan with his maternal grandparents – notwithstanding the Court's previous decision ordering the return of the child to his father's house in Italy. However, Masato was heard in the presence of his grandfather, at the latter's house, by simple court executors, who assessed that: '*considering the child's age, it is difficult to think the child's will as not sincere*'. After having spent 4 years cut off from his father, he was never submitted to any kind of psychological expertise, while it is clear that his will was actually his grandfather's.¹⁵¹

161. Unsurprisingly, in its 2019 report on Japan, the CRC Committee '*remain(ed) seriously concerned that the child's right to express his or her views freely in all matters affecting them is not respected*.'¹⁵²

162. In their determination of custody and parental authority combined with an almost non-existent right of visitation for the other parent – Japanese judges will systematically choose the parent who has forcefully removed the child away from the family home, regardless of whether the child has been abducted by that parent, and regardless of the child's best interest. This is in clear breach of the CRC.

d. State Authorities Fail to Enforce Decisions in Favour of Non-Custodial Parents

163. In the unlikely event that the excluded parents obtain court orders granting them some rights over their children, the nightmare may not end there. Enforcement mechanisms of family law decisions are wholly inadequate. If the custodial parent chooses not to comply

¹⁵⁰ Exhibit n° BALZER (factual presentation) and related exhibit 7 (Testimony of Michael BALZER's Japanese lawyer dated 20.06.2019).

¹⁵¹ Exhibit n° BECATTINI (factual presentation) and related exhibits 9 (Shizuoka District Court record of execution (failure) dated 25.05.2017) and 11 (Decision of the Japanese Supreme Court dated 02.11.2018).

¹⁵² *ibid*, para. 21.

with an order, the excluded parent may still find himself cut off from his children. As Professor Colin P.A. Jones explained, indirect enforcement ‘*may be unenforceable if the non-complying party has no identified and attachable assets or wages subject to garnishment, as may often be the case with custodial stay-at-home mothers*’.¹⁵³ Even more worrying, ‘*direct enforcement is also limited. Even if a child is abducted in violation of a custody order, the police are unlikely to intervene. There also does not appear to be a formal mechanism whereby courts can order police involvement*’.

164. Ultimately, due to the multiple breaches and shortcomings in the Japanese legal system, a parent whose child has been abducted by an uncooperative partner is left with the following options:

*‘Either give up attempts to see their children, hope for the ongoing cooperation of the custodial parents and thereby submit to their control, or attempt to secure visitation privileges through family court proceedings that involve mandatory mediation. **None of these options provide any assurance of obtaining access**’.*¹⁵⁴

165. This is well illustrated by the cases of Tommaso PERINA,¹⁵⁵ Daisuke TANAKA,¹⁵⁶ Stephane LAMBERT¹⁵⁷ and Michele BECATTINI. The latter is a particularly sad example of it: although the Supreme Court initially ordered that Masato BECATTINI should return to his father in Italy, his grandparents refused to execute the Supreme Court decision. Court executors – in the absence of any police agent – subsequently visited Masato’s grandparents, but simply acknowledged their lack of cooperation, without even trying to take the child away from their house. As Michele BECATTINI further brought an action for legal enforcement, the Supreme Court ruled that Masato should eventually remain under the custody of his grandparents, in order to respect the ‘will of the child’ and in light of the allegations of violence brought by his grandfather without any evidence.¹⁵⁸

¹⁵³ Colin P. A. Jones, ‘In the best interests of the Court: what American lawyers need to know about child custody and visitation in Japan’ (n78), 250.

¹⁵⁴ *ibid*, 229.

¹⁵⁵ Exhibit n° ONUMA (PERINA) (factual presentation) and related exhibit 8 (Judgment of the High Court dated 26.03.2019).

¹⁵⁶ Exhibit n° TANAKA (factual presentation) and related exhibit 4 (Judgment regarding visitation rights dated 19.01.2018).

