

ACCESS TO JUSTICE FOR CHILDREN: JAPAN

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Japan ratified the CRC on 22 April 1994.¹ Japan has also ratified the Optional Protocols to the CRC on children in armed conflict² and on the sale of children.³

Article 98(2) of the Constitution states that: “[t]he treaties concluded by Japan and established laws of nations shall be faithfully observed.”⁴ This has led the overwhelming majority of scholars to conclude that ratified treaties automatically have domestic legal force in Japan without further procedures.⁵

The usual procedure before ratifying a treaty involves examining domestic laws and removing any provisions that are inconsistent with that treaty.⁶ Furthermore, according to Article 73 of the Constitution, when concluding treaties “[t]he Cabinet... shall obtain prior or, depending on circumstances, subsequent approval of the Diet [Japanese legislature]”.

B. Does the CRC take precedence over national law?

International instruments such as the CRC take precedence over domestic statutes.⁷ However, scholarly views are divided as to whether or not treaties prevail over the Constitution. On this issue, the Japanese Government has stated that the Constitution is Japan’s supreme law and supersedes treaties such as the International Covenant on Civil and Political Rights in domestic effect.⁸ Accordingly, it is likely that the Constitution also prevails over the CRC.

¹ UN Treaty Collection, ‘Convention on the Rights of the Child’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

³ UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

⁴ Available in English at:

http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html.

⁵ Makoto Seta, ‘Japan country report’, 2010, p. 7, available at:

<http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/Country-Report-Japan.pdf>.

⁶ UN Committee on the Rights of the Child, *Summary record of the 464th meeting: Japan*, CRC/C/SR.464, 6 February 1998, para 12. Available at:

<http://www.unhcr.ch/tbs/doc.nsf/0/c427d1d8ce26406d802566240053a444?Opendocument>.

⁷ *Ibid.*, para. 14; Makoto Seta, p. 8.

⁸ Makoto Seta, p. 9.

C. Has the CRC been incorporated into national law?

The CRC has been incorporated into national law in Japan. The Japanese Government, however, has reserved the right not to be bound by the second sentence of Article 37(c): “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.” Japan currently divides those deprived of liberty into two categories: those over the age of 20 and those under the age of 20.⁹ Without Japan’s reservation, the CRC would require the threshold to be changed to the age of 18.¹⁰

Furthermore, Japan has made declarations in regards to Article 9, Paragraph 1 and Article 10, Paragraph 1 concerning separation of a child from the child’s parents. The Government has justified these declarations based on such provisions’ possible effect on deportation rules and the processing of immigration applications.¹¹ Despite repeated encouragement by the Committee of the Rights of the Child, the Japanese Government has not declared an intention to change its stance on the foregoing reservations and declarations.¹²

Japan does not have a comprehensive children's act, and legal provisions on children's rights appear throughout the Penal Code (刑法), Civil Code (民法), Code of Criminal Procedure (刑事訴訟法), and Code of Civil Procedure (民事訴訟法).¹³

D. Can the CRC be directly enforced in the courts?

Courts can rule on complaints which rely on the CRC.¹⁴ However, according to the second Japanese State report to the Committee on the Rights of the Child, at the time “there is no precedent of a court decision explicitly showing whether or not the direct application of the provisions of the [CRC] is possible” and that “the manner of application should be determined on a case-by-case basis, with due regard to the purpose and content of the provisions of the [CRC].”¹⁵ The Tokyo High Court in 1993 stated that, in general, the direct applicability of a treaty depends on the specific intent of the parties to the treaty,¹⁶ and the provisions being precise.¹⁷

⁹ *Third periodic report of Japan to the UN Committee on the Rights of the Child*, 25 September 2009, CRC/C/JPN/3, para. 7. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fJPN%2f3&Lang=en.

¹⁰ *Initial periodic report of Japan to the UN Committee on the Rights of the Child*, CRC/C/41/Add.1, 5 August 1996, para. 13. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f41%2fAdd.1&Lang=en.

¹¹ *Third periodic report of Japan to the UN Committee on the Rights of the Child*, paras 8 and 9.

¹² *Ibid.*, para. 6.

¹³ See CRIN, ‘Japan: National laws’, 2011, for a list of other statutes relating to children, available at: <https://www.crin.org/en/library/publications/japan-national-laws>.

¹⁴ UN Committee on the Rights of the Child, *Summary record of the 464th meeting: Japan*, para. 14.

¹⁵ *Second periodic report of Japan to the UN Committee on the Rights of the Child*, CRC/C/104/Add.2 24 July 2003, para. 13. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f104%2fAdd.2&Lang=en.

¹⁶ Judgment of 5 Mar. 1993 (*Siberian Detainees Case*), Tokyo High Ct, Hanrei Taimuzu, No. 811, p. 87: JAIL, Vol. 37 (1994) p. 139.

