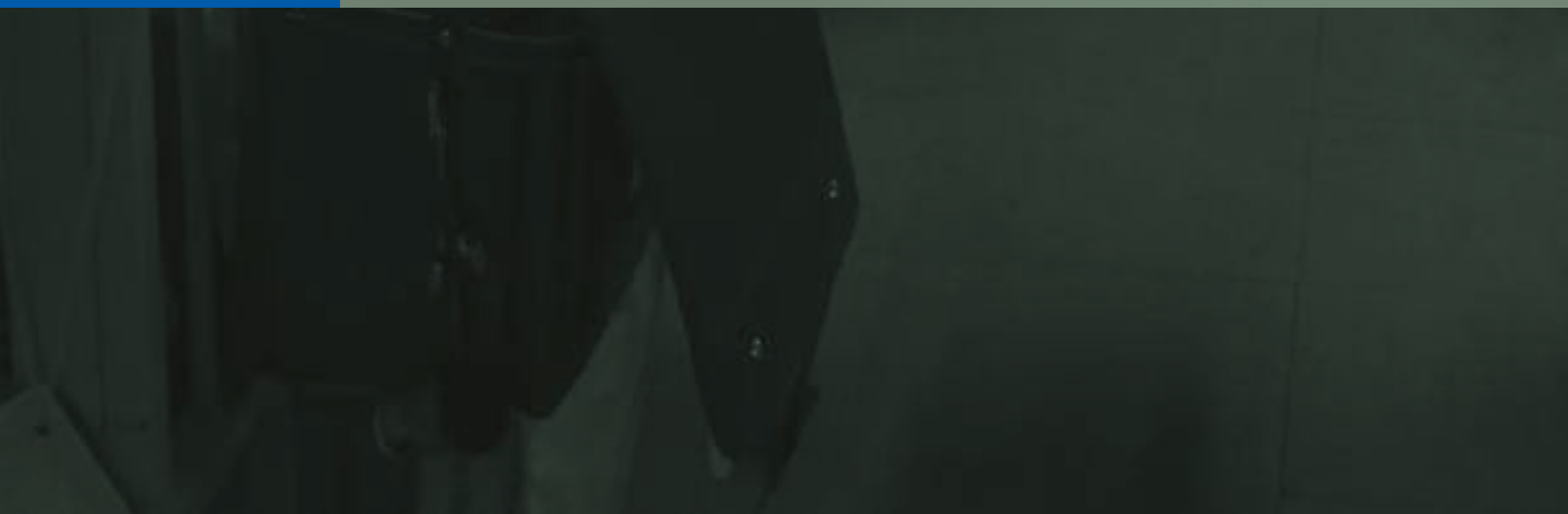
HUMAN RIGHTS WATCH

WITHOUT DREAMS

Children in Alternative Care in Japan



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Glossary of Terms

Adoptive (registered) foster parents: Foster parents who ultimately wish to adopt a child.

Alternative care: Care provided for children whom the government determines do not have biological parents or original caregivers who can care for them appropriately.

Child care institution: Institution for children, except for infants, until they graduate from high school, or are 15 or older and leave the education system.

Child guidance center: Office operating under a prefecture-level government or an ordinance-designated city that is tasked with improving the wellbeing of individual children.

Foster Family Group Home (Family Home): Residential setting under the alternative care system designed to provide family-based care for five to six children.

Group home for independent living: Residential setting for 15 to 19 year olds who have left the education systemand been released from an alternative care institution or other care facilities, and for persons within that age group whom the prefecture governor determines need continued support.

Infant care institution: Institution in the alternative care system for newborns and infants.

Kinship-based (registered) foster parent: A foster parent who is a relative within the third degree of consanguinity of the child, such as grandparents and older brothers and sisters, but not uncles and aunts.

Short-term therapeutic institution: Institution for children who face difficulties in daily life because of emotional or behavioral problems and who need psychological care.

Specialized (registered) foster parents: Foster parents for children whom the government determines need specialized care, including children who have faced traumatic experiences caused by mental and/or physical abuse; children who have come

into conflict with the law; and children who are determined to have physicalintellectual or developmental disabilities or mental health problems.

Temporary custody: Arrangement to confine a child, made by a child guidance center, after they are removed from their parents.


MAP OF JAPAN
Areas where Human Rights Watch conducted research
TOHOKU
Iwate
Miyagi
Saitama
Ibaraki
TOKYO
Chiba
Hyogo
Osaka
Kanagawa
Oita

Summary

> I don't have any dreams [for the future].
> —Nozomi M., 15, living in an institution, Osaka, December 2011

> Many of the staff look like they take care of us only because it is their job. They just play with us and they work. They don't love us.
> —Kenji M., 17, living in an institution, Tokyo, August 2012

> If Japan's alternative care system doesn't change after this, I don't believe it will change for many years to come.
> —Former child guidance center staff member, in charge of foster parent system at the time of the March 2011 earthquake and tsunami, Miyagi, May 2012

The March 2011 earthquake and tsunami that devastated much of the coastal area of Tohoku in northeastern Japan, killed almost 16,000 people and left 241 children orphaned. Almost all of the children were subsequently taken in by relatives, and received generous financial support from governmental and nongovernmental sources—a response that has given them, though indelibly marked by tragedy, a chance to rebuild their lives.

But thousands of other Japanese children who are either orphaned or are facing serious difficulties with their families remain out of the limelight, receiving far less attention and support from the Japanese government. In 2013, 39,047 childrenwere living in alternative care because the state determined that their parents were either unable or unwilling to care for them properly.[1]

[1]In 2012, the following number of children were recorded as entering the alternative care system: 2,237 children in infant homes, 5,401 in child care institutions, 475 in short-term therapeutic institutions, 826 placed with foster parents from their original family, and 179 placed in a family home from their original family. However, there is no data about how many new children entered in group homes for independent living. However, accurately determining the actual overall number of children newly entering the alternative child care system each year is difficult because children who enter institutions from other child care institution and other foster homes are included in government statistics.Human Rights Watch phone interview with an official of the Ministry of Health, Labor and Welfare, November 26, 2013.Although alternative care in the narrow sense does not include short-term therapeutic institutions, this number includes children in alternative care because of the focus on children with disabilities.See footnote 7.

A child plays inside an evacuation center in Kamaishi in Iwate prefecture, March 2011.
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The vast majority—over 85 percent—are placed in government-run institutions, which in 2013 housed just under 34,000 children.[2] The rest receive care from foster parents or are placed in smaller "family homes," where five to six foster children are cared for in one family. A relatively tiny number, 303 in 2011,[3] are eventually formally adopted. For most, institutional living lasts approximately five years. Such high rates of institutionalization contrast sharply with rates in countries with similar levels of development and economy.[4]

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[2]This is the sum of the number of children in infant homes (3,069), child care institutions (28,831), short-term therapeuticinstitutions (1,310), and group homes for independent living (430) in 2013;Ministry of Health, Labor and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2014,

http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed April 17, 2014), p.1.

[3]This number is some of children adopted from childcare institutions (21 children), infant care institutions (47), short-term therapeutic institutions (1) and foster parents (235) in FY 2011;

Ministry of Health, Labor and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013,

http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 3, 2013), p.84-86.

A Japanese government statistic uses the Japanese fiscal yearwhich is April to March. All yearly statistics cited in the report from Japanese government sources reflect that fiscal year, not the calendar year without mentioning it.

[4]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed December 6, 2013) p.23.

Sleeping quarters for children at a child care institution in the Kansai region. Even teenagers have to share a room with others, without any private space for themselves, June 2012.

This report examines Japan's alternative care system for children—a structure that includes infant care institutions, child care institutions, short-term therapeutic institutions, group homes for independent living, and foster care and family homes. It analyzes the system's organization and processes, and highlights the problems found in the institutionalization of most children (including infants), as well as abuses that take place in the system. It also considers the difficult post-institutional environment that many children experience once they have left alternative care and the many continuing problems in the foster care system. Finally, it examines the experience of orphans of the 2011 earthquake and tsunami.

Human Rights Watch finds that while there have been improvements in alternative care made in the aftermath of a spate of high-profile abuse cases in recent years, as well as a move to more fostering and other positive policy initiatives, an array of practical problems and specific abuses still plague the system.

These problems include physical and sexual abuse by both caregivers and children; poor physical conditions; overly large institutions in which physical space is limited and chances for bonding and learning life skills are limited; and insufficient mechanisms forchildren to report problems. Lack of support for children once they leave the alternative care system leaves them prone to homelessness, low-paying work, little opportunity for higher education,and difficulty navigating a social and employment structure in which a "guarantor" is crucial.

More broadly, the very system of institutional care may itself be abusive—depriving children of the smaller, family-based care that studies have shown is important for their development and wellbeing.

At the root of many of these problems is a long-standing predisposition of Japan's child guidance centers—which determine the placement of children needing such care—towards institutionalizing children rather than placing them in adoption or foster care. A number of reasons explored below inform this view, which includes deferring to the financial interest of existing institutions as well as deferring to the preference of biological parents to place the child in an institution rather than with a foster family. As one care worker at an institution in Tsukuba said, "In Japan, the interest of the parents is seen as more important than the interests of the child."

International human rights standards provide that institutionalizing children who need alternative care should be a last resort, only used after care by members of the extended family, or opportunities for adoption or foster care are deemed unsuitable and not in the child's best interests.

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Over-institutionalization is a problem for all children who need alternative care, but it is especially problematic for infants— around 3,000 of who lived in infant institutions in 2013. International standards set out that alternative care for young children under three should be, almost without exception, in family-based settings, and many child development specialists suggest that infants are at risk for attachment disorder, developmental delay, and neural atrophy when in institutional care. One care worker in a Tokyo institution told

Human Rights Watch that the infants housed there have no one to hold them when they cry at night because there are too few staff.

A high proportion of children living in institutions have some form of disability, mostly mild intellectual or emotional disabilities. According to the government, about a quarter of all children living in child careinstitutions have a disability.

Some children with disabilities in child care institutions are sent to specially designated schools reserved only for those with disabilities, and lose their opportunity to study in their community.Somechildren in alternative care are even more segregated from their peers and community,placed in so-called short-term therapeutic institutions that cater only to children with disabilities, and are restricted from going out, even for school. International human rights law and standards provide that children with disabilities have a right to be supported as necessary so that they can live in a community-based setting and have an inclusive education.

The confining nature and duration of "temporary child custody," in which children who have been removed from their families are first placed, is also problematic. Children are confined to these locked premises, and often restricted from going to school or having contact with the outside world. The law allows children to be held in such a facility for up to two months, although this can be extended indefinitely. In 2011, these children spent 28 days on national average in such custody. In the worst cases, they were there for about two years.

Many childcare institutes in Japan are modern, clean, and safe, but a few that Human Rights Watch visited were in poor condition. In one, the boys' wing stank of urine, electrical wiring was exposed, wallpaper was peeling, and much of the furniture was broken.

But more than the physical conditions, the very nature of life in these institutions is troubling. In particular, children lack privacy—new standards in 2011 raised the living space requirement per child in institutions to just 4.95 square meters—and opportunities to develop a bond or trusting relationship with an adult care giver. Care workers rotate in and out, and are often too overworked to provide consistent care to individual children.

The large size of many facilities compounds the problem: more than 50 percent of child care institutions have facilities that can house 20 or more children, and 30 facilities house

over 100 children. Life in an institution does not seem conducive to learning important life skills, whether forging human relationships, developing communication and social skills, or gaining daily coping skills that children in regular families would naturally learn, such as how to cook a meal or eat in a restaurant.

Lack of privacy, frustration, distress, and trauma from past family abuse can also lead to violence and bullying among children inside institutions. And the sense of stigma and shame that segregation in institutions can breed can also prompt bullying and violence in schools against children from institutions.

Japan's foster care system also has problems. Information collected by the government's child abuse reporting system for children in alternative care shows that the percentage of abuses by foster parents is higher than abuses recorded among children in an institutional environment. There are a few cases in recent years in which children died in foster parent care.

