

national

Child custody injustices hard to fix

Joining Hague may curb parental abductions if legal mindset evolves

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On May 6, 2010, Yasuyuki Watanabe, an internal affairs ministry bureaucrat, came home to find his wife and 2-year-old daughter gone, along with their clothes.

His wife had spirited away their daughter near the end of Golden Week, just days after he was enjoying the holidays taking her on hikes and to local festivals, recalled Watanabe, 40, now deputy mayor of Nasushiobara, Tochigi Prefecture. He recounted how he carried his daughter on his back and how they sang songs together until she fell asleep, smuggling against him.

His world was turned upside down that fateful day. Last month she turned 5.

"It is so important for children to feel loved by both parents, especially when they are growing up, and I think that my daughter feels abandoned by me, that I left her because I didn't love her anymore," Watanabe told The Japan Times during a recent interview in Tokyo. "The most painful thing about my situation is when I think about how my daughter must be feeling."

Watanabe is one of many parents in Japan who have been torn away from their children after a falling-out with their spouse in a nation that grants only sole custody, usually to the mother, and where it is customary for parents not living with their offspring, to have little, if any, contact with them.

This has also been a widely reported harsh reality for foreign parents, including those living overseas whose children have been taken to Japan by estranged Japanese spouses.

These so-called parental child abductions are behind growing calls for Japan to join the international Hague treaty to prevent such cross-border kidnappings. "These two problems are actually closely related because the domestic and international situation is the same — your children are abducted one day out of the blue and you are forbidden from seeing them," Watanabe said.

For Watanabe, what followed was a long legal battle with his wife, and divorce proceedings, which continue.

Initially his wife let him see their daughter a few times, but that stopped abruptly when he was slapped with domestic violence charges — which he branded a lie.

His wife alleged he had threatened her with a large pair of scissors while she was pregnant and told her he knew Yakuza who would be willing to help him out with the situation by pushing her off a station platform in front of a train. The violence charges were later dropped.

"There is nothing more ter-

rifying than receiving an order to appear before the court over 'DV' allegations. I was completely distraught. The judge, however, recognized that much of her claims were questionable and warned she could be charged with false accusations, so she dropped the charges the day before the ruling was to be made," Watanabe said.

But his wife then filed a lawsuit, demanding custody of their child and, again, adding allegations of abuse.

Last February, presiding Judge Tatsushige Wakabayashi at the Chiba Family Court granted Watanabe's ex-wife custody of their daughter from the viewpoint of "continuity," ruled that Watanabe had committed domestic violence and rejected his demand that his daughter be returned. The Supreme Court finalized the ruling in September. While his legal battles dragged on, Watanabe asked lawmakers to address the issue and his case was deliberated on in the Diet.

Given his public profile, Watanabe originally wished to remain anonymous. But to garner public support for his situation, he recently came forward to tell his story to the press.

"I've been labeled a DV husband, and the judge completely ignored the facts and the law in my case. I had no choice but to stand up and fight," he said.

Watanabe has solicited the help of a special group of lawmakers who are trying to get Judge Wakabayashi fired from the bench. Among the so-called left-behind parents in Japan, Wakabayashi has spurred widespread ire, especially when in 2011, he criticized then-Justice Minister Satsuki Eba for telling the Diet that priority should be placed on the welfare of the child rather than the "principle of continuity."

"There are many people in similar situations. I cannot give up for their sake. It is not just about me and my daughter. This is a battle for all children and their parents," Watanabe said.

According to data compiled by family courts, there were 409 parents seeking the return of their offspring from an estranged spouse in 2001, whereas by 2011, there were 1,985 parents seeking to get their kids back. The numbers, however, reflect only the legal cases filed by left-behind parents that were officially accepted by the nation's family courts. Experts speculate they constitute only the tip of the iceberg.

Maseyuki Tanamura, a professor of family law at Waseda University, said various factors are behind the increase in parental child abductions, including Japan's sole custody principle and the current legal framework that generally grants that right to mothers.