¹⁷ *Ibid.* Japanese courts have, for example, consistently accepted the direct applicability of the International Covenant on Civil and Political Rights (ICCPR). See judgment of 28 Oct. 1994, Osaka High

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC has been referenced, including by judges, in several cases in Japan involving shares of inheritance for children born out of wedlock,¹⁸ rescission of deportation and other orders,¹⁹ and an injunction to allow a physically disabled child into kindergarten.²⁰ However, there is no precedent in Japan where, in relation to cases brought to courts, the principles and provisions of the CRC were directly applied to judicial judgments.²¹ Additionally, Child Rights International Network believes that certain cases have been decided in a manner inconsistent with the CRC.²²

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

A child may bring a civil action under the Civil Procedure Code²³ or request a judicial review of an administrative action under the Administrative Case Litigation Act.²⁴ There is no private prosecution in Japan; however, when a child has been injured by an offence, he/she may file a complaint to a public prosecutor or a judicial police official (*kokuso*) and a public prosecutor will decide whether or not to institute prosecution.²⁵ Moreover, a child's statutory representative may file a complaint independently.²⁶

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

A child regardless of their age may sue in their own name in administrative litigation.²⁷ In order to file a lawsuit in a civil action, a person must attain 20 years of age (age of maturity).²⁸ Although a minor may be a party involved in a civil action, the filing of a lawsuit for a minor must be undertaken by a statutory representative such as a person with parental authority. This requirement is not applicable in personal status actions (e.g., actions seeking judgment on the existence of a marital or adoptive relationship).²⁹

Ct, Hanrei Taimuzu, No. 868, p. 61: JAIL, Vol. 38 (1995) p. 129; Judgment of 15 Mar. 1996, Tokushima Dist Ct, Hanrei Jihou, No. 1597, p. 123: JAIL, Vol. 40 (1997) p. 120.

¹⁸ Saikō Saibansho [Sup. Ct. (Japan)] July 5, 1995, 1991(Ku)No.143, Minshu Vol. 49, No. 7 at 1789; Judgment concerning the relationship between a distinction in granting Japanese nationality caused by article 3, para.1 of the Nationality Act 2006 (Gyo-Tsu) No. 135.

¹⁹ Demand for rescission of a deportation and other order 2009 (Gyo- U) No. 19.

²⁰ Demand for rescission of a decision of the local authorities to admit a child into a child welfare facility 2007 (Gyo-U) 745.

²¹ *Third periodic report of Japan to the UN Committee on the Rights of the Child*, para. 26.

²² See, for example, www.crin.org/node/7098.

²³ Act No. 109 of June 26, 1996.

²⁴ Act No. 139 of May 16, 1962.

²⁵ Article 230, 241 and 260 of the Criminal Procedure Code.

²⁶ *Ibid.*, Article 231(1).

²⁷ *Second periodic report of Japan to the UN Committee on the Rights of the Child*, para. 95.

²⁸ Article 28 of the Code of Civil Procedure, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=214953.

²⁹ Article 13(1) of the Code of Procedure Concerning Cases Relating to Personal Status; *Third periodic report of Japan to the UN Committee on the Rights of the Child*, para. 128.

C. In the case of infants and young children, how would cases typically be brought?

Cases of this kind would usually be brought by the child's parent(s). A child is automatically subject to the parental authority of their parents,³⁰ therefore a child's representative is typically a parental guardian.

A parent can be removed as a guardian by a family court on application by a relative of the child or a public prosecutor in the event that the parent "abuses parental authority or if there is gross misconduct."³¹ A parent may still designate the guardian of the child by will, unless the family court has also removed the parent's right to administer the property of the child.³² If the parent fails to appoint a guardian for the child, the court may do so on application of the child, a relative of the child, or any other interested person.³³

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

The court may, upon petition, grant an order for judicial financial aid to: (a) a person who lacks the financial resources to pay the necessary expenses for preparing and conducting a legal suit; or (b) a person who will suffer substantial detriment to their standard of living by paying such expenses.³⁴ Judicial aid will only be granted where "it cannot be said that such person is unlikely to win the case".³⁵ Granting of the order will give the applicant grace from payment of court costs (including fees and expenses for a court execution officer), grace from payment of compensation and expenses for an attorney ordered to be an attendant by the court, and exemption from providing security for court costs.³⁶ Such expenses and costs may be collected directly from the opponent who shall bear such expenses and costs.³⁷ A lawyer or a court execution officer, on behalf of the person receiving judicial financial aid, may file the petition or enforce compulsory execution with regard to their compensation, fees, expenses and costs.³⁸

If a person who has received an order to grant judicial aid is found not to meet the requirements or no longer meets the requirements, the court may at any time revoke the order to grant judicial aid and order payment of expenses and costs for which grace is given.³⁹

In addition, the Comprehensive Legal Support Act (promulgated on 2 June 2004) established the Japan Legal Support Centre, which provides "civil legal aid" where a citizen has limited financial resources. This aid includes: (a) free legal counselling; (b)

³⁰ Article 818(1) of the Civil Code, available at:

http://www.law.yale.edu/rcw/rcw/jurisdictions/ase/japan/japan_civ_code.htm.