Moreover, almost a quarter of foster childplacements do not work out and the child is sent back to the institution. An inappropriate certification and matching process also causes problems. Foster parents are not provided with enough training, support, and monitoring. The child guidance center, which is positioned to deliver these inputs and training, does not have sufficient human resources and expertise to deliver. Authorities also fail to raise awareness about the role of foster parents. As a result, foster parent candidates who do register are often insufficiently qualified, which particularly affects placing children with diverseneeds,including disabilities.

Poor post-institutionalization outcomes for many children who growup in institutions reflect the failure of such facilities and the government to adequately prepare them for independent life once they leave school or turn 18. Just 73 percent of children living in the alternative care system complete high school in Tokyo, andjust 15 percent of children in alternative care complete a higher education (a course of study in a university, college, or vocational school). National high school completion rates stand at 81.5 percent, and

higher education graduation rates are 36.1 percent in Japan.[5]Far too many children leave their institutions only to end up in low-paying jobs, or jobless, and even homeless.

At the national level, the Japanese government has recognized the need to increase the use of foster parenting. But its plan for transforming the alternative care system is piecemeal and half-hearted.

In 2011, it set a goal to change the distribution of alternative care in the next 10-plus years to be equally divided three ways among the main larger institutions, house-based institutional care, and foster parents. This would still officially allow two-thirds of the children to remain institutionalized, whether in larger or house-based institutions.[6]In line with this policy, significant budgetary resources have been dedicated to reform and remodel many large-sized institutions into units and house-based institutional care.

Smaller institutions are recognized as better for children than larger ones, but they cannot be the same as family-based care. They may even lead to greater government dependence on this slightly improved form of institutional care, hindering transition to a full-fledged foster parent system that should not be put on hold to maintain existing institutional facilities. And while existing institutions understandably have a vested interest in maintaining their current funding and work, the government—consistent with its international legal obligations—should prioritize the best interests of the child, and treat the institutional transition towards a smaller-scale care system as provisional.

Japan should demonstrate its commitment to increasing use of adoption and foster parenting—and simultaneously decreasing institutionalization—by ensuring that its foster parenting system is of sufficient quality to protect children in need of care. Deaths of foster children have received high-profile attention, but steps still need to be taken to prevent future tragedies. Unless the current foster parent system is reformed and improved, simply

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[5]Ministry of International Affairs and Communications, "Table 2: Population of 15 Years Old and Over by Sex, Labour Force Status, Working Mainly or Partly, Wish for Work, Whether Wising to Work, Whether Seeking a Job, Age and Education" (総務省統計局　平成 24 年就業構造基本調査　第 2 表　「男女、就業状態・仕事の主従、就業希望意識・就業希望の有無、求職活動の有無、年齢、教育別 15 歳以上人口」)2012 Employment Status Survey, Statistics Japan, Statistic Bureau, http://www.estat.go.jp/SG1/estat/GL08020103.do?_toGL08020103_&tclassID=000001048178&cycleCode=0&requestSender=search(accessed March 23, 2014).

[6]Alternative Care Review Committee Regarding Child Care Institutions, Social Security Council Child Alternative Care Committee, "Issues of Alternative Care System and Future Goals"("社会的養護の課題と将来像"), July 2011, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/08.pdf (accessed January 14, 2014), p. 41.

increasing the number of placements could risk exposing children to more dislocation and anguish. Foster parents need better training, better support, and better monitoring in order to deliver quality care to children. Measures to promote and improve adoption should also be seriously considered.

The shortcomings of the existing systems can be overcome. But the situation will not change significantly so long as the current availability of institutional care facilities and difficulties in reforming adoption andfoster care are used as excuses to defend the status quo.

Just like the orphans created by the earthquake and the tsunami, every child in need of alternative care in Japan has the right to family life. If that cannot be with their biological parents, alternative solutions should be found for them with close relatives, or adoptive or foster families.

The care and support shown to the child survivors of the earthquake and tsunami demonstrate that the Japanese government, along with civil society, is more than capable of protecting its most vulnerable members. It is time that all children needing alternative care receive similar attention and support.

Key Recommendations

To the Japanese Diet

- Revise the Child Welfare Act so that an independent mechanism, such as a family court, can decide where a child should be cared for in the alternative care settings to ensure their best interests are met, in line with the UN Guidelines for the Alternative Care of Children.

To the Japanese Government

- Close all infant care institutions as part of a clear plan to transitionthe care of infants from institutions to families. Ensure that the plan is time-bound and has adequate resources and political support to reach its goals. Provide children under the age of 3 years with care in family-based settings.
- Amend the Foster Parents Placement Guidelines in line with the UN Guidelines for the Alternative Care of Children, which require that institutional care is limited to

"cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests," and direct prefecture governments, ordinance designated cities, and child guidance centers to implement the revised guidelines.

- The amendment should also specify a certain short period, such as 6 months for a child and 3 months for an infant, as the maximum period a child can remain in an institution before being cared in family-based settings, unless this is against the best interest of the child.This setting should be temporary only until the institutions, such as infant homes, are terminated.
- Direct the use of Child Welfare Act article 28 court process to place children with foster parents if any biological parents found to be abusive refuse to give consent to placing children in family-based care.
- Assign an independent panel of experts to develop a set of policy recommendations to ensure that adoption is considered before any other long-term arrangements, such as foster or institutional care;
- Utilize special adoption for newborns by consulting with pregnant women who are not willing or able to raise their babies.
- Make sure that all foster parents, including kinship-based foster parents and adoptive foster parents, receive adequate training, monitoring, and support, including foster parent allowance. In order to come up with the improved comprehensive programs, assign anindependent panel of expertsto make recommendations regarding the comprehensive training programs, support programs, and monitoring mechanisms for foster parents. It should also recommend concrete measures to improve the child guidance center's ability to support foster parents.

Methodology

Research for this report was conducted in Japan by a consultant for Human Rights Watch and two Human Rights Watch staff members between December 2011 and February 2014. Human Rights Watch interviewed 202 people. The interviewees included 32 children ages 7 to 17 who are in alternative care, and 27 adults who previously had lived in alternative care arrangements. Pseudonyms are used for all children and some adults quoted.

We also interviewed foster parents, institution administrators, care workers, prefecture and national level government officials (including staff members of 10 child guidance centers), academics specializing in child care issues, and experts from local nongovernmental organizations.

Human Rights Watch visited 24 institutions in the alternative care system, including 18 child care institutions, four infant care institutions, one group home for independent living, and one short-term therapeutic institution. Human Rights Watch also visited seven foster family homes and foster care homes.

Human Rights Watch also attended several conferences and workshops, including discussion events of children's self-help groups, Zenkoku-Jidou-Yougo-Mondai-kenkyukai (National Workshop for Alternative Care), the Foster Parent Convention in Kanto, Koshinetsu and Shizuoka, as well as meetings of foster parent organizations.

Interviews and field investigations took place in four different regions, and encompassed 10 prefectures out of total 47 prefectures in Japan, to ensure a comprehensive examination of local government policies that vary between prefectures. The regions visited were Tohoku (Iwate and Miyagi prefectures), Kanto (Ibaragi, Chiba, Saitama, Kanagawa and Tokyo prefectures), Kansai (Osaka and Hyogo prefectures), and Kyusyu (Oita prefecture).

In Tohoku, in addition to the general situation of the alternative care,Human Rights Watch conducted research on childrenwho lost their parents in the 2011 earthquake and tsunami. Kanto and Kansai were chosen since they have the largest population of children in alternative care in Japan and their systems have significant differences, seen by the

continued operation of many large alternative child care institutions in Kansai. Human Rights Watch also conducted work in Oita because in recent years it hadconsiderably increased foster parents placements.

Out of the 202 interviewees, 61 are from the Tohoku region. Human Rights Watch visited Tohoku four times, in December 2011, and in May, June, and August of 2012. We visited cities and towns devastated by the 2011 earthquake and interviewed earthquake orphans, caregivers taking care of the orphans, local government officials, and representatives of civil society organizations.

To gain additional perspectives on child care institutions, a Human Rights Watch researcher conducted daytime activities with children and stayed overnight in a child care institution in Chiba. The researcher also joined a three-day camping trip for high school children from alternative care.

In this report, the word "child" refers to anyone under the age of 18. The Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

The Japanese Child Welfare Law also defines child as anyone under the age of 18, but full age is 20 in Japan according to civil law.

Human Rights Watch ensured that all interviewees were informed in advance of the purpose of the interview, its voluntary nature, and the ways in which the data would be collected and used. Human Rights Watch obtained oral consent to conduct the interview from each interviewee. Whenever possible, which was in most cases, the interviews were held in private, but several were conducted in the presence of other people such as friends of the interviewees; interviewees consented to this arrangement.

Interviews were conducted in Japanese or in English and Japanese with the assistance of an interpreter. No one interviewed received any financial compensation.

In preparing this report, Human Rights Watch reviewed Japanese government documents and laws regarding alternative care and consulted reports written by United Nations and local and national nongovernmental organizations about alternative child care.

I. Japan's Alternative Care System

In 2013, 39,047 children lived in alternative care in Japan.[7]

After World War II, childcare institutions were mainly intended to care for war orphans and street children. Today, however, most children requiring alternative care are not orphans, but children who cannot live with their families because of parental abuse or neglect.[8]

The number of reported child abuse cases has been consistently rising since the late 1990s, when the issue was first recognized as a serious social problem.[9]In addition, children may live within the alternative care system if there is no parent to take care of them because they are deceased or incarcerated, or if their sole remaining parent has a disability so severe they cannot parent.

Children who are victims of domestic abuse or neglect account for 53 percent of the children and youth in child care institutions, 32 percent of those in foster family homes, and 32

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[7]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2014,http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed April 17, 2014), p.1.

The figure represents the total number of children in alternative care in a narrow sense (child care institutions, infant care institutions, short-term therapeutic institutions, foster parents, Foster Family Group Homes, group homes for independent living), which applies to children without parents to provide adequate care. The definition of alternative care more generally, on the other hand, includes; daycare centers which provide supplemental care, children's halls as well as mother and child life support facilities for assistance care (which support and encourage independent living of single mothers and their children), and blind children's centers for treatment care. The UN Guidelines for the Alternative Care of Children deems adoption as an appropriate and permanent solution, and applies to pre-adoption or probationary placement of a child with the prospective adoptive parents. The categorization of alternative care in this report is in accordance with the source below, which is the narrow definition as explained in the first sentence of this paragraph, unless otherwise noted; Takamasa Kato and Hidehiko Ogawa, *Alternative Care from Basics* (基礎から学ぶ社会的養護) (Kyoto: Minerva Shobo, 2012), p.12.

[8]Ibid, pp.28-35, 120.

[9]"Overview of the Ninth Investigation Report Regarding Child Abuse Resulting in Death and Other Similar Incidents as well as Statistics of Consulted Child Abuse Cases" ("子ども虐待による死亡事例等の検証結果（第 9 次報告の概要）及び児童虐待相談対応件数等"), The Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare press release, July 25, 2013,
http://www.mhlw.go.jp/stf/houdou/2r9852000037b58.html (accessed November 3,2013). The increase in the number of child abuse cases reported to child guidance centers is as follows:1,101 cases (1990), 1,961 (1995), 17,725 (2000), 34,472 (2005), 56,384 (2010) (The 2010 figure does not include those in Fukushima Prefecture). In Japanese fiscal year 2012, 66,807 abuse-related consultations were recorded. Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013,

http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 3, 2013), p.4. See also, Ministry of Health, Labour and Welfare, "Transition of the number of child abuse cases and deaths by child abuses."（"児童虐待相談の対応件数及び虐待による死亡事例件数の推移"), undated,http://www.crc-japan.net/contents/situation/pdf/10011301.pdf (accessed November 1, 2013) .

percent of infants in alternative care institutions, according to a 2008 government report.[10] These figures may not include those who were placed in alternative care for a different reason but were also victims of abuse or neglect, or whose experience of abuse or neglect did not come to light until after they were already separated from their parent or guardian.