Playing catchup: Yasuyuki Watanabe, deputy mayor of Nasushiobara, Tochigi Prefecture, speaks during an interview at a Tokyo hotel on Dec. 11. SATOKO KAWASAKI

"Times have changed — fathers are more involved in child-rearing, and the legal system — including the principle of sole custody — makes battles over children more likely to happen. I think this part of Japan's legal system is outdated," Tanamura said.

One major difference that makes Japan's legal system peculiar is that when an estranged spouse initially takes a child, it isn't considered a crime. This is because it is common for an estranged parent, generally the mother, to take the children to her parents' domicile if a divorce is being contemplated.

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WASEDA UNIVERSITY LAW PROFESSOR MASEYUKI TANAMURA

ent then subsequently tries to retrieve the offspring spirited away from their home, the action is considered kidnapping. Tanamura claimed there are many cases in which parents who spirit offspring away are unaware such action could be construed as abduction. From their point of view, they are merely considering a divorce or fleeing an abusive environment.

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the longtime concept that children belong with their mothers."

To prevent children from losing access to both parents after a separation, Article 766 of the Civil Law was revised in 2011 to specify that visitation rights, child-support payments and other matters be determined during nonlitigated divorce proceedings, and that the welfare of the child be considered first.

But even this change can't help people like Watanabe because his case was ruled on after the amendment. "The aim of the revision is to promote forming agreements (over child care) when getting a divorce. But there

is nothing that guarantees compliance," Tanamura said. Tanamura and other experts thus agree that if and when Japan signs the 1980 Hague Convention on the Civil Aspects of International Child Abduction, it must at the same time institute fundamental changes in the legal system, and the public mindset must also be overhauled, or joining the convention will lead to naught.

John Gomez, chairman of the recently founded Kizuna Child-Parent Reunion, a group of Japanese and non-Japanese parents, friends and supporters advocating the right of children to have access to both parents, emphasized the need for left-

behinds to cooperate because simply joining the Hague Convention will not solve anything in Japan if it continues to take a one-sided approach to domestic custodial rights.

"The problem of international cases and in-country cases has the same root cause — Japanese family law and the courts," Gomez said.

"The abduction issue affects all people in Japan — mothers as well as fathers, Japanese as well as non-Japanese."

The Hague treaty aims for the swift return of children wrongfully taken out of the country of their "habitual residence" by a parent to prevent cross-border parental kidnappings. Of the Group of Eight countries, Japan is the only nation yet to sign the convention.

Japan has been under pressure from member states, including the United States, the United Kingdom and Canada, to join the convention, but it has been reluctant, given strong domestic opposition, especially from Japanese mothers who claim they fled to Japan with their children to protect themselves from abusive ex-spouses.

Facing severe criticism from the international community, however, Japan finally reached the point of submitting a bid to sign the treaty and Hague-related legislation to the Diet during the last session presided over by Prime Minister Yoshihiko Noda's Democratic Party of Japan. But the politicians instead spent most of their time bickering over internal power struggles related to other domestic issues, pushing the Hague Convention to the sidelines once again.

And it remains unclear whether the issue will move forward under the new government led by the Liberal Democratic Party.

Government officials have expressed confidence that once deliberations begin, the Hague bid will be approved by the Diet. But parents, including Gomez, a longtime Japan resident who himself is separated from his Japanese wife and is having difficulty seeing his daughter, say joining the Hague treaty is only a step in the right direction, not a silver bullet.

Gomez explained that on the legal front, parental kidnappings must be stopped, visitation rights made enforceable and the idea of joint custody introduced. But he added that public awareness must also be raised at the same time so the public understands the benefits of the changes to ensure the rules are followed.

"The Hague is only one tool. The ultimate goal for us is a social and legal transformation of Japan ... a complete transformation in terms of mindset and practice," Gomez said. "We firmly believe, Japanese and non-Japanese alike, that the social and legal transformation is for the betterment of Japanese society and children and improvement in the quality of life."