³¹ Ibid., Article 834.

³² Ibid., Article 839(1).

³³ Ibid., Article 840.

³⁴ Article 82 of the Civil Procedure Code, available at:

http://www.wipo.int/wipolex/en/text.jsp?file_id=214953.

³⁵ Ibid., Article 82(1).

³⁶ Ibid., Article 83. "Grace from payment" means delay of payment: Yamamoto Hiroshi, etc (1992), *Chu-Kai Minji Soshō Ho II*, (Annotation: Civil Procedure Code II), p. 607.

³⁷ Article 85 of the Civil Procedure Code.

³⁸ Ibid.

³⁹ Ibid., Article 84.

loans for attorney's fees for legal representation in civil, family and administrative cases (covering attorney's remuneration and actual expenses for the case); and (c) loans for attorney's fees for preparation of documents to be submitted to the court.⁴⁰

In criminal matters, for certain serious cases involving children in conflict with the law, the court has the discretion to appoint a public attendant who is an attorney. If the court orders the public prosecutor to appear before the court, a public attendant who is an attorney must be appointed for the child. Victims of certain serious crimes who have limited financial resources can, at the victim's request, receive a court-appointed attorney who will support their participation in the criminal trial, including attendance, statement of opinion, and examination of the defendant and witnesses. Remuneration and expenses for court-appointed attorneys are calculated and paid by the Japan Legal Support Centre.⁴¹

In cases that are not covered by public funding under the Comprehensive Legal Support Act, the Japan Federation of Bar Associations (JFBA) provides funding for cases where "the need for redress of rights is significant", including legal support for children. Since 2007, the Japan Legal Support Centre has also been entrusted with providing legal services to children who need redress of human rights abuses due to child abuse, when the "cooperation of a person who has parental authority over the child cannot be obtained because of poverty, hostility or other reasons."⁴²

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Where a parent has been removed as the child's guardian (see part II.C), the parent may still designate the guardian of the child at will, unless the family court has also removed the parent's right to administer the property of the child.⁴³

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Under the Constitution, every person may sue for redress as provided by law from the State or a public entity, in case he/she has suffered damage through an illegal act of any public official.⁴⁴ Furthermore, every person has "the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters".⁴⁵ Any person, in

⁴⁰ Japan Federation of Bar Associations, 'The Japanese judicial system', available at: http://www.nichibenren.or.jp/en/about/judicial_system/judicial_system.html; see also Japan Legal Support Centre, 'Civil legal aid', available at: http://www.houterasu.or.jp/en/about_jlsc/operation2.html.

⁴¹ Japan Federation of Bar Associations, 'The Japanese judicial system'.

⁴² Japan Federation of Bar Associations, 'Duties of the Japan Legal Support Center and the JFBA', available at: http://www.nichibenren.or.jp/en/about/judicial_system/legal_aid_and_jlsc.html; Japan Federation of Bar Associations, 'The Japanese judicial system'.

⁴³ Article 839(1) of the Civil Code.

⁴⁴ Article 17 of the Constitution.

⁴⁵ Ibid., Article 16.

case he/she is acquitted after he/she has been arrested or detained, may sue the State for redress as provided by law.⁴⁶

The Constitution sets out certain individual rights, including freedom of thought, conscience, religion, assembly, association and movement, and right to receive an “equal education correspondent to their ability”, with compulsory education to be free.⁴⁷ However, violations of constitutional rights may only be challenged through a special appeal to the Supreme Court in certain civil, criminal, administrative or domestic relations cases.⁴⁸

Under the Civil Code, children and their representatives are entitled to bring a civil action for damages caused by a violation of children’s rights.⁴⁹ Where a violation is caused by a public body, the public body’s actions can be subject to judicial review under the Administrative Case Litigation Act. In certain cases provided by law, “citizen actions” may also be filed by individuals, irrespective of their legal interest, to correct an act by a public body that does not conform to laws, regulations or rules.⁵⁰

B. What powers would courts have to review these violations, and what remedies could they offer?

The Administrative Case Litigation Act sets out the court’s powers to review administrative decisions of public bodies. Under the Administrative Case Litigation Act, the court can: (a) revoke an administrative disposition, decision or any other act by an administrative agency; (b) declare the existence or non-existence of, or validity or invalidity of, an administrative disposition (“declaration of nullity”); (c) declare an administrative agency’s failure to make an administrative disposition to be illegal; (d) order an administrative agency to make an administrative disposition (“mandamus actions”); (e) issue an injunctive order to prevent an administrative agency from making an administrative disposition; and (f) correct an act by a State agency or public entity which does not conform to laws, regulations, and rules pursuant to a citizen action.⁵¹

The relevant provisions on civil actions apply to any administrative case litigation matters not covered by the Administrative Case Litigation Act.⁵² Under the Civil Code, children and their representatives may demand damages arising from a violation of children’s rights.⁵³ In the case of defamation, children may order a person who defamed him/her to restore their reputation.⁵⁴ Obtaining an injunction as a remedy to stop a violation is not written in the provisions of civil actions; however, from precedent, an injunction may be allowed when one’s rights are violated.⁵⁵

In a special appeal to the Supreme Court concerning a violation of the Constitution, if

⁴⁶ Ibid., Article 40.