Some institution staff said that up to 90 percent of children in care may have been victims of abuse or neglect.[11] According to the Ministry of Health, Labor and Welfare, the types of abuse experienced include neglect (70 percent), physical abuse (39 percent), psychological abuse (24 percent), and sexual abuse (4 percent).[12]

The child guidance center is the government body with principal responsibility for children in need of alternative care. There are 206 centers around the country, each reporting to the prefectural or ordinance-designated city government where they are located.[13]

Once informed by a school, medical facility, the police, or a member of the public of the potential need of a child for protection, staff members from these centers carry out investigations, ensure the safety of the child, and plan their support.[14]

Temporary Child Custody

When achild guidance center finds there is an urgent need for protection, the center's director makes the decision to remove the child from their parents and place them in temporary custody. In Japan, this does not involve any judicial process.[15]
These children are often placed in a facility for temporary custody within a child guidance center, where they are confined and often restricted from going to school or having contact

[10] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013,
http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed July 21, 2013), p.4.

[11] Human Rights Watch interview with child care institution "Koyama Home" care staff, Chiba, May 3, 2012.

[12] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013,
http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed July 21, 2013), p.5.

[13] In Japanese alternative care, prefectures and ordinance-designated cities have the same authority and obligation. To avoid using this long designation, this report mayuse only "prefecture" to express both.

[14] Ministry of Health, Labour and Welfare, "Guide to Handling Child Abuse" ("子ども虐待対応の手引き"), undated, http://www.mhlw.go.jp/bunya/kodomo/dv12/05.html (accessed September 20, 2012).

[15] After the temporary custody measures are implemented, it is possible to contend the validity of these measures through a lawsuit.

with the outside world.[16] Infants are temporarily placed in infant care institutions. Under the Child Welfare Act, a child may be held for up to two months in such a facility, although the child guidance center may authorize that this period be extended for an unlimited time.

On an average day in 2011, 1,541 children were held in temporary custody around the country, where they remained an average of 28 days. In Chiba prefecture, which tops the statistics, children were in temporary custody for 53 days.[17] In some especially lengthy cases, the child was in temporary custody for nearly two years.[18] In 2011, 36 percent of municipalities had temporary custody facilities that were over capacity.[19]

While the child is in temporary custody, the child guidance center attempts to sort out the issues between the parents and the child to allow the child to return to parental care. However, few special programs exist to assist parents with problems such as parental abuse that underlie many casesor drug addiction.[20]

If a child in temporary custody is deemed to need longer separation from the parents, the child guidance center places them in a child care institution or in foster parent care, detailed below.[21]

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[16]Human Rights Watch interview with staff members of temporary child custody in the Oita prefecture central child guidance center, Oita, October 18, 2013 and Tokyo Child Guidance Center, Tokyo,May 30, 2012.

[17]Ministry of Health, Labour and Welfare, "Regarding the Measures to Prevent Child Abuse" ("児童虐待防止対策について") undated, http://www.crc-japan.net/contents/situation/pdf/20130611.pdf(accessed January 25, 2014).

[18]Human Rights Watch interview with Ryoichi Yamano, former child counselor at child guidance center in Kanagawa prefecture, currently professor at Chiba Meitoku College, Chiba, July 14, 2012.

He said that in few cases, children stay in temporary shelter more than oneyear or even two years. There are various reasons for such long-stays, including the following: some child care institutions did not accept children with developmental disabilities; some parents gave their consent for placement of their child, but then withdrew it later, and then continued this cycle of consent and withdrawal of consent; the child guidance center thought the article 28 process under the Child Welfare Act(by which the center seeks a court order when biological parents seek to block a transfer to alternative care) took a long time and hesitated to use it, but then found that getting consent from the birth parents actually took longer time; the child guidance center did not use the article 28 process because they did not have confidence that the family court would authorize the placement. Those children who cannot go to school receive tutoring and other forms of education within the premise of the temporary custody facility. Human Rights Watch visit at Facility for Temporary Custody, Tokyo Child Guidance Center, May 30, 2012.Please note that in this report, the titles of interviewees reflect the positions they held at the time of interview.

[19] Ministry of Health, Labour and Welfare, "Countermeasure against child abuse" ("児童虐待防止対策について") undated, http://www.apan.net/contents/situation/pdf/20130611.pdf(accessed January 25, 2014) p. 26.

[20] Human Rights Watch interview with Hiroyasu Hayashi, professor of Social Welfare Studies in Japan Women's University, member of Institutional Management and Foster Parent Care Policies Working Group of the Ministry of Health, Labour and Welfare, Kanagawa, September 4, 2012.

[21]For example, only 57 percent of the children (874 out of 1,535) who left the facility for temporary custody in Tokyo went back home. Those who didn't were either: placed in child welfare facilities (424), matched up with foster parents (15), transferred to other child guidance centers/ institutions (194) or referred to a family court (6). Tokyo Child Guidance Center, "2012

Longer Term Care

The Japanese government's alternative care system comprises of:

- **Infant care institutions** for newborns and infants;[22]
- **Child care institutions** for children (except infants) until they graduate from high school, or are 15 or older and leave the education system;[23]
- **Group homes for independent living**for 15 to 19yearolds who have left the education systemand have been released from an alternative care institution or other care facilities, and for persons in that age group who the prefecture governor determines needs continued support.
- **Short-term therapeutic institutions** for children who experience difficulties in daily life because of psychological issues and pain and who need psychological treatment;[24]
- **Foster parent system,** which provides family care for one to four children in family home; and
- **Foster family group home system**, which provides family-based care for five to six children in a residential setting.

Business Overview" ("事業概要　2012 年（平成 24 年度）版"), undated,http://www.fukushihoken.metro.tokyo.jp/jicen/others/insatsu.files/ji2012_Part4.pdf(accessed March13, 2014) p.104

[22] While by definition, the role of infant care institutions is to provide care for infants (younger than 1 year old), in reality there are many cases in which children as old as 2 to 3 years old are admitted to these facilities. Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Infant Care Institutions Management Guidelines" ("乳児院運営指針"), March 29, 2012, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_05.pdf (accessed July 1, 2013). Also, in some special cases, such as those with disabilities, infant care institutions may look after children up to six years old. Human Rights Watch interview with Yoshio Imada, director of Japan Red Cross Medical Center Infant Care Institution, Tokyo, July 24, 2012.

[23] While child care institutions in principle accept children and youth up to the age of 18 except for infants, infants in special needs may be placed in these institutions as well. Ministry of Health, Labour and Welfare, "Child Care Institutions Management Guidelines" ("児童養護施設運営指針"), March 29, 2012, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_04.pdf(accessed January25, 2014).

[24]Although alternative care in the narrow sense does not include the short-term therapeutic institution, Human Rights Watch decided to include mention of these institutions, define what they are, and include the number of children in these institutions. See foot note 7.

Number of Children in Alternative Care, October 1, 2013[25]	
Child care institutions	28,831
Infant care institutions	3,069
Short-term therapeutic institutions	1,310
Foster children in foster parents	4,578
Foster children in foster family group home	829
Youths (age 15-19) in group homes for independent living	430
Total:	**39,047**

Typically, child placement in alternative care takes place only after the child's parent or guardian agrees.[26] The child guidance center plays an important role in trying to reach such an agreement with the child's parent or guardian, but when this fails, the director of the center or each prefecture may apply to a family court for approval to place the child in an institution or foster parent's care under article 28 of the Child Welfare Act by demonstrating that the child's welfare is seriously violated in the custody of the parents. For those children recognized by the family court to need institutional or foster parent care, a renewal procedure is required every two years.[27]

Child Care Institutions

Most children in the Japanese alternative care system are housed in institutions; only 14.8 percent of children receiving alternative care do so from foster parents.Children sent to an institution spend an average of five years there,but as many as 18 percent stay longer than 10 years.[28]

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[25]These are the statistics for children in alternative care as of October1, 2013, except for the number of foster children in the system, which is a statistic current as of March 31, 2013. Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2014, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed April17, 2014), p.1.

[26]According to statistics from the National Conference of Child Guidance Center Directors (全国児童相談所長会) in 2010, 29,308 out of 29,755 children were placed in institutions after a decision by biological parents to agree to the placement, and 2,591 out of 2,610 children were placed with foster parents only after their biological parents concurred with that action. The remaining 466 children (447 in institutions and 19 in foster parent care) were placed by CGC director recommendation at least once since a child is separated from his/her parents, using the article 28 process of the Child Welfare Act.

National Child Guidance Center Directors Conference, " Report: Survey Result Regarding Parental Authority System," ("『親権制度に関するアンケート調査』結果報告)"), www.moj.go.jp/content/000048447.pdf(accessed March13, 2014), p.1.

[27]Child Welfare Act, art.28, para. 1-2. See discussion below in section III.

[28] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2014, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed April 17, 2014), p.22. According to the government statistics, 20 percent of children stay in child care institution for less than one year, 14 percent stay for one to two years, and 10 percent stay for two to three years.

Child care institutions in Japan are large establishments, with an average institutional capacity of 55 children. The largest institution can hold 164 children.[29]

Japanese government classifies institutions into three categories; large institutions with 20 children or more (280 locations), middle-sized institutions with 13 to 19 children (147 locations), and smaller facilities with 12 or less children (226 locations).[30]

However, classifying some of these institutions as "middle-sized" and "small-sized" does not mean they are small. Rather such institutions could have multiple units under their purview, and the total number of children in the so-called small and middle-sized institutions can be quite large—in fact, similar in size to the so-called "large-sized" institutions that could have more than 100 children.[31]

In "large" institutions, children live in a dormitory-type residence sharing rooms, bathrooms, dining rooms, and living rooms with dozens of other children. 51 percent of child care institutions in Japan have one or more "large" residences.

Efforts to provide care in smaller groups within institutions through house-based or other unit-based care facilities are intended to transform the large-scale institutions into small-scale systems to provide better services and downsize the living environment for children. The unit-based care system in institutions divides the institution into smaller groups of six to eight children that are independent and clearly divided from each other. The house-based institutional care is operated by a larger institution but accommodates up to six children under the care of around three staff in a separate rented local residence.

Infant care institutions and short-term therapeutic institutions will be discussed in section II.

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[29] Human Rights Watch email interview by Human Rights Watch with Tetsuo Tsuzaki, Professor at Kyoto Prefectural University, Theory of Child Care and Comparative Social Welfare, October 16, 2013. Human Rights Watch phone interview with officer in the Family Welfare Division, Ministry of Health, Labour and Welfare, November 5, 2013.

[30] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 5,2013), p.7.Please be informed that this number shows only how many institutions have which size of residence. For example, when one institution has seven units each with eight children and two units each with thirteen children in its premise, this data counts twice, one for "small-sized-institution" and one for "middle-sized institution."

[31] Phone interview with officer in the Family Welfare Division, Ministry of Health, Labour and Welfare, November 5, 2013.

Foster Care

In 2012, 4,295 foster children lived in 3,292 households in Japan and 671 children lived in 177 foster family group homes. Japan's foster care system is made up of four types of foster parent arrangements and one foster family group home arrangement:

Foster Care Arrangements

Registered foster parents: This is themost basic type of foster parent arrangement in Japan. Registered foster parents must renew their status every five years by completing a one-day training session conducted by prefectural or city-level officials, or by nonprofit organizations that are entrusted to conduct the trainings. They receive the foster parent allowance of 72,000 yen (US$720) per month paid by the prefectural or city government and the national government, plus general living, educational, and medical expenses.[32] There were 7,001 households of registered foster parents in 2012, yet slightly more than one-third (2,617) were matched with a child, providing care for the total of 3,283 children.

Specialized (registered) foster parents: If the child guidance center determines that a child needs special care, they are placed with specialized foster parents. These children may include those who have faced traumatic experiences, such as abuse that has affected them mentally and physically; children who have come into conflict with the law; or children with physical or mental disabilities. Specialized foster parents have more than three years of experience as a registered foster parent or institutional care staff, have completed government organized training for specialized foster parents, and should be capable of dedicating adequate time and resource to caring for the child. Their registration as a specialized foster parent needs to be updated every two years followed by a training session. They receive the specialized foster parent allowance of 123,000 yen ($1,230) per month and general living, educational, and medical expenses. In 2012, there were 602 households registered as specialized foster parents, but only 152 had been matched with at least one child as specialized foster parents, covering 184 children.[33]

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[32] As of 2013, monthly general living expense covered by the government is54,980 yen ($550) for an infant, and 47,680 yen ($480) for others. Foster parents also receive additional funds for educational expenses, preparation for a job or higher education, and medical services.