¹⁵⁷ Exhibit n° LAMBERT (factual presentation) and related exhibit 6 (Yokohama Court decision of 25 November 2016 on the motion to obtain access to Nathan).

¹⁵⁸ Exhibit n° BECATTINI (factual presentation) and related exhibits 7 (Decision of the Supreme Court of Japan dated 29.02.2017), 8 (Shizuoka District Court record of execution (failure) dated 23.05.2017), 9 (Shizuoka District Court record of execution (failure) dated 25.05.2017), 10 (Decision of the Tokyo High Court dated 10.08.2018) and 11 (Decision of the Japanese Supreme Court dated 02.11.2018).

166. Cases of cross-border abductions, falling under the application of the Hague Convention, are equally subjected to a serious enforcement issue, as the US Department of State pointed out in its 2018 annual report on international child abduction regarding Japan:

‘Unless the taking parent voluntarily complied with a return order under the Convention, judicial decisions in Convention cases in Japan were not enforced. [...] Japan’s inability to quickly and effectively enforce Hague return orders appears to stem from limitations in Japanese law including requirements that direct enforcement take place in the home and presence of the taking parent, that the child willingly leave the taking parent, and that the child face no risk of psychological harm. As a result, it is very difficult to achieve enforcement of Hague return orders.’¹⁵⁹

167. The US Committee on Foreign Affairs also observed that *‘when abductors says [sic] no, the enforcement ends’*, underlining that *‘the systemic non-enforcement of access and return orders is so bad in Japan that 26 EU countries recently issued a joint demarche to Japan asking Japan to fix the problem’*.¹⁶⁰

168. Rather than *‘fixing the problem’*, the Japanese Minister of Justice has, in a reply to the letter of the 26 EU Ambassadors in Tokyo, instead asserted that *‘[...] the Japanese legal system has laws in place that establish a vigorous enforcement mechanism’*, adding that *‘compulsory enforcement of the visitation rights and return of a child can be realized through “indirect compulsory execution”’* or through the *‘compulsory return of a child by a court execution officer’*. He bluntly reiterated: *‘Japan has an appropriate legal framework that enables visitation rights and the return of children’*.¹⁶¹

169. Japanese State authorities have therefore been made aware of the non-enforcement issue and have failed to address it, allowing *‘parents who happened to get custody over their children to have their own way’*,¹⁶² in violation of Articles 3, 9.1, 9.3, 10.2, 12 and 18 of the CRC.

¹⁵⁹ US Department of State (n69), 21-22.

¹⁶⁰ US Committee on Foreign Affairs (n64), 3.

¹⁶¹ Minister of Justice Yoko Kamikawa, ‘Answer to the letter of the EU 26 Ambassadors in Tokyo’ (27 April 2018), <www.moj.go.jp/content/001257588.pdf>.

¹⁶² Tanase and McCauley (n57), 577.

4. The Damage Caused by the Violations is Severe

170. In its 2010 report on compliance with the Hague Convention, the US Department of State warned how parental child abduction can be traumatic and cause long term psychological damage:

*'[A]bducted children are at risk of serious emotional and psychological problems. Research shows that recovered children often experience a range of problems including anxiety, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt, and fearfulness. As adults, individuals who have been abducted as children struggle with identity issues, personal relationships, and experience problems in parenting their own children.'*¹⁶³

171. Relying on the work of US psychologist and researcher Dr Wallerstein¹⁶⁴, Professor Takao Tanase also explained the devastating consequences of divorce when the relationship with both parents is not protected and maintained:

*'For a child, divorce severs these important attachment relationships, and our society must consider how to reduce the worries of the child and prevent divorce from becoming a traumatic experience. [...] The most helpful thing during this period of confusion is a guarantee that both parents will continue to serve as loving figures of attachment. Because of this, it is essential that visitation starts immediately following separation. Together with the need to keep children from experiencing trauma associated with being cut off from a figure of attachment, it is necessary for children to continue to be raised and cared for by both parents, with whom they have an attachment relationship, until adulthood, in the same manner as normal households.'*¹⁶⁵

172. Unfortunately, as we have seen above, ***'this is the exact opposite of the common practice in Japan, where one parent will often strictly deny visitation, especially in situations where that parent took the child out of the home, because of a fear that the other parent will take the child back during visitation'***.¹⁶⁶

173. Considering the scale and systematic nature of the violations, millions of Japanese children have likely been traumatized for life.