⁴⁷ See Ibid., Chapter III.

⁴⁸ Supreme Court of Japan, ‘Overview of the judicial system in Japan’, available at: http://www.courts.go.jp/english/judicial_sys/overview_of/overview/index.html#01.

⁴⁹ Article 709 of the Civil Code; Article 3-3(8) of the Civil Procedure Code.

⁵⁰ Articles 5 and 42 of the Administrative Case Litigation Act.

⁵¹ See Administrative Case Litigation Act.

⁵² Ibid., Article 7.

⁵³ Articles 722(1), 417 of the Civil Code.

⁵⁴ Ibid., Article 723.

⁵⁵ For example, see Saikō Saibansho [Sup. Ct. (Japan)] Jan. 16, 1964, Minshu Vol. 18, No. 1 at 1.

the Supreme Court finds that a legal provision is inconsistent with the Constitution, the legal provision will be held to be invalid.⁵⁶

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Generally, a person must have a legal interest to seek judicial review of an administrative disposition by a public body (see part III.E below).⁵⁷ In addition to a legal interest, there must be damage suffered or a risk of damage in order to file actions for a declaration of nullity, mandamus actions, and injunctive orders.⁵⁸

A citizen action can be brought by an individual regardless of their legal interest,⁵⁹ but only if the law specifically allows such a challenge.⁶⁰ The identity of the victim can be withheld by the court where it is necessary to protect the victim, as can be seen in the recent Fukushima case.⁶¹

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Under the Civil Procedure Code, there are two principle methods of group litigation: (a) appointing a group representative to stand as plaintiff on behalf of the group; or (b) joining suits.⁶² In both cases, the individual victims must be known as they themselves will be the plaintiffs, albeit through a single representative or as a group.

In order to appoint a group representative, the parties must all share “common interests”. From precedent, a common interest can be established where (a) the subject matter of the suits are based on the same factual or statutory cause and (b) the main allegations and evidence are common to all the appointers.⁶³ This type of litigation is where the co-litigants choose amongst themselves a specific representative to carry out the litigation on their behalf. The representative party must be chosen from among the parties to the litigation; a third party outside of the litigation cannot be chosen as the representative party. The effects of the judgment obtained by the representative party will apply to all represented parties, including those who have withdrawn from the proceeding.⁶⁴

Parties may join their claims and sue or be sued as co-parties when the rights or obligations that are the subject matter of the suits are common to two or more persons or

⁵⁶ See, for example, www.crin.org/node/40131.

⁵⁷ Articles 9(1), 36, 37(2), 37(4) of the Administrative Case Litigation Act.

⁵⁸ Ibid.

⁵⁹ Ibid., Article 5.

⁶⁰ Ibid., Article 42.

⁶¹ ‘Lawsuit seeks evacuation of Fukushima children’, 14 April 2013, available at: <http://www.news.com.au/world-news/lawsuit-seeks-evacuation-of-fukushima-children/story-fndir2ev-1226620328382>.

⁶² Articles 30(1) and 38 of the Civil Procedure Code.

⁶³ Saikō Saibansho [Sup. Ct. (Japan)] Apr. 4, 1944, Minshu Vol. 12, No. 6 at 873.

⁶⁴ Article 115(1)(ii) of the Civil Procedure Code provides that a final and binding judgment shall be effective against another person for whom the party has served as a plaintiff or defendant. “Another person” includes those who have withdrawn from the proceeding: Akiyama, Mikio, et al (2006), *Kommentar Minji Sosho Ho II*, p. 480; Yamamoto Kazuhiko, et al (2000), *Chu-Kai Minji Sosho Ho II* (Annotation: Civil Procedure Code II), p. 466.

are based on the same grounds of fact or law.⁶⁵ This is used for convenience. Even though several litigants are joined in one litigation procedure, each of the co-litigant's actions is seen as independent and does not affect the other co-litigants. As each co-litigant is in principle deemed an independent party, there is no guarantee that the result of the litigation will be the same for co-litigants. In such joint actions, all parties to a dispute will enter their names in the petition as parties to the litigation.⁶⁶

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

The first threshold in Japanese litigation is whether or not the plaintiff has a "standing to sue". "Standing to sue" is a threshold of whether a plaintiff has a legal right to a judicial determination of the issues, rather than a threshold based on the merits of the plaintiff's complaint. Article 3 of the Court Act 1947⁶⁷ provides that the court shall decide all "legal disputes" with respect to general court cases. "Legal disputes" are defined as disputes "which relate to the existence of concrete rights and duties or legal relations between the parties and which can be finally settled by the application of law."⁶⁸