[33]Furthermore, there are also many cases in which those who are certified as specialized foster parents serve simply as registered foster parents. Kiyoshi Miyajima,"Alternative Care Placement of Child Abuse Victims: From the Social Work Viewpoint"("虐待を受けた子どもを委託する場合ーソーシャルワークの立場から"), Foster Parents and Children (里親と子ども) magazine, Vol.2, October, 2007.There is a huge gap between the overall number of specialized foster parents and the number of specialized foster parents successfully matched with a child. This is because some specialized foster parents

Adoptive (registered) foster parents: These are foster parents who ultimately wish to adopt a child. In 2012, there were 179 children placed in 183 such households out of a total of 2,124 households that were registered as adoptive foster parents.[34]This is often used for building stronger ties between children who are unlikely to be able to be reunited with their biological family, and foster parents who are unable to have a biological child. Slightly more than 17 percent of foster parents eventually adopt their foster children in Japan, and others remain as foster parents.[35] However, due to financial reasons, many foster parents who might actually wish to adopt the child they are caringfor, register as foster parents not as adoptive foster parents. Japanese government policy dictates that if they register themselves as adoptive foster parents, they lose the foster parent allowance of 72,000 yen ($720) per month paid by the prefectural or city government, and the national government. They only receive general living, educational, and medical expenses.

Kinship-based (registered) foster parents: In this type of arrangement, relatives within the third degree of consanguinity take in the child and become the responsible relative for providing care for the child. Kinship-based foster parents are not entitled to receive a registered foster parent allowance, but receive general living expense, educational expense, and medical expense coverage. Withinthe third degree of consanguinity, there is an exception for uncles and aunts who under Japanese civil law are not considered to be obligated to take care of children, and therefore are placed in the category of registered foster parents who are eligible for the foster parent allowance. This exception was created in 2011 after many uncles and aunts started taking care of their nephews and nieces because of the 2011 earthquake. In 2012, there were 649 children placed in 434 households out of 445 registered households in this category.[36]

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receive children in the status of registered foster parents, not as specialized foster parents, but are still counted bureaucratically as "specialized foster parents without any child placement."The disparity also results because some specialized foster parents run family homes and are not counted as specialized foster parents matched with children.

[34]The number of children placed in foster parent's care does not match up the number of foster parents receiving a foster child, which seems to be a statistical error. The Ministry of Health, Labour and Welfare responded to an inquiry from Human Rights Watch regarding this issue, by admitting that they were aware of the statistical errors which were thought to be caused by duplicate calculations of the same foster parents who are registered in multiple categories. However, the ministry was unable to provide any further clear reasoning or explanation on this issue.

[35]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed March 1, 2014), p. 86.

[36]Human Rights Watch raised the question with officials of the Ministry of Health, Labour and Welfare about why persons would register with the Child Guidance Center as kinship-based foster parents and then not have a child who is their relative placed with them. Ministry officials could give no clear answer for this, but speculated that their records might not be fully updated, Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状

Foster family group home: Established in 2009, this system is designed to enlarge the scale of the foster parent system by providing family-based care for a group of five or six children in a residential setting.[37]

In all, there were 8,726 households registered under the foster parent system in 2012, but as many as 60 percent of the registered foster parents were not matched up with a child. This issue will be discussed later in "Inappropriate Certification and Matching," section III.

Steps to Foster Parent Certification, Registration, and Child Placement

The foster parent system is run and managed by the child guidance center established in each prefecture and ordinance-designated city. Once a potential foster parent submits an application to the child guidance center, the candidate receives basic pre-certification training, residence visits, and inspection.

The inspection results are forwarded to the prefectural governor or ordinance-designated city mayor for assessment by the Child Welfare Advisory Council as to the candidate's suitability as a foster parent.

To become a certified foster parent, candidates must meet the requirements outlined in the Ordinance for Enforcement of Child Welfare Act, including devotion to childrearing, adequate financial status, and completion of training for registered foster parents.[38] These

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について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 3, 2013), p.1; Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Notice on Foster Parent Placement Guidelines" ("里親委託ガイドラインについて"), in Foster Parent Placement Guidelines (里親委託ガイドライン), Issue 0330, No.9, March 30, 2011,http://www.mhlw.go.jp/stf/shingi/2r9852000018h6g-att/2r9852000018hlp.pdf (accessed November 3, 2013); and Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Regarding the Operation of Foster Parent System" ("里親制度の運営について"), in Foster Parent Placement Operation Requirements Overview (里親委託運営要綱), Issue No. 0905002, September 5, 2002, http://www.mhlw.go.jp/stf/shingi/2r9852000018h6g-att/2r9852000018hlp.pdf (accessed November 3, 2013). Some researchers note that the small number of foster parents in Japan is even more aggravated statistically by a low rate of registration as foster parents by people who foster their relative's child. Human Rights Watch interview with Hiroyasu Hayashi, professor of Social Welfare Studies in Japan Women's University, member of Institutional Management and Foster Parent Care Policies Working Group of the Ministry of Health, Labour and Welfare, Kanagawa, September 4, 2012.

[37] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 3, 2013). p. 21.

Although some Foster Family Group Home facilities are founded and run by main child care institution bodies, many cases take a form of expanded foster families that have continued to accept and care for more foster children up to six. Therefore, this form of care is typically considered to be a type of the foster parent care system in Japan and, in principle, treatedequally as foster parents. The term "foster parent" used in this report includes foster family group home facilities unless noted

national certification requirements for foster parents are supplemented in some cases by additional requirements from the prefecture or city, and so there are some variations.[39]

When there is a potential foster child to be placed in care, the child guidance center arranges a match-up process, which involves a series of visits by the potential foster parents to the facility for temporary custody or institution where the child is placed, as well as trial placements of the child with the potential foster parents in their residence before the placement is made official.[40]

Financial Support for Foster Parents

The government gives foster parents money to cover the general living costs of a child. As of 2013, this was 54,980 yen ($550) per month for infants, and 47,680 yen ($480) per month for others. Foster parents also receive additional funds for educational expenses, preparation for a job or higher education, and medical services. In addition, a monthly allowance of 72,000 yen ($720) is granted to registered foster parents for the first child they care for, and 36,000 yen ($360) for each subsequent foster child.

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otherwise. However, some argue that nurturing six children at once, even if it were under single residential setting, may not be exactly the same as what we call "foster parent's care." Human Rights Watch interview with Tadami Takahashi, president of Iwate foster parent association, Iwate, May 17, 2012.

[38] Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Notice on Foster Parent Placement Guidelines" ("里親委託ガイドラインについて"), in Foster Parent Placement Guidelines (里親委託ガイドライン), Issue 0330, No.9, March 30, http://www.mhlw.go.jp/stf/shingi/2r9852000018h6g-att/2r9852000018hlp.pdf (accessed July 26, 2013).

[39] These certification requirements for foster parents vary among prefectures and cities. The Tokyo Metropolitan Government, for example, sets out requirements including those related to residential conditions which demand that "appropriate space be available according to the family structure with at least two rooms making up 10 tatami mat space (approximately 16.5 square meters) or larger in principle," as well as income standards which require "a total income of the household exceeding the welfare standards in principle," meaning the individual or family must earn more than the amount that would qualify them for public welfare assistance. The Tokyo Metropolitan Government also sets out a requirement that if the foster parent candidate does not have a partner, he or she must be recognized as able to provide adequate care for the child solo. If no issues are raised through this process, the candidate will then be certified as a foster parent and registered.Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Notice on Foster Parent Placement Guidelines" ("里親委託ガイドラインについて"), in Foster Parent Placement Guidelines (里親委託ガイドライン), Issue 0330, No.9, March 30, 2011, http://www.mhlw.go.jp/stf/shingi/2r9852000018h6g-att/2r9852000018hlp.pdf (accessed November 3, 2013). Also see Bureau of Social Welfare and Public Health, "Tokyo Standard for Foster Parent Certification"
http://www.fukushihoken.metro.tokyo.jp/kodomo/satooya/seido/hotfamily/satooya/s_kijun.html(accessed March13, 2014).

[40] Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Notice on Foster Parent Placement Guidelines" ("里親委託ガイドラインについて"), in Foster Parent Placement Guidelines (里親委託ガイドライン), Issue 0330, No.9, March 30, 2011,http://www.mhlw.go.jp/stf/shingi/2r9852000018h6g-att/2r9852000018hlp.pdf (accessed July 27, 2013; Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Regarding the Operation of Foster Parent System" ("里親制度の運営について"), in Foster Parent Placement Operation Requirements Overview (里親委託運営要綱), Issue No. 0905002, September 5, 2002, http://www.mhlw.go.jp/stf/shingi/2r9852000018h6g-att/2r9852000018hlp.pdf (accessed July 27, 2013).

Specialized foster parents receive more: 123,000 yen ($1,230) per month and 87,000 yen ($870) for each child after the first.[41] However, kinship-based foster parentsand adoptive foster parents receive no monthly allowance.[42]

Post-Placement Support

After a child is placed with foster parents, the child guidance center staff or similarly positioned personnel (e.g.foster parent assistance counselors in child care institutions) visit the household to inspect the situation, and give guidance and support.[43]

Foster parents are encouraged to get support from foster parent groups, which host gatherings, and provide training and consultation services. Some services, such as trainings, are subsidized by prefectural governments and entrusted to foster parent groups and other nonprofit organizations that act as foster parent support agencies. Starting from 2012, foster parent assistance counselors have also been deployed in child care institutions and infant care institutions to provide support and consultation for foster parents. Problems regarding post-placement support are detailed later in this report (see sectionIII).

Adoption

Adoption is generally deemed to better serve a child's interests than foster care or institutional care, should family reintegration prove impossible within an appropriate period. However, child guidance centers are often reluctant to use adoption and consequently, in 2011, only 303 children were adopted through the child guidance

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[41] These figures have been in effect since 2009.Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf(accessed July 27, 2013), p.18.

[42] Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Notice on Foster Parent Placement Guidelines" ("里親委託ガイドラインについて"), in Foster Parent Placement Guidelines (里親委託ガイドライン), Issue 0330, No.9, March 30, http://www.mhlw.go.jp/stf/shingi/2r9852000018h6g-att/2r9852000018hlp.pdf (accessed July 26, 2013). Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Regarding the Operation of Foster Parent System" ("里親制度の運営について"), in Foster Parent Placement Operation Requirements Overview (里親委託運営要綱), Issue No. 0905002, September 5, 2002, http://www.mhlw.go.jp/stf/shingi/2r9852000018h6g-att/2r9852000018hlp.pdf (accessed January 23, 2013).For those uncles and aunts who since 2011 now register themselves as general foster parents, rather than as kinship based foster parents, they are provided with the foster parents allowance from the government.

[43]The "Foster Parent Placement Guidelines" issued by Ministry of Health, Labour and Welfare stipulates that child guidance center staff or foster parent support agency personnel should pay a visit approximately within a week after the child placement, followed by another about a month later, and occasionally after that as appropriate.

centers.The same year, 127 additional children were adopted through registered private agencies.[44]

The family court must grant permission for a child to be adopted. For the adoption of children up to age 15, a legal representative of the child, including biological parents, consents on their behalf.[45]

Japan also has the system of special adoption that promotes a relationship similar to with biological parents, under which it terminates the relationship between the biological parents and the child. Special adoption is allowed only for children under six years old and after the family court decision following more than six months' probation period.[46] Some prefectures, such as Aichi, try to find special adoptive parents for newborn babies after consultation with pregnant women who are either unwilling or unable to raise their babies, but this trend has not spread.

[44]Ibid.

[45] Civil Code,article 797, 798.

[46]Ibid, article 817-2 – 817-9.

II. Abuse and Problems in Institutions

> I was having a very difficult time in my life, and all the friends I met at junior high school had parents, and I wanted to have parents as well.
> —Masaki, 15, who lives in an institution, Tohoku December 2011

Recent efforts to end the traditional use of physical punishments against children living in institutions have led to a significant decrease in incidents of physical abuse, although a small number are still reported.[47] But children living in institutions continue to face abuse, bullying, and harassment from their peers, both from within and outside their institution.