¹⁶³ US Committee on Foreign Affairs (n64), 4.

¹⁶⁴ See, for a major influence in this area, Judith Wallerstein and Joan Kelly, *Surviving the breakup: how children and parents cope with divorce* (New York: Basic Books, 1980). Judith Wallerstein (December 27, 1921 – June 18, 2012) was a psychologist and researcher who created a 25-year study on the effects of divorce on the children involved. She received several prominent awards and honors and wrote 4 best-selling books.

¹⁶⁵ Tanase and McCauley (n57), 582.; see also Noriko Odagiri, 'Japan's Child Abduction Issue – Press conference at the FCCJ' (n6).

¹⁶⁶ Tanase and McCauley (n57), 582.

IV. CONCLUSION

174. The present case exposes a consistent pattern of gross violations in Japan, namely, the rights of the child. These are so serious that country representatives from at least 28 States have expressed deep concern. After 26 EU Ambassadors to Japan urged the Japanese Minister of Justice to address the issue, French President Macron and Italian Prime Minister Giuseppe Conte raised the matter with Prime Minister Shinzo Abe. This is a **matter of international concern** that must be tackled by the UN Human Rights Council.

175. As demonstrated above, reliable evidence suggests that every year, **at least 150,000 children** will not see their excluded parent at all, in clear breach of their right to access both parents. Over 10 years, around 1.5 million children may lose access to a parent after divorce. Those children who carry dual nationality will also be denied half their cultural identity. The nature and scale of the violations clearly demonstrate a pattern.

176. As shown by the 10 case studies - representative of the 150,000 children abducted every year - Japanese authorities have consistently failed to consider properly the ‘best interests of the child’, in violation of Article 3 of the CRC. Notably, they have **violated multiple aspects of the CRC**, which has enabled abductor parents to prevent children from ‘*maintain[ing] personal relations and direct contact with both parents on a regular basis.*’ The considerable efforts of the excluded parent to protect their children’s rights and wellbeing have been met by Japanese authorities with rejection, or even threats of prosecution by police agents or judges. Japan has violated Article 9.3 of the CRC, as well as Articles 9.1, 10.2, 12 and 18. It has failed to respect the rule of law.

177. The authorities are fully aware of this pattern of gross violations: the matter has been discussed in Japanese Parliament,¹⁶⁷ raised at the Head of States level, and identified in civil society campaigns.

178. With such devastating consequences for the development of the child victims, Japanese authorities should have addressed the problem. However, it has repeatedly failed to do so, leaving victims with no remedy under national law. The HRC is therefore their last chance to obtain some measure of recognition and avoid long-term trauma.

¹⁶⁷ For example, on 8 March 2017, <https://www.youtube.com/watch?v=l_X0uK-IaBk>; on 25 February 2019, <<https://www.kizuna-cpr.org/diet-feb-25-2019-kushida-questions->>.

179. The present Complaint meets the admissibility requirements of the HRC Resolution 5/1 dated 18 June 2007 and should be accepted.

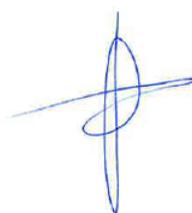
V. SUGGESTED MEASURES

180. In light of the above, the HRC should take any and all measures within its power to assist children deprived of one of their parents against their best interest, in achieving the meaningful exercise of their right to ‘maintain personal relationship and direct contact with both parents on a regular basis’. While the Council will be in the best position to determine the effectiveness of the various means at its disposal, the Complainants propose – at a minimum:

- the appointment of ‘*an independent and highly qualified expert to monitor the situation and report back to the Council*’ (a Special Rapporteur) pursuant to Resolution 5/1,
- the adoption of a resolution urging Japan to refrain from its continued violations.