With respect to administrative cases, the Administrative Case Litigation Act provides that a person must have a "legal interest" to bring most types of judicial review actions. A legal interest, as defined by the Supreme Court, requires the subjective interests of the plaintiff to: (a) be damaged by the disposition; (b) fall under the protection of the statutory law, which serves as the legal ground of the disposition; and (c) be protected as the specific interests of the plaintiff and not entirely absorbed into the "public interest".⁶⁹

In Japanese law, both a person and a legal person has standing to sue. Some Japanese NGOs have obtained legal status as a legal person under the Act on Promotion of Specified Non-profit Activities, and have therefore obtained standing to sue.⁷⁰

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Civil cases

⁶⁵ Article 38 of the Civil Procedure Code.

⁶⁶ Ibid., Article 133(2)(i).

⁶⁷ Act No. 59 of April 16, 1947.

⁶⁸ 35 MINSHŪ 1369, 1369 (Sup. Ct., Dec. 16, 1981).

⁶⁹ Kadomatsu Narufumi, 'The rise and fall of the "relationship of reciprocal interchangeability" theory in Japan ---productivity of "misinterpretation"?', 2009, available at: <http://www.lib.kobe-u.ac.jp/repository/81004333.pdf#search='interests+should+fall+under+the+protected+realm+of+the+statutory+law%2C+which'>. In 2004, the Administrative Case Litigation Act was amended to introduce the new concept of "consideration factors" in the newly added second paragraph to Article 9. This paragraph is a codification of the Supreme Court case law and provides that courts shall not only rely on the language of the provisions when determining one's standing, but consider the whole purport and purpose of the law, as well as the contents and the nature of the interest, which includes how and to what extent it is likely to be injured.

⁷⁰ Comments provided by Prof. Akihiko Morita, August 2015.

The court with competent jurisdiction is the court with jurisdiction over the place and subject matter of the case as provided in the Court Act and other applicable laws. According to the Court Act, the courts at the lowest level are the summary courts (*kani saibansho*), which exercise jurisdiction over cases involving claims not exceeding 1,400,000 yen. At the next level, there are district courts (*chihou saibansho*), which are the courts of general jurisdiction. The district courts also have jurisdiction over certain specified cases. The Civil Procedure Code provides that a plaintiff shall, as a rule, bring an action in the court of the place of residence of the defendant. Other courts, however, may also have jurisdiction. For example, an action for damages on the basis of tort may be brought to the court which has jurisdiction over the place where the tort was committed.⁷¹ Chapter V of the Civil Procedure Code provides guidance on how to initiate civil proceedings.

Administrative cases

With respect to administrative cases, the territorial jurisdiction of the courts shall be determined by the defendant's general forum or the location of the administrative office making the administrative disposition or whose administrative disposition is being challenged. District courts have jurisdiction over administrative cases regardless of the amount of the claim. Administrative cases are filed in the civil courts following the abolition of the separate, so-called "administrative courts". Where the Administrative Case Litigation Act does not give guidance on the procedure in administrative trials, the Civil Code and the Civil Procedure Code should be applied.⁷²

Criminal cases

With regard to criminal cases, the territorial jurisdiction of the courts shall be determined based on: (a) the place where the crime was committed; (b) the place of residence of the accused; or (c) the place where the accused is at present. Either a district court or a summary court may be a court of first instance in criminal cases.⁷³ The Criminal Procedure Code provides guidance on the procedures for criminal proceedings.

Regarding children in conflict with the law aged 14 to 19 years, and those under 14 who have violated a criminal law or ordinance but are not considered as offenders under the Penal Code because of their young age, every juvenile case is referred to a family court for investigation and hearing of proceedings. Proceedings in the family court are not open to the public. In certain cases, the family court may refer a case back to the public prosecutors for trial under ordinary criminal proceedings.⁷⁴

Domestic relations cases

The family court has a very broad jurisdiction encompassing all disputes and conflicts within the family and all related domestic relations, including personal status actions

⁷¹ Supreme Court of Japan, 'Outline of civil procedure in Japan', available at: http://www.courts.go.jp/english/judicial_sys/civil-contents/civiltext/index.html.

⁷² Article 7 of the Administrative Case Litigation Act.

⁷³ Supreme Court of Japan, 'Outline of criminal procedure in Japan', available at: http://www.courts.go.jp/english/judicial_sys/criminal_contents/criminal_text/index.html#01.

⁷⁴ Japan Federation of Bar Associations, 'The Japanese judicial system'.

discussed below. The Family Case Proceeding Act divides domestic relations cases into two categories: domestic relations adjudication cases and domestic relations conciliation cases.

Domestic relations adjudication cases are further divided into “Appended Table 1” cases and “Appended Table 2” cases.⁷⁵ Appended Table 1 cases include matters such as permission to change a child’s name, renunciation of inheritance, commencement of guardianship, and permission for adoption.⁷⁶ Appended Table 2 cases include designation of a parent to exercise parental authority and alteration thereof, and measures relating to child custody (such as requests for child support). In cases where a child’s parental authority or custody is disputed, the court may order a family court probation officer or a doctor to investigate the facts.⁷⁷

Domestic relations conciliation cases include divorces and Appended Table 2 cases that resort to conciliation rather than adjudication.⁷⁸ Personal status litigation such as divorce must undergo conciliation proceedings before litigation may be filed (see also below). Unless the parties to a domestic relations conciliation case agree on a different family court, the family court with territorial jurisdiction over the domicile of the opponent will hear the case. Conciliation has the same effect as a final and binding judgement. Where conciliation fails, the family court may refer the case to adjudication where it finds it reasonable to do so.⁷⁹

Both conciliation and adjudication cases may be commenced by filing a petition available at family court counters or on the Japan Courts website,⁸⁰ along with the relevant fee and documents (such as a certified copy of the family register).

Personal status cases

Personal status cases include cases relating to filiation of a child, declaration of a parent-child relationship and other familial relationships. The most common type of personal status case is divorce proceedings. Personal status cases are resolved by a judgment, typically in open court. Proceedings may be closed to the public by order of the court in special circumstances such as the examination of a material secret regarding the private life of a party.⁸¹ The governing law will generally depend on the provisions of the Act on General Rules for Application of Laws. For example, in the case for designation of a parent to exercise parental authority over a child, the governing law will be the law of the child’s nationality if such nationality is the same as either the mother or the father, or otherwise the law of the child’s habitual residence.⁸² A personal status action may be commenced with the submission of a complaint, together with a fee, postal stamps, a certified copy of the family register and other necessary materials.⁸³

⁷⁵ Supreme Court of Japan, ‘Domestic relations cases’, available at: http://www.courts.go.jp/english/judicial_sys/domestic_relations/domestic_index/index.html.

⁷⁶ Ibid.

⁷⁷ Supreme Court of Japan, ‘Guide to the Family Court of Japan’, 2013, p. 14, available at: http://www.courts.go.jp/english/vcms_if/20130807-1.pdf.

⁷⁸ Supreme Court of Japan, ‘Domestic relations cases’.

⁷⁹ Ibid.

⁸⁰ <http://www.courts.go.jp>.

⁸¹ Supreme Court of Japan, ‘Guide to the Family Court of Japan’, p. 24.

⁸² Article 32 of the Act on General Rules for Application of Laws; see also Ibid., p. 25.

⁸³ Supreme Court of Japan, ‘Guide to the Family Court of Japan’, pp. 24-27.

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

There is currently a shortage of lawyers in Japan.⁸⁴ Therefore, while contingency fees are permissible in theory,⁸⁵ they have proved to be relatively unworkable in practice.⁸⁶ Many lawyers in Japan, however, are actively involved in pro bono matters. It is therefore possible to find lawyers with an interest in representing children in child rights cases on a pro bono basis.

The following bodies in Japan may also provide legal advice or referrals to children: the committee on the rights of the child set up by the Japan Federation of Bar Associations,⁸⁷ human rights organisation or national human rights institution set up by the Japanese government,⁸⁸ or Volunteers for Children's Rights Protection.⁸⁹

D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

A demand for compensation for damages in tort must be brought within three years from the time when the victim becomes aware of the damages and the identity of the perpetrator.⁹⁰ In any event the demand must be made within 20 years of the time of the tortious act.⁹¹

For actions filed under the Administrative Case Litigation Act, Article 14 requires any action for the revocation of an administrative disposition to be filed within six months from the day on which the person who seeks revocation became aware of the fact that the administrative disposition was made. In any event, however, the demand must be made within one year of the administrative disposition. These requirements can be

⁸⁴ Japan Federation of Bar Associations, 'White paper on attorneys', 2012, available at: <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2012.pdf>.

⁸⁵ Herbert M. Kritzer, *Risks, Reputations, and Rewards: Contingency Fee Legal Practice in the United States* (2004), pp. 258-259.

⁸⁶ See Carl F. Goodman, 'The Somewhat Less Reluctant Litigant', 32 *Law & Pol'y Int'l Bus.* 769 (2001), p. 793 (noting that given the relatively small number of licensed lawyers permitted to handle litigation, few attorneys desire a contingent fee system).

⁸⁷ http://www.nichibenren.or.jp/activity/human/child_rights.html.

⁸⁸ <http://www.moj.go.jp/JINKEN/jinken120.html>.

⁸⁹ <http://www.mofa.go.jp/policy/human/child/report2/general.html#F>.

⁹⁰ Article 724 of the Civil Code.