Moreover, the conditions in some institutions may also qualify as abusive, as may the overuse of institutions. Extensive research by child development experts has shown that institutionalization can cause severe developmental delays, disability, and irreversible psychological damage. Such negative effects are more severe the longer a child remains in an institution, or when the conditions of the institution are poor.

Physical and Sexual Abuse by Adults

Physical abuse, including hitting, kicking, andforcing children to stand in place or sit in the Japanese traditional *seiza* style for a long time[48]—often meted out under the guise of discipline—used to be widespread in child care institutions in Japan. Achild care institution chief told Human Rights Watch that in the past they often frequently "raised a hand" to a child.[49]

However, growing societal opposition to the use of physical punishment, combined with a series of cases from late 1990s to mid-2000s that publicly exposed abuses in certain institutions, eventually led to reform.

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[47]Human Rights Watch interview with Satoshi Urashima, Representative of Association for Stop Abuse in Institutions (施設内虐待を許さない会), October 17, 2013.

[48]Seiza-style is Japanese traditional formalposture for sitting, done by folding legs underneath thighs, while resting the buttocks on the heels. It is difficult to physically maintain this position for an extended period of time.

[49] Human Rights Watch interview withYuji Morita, director of child care institution "Koyama Home," Chiba, April 24, 2012.

In April 2009, the government finally revised the Child Welfare Act and mandated that "institutional staff and similarly positioned personnel must not conduct any actions which may cause harmful impacts on children in care, physically or mentally."[50]

New guidelines to prevent child abuse in alternative care were also formulated, requiring that the number of child abuse cases in institutions and the foster parent's care be reported to each municipality, and published.[51] Many experts whom Human Rights Watch interviewed said the tendency of alternative care providers to view physical punishments as customary has receded, and the gravity of child abuse by institutional staff has significantly diminished.[52]

In 2011 (the most recent year for which information has been published), 193 cases of abuse in alternative care were reported through this child abuse reporting system.[53] Of those, government investigations found 46 credible claims, including 37 cases of physical abuse, 6 cases of psychological abuse, 2 cases of neglect, and 1 case of sexual abuse. Of the 46 valid cases, roughly two-thirds were in child care institutions, and 13 percent were foster care and foster family group homes. The remaining 26 percent of cases included one in an infant home, four in group homes for independent living, three in child guidance centers (including temporary shelters); and four cases in institutions for children with disabilities.

Incidents included physical violence, such as slapping and kicking by careworkers at institutions when reprimanding children.[54] For example, three workers at one child care institution hit a child in the head, and used other violence after they found the child had hit his younger brother, saying, "He would not understand unless [he was] being hit." The

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[50]Law No. 164 of 1947, as amended, article 33-11.

[51] Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, " Child Abuse Prevention Guidelines for Children in Alternative Care—For Prefectures and Cities with Designated Child Guidance Center" ("被措置児童等虐待対応ガイドライン～都道府県・児童相談所設置市向け～"), No. 0331002, March 2009, http://www.mhlw.go.jp/bunya/kodomo/pdf/tuuchi-45.pdf (accessed July 25, 2013.)

[52] Human Rights Watch interviews with Ryoichi Yamano, former child counselor at child guidance center in Kanagawa prefecture, currently professor at Chiba Meitoku College, Chiba, July 14, 2012; Kunio Kuroda, director of child caring institution "Futaba MusashigaokaGakuen," Tokyo, May 6, 2012; Junichi Komiya, journalist specialized in alternative care, Tokyo, October 9, 2012; and Masato Hirayu, lawyer, Tokyo, October 9, 2012.

[53] Ministry of Health, Labour and Welfare, " Abuse Reporting System for Children in Alternative Care Implementation Status in 2011" ("平成２３年度における被措置児童等虐待届出等制度の実施状況"), October 15, 2012, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo04-04.pdf (accessed April 1, 2013).

[54] Ministry of Health, Labour and Welfare, " Abuse Reporting System for Children in Alternative Care Implementation Status in 2011" ("平成２３年度における被措置児童等虐待届出等制度の実施状況"), October 15, 2012, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo04-04.pdf (accessed April 1, 2013).

workers told the child: "You should experience the pain yourself." At another child care institution, a staff member had sexual relations with a child.

One child interviewed by Human Rights Watch recalled that a staff member always hit a child if it was perceived the child did something wrong. "Everyone saw it, but did not stop it or even say anything," the interviewee said.[55]

However, the nature of the subject of abuse is so sensitivethat some victims are reluctant to report what has happened to them. In addition,many children do not know they can report their experience to outside organizations. As a result, there is a strong possibility that the actual number of institutional abuse cases is higher than official figures suggest.[56]

Harassment and Violence among Children

Lack of privacy, frustration, overcrowding, and a failure to separate particularly vulnerable children from older, more aggressive children can lead to violence and bullying. Many children told Human Rights Watch that bullying or harassment by other children was the hardest part of living in an institution. One institution head told Human Rights Watch: "We are aware that there is always a power dynamic between the older children and younger ones."[57]

Aki K., a junior high school student, was bullied by other children at her institution in Tokyo. She told her care worker about the harassment, who asked the children to stop. However, the bullying continued. Aki said: "I wanted the head of the institution to ask the children to stop it with a forceful voice," but he did not do anything and the abusive situation continued.[58]Aki was taken into a storeroom and sexually abused by other children from her institution. Aki said, "I was troubled all the time when I was in the

[55]Human Rights Watch interview with Aki K., foster child, female junior high school student, Kanto area, July 2012.

[56]Human Rights Watch interview with Tsuneo Yoshida, professor of Law at Surugadai University, Tokyo, July 6, 2012.

Satoshi Hayakawa, an institutional worker told Human Rights Watch that staff members and institutions don't want to report their cases, and that when he found one case where a staff pulled on a child's ear, he strongly stated the institution had to report the case to the governmentand the institution finally did; Human Rights Watch interview with Satoshi Hayakawa, worker at child care institution Meguro Wakabaryo, Tokyo, August 1, 2012.

[57]Human Rights Watch interview with child care institution head, Tohoku, December 4, 2011.

[58]Human Rights Watch interview with Aki K., foster child, female junior high school student, Kanto area, July 2012.

institution not being able to talk to anybody about the harassment. I wished they would have noticed it without me having to tell them."[59]

Aki's foster mother told Human Rights Watch, "The institution was concerned of the risk of pregnancy should she stay any longer and she was sent to us right after they found out about the assaults."[60]

At another institution, the head told us that, on average, there was one incident of sexual abuse between children each year.[61]

Joji S., a 15-year-old living in an institution in Osaka, told Human Rights Watch:

> I was very aggressive when I was in elementary school. Punching and damaging all sorts of things. I was fighting all the time in the institution. I even punched the other children for small things that didn't mean anything…. In my previous institution I noticed that some spaces are blind spots for the care workers, and sometimes the children were being threatened or crying [there].[62]

Toshiyuki Abe, 19, recalled that when he was in elementary school, he was brutally bullied by older children at his institution. He told Human Rights Watch: "I was beaten by a baseball bat, hit in the face. … The older guys would just hit me if they were having a bad day." He added that the institution staff knew about the bullying but the staff person "was an old lady so she didn't say anything."[63]

Children also face stigma and exclusion at school due to the fact that they live in institutions. Hana T., 13, told Human Rights Watch, "At school, classmates know I come from the institution and they keep some kind of distance."[64]

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[59]Human Rights Watch interview with Aki K., foster child, female junior high school student, Kanto area, July 2012.

[60]Human Rights Watch interview with a foster mother(name and details withheld by Human Rights Watch), Kanto area, July 2012.

[61] Human Rights Watch interview with residential institution head, Yokohama, October 16, 2013

[62]Human Rights Watch interview with Joji S., 15, who lives in an institution, Osaka, December 12, 2011.

[63] Human Rights Watch interview with Toshiyuki Abe, 19-year-old male formerly admitted to institution as a child, Chiba, July 22, 2012.

[64] Human Rights Watch interview with Hana T., 13 years old, Osaka, December 14. 2011.

An institution head told Human Rights Watch that children from his institution struggle in school, "Because they're living in an institution, because they are not living in families. It's out of the typical Japanese picture, so if you're out of that they feel bad about it."[65] Maiko, now 20 years old but still living in an institution, noted:

> There are children living in residentialcare institutions who are hiding that fact, because of the ideas that some people have about people who live in residential care institutions.[66]

Nozomi M. told Human Rights Watch:

> I feel unhappy about living in an institution because when I go to school next door everyone knows where I came from. For example, last year, all of a sudden, my classmates started saying that I was supported by the taxes that they pay. And this year … when they were talking about going on some trip doing something fun, they said "Because you come from the institution you can't make it because of the money and the time." All of the time, they are saying, "Probably you can't do it because you come from the institution."[67]

Institutionalization of Infants

The vast majority of infants (children under 2) who require alternative care in Japan end up in institutions—despite studies that indicate that children under 4 risk developmental and psychological damage when they do not have adequate opportunities to bond with their parents or care giver.[68]

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[65]Human Rights Watch interview with head of therapeutic institution head, Yokohama, October 16, 2013.

[66] Human Rights Watch interview with Maiko W., 20 years old but still living in an institution, Tohoku, December 11, 2011.

[67]Human Rights Watch interview with Nozomi M., 15 years old, Osaka, December 12, 2011.

[68]Frank DA et al.,*Infants and Young Children in Orphanages: One View from Paediatrics and Child Psychiatry*,in Pediatrics, 1997, 97(4): pp. 569–578.One study on institutions in Europe found that children under the age of 3 placed in residential care institutions without parents were at risk of attachment disorder, developmental delay, and neural atrophy in the developing brain. The study concluded: "The neglect and damage caused by early privation of parenting is equivalent to violence to a young child." University of Birmingham, UK Centre for Forensic and Family Psychology.Cited in: International Foster Care Organisation (2005).Submission to the Committee on the Rights of the Child Day of General Discussion. Available at: http://www.crin.org/docs/resources/treaties/crc.40/GDD_2005_IFCO.pdf

Out of 2,032 children under the age of 2 who required alternative care in 2011, merely 15 percent (310 children) were placed into foster parent care and the remaining 85 percent (1,722 children) were admitted to infant care institutions.[69] Almost half of all municipalities and government ordinance-designated cities did not have a single case of foster parent placement for infants under one year old in 2011.[70]In 2011, 2,963 children were living in infant care institutions. [71]

Baby beds lined up side by side at an infant care institution in Tokyo, where newborns and infants up to age two are placed in two bedrooms with a capacity of 35 children each, August 2012.
© 2012 Sayo Saruta/Human Rights Watch

[69]Most children are fostered when they are two years old (16 percent of all foster parent placements or 656 cases), followed by one year olds (12 percent of placements or 513 cases), and under one year olds (10 percent of placements or 402 cases). Just 9 percent (392 cases) of three year olds are fostered, 7 percent (272 cases) of four year olds, 6 percent (244 cases) of five year olds, and less than 4 percent of all children 7 years old or older; National Child Guidance Center Directors Conference, "Report: Child Guidance Center's Study on Foster Parent Placement and Placed Children (Issue 91)" ("全児相（通巻第 91 号別冊)『児童相談所に置ける里親委託及び遺棄児童に関する調査』報告書"), July 2011, p. 57.

[70] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, *Outlook of New Alternative Care Placements for Infants in 2011 (Prefecture/City Level)*("新生児等の新規措置の措置先 (都道府県市別) (平成 23 年度)"), 2011,http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed on February 3, 2014) p. 88.

[71]Ministry of Health, Labour and Welfare, "Alternative Care Institutions" ("社会的養護の施設等について"), undated, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/01.html(accessed on February 3, 2014).