181. For all the foregoing reasons, the Complainants hereby urge the Council to admit this communication and take the measures suggested herein.

Done in Paris, France on 09.08.2019 and respectfully submitted to the Human Rights Council at Geneva, Switzerland:



Jessica Finelle

LIST OF EXHIBITS

A. Exhibits AKEO

Exhibit n° AKEO 1: Copy of Masako AKEO's passport

Exhibit n° AKEO 2: Copy of Kazuya David SUZUKI's birth certificate

Exhibit n° AKEO 3: Canadian Court decision dated 20.11.2006 granting Kazuya's parents joint custody and guardianship of their son

Exhibit n° AKEO 4: Tokyo Family Court decision dated 26.03.2010

Exhibit n° AKEO 5: Letter of engagement of the Missing Children Society of Canada, dated 5.05.2012

Exhibit AKEO 6: Masako Akeo, "Japanese law should encourage joint custody", published in International Herald Tribune / the Asahi Shinbun, on 23.06.2010.

B. Exhibits BABA

Exhibit n° BABA 1: Copies of Mitsuru BABA's ID, Yohei BABA's ID, Yuna BABA's ID

Exhibit n° BABA 2: Copy of the family record book (from the Family Court examiner's report – 03.2019)

Exhibit n° BABA 3: Complaint to the police filed on 27.04.2019

Exhibit n° BABA 4: Complaint to the prosecutor filed on 30.04.2019

C. Exhibits BALZER

Exhibit n° BALZER 1: Copy of Michael BALZER's US passport

Exhibit n° BALZER 2: Copy of the family record book

Exhibit n° BALZER 3: Medical certificate dated 16.12.2015

Exhibit n° BALZER 4: Medical certificate dated 19.07.2018

Exhibit n° BALZER 5: Michael BALZER's messages to his wife

Exhibit n° BALZER 6: Letter from Michael BALZER to his children's school

Exhibit n° BALZER 7: Testimony of Michael BALZER's Japanese lawyer dated 20.06.2019

Exhibit n° BALZER 8: Statements of Michael BALZER before the Family Court

Exhibit n° BALZER 9: Eligibility meeting conference report conducted in the US in 2013 regarding Brian BALZER, mentioning an "intact and supportive family of four", and describing Brian as in "good health", "pleasant, friendly, energetic"

D. Exhibits BECATTINI

Exhibit n° BECATTINI 1: Michele BECATINI's ID

Exhibit n° BECATTINI 2: Marriage certificate dated 3 April 2014

Exhibit n° BECATTINI 3: International birth certificate of Masato BECATTINI

Exhibit n° BECATTINI 4: Masato BECATINI's ID

Exhibit n° BECATTINI 5: Decision of the Shizuoka District Court Hamamatsu Branch dated 02.12.2015

Exhibit n° BECATTINI 6: Decision of the Tokyo High Court dated 30.08.2016

Exhibit n° BECATTINI 7: Decision of the Supreme Court of Japan dated 29.02.2017

Exhibit n° BECATTINI 8: Shizuoka District Court record of execution (failure) dated 23.05.2017

Exhibit n° BECATTINI 9: Shizuoka District Court record of execution (failure) dated 25.05.2017

Exhibit n° BECATTINI 10: Decision of the Tokyo High Court dated 10.08.2018

Exhibit n° BECATTINI 11: Decision of the Japanese Supreme Court dated 02.11.2018.