⁹¹ *Ibid.*

waived if there are justifiable grounds for failing to meet such time limits.⁹² Article 40 of the Administrative Case Litigation Act allows for filing of a public law-related action even after the expiration of any statute of limitations under any regulation or law if there are justifiable grounds for failing to meet such statute of limitations.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

There is no legal restriction on age or legal capacity for a child to testify at a civil trial.⁹³ Article 195 of the Civil Procedure Code allows for the examination of witnesses outside of court if the witness is unable to appear before that court on “justifiable grounds”. The court shall have a witness aged 16 years or over swear under oath.⁹⁴ When a witness who has sworn in accordance with law gives false testimony, he/she will be imprisoned.⁹⁵ However, the court may not require children aged under 16 years to swear under oath.⁹⁶

In criminal matters, Articles 203-2 to 204 of the Civil Procedure Code and Articles 157 and 158 of the Criminal Procedure Code allow for the examination of a witness to take place in another location or in a manner to prevent the identification of the witness or extreme anxiety or tension arising from the age or mental or physical condition of the witness.

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Legal proceedings generally move slowly in the Japanese legal system. Further, civil cases, given the increase in their number and complexity, usually require a long period of time to reach a verdict. Following public criticism of the pace of Japanese trial proceedings, the Justice System Reform Council (JSRC) was established in July 1999 to suggest possible reforms. Thereafter, the Act on the Expediting of Trials was established in order to ensure citizens’ rights and interests through expeditious trials. According to Article 2 of the Act, the aim is to conclude the proceedings in the court of first instance as expeditiously as possible, and in any case within two years. Now, 96.7% of civil proceedings and 99.9% of criminal proceedings in the court of first instance are completed within two years.⁹⁷ In 2011, the average period of criminal court deliberations was nine months.⁹⁸

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

First instance appeal

A party who is unsuccessful in the court of first instance may file an appeal to a higher

⁹² See Article 14 of the Administrative Case Litigation Act.

⁹³ *Second periodic report of Japan to the UN Committee on the Rights of the Child*, para. 92.

⁹⁴ Article 201(1) of the Civil Procedure Code.

⁹⁵ Articles 169 of the Criminal Code.

⁹⁶ Article 201(2) of the Civil Procedure Code.

⁹⁷ Japan Federation of Bar Association, ‘裁判の充実・迅速化’ (Enhance and expedite trial), available at: http://www.nichibenren.or.jp/activity/justice/citizen/speedy_trial.html.

⁹⁸ Japan Federation of Bar Associations, ‘White paper on attorneys’.

instance court with competent jurisdiction over the case. Therefore, an appeal against a summary court decision may be filed with a district court, and an appeal against a district court decision may be filed with a high court. The jurisdiction of the second instance court will be determined according to the location of the court of first instance. A court of second instance is normally composed of three judges.⁹⁹

The petition for appeal must be made in writing and must contain the specifications of the parties, the judgment under appeal and the appropriate revenue stamps. The appeal can be based on mistakes of fact or law, or both; however, the argument at the second instance court will generally be focused on the reasons for appeal rather than a broad review of the facts. The petition for appeal must be filed with the court of first instance within two weeks from the date of service of the judgment. The reasons for the appeal need not be disclosed at the time of filing of the petition for appeal, but must be filed within 50 days. Failure to meet these requirements will cause dismissal of the appeal without prejudice.¹⁰⁰

A final appeal against a judgment of the court of first instance may be filed directly to the final appellate court upon the agreement of both parties, which is referred to as a “direct final appeal”.¹⁰¹

Final appeal

A party who loses at the court of second instance may file a final appeal to the upper instance court with competent jurisdiction. Therefore, an appeal against a district court judgment may be filed to a high court, and an appeal against a high court judgment must be filed to the Supreme Court. A case before a high court is tried by a three-judge panel, while a case before the Supreme Court is tried by one of the three Petty Benches, each of which is composed of five Justices. There is an exception for cases involving constitutional questions, where the Grand Bench, consisting of all 15 Justices, tries the case.¹⁰²

A final appellate court exercises its jurisdiction only over questions of law and is bound by the facts found in the judgment in prior instance. The grounds for final appeal against the judgment in prior instance are limited to: (a) a violation of the Constitution; or (b) any of six kinds of substantial illegalities set forth in Article 312(2) of the Civil Procedure Code. The requirements for filing a petition for final appeal are substantially the same as for the first instance appeal; however, the format must follow the Supreme Court Rules where appropriate. If the final appellate court finds any of the foregoing violations or a material violation of law, it may quash the judgment and remand it to the prior instance court. Alternately, if it does not find in favour of the appellant, the court may dismiss the appeal.¹⁰³

If the final appeal was to a high court, the decision may only be further appealed to the Supreme Court on the ground that it contains a violation of the Constitution, which is

⁹⁹ Supreme Court of Japan, ‘Outline of civil procedure in Japan’.

¹⁰⁰ Articles 288, 137 (1) (2) and 290 of the Civil Procedure Code

¹⁰¹ Ibid., Article 281(1).

¹⁰² Article 10 of the Court Act.

¹⁰³ Articles 313, 302(1), and 319 of the Civil Procedure Code.

referred to as a “special appeal to the court of last resort”.¹⁰⁴

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Unless appealed, judgments are final and binding among the parties and their interested persons.¹⁰⁵ Supreme Court judgments also have a binding effect over subsequent court cases. The Supreme Court is empowered to dismiss lower instance courts’ judgments where the decision made is inconsistent with previous Supreme Court decisions. The decision by the Grand Bench consisting of all 15 Justices is required to change the Supreme Court opinion previously rendered.¹⁰⁶ Accordingly, a negative decision rendered by the Supreme Court generally has an impact on subsequent court cases in Japan.

In Japan, legislative power is vested in the Diet [Japanese legislature] and judicial power is vested in the Supreme Court and lower courts. Japan has a statutory law system, whereby laws are made by the Diet and courts rely on the statutes in rendering judgments. Courts have little authority to make new law despite the fact that they are the final adjudicators of all legal disputes. The Supreme Court has historically also been very respectful of governmental legislation and actions and hesitant to overstep its boundaries. Accordingly, it is unlikely the Diet would face a situation where it needed to undertake political action due to a decision in a court case. The Diet may, however, take action where a court bridges the gap between statutes in a manner that is against the opinion of the Diet, or the Supreme Court exercises its authority to review the constitutionality of laws.¹⁰⁷

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

Japanese courts are cautious when considering cases where a positive decision may have legal or other effects on third parties. An example of this is the case in which 14 children living in Koriyama City filed an injunction against the board of education regarding educational activities in Koriyama City on the grounds that radiation was potentially causing damage to the students’ health. The Fukushima District Court, Koriyama Branch concluded that it would be difficult to suspend the educational activities only of the parties concerned. In light of this, the court rejected the case, reasoning that courts should establish strict standards when deciding whether plaintiffs have a right to be protected.¹⁰⁸

Furthermore, and despite the signs of change in recent years, Japan is generally not a litigious society compared to many other countries. This, some have argued, is also

¹⁰⁴ Ibid., Article 327(1).

¹⁰⁵ Ibid., Article 115.

¹⁰⁶ Article 10 of the Court Act.

¹⁰⁷ Article 81 of the Constitution.

¹⁰⁸ Decision available at:

<https://docs.google.com/viewer?url=http%3A%2F%2F1am.sakura.ne.jp%2FNuclear%2F111216decision.pdf>. CRIN summary available at: <https://www.crin.org/en/library/legal-database/regarding-immediate-appeal-against-decision-dismiss-application-preliminary>.

reflected in the reluctance of the Supreme Court to challenge administrative decisions.¹⁰⁹ Therefore, there could be a societal backlash in a publicised case against those who have chosen to settle their disputes through litigation or to sue the government.

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

As at the date of this report, there is no independent monitoring body such as an ombudsman or national human rights institution in Japan that can receive complaints about human rights violations. The Human Rights Protection Bill, under which a Human Rights Commission for Japan would be established, has been removed from consideration,¹¹⁰ and the Japanese Government has stated that there are no plans to introduce such a role.¹¹¹

However, some local governments have, in accordance with the CRC, established independent organisations to bring relief when a child's human rights have been violated, such as in the case of a child being bullied, physically punished, or abused. As of January 2006, there are five local governments that have introduced an ombudsman for children as far as the Cabinet Office is aware.¹¹²

The Government of Japan has set up human rights organs of the Ministry of Justice. These agencies receive enquiries concerning children's rights issues, run the "Children's Rights Hotline" and investigate cases of potential violations, however, the remedies do not tend to include court action. The agencies have set up the Volunteers for Children's Rights Protection program that further investigates and deals with cases of infringement. The volunteers provide counselling services and respond to enquiries on children's rights in counselling rooms through the "Children's Rights Dial 110" telephone and internet consulting service. The volunteers can take appropriate measures in cooperation with the Legal Affairs Bureau and the District Legal Affairs Bureaus when there is a suspected violation of children's rights.¹¹³

This report is provided for educational and informational purposes only and should not be construed as legal advice.

¹⁰⁹ David S. Law, 'Why has judicial review failed in Japan?', 88(6) *Washington University Law Review* 1425 (2011).

¹¹⁰ OHCHR, 'Human Rights Committee considers report of Japan', 16 July 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14878&LangID=E#sthash.wiFwi0wk.dpuf>.

¹¹¹ *Second periodic report of Japan to the UN Committee on the Rights of the Child*, para. 28.

¹¹² *Third periodic report of Japan to the UN Committee on the Rights of the Child*, para. 46.

¹¹³ Article 8 of the Provision of Investigation and Disposition on the Incident of Violation of Human Rights (*Jinken Shinpan Jiken Cho-sa Shori Kitei*), available at: <http://www.moj.go.jp/content/000002021.pdf>.