For example, in Tokyo, which has the most number of children in need of alternative care, 395 children younger than 2 years old were brought into alternative care in 2010. Of these, 95 percent were sent to infant care institutions; and only 17 from the one-year-old age group and 1 from the under one-year-old age group were placed into foster parent care. Institutionalization dominated the response for infants, and in fact, not a single infant from among 56 infants in the under one-month-old age group was placed into foster parent care.[72]

Sumiko Hennessy, an emeritus professor in Tokyo and an expert in child abuse and attachment disorder, said:

> Consistent bonds of attachment with parents are important for normal growth of the brain. Bonds of attachment made within the first three months after birth and made after that period differ in depth and quality. … We [in Japan] have been creating mentally delayed children by bringing them into infant homes.[73]

Katsumi Takenaka, a foster parent who grew up in a child care institution, told Human Rights Watch:

> Japanese alternative care takes the trouble of putting babies into infant care institutions only to make them disabled, and then later makes the point that they are in need of care precisely because of this. If [the children] had been given to foster parents in the first place, such hardship would have been unnecessary.[74]

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[72] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, "Outlook of New Alternative Care Placements for Infants in 2011 (Prefecture/City Level)"("新生児等の新規措置の措置先（都道府県市別）（平成 23 年度）"), 2011, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf, (accessed on February 3, 2014) p.34.

[73] Presentation by Sumiko Hennessy (Director of Crossroad Social Work, Professor emeritus of Tokyo Welfare University, PhD of Social Welfare Studies), "Attachment Formation and its Influences on the Development of Baby's brain"(" 赤ちゃんの脳の発達に影響を及ぼす、愛着形成について"), Tokyo, May 24, 2013.

[74] Human Rights Watch interview with Katsumi Takenaka, formerly in institutional care and currently a foster father, Saitama, July 7, 2012.

At Saiseikai Chuo Hospital Infant Care Institution in Tokyo, the newborns and infants up to age two are placed in two bedrooms with a capacity of 35 children each, which is then supplemented by one playroom and one dining room. The chief nurse of this facility, Matsue Takeuchi, said:

> This facility was established in response to the Great Kanto Earthquake [in 1923] and as much as we feel sorry for the children, there is not much we can do [about the poor environment].[75]

At the Futaba Infant Care Institution in Tokyo, infants who cry at night have no one to hold them. A care worker noted:

> There are not enough care staff at night so one worker has to take care of many children at once. When there are multiple children crying at the same time, we can't do anything but hold one child and feed the rest of them from a bottle placed on their bedside.[76]

Segregation of Children with Disabilities

Children with disabilities are over-represented in Japan's alternative care system. According to the government, approximately a quarter of all children in child care institutions (which are not specialized for children with disabilities) have a disability or medical condition.[77] This includes intellectual disabilities (40 percent), "pervasive developmental disorders"(11 percent), attention deficit-hyperactivity disorder (ADHD) (11 percent), "physical weakness"(10 percent), speech disabilities (6 percent), epilepsy (5 percent), and learning disabilities (5 percent).[78]

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[75] Human Rights Watch interview with Matsue Takeuchi, chief nurse of Saiseikai Chuo Hospital Infant Care Institution, Tokyo, August 1, 2012.

[76]Human Rights Watch interview with female care worker in Futaba Infant Care Institution, Tokyo, July 31, 2012.

[77]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 1, 2013), p.6. " Important Points on the Research Results Regarding Children in Child Care Institutions and Others: As Of February 1, 2008" ("児童養護施設入所児童等調査結果の要点 [平成２０年２月１日現在]"), The Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare press release, July 2009, http://www.crc-japan.net/contents/notice/pdf/h20_0722.pdf (accessed November 1, 2013). p.2.

[78]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 1, 2013) p.6.This language is copied from a document of the Ministry of Health, Labour and Welfare.

Fifty-three percent of children in child care institutions are victims of abuse who have a number of emotional and behavioral issues, which increases the number of children needing specialized attention.[79] Abuse could be a cause of physical issues and various developmental delays due to the impact on brain development.[80]

Notable characteristics shown in the behaviors of abused children include a series of sudden and severe problematic behaviors; dissociation(loss of memory, an altered state of consciousness, hallucination, and switching personalities occurs daily along with frequent aggressive behaviors); hyperactivity; irritability; and malfunction of emotional control, and aggressive behaviors.[81]

However, rather than taking care of their existing problems, an immediate result of institutionalization of those abused children in alternative care is creating greater difficulties for these children, for example, by causing them increased difficulties forming appropriate human relationships.[82]

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[79]A number of institution workers estimate 90 percent of the children admitted to the institutions are actually abuse victims; Human Rights Watch interview with child care institution "Koyama Home" care staff, Chiba, May 3, 2012. The reality of children who require alternative care representing a high tendency of being abuse victims is shown in: Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed July 25, 2013), p.4. There has been considerable discussion regarding the relationship between abuse and disability. According to Masao Tamai, the traits of developmental disorders (i.e. pervasive developmental disorder, LD, ADHD) could induce abuse at times, but there is no causal relationship in abuse leading to developmental disorders. However, it is possible that abuse causes an adverse effect on child development, resulting in resembling behaviors as those of children with disorders; Masao Tamai, *Learning Child Abuse as Special Education Specialist* (特別支援教育のプロとして子ども虐待を学ぶ) (Tokyo: Gakken, 2009), p. 61.

[80]JyunichiSyoji and Rika Shinojima, "Abuse and Developmental Disorders in Relation to Foster Parent's Care" ("虐待・発達障害と里親養育"), Foster Parents and Children (里親と子ども) magazine, Vol.2, October, 2007. Toshiro Sugiyama, *The Forth Kind of Developmental Disorder Called Child Abuse* (子ども虐待という第四の発達障害) (Tokyo: Gakken, 2007), p. 21.

[81] Toshiro Sugiyama, *The Forth Kind of Developmental Disorder Called Child Abuse* (子ども虐待という第四の発達障害) , (Tokyo: Gakken, 2007), pp.118, 121. Toshiro Sugiyama, "Psychiatric Treatments for Abused Children" ("虐待を受けた子どもへの精神医学的治療"), Foster Parents and Children (里親と子ども) magazine, Vol.2, October, 2007, p. 92.Another report says eighty percent of abused children show tendencies of reactive attachment disorder; Satoru Nishizawa, "Psychological Characteristics of Abused Children" ("虐待を受けた子どもの心理的特徴") , Foster Parents andChildren (里親と子ども) magazine, Vol.2, October, 2007. Reactive attachment disorder is defined as "a condition in which a child fails to experience any form of attachment in the relationship with the parent or one who plays the role, thereby causing a disability to form an appropriate human relationship with other people in the process of constructing the foundation of his/her personality." "The infants who are suddenly taken away from the person who forms an attachment with the child stop reacting to the surroundings" (anaclitic depression) "tend to show prominent retardation in physical and mental development, possibly leading to lowering of immune system functions and, even to death in some cases." Toshiro Sugiyama, *The Forth Kind of Developmental Disorder Called Child Abuse* (子ども虐待という第四の発達障害), (Tokyo: Gakken, 2007), p. 28.

[82]Kevin Browne, "The Risk of Harm to Young Children in Institutional Care," translated into Japanese by Tetsuo Tsuzaki in *The Save the Children England Social Work*,Kenkyukai Translation Material No.20, August 2010, http://foster-family.jp/tsuzaki-file/The_Risk_of_Harm_to_young.pdf (accessed August 26, 2013), pp. 11, 17, 25.

Furthermore, whenchildren with a disability enter the alternative care system, they are in some cases further segregated from their peers and community. Nearly 1,300 children live in Japan's 38 so-called short-term therapeutic institutions that areintended to treat children with emotional or behavioral issues.[83]

According to the Ministry of Health, Labor and Welfare, more than 70 percent of the children living in these institutions were victims of abuse in their homes.[84]These institutions have doctors, psychotherapists, and nurses who provide psychiatric treatments and other support, such as life guidance and academic assistance. Most children live in these institutions and in some cases attend classes within them, while a small number of children visit these institutions for nonresidential care.

Children are supposed to be discharged once their therapeutic goals are achieved. The average period of stay for these children in these institutions nationally is 2.1 years.[85] Human Rights Watch visited one such institution in Yokohama with 50 children from elementary to high school age, and was informed by the institution's head that "to make some kind of improvement it takes about three years." He added, "Some stay from elementary school to 12th grade."[86]

At this institution in Yokohama, all children of elementary and middle school age attended small classes inside the institution, which the head promoted as being "not that different from regular school."[87] Children do not leave the building to walk from their rooms to their classroom. They are allowed outside into the institution's playground to play, but must apply for permission to go outside the institution.

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[83]Takamasa Kato and Hidehiko Ogawa, *Alternative Care from Basics* (基礎から学ぶ社会的養護) (Kyoto: Minerva Shobo, 2012), p. 148.

[84] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed July 20, 2013), p.20.

[85]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 3, 2013), p.81.

[86]Human Rights Watch interview with the therapeutic institution head, Yokohama, October 16, 2013.

[87]Human Rights Watch interview with head of therapeutic institution head, Yokohama, October 16, 2013.

Furthering their isolation from peers and community, the institution had just two computers for the 50 children—despite Japan having one of the highest per capita number of computers in the world, with almost eight computers for every ten people.[88]

Once they reach high school age, the vast majority of children at the institution attend regular school, but struggle to fit in. According to the head:

> They feel bad about themselves; they know they are not normal, so they keep a distance. They care very much about how others view them.[89]

The head did not express an opinion as to whether the fact that they had been excluded from regular schools until high school might have influenced the students' feelings of unease and stigma.

Thirty-eight of these so-called "short-term" therapeutic institutions have similar arrangements whereby children also attend "special" education institutions. In this separate education model, in which children with disabilities are taught in segregated schools, children with and without disabilities have very little interaction. This can lead to greater marginalization within the community, a situation that persons with disability face generally, thus entrenching discrimination.[90]

Some children, although not segregated into "therapeutic institutions," are nonetheless sent by their institutions to segregated schools for children with disabilities. Masashi Suzuki (pseudonym), for example, was sent to a "special guidance school" instead of a regular high school where he said he did not make friends because all his schoolmates had more severe disabilities. "I went to drink with my teachers. My only friends were those I knew from junior high school who were in a regular high school," he recalled.[91]

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[88] "Getting Wired," *The Economist*, December 19, 2008, http://www.economist.com/node/12798277(accessed April 1, 2014).

[89]Human Rights Watch interview with head of therapeutic institution head, Yokohama, October 16, 2013.

[90]United Nations Human Rights Council, "The Right to Education of persons with disabilities: Report by the UN Special Rapporteur on the Right to Education Vernor Muñoz," February 19, 2007, A/HRC/4/29, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/108/92/PDF/G0710892.pdf?OpenElement (accessed June 17, 2011).

[91]Human Rights Watch interview with Masashi Suzuki, 21, formerly in child care institution, Chiba, June 25, 2012.

Maiko W., who was sent to an elementary school and junior high school for children with disabilities, but then went to a mainstream school for high school remarked:

> When I went to high school, it was the first time that I was living in the community. I realized there is so much information that I didn't know. Certain values, certain ways of living, I just didn't know. If we were integrated into the community, the exchange of ideas would be much better.[92]

See section V for international standards for inclusive education for children with disabilities, and for community based non-institutional residential care for these children.

General Institutionalization-Related Problems

Alternative care in Japan depends significantly on institutions. Compared to other developed countries, the rate of foster parent placement, 13.5 percent in 2012,is extremely low.[93] The proportion of children who enter the alternative care system is lower than in similarly developed countries.[94]

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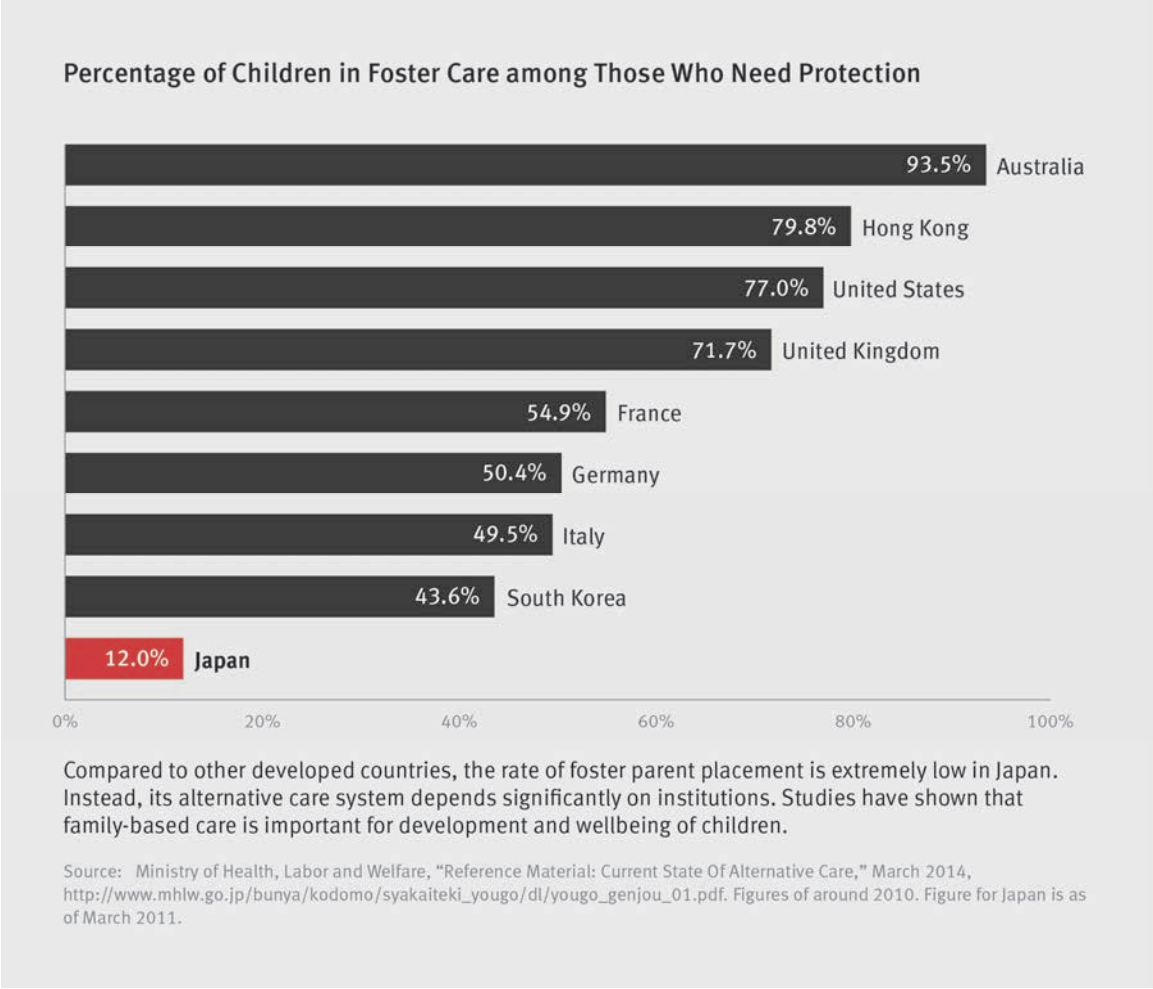
[92] Human Rights Watch interview with Maiko W., 20 years old but still living in an institution, Tohoku, December 11, 2011.

[93]In March 31, 2012, 28,803 Children were in child care institution, 2,890 children were in infant care institution and 4,966 children were in foster parent home. The rate of children in the foster care within the total of those children,36,656, are 13.5%; Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed August 18, 2013), p.22. According to the "Cross-Country Comparison on Percentage of Children in Need for Alternative Care Placed into the Foster Parent's Care (around 2010)" ("各国の要保護児童に占める里親委託児童の割合（2010 年前後の状況）（%）") compiled by the Japanese government, the percentage of children taken into care by a foster parents in each country is; 93.5% (Australia), 79.8% (Hong Kong), 77.0%(United States), 71.7% (UK), 63.6% (British Columbia, Canada), 54.9% (France), 50.4% (Germany), 49.5% (Italy) and 43.6% (South Korea). In the same source material it is noted, "Although a simple comparison is not possible due to systematic differences between the countries, Japan displays a significant dependence on institutional care with the ratio of 9:1 between the children placed in institutions and those in a foster parent's care, as opposed to the Western counterparts where mostly over half of the children are finding themselves in the foster parent's care." Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed on August 15, 2013),p.23.

[94]Out of 10,000 children younger than 18 years old, there are 17 children in the alternative care in Japan in 2005. It is 102 children out of 10,000 in France in 2003, 66 in the U.S.in 2005, 55 in England in 2005, 49 in Australia in 2005. Thoburn J. (2007) "Globalisation and Child Welfare: Some Lessons from a cross-natinal Study of Children in out-of-home care," *Social Work Monograph*, UEA, Norwich, (2007) p.30.



Compared to other developed countries, the rate of foster parent placement is extremely low in Japan. Instead, its alternative care system depends significantly on institutions. Studies have shown that family-based care is important for development and wellbeing of children.

Source: Ministry of Health, Labor and Welfare, "Reference Material: Current State Of Alternative Care," March 2014, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf. Figures of around 2010. Figure for Japan is as of March 2011.

Once they enter an institution, a child will live in an institution for an average of five years. Fourteen percent of children stay in an institution for more than ten years.[95] As explained in greater detail in section V, international standards generally recommend favor family-based alternatives to institutional care.

[95] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed August 18, 2013), p.81.

Beds for children in kindergarten at a child care institution in the Kansai region. The beds are supplemented by a small playing space in the same room, June 2012. © 2012 Sayo Saruta/Human Rights Watch

A number of studies have linked institutional care in general (discussed further later in this section) to adverse effects on children's mental, physical, intellectual, and language development.[96] While many children are admitted to institutions due to abuse and neglect in their own homes, the negative consequences of institutional care can compound the damage done to the child. Kevin Browne, a professor of Forensic Psychology and Child Health at Nottingham University in the United Kingdom, writes: "Even apparently 'good quality' institutional care can have a detrimental effect on children's ability to form relationships throughout life."[97] Foster care allows for a deeper, more sustained, and more

[96]Kevin Browne, "The Risk of Harm to Young Children in Institutional Care," translated into Japanese by Tetsuo Tsuzaki in The Save the Children England Social Work Kenkyukai Translation Material No.20, August, 2010, http://foster-family.jp/tsuzaki-file/The_Risk_of_Harm_to_young.pdf (accessed August 26, 2013), pp. 11, 17, 25. In one study conducted in Europe, while the percentage of infants who had a disability at the point of admission to an institution was 27%, at the point of leaving the institution one in three of these children had some sort of disability and needed social support, which is argued that was possibly associated with the impact of institutional care.

[97]Kevin Browne, "The Risk of Harm to Young Children in Institutional Care," translated into Japanese by Tetsuo Tsuzaki in The Save the Children England Social Work Kenkyukai Translation Material No.20, August, 2010, http://foster-family.jp/tsuzaki-file/The_Risk_of_Harm_to_young.pdf (accessed August 26, 2013), pp. 11, 17, 25.

consistent relationship with the child than is possible in institutional care. Megumi Fukuta, a former foster child, told Human Rights Watch:

> The biggest difference [in the foster parent's care from institutions] is that you will always have the same adult [to look after you]. Even in house-based institutional care where resident care givers are supposedly providing 24-hour care, these people don't necessarily work there forever.[98]

Tomoya Maruyama, who cares for four children in a foster family group home in Saitama prefecture, has seen first-hand the problems derived from institutional care, including developmental delays among the many children whom he has cared for over the years. Based on his experience, he suggested that these delays could have been caused by abuse in the home, coupled with inadequate institutional care. "The institution's primary goal is 'safety.' They cannot afford to strongly encourage children to try new things," Maruyama said. "When a child faces difficulties in doing something, we as foster parents consider all sorts of ways to make it possible and get the child to try over and over again with patience. That's not possible in institutions."[99]

Maruyama, who helps his foster children with their homework every day, stated it is important to get foster children to "study properly." He explained that because children in alternative care face difficulties when they are young, they often need to work harder to keep up academically: "I feel I needed to get them to study harder than my own child." Maruyama, who sends his foster children to soccer class and other extracurricular activities, pointed out another difference from institutional care saying:

> Children go to play soccer on weekends. Naturally, we as parents go with them. That's nothing special. But in institutions, if one child goes outside, the staff will be short the one worker who must accompany that child. The result is children cannot even go out of the institution to lessons or practices to do what they like freely.[100]

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[98] Human Rights Watch interview with Megumi Fukuta, 31 year-old female former foster child, Saitama, July 26, 2012.

[99] Human Rights Watch interview with Tomoya Maruyama, foster father running foster family group home in Saitama, September 12, 2012.

[100] Human Rights Watch interview with Tomoya Maruyama, foster father running foster family group home in Saitama, September 12, 2012.

Overly Large Institutions

The general problem of institutionalization can be compounded by the large size of many facilities: More than 50 percent of child care institutions have facilities whichcan house 20 or more children. Of these, 30 facilities can house over 100 children. Five of these can hold over 150 children.[101]Many of these institutionshold as many children as their maximum capacity, or just a few less than the limit.

Satoshi Hayakawa, who works at child care institution Meguro Wakabaryo, explained that large-scale institutions are incapable of providing children with adequate, quality living conditions. "Putting children in a large-scale institution for a long time is systematic abuse on its own," he said. "Children's life style in big institutions is so different from the normal life in the society. They put children into the abnormal situations and they cannot learn what they should learn."[102]

The Japanese government's recent push towards family-based care has in recent years begun to shift from a large-scale, institution-heavy care structure to a smaller-scale (but still institutional) care system that the government claims promotes family-like settings, such as unit-based care and house-based care within a larger institution.

In 2011, the Japanese government set a goal to change the weight of alternative care distribution to be equally divided three ways among the main institutions (with a new limit of no more than 45 children), house-based institutional care, and foster parents (including foster family group homes) within the next 10-plus years.[103] In line with this policy orientation, many large-sized institutions have been, or are being, reformed and renovated to move towards unit-based care and house-based institutional care.[104]

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[101] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 5, 2013), p.7.The largest facility in Japan is located in Osaka, which has the capacity to receive 164 children though the number present at any given time is likely less than that.

[102]Human Rights Watch interview with Satoshi Hayakawa, worker at child care institution Meguro Wakabaryo, Tokyo, August 1, 2012.

[103]Alternative Care Review Committee Concerning Child Care Institutions, Social Security Council Child Alternative Care Committee, "Issues of Alternative Care System and Future Goals" ("社会的養護の課題と将来像"), July 2011, P.8, 41 http://www.mhlw.go.jp/stf/shingi/2r9852000001j8zz-att/2r9852000001j91g.pdf (accessed November 1 2013).

[104] Alternative Care Review Committee Concerning Child Care Institutions, Social Security Council Child Alternative Care Committee, "Issues of Alternative Care System and Future Goals" ("社会的養護の課題と将来像"), July 2011, http://www.mhlw.go.jp/stf/shingi/2r9852000001j8zz-att/2r9852000001j91g.pdf (accessed November 1, 2013).

Some large institutions have adopted unit-based care and house-based institutional care. Care workers in such institutions told Human Rights Watch that "the children are much calmer now" and "the living environment became much quieter, like a regular family home."[105] Additionally, institution staff members argued that these new forms of institutional care provide a living environment more similar to a regular family home and thus help children learn day-to-day coping skills such as how to use a refrigerator or what vegetables look like before being served on a plate, reducing a number of problems often associated with large-scale institutional living.[106]

But even with improvements, institutional care cannot be the same as family-based care. While smaller institutions are considered better for children than larger ones, they typically will not be in the best interests of the child compared to family-based care. The fact that many facilities have been reconstructed or newly built to shift institutional care from large group facilities towards unit-based care or house-based institutional care may even lead to a greater government dependence on this slightly improved form of institutional care that hinders a transition to a full-fledged adoption and foster parent system.

Staff Shortages,Barriers to Bonding

At institutions, care workers rotate in and out and can rarely provide consistent care to the children they oversee. As a result, many children grow up in environments where they are never able to develop a bond or trusting relationship with an adult care giver.

Setsuko Yamamoto spent 25 years as a foster parent after working for seven years as a staff member at a child care institution. She currently cares for six foster children at a Foster Family Group Home. Setsuko told Human Rights Watch:

> What's important for children is to receive love from a specific individual and establish a safe, unshaken relationship with him or her since the time they are infants. You could face some problems along the way but I find

[105] Human Rights Watch interviewwithTakanori Seki, house-based institutional care worker at child care institution "NissyoYohtokuen," Ibaraki, August 3, 2012.

[106] Human Rights Watch interview with Yuji Morita, director of child care institution "Koyama Home," Chiba, October 3, 2012; Human Rights Watch interview with Satoshi Hayakawa, worker at child care institution Meguro Wakabaryo, Tokyo, August 1, 2012.

> that having this "unshaken relationship" is absolutely essential. Staying in long-term institutional care impairs the fundamental stability of a person.[107]

The goal of consistent care by the same individual is virtually impossible in institutional care. Even in the institutions that designate a specific caregiver for a group of children, the staff operates on eight-hour shifts, so they may not always look after the same group of children. There is also staff turnover, meaning that staff caregivers change over time.

Hiro S., a third-year high school student in institutional care, said:

> When I see small children held by the care workers, I really envy them. Staff members do not have time to take care of older children like me… It is so bad when the staff change and even quit. I hate the change. I feel if you leave me eventually, I won't trust you from the beginning.[108]

Kenji M., who is 17, told Human Rights Watch:

> I had the same care worker for me since I was 3 years old until I was 15 years old. But two years ago, the worker changed. The new worker is too young for me.… Many of the staff look like they take care of us only because it is their job. They just play with us and they work. They don't love us.[109]

At one institution with 98 children that Human Rights Watch visited in Osaka, one staff member stated proudly:

> We make it a rule for a care worker who is assigned to a child that once a month they have tea time, when they sit down and the care worker can ask if the child has anything of concern.[110]

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[107]Human Rights Watch interview with Setsuko Yamamoto, Tokyo-based foster mother running a foster family group home, Tokyo, September 6, 2012.

[108]Human Rights Watch interview with Hiro S., third-year high school student, Tokyo, August 28, 2012.

[109]Human Rights Watch interview with Kenji M., third-year high school student in institutional care, Tokyo, August, 28, 2012.

[110] Human Rights Watch interview with institution care worker, Osaka, December 13, 2011.

The number of staff deployed in institutions in Japan is strikingly low compared to similar European and North American child care institutions.[111] This creates an inevitable problem in maintaining quality care. For example, in England, the standards are set to place at least one caregiver per child. Japan's new 2012 standards provide that the child to care worker ratio is "1.6:1" for children aged zero to one year old,"2:1" for two year olds, "4:1" for young children from three to five, and "5.5:1" for those from school age (six years old) to eighteen years old.

Japan's new standards were a major disappointment for various stakeholders in the field of institutional care, many of whom were hoping for more significant changes.[112]Despite some budget allocations for special staff deployment, such as individual care staff and family support counselors, some institutions with unit-based care only have one worker looking after 18 children at night, working on the three-shift system. Human Rights Watch observed such staffing arrangements in two institutions, and inadequate staffing levels to meet needs were a common complaint among staff members from other institutions.

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[111]For example,in the UK, the rate of children to staff members is different in each municipality, but overall, it is approximately 1:1 to 1:15 (children to staff member), while in Japan, the ratio is only 5.5:1 (children to staff member). The British national regulations (Children Act 1989 Guidance and Regulations, Volume 5:Children's Homes) provide the following: 3.16. Regulation 25 and Standard 17 require that the registered person ensures that there are enough suitably qualified and experienced staff to meet the needs of the children and young people placed there. Children's home staff need to be able to demonstrate the competences necessary to meet the requirements, as set out in the home's Statement of Purpose, to safeguard and promote the health, welfare and safety of the children accommodated. Also, in the Children's Home Regulation 2001on staffing of children's homes, the regulation provides: 25. (1) The registered person shall ensure that there is at all times, having regard to (b)the need to safeguard and promote the health and welfare of the children accommodated in the home, a sufficient number of suitably qualified, competent and experienced persons working at the children's home. Human Rights Watch email interview with Tetsuo Tsuzaki,Professor at Kyoto Prefectural University,Theory of Child Care and Comparative Social Welfare, November 6, 2013.

[112] Ministry of Health, Labour and Welfare, "The Act of Partial Amendment on Standards Defined in the Facility and Operational Standards for Child Care Institutions" ("児童福祉施設の設備及び運営に関する基準の一部を改正する省令"), Act No.88, May 31, 2012, http://kanpoo.jp/page.cgi/20120531/ho5811/0002.pdf?q=%E5%85%90%E7%AB%A5%E7%A6%8F%E7%A5%89%E6%96%BD%E8%A8%AD%E3%81%AE%E8%A8%AD%E5%82%99%E5%8F%8A%E3%81%B3%E9%81%8B%E5%96%B6%E3%81%AB%E9%96%A2%E3%81%99%E3%82%8B%E5%9F%BA%E6%BA%96%E3%81%AE%E4%B8%80%E9%83%A8%E3%82%92%E6%94%B9%E6%AD%A3%E3%81%99%E3%82%8B%E7%9C%81%E4%BB%A4%EF%BC%88%E5%90%8C%E5%85%AB%E5%85%AB%EF%BC%89 (accessed July 25, 2013). The definition of caregiver/staff here is limited to those who are directly involved in the care of the children and does not include institution principals, nutritionists, kitchen staff, family support counselors or similar personnel.

Human Rights Watch interview with Yuji Morita, director of child care institution "Koyama Home," Tokyo, April 24, 2012 and Kunio Kuroda, director of child caring institution "Futaba MusashigaokaGakuen," Tokyo, May 6, 2012; KunifusaUtagawa, director of child care institution KouboAijien, Kanagawa, June 4, 2012.

Difficulties Learning Life Skills

When Human Rights Watch asked individuals who had spent time in institutions as a child what was most lacking in institutional care, the predominant answer was that basic social skills required for life in society were not taught. KiyomiMorikawa, a 30-year-old woman living in Chiba who grew up in institutional care explained:

> The biggest problem I had after coming out of the institution was that I didn't know basic things in life. I didn't know that you don't get electricity at home if you don't pay for it, how to buy tickets to ride a train, or how to order food at McDonald's. We go out in society without knowing these things, while a child from a normal family can simply learn from day-to-day life.[113]

Tomo S., who is in the sixth grade and lives in a foster family, told Human Rights Watch that at first, after he moved from an institution, "I didn't know what to do when I went shopping with my new foster family."[114]

A foster parentpointed out that in institutions "normal things are so restricted that the children are unaware of the fact and that situation becomes the norm." He said that "it is important that children learn from day-to-day life."[115]

These seemingly trivial things can build up to make it difficult for individuals who have lived in an institution to become self-reliant.Many institution graduates told Human Rights Watch that there is a serious need for sufficient training on independent living skills, including communication skills, social survival skills, and regular day-to-day coping skills.[116]Children living in institutions also have difficulties learning family-based social behaviors, as well as experiencing a family model of nurturing children that could influence the way they parent.[117]"I now know for the first time in my life what 'spending

[113]Human Rights Watch interview with KiyomiMorikawa, 30-year-old female from Chiba formerly in institutional care, Osaka, June 6, 2012.

[114]Human Rights Watch interview with Tomo S, foster child in Saitama, September 12, 2012.

[115]Human Rights Watch interview with a foster father running foster family group home in Saitama, September 12, 2012.

[116] Human Rights Watch interview with KiyomiMorikawa, 30 year-old female formerly in institutional care in Chiba, Osaka, June 6, 2012; and Human Rights Watch interview with SayuriWatai, 29 year-old female, formerly in institutional care, chairperson of self-help group "Hinatabokko," Tokyo, July 13, 2012.

[117] The "Foster Parent and Foster Family Group Home Child Care Guidelines" (Ministry of Health, Labour and Welfare) also state that "Forming a relationship with a specific care giver and having a family life experience during some period in the

time with family' meant after having started living with my foster family,"a highschool aged female foster child told Human Rights Watch.[118]

Lack of Privacy

KunifusaUtagawa, the principal of child care institution KouboAijien, described the difficulty providing child care as he showed Human Rights Watch the built-in, clinical looking bunk beds lined up in a room.[119]

Another institution that Human Rights Watch visited was an annex of a local hospital, and the children's rooms resembled a medical ward filled with hospital beds. The space on their own bed was the only place children were allowed some privacy.[120]

In one institution, eight children shared each room.[121] Maiko W., who had lived at this institution for several years, told Human Rights Watch:

> There are certain times when I want to think over, or think through certain things and I want to do so in peaceful circumstances. But if I am surrounded by people it doesn't make me tense, as such, but you can always feel people's eyes on you. I just want to be alone sometimes.[122]

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growth process will be a meaningful and essential experience for a child."Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Foster Parent and Foster Family Group Home Child Care Guidelines" ("里親及びファミリーホーム養育指針"), March 29, 2012, http://www.mhlw.go.jp/bunya/kodomo/pdf/tuuchi-56.pdf (accessed July 25, 2013, p.9.Yuko Takizawa, a 32-year-old female who was in institutional care as a child, and then spent 6 months in foster parent's care before turning 18. She stated, "I didn't think the foster parent system was particularly better than institutions but it was a good experience to know and see what a family is like."Human Rights Watch interview with Yuko Takizawa, Chiba, July 27, 2012.

[118]Human Rights Watch interview with a female high school-aged foster child (name and details withheld by Human Rights Watch), Nagano, August, 2012.

[119]Human Rights Watch interview with KunifusaUtagawa, director of child care institution KouboAijien, Kanagawa, June 4, 2012.

[120]Human Rights Watch visit (name and details of the institution withheld by Human Rights Watch), August 23, 2012.

[121]Human Rights Watch visit, institution named withheld, December 11, 2011.

[122] Human Rights Watch interview with Maiko W., 20 years old but still living in an institution, Tohoku, December 11, 2011.

Sleeping quarters for boys at a child care institution in Iwate prefecture. Children's' rooms often resemble medical wards filled with hospital beds, August 2012. © 2012 Sayo Saruta/Human Rights Watch

Aki K., a junior high student, who now lives in a foster family, told Human Rights Watch that when she lived in an institution, "I shared a room with three children. It is same even for high school students. There is no private space for myself."[123]

The minimum standards that Japanese child care institutions and infant care institutions must meet are defined in the "Facility and Operational Standards for Child Care Institutions."[124] In 2011, the living space requirement per child in child care institutions was raised from only 3.3 square meters per child to 4.95 square meters per child, and infant institutions from only 1.65 square meters to 2.47 square meters per child.[125]

[123] Human Rights Watch interview with Aki K. Tokyo, 2012.

[124] Facility and Operational Standards for Child Care Institutions, Ministry of Health, Labour and Welfare, Act No.88, amended May 31, 2012, http://law.e-gov.go.jp/htmldata/S23/S23F03601000063.html (accessed July 25, 2013).

[125] Ministry of Health, Labour and Welfare, "Overview of Ordinance Amendment Put into Effect in June 2011 Including Article 41 in 'Facility and Operational Standards for Child Care Institutions, Act No.63, December 29, 1948' Regarding Minimum Facility Standards in Child Care Institutions" ("児童福祉施設最低基準等の一部を改正する省令の概要平成２３年６月公布施行"), undated, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/01.pdf (accessed August 10, 2013).

Poor Hygiene and Safety

Two facilities Human Rights Watch visited had readily apparent problems with sub-standard hygiene and safety.

At one facility, the boys wing smelled strongly of urine, paint and wallpaper were peeling, numerous wall sockets were smashed, carpets were stained, many pieces of furniture were broken, the fabric on seats was ripped, and there were holes in the wall.[126]

The condition was particularly concerning because it was possible that maintenance had not been prioritized as the institution was building a new facility that would comply with the government's desire for "smaller" institutions.

At another institution, where five to six children share a room, books, cups, towels, and clothesthat belonged to different children were scattered all over their rooms, heavy dust lay on window frames, and