E. Exhibits DE FOURNAS

Exhibit n° DE FOURNAS 1: Passport of Emmanuel DE FOURNAS

Exhibit n° DE FOURNAS 2: Copy of the family record book

Exhibit n° DE FOURNAS 3: Certificate on Rie SAITO's condition from the International Bumrungrad Hospital dated 26.03.2014

Exhibit n° DE FOURNAS 4: Document of Rie SAITO sent to Emmanuel DE FOURNAS on 15.04.2014

Exhibit n° DE FOURNAS 5: Message from Rie SAITO to Emmanuel DE FOURNAS dated 15.05.2014

Exhibit n° DE FOURNAS 6: Message from Rie SAITO to Emmanuel DE FOURNAS dated 09.08.2014

Exhibit n° DE FOURNAS 7: Certificate of residency change dated 15.05.2014 at the French Embassy in Bangkok

Exhibit n° DE FOURNAS 8: Message from Rie SAITO to Emmanuel DE FOURNAS dated 24.06.14

Exhibit n° DE FOURNAS 9: Message from Rie SAITO to Emmanuel DE FOURNAS dated 3.07.14

Exhibit n° DE FOURNAS 10: Message from Rie SAITO to Emmanuel DE FOURNAS dated 8.07.14

Exhibit n° DE FOURNAS 11: Message from Rie SAITO to Emmanuel DE FOURNAS dated 19.08.2014

Exhibit n° DE FOURNAS 12: Message from Rie SAITO to Emmanuel DE FOURNAS dated 24.08.2014

Exhibit n° DE FOURNAS 13: Conciliation report dated 18.11.2014

Exhibit n° DE FOURNAS 14: Decision of the family court on the request for return of the child dated 25.11.2014

Exhibit n° DE FOURNAS 15: Email written by Emmanuel DE FOURNAS to his Japanese lawyer on 25.03.2015

Exhibit n° DE FOURNAS 16: Order of President of the Court of Toulouse dated 21.11.2014

Exhibit n° DE FOURNAS 17: Emails from Emmanuel DE FOURNAS's Japanese lawyer to his client dated 15.12.2014

Exhibit n° DE FOURNAS 18: Withdrawal of appeal by Emmanuel DE FOURNAS's Japanese lawyer

Exhibit n° DE FOURNAS 19: Toulouse Court's decision dated 26.03.2015 ordering the return of Claire to Japan (procedure of the Hague Convention)

Exhibit n° DE FOURNAS 20: Offer of Rie SAITO's French lawyer dated 01.04.2015

Exhibit n° DE FOURNAS 21: Email from Emmanuel DE FOURNAS to Rie SAITO dated 27.04.2015

Exhibit n° DE FOURNAS 22: Exchange of emails between Emmanuel DE FOURNAS and Rie SAITO on 9.05.2015

Exhibit n° DE FOURNAS 23: Emails dated 9 and 28 May 2015 from Emmanuel DE FOURNAS to Rie SAITO mentioning his arrest and being put in police custody

Exhibit n° DE FOURNAS 24: Agreement signed, under duress, during Emmanuel DE FOURNAS' custody

Exhibit n° DE FOURNAS 25: Apology letter written under duress

Exhibit n° DE FOURNAS 26: Exchange of emails between Emmanuel DE FOURNAS and Rie SAITO concerning the apology letter

Exhibit n° DE FOURNAS 27: Copy of the judgement dated 2.03.2017 declaring divorce for gross misconduct

Exhibit n° DE FOURNAS 28: Letter of Rie SAITO's Japanese lawyer to Emmanuel DE FOURNAS dated 08.02.2017

Exhibit n° DE FOURNAS 29: Transaction agreement dated 18.04.2017

F. Exhibits FICHOT

Exhibit n° FICHOT 1: Copy of Vincent FICHOT's ID

Exhibit n° FICHOT 2: Copy of marriage certificate delivered by the French authorities on 16th June 2009

Exhibit n° FICHOT 3: Copy of the family record book

Exhibit n° FICHOT 4: Vincent FICHOT's email to his Japanese lawyer dated 24th June 2018

Exhibit n° FICHOT 5: Email sent by Maiko FICHOT's lawyer to Vincent FICHOT on 10.08.2018

Exhibit n° FICHOT 6: Email sent by Vincent FICHOT to his Japanese lawyer on 11.08.2018

Exhibit n° FICHOT 7: Email sent by Vincent FICHOT's Japanese lawyer to his client on 16.08.2018

Exhibit n° FICHOT 8: Testimony of Vincent FICHOT's Japanese lawyer on 2.04.2019

Exhibit n° FICHOT 9: Video dated 20 August 2018, at 10min19sec

Exhibit n° FICHOT 10: Tokyo Prosecutor's mail dated 8.01.2019

G. Exhibits LAMBERT

Exhibit n° LAMBERT 1: Copy of Stéphane LAMBERT's passport

Exhibit n° LAMBERT 2: Copy of Nathan LAMBERT's French passport

Exhibit n° LAMBERT 3: Proposal for marriage contract

Exhibit n° LAMBERT 4: Order of non-conciliation dated 14.09.2015

Exhibit n° LAMBERT 5: Chiba Court decision dated 4.12.2015 on the request for contribution to the marriage expenses

Exhibit n° LAMBERT 6: Yokohama Court decision of 25th November 2016 on the motion to obtain access to Nathan

H. Exhibits MIWA

Exhibit n° MIWA 1: Copy of the family record book

Exhibit n° MIWA 2: Petition filed by Hiroshi MIWA for a progressive right of visitation dated 10.08.2018

Exhibit n° MIWA 3: Decision of the Osaka Family Court dated 29.03.2019

I. Exhibits ONUMA (PERINA)

Exhibit n° ONUMA (PERINA) 1: Copy of Tommaso PERINA's passport

Exhibit n° ONUMA (PERINA) 2: Copy of Tomoko ONUMA PERINA's passport

Exhibit n° ONUMA (PERINA) 3: Family Certificate delivered by the Italian Embassy in Japan

Exhibit n° ONUMA (PERINA) 4: Copy of Hokuto Marcello ONUMA (PERINA)'s passport

Exhibit n° ONUMA (PERINA) 5: Copy of Ai Sofia ONUMA (PERINA)'s passport

Exhibit n° ONUMA (PERINA) 6: Medical certificate dated 5.01.2017

Exhibit n° ONUMA (PERINA) 7: Court rejection ruling, dated 7.02.2017, regarding the petition filed by Tomoko ONUMA PERINA for domestic violence

Exhibit n° ONUMA (PERINA) 8: Judgment of the High Court dated 26.03.2019

Exhibit n° ONUMA (PERINA) 9: Testimony of Tommaso PERINA's Japanese lawyer dated 18.06.2019

Exhibit n° ONUMA (PERINA) 10: Letter sent by Tommaso PERINA's Japanese lawyer to Fuchu City Police Station Chief on 28.02.2017

Exhibit n° ONUMA (PERINA) 11: Letter from the Italian Consulate to Tommaso PERINA dated 20.06.2019

Exhibit n° ONUMA (PERINA) 12: Letter from the Italian Minister for Family and Disability to the Japanese Minister of Justice, dated 11.10.2018

Exhibit n° ONUMA (PERINA) 13: Letter sent by the Head of the Italian Consular division to the Court clerk Hashimoto Yukari, dated 19.02.2019

J. Exhibits TANAKA

Exhibit n° TANAKA 1: Copy of Daisuke TANAKA's passport

Exhibit n° TANAKA 2: Copy of the family book record

Exhibit n° TANAKA 3: Judgment of divorce dated 20.07.2018

Exhibit n° TANAKA 4: Judgment regarding visitation rights dated 19.01.2018

Exhibit n° TANAKA 5: Request for impeachment of Judge AUTUKO NIWA, dated 17.12.2018

Exhibit n° TANAKA 6: Decision rejecting request for impeachment of Judge ASAKURA, dated 14.06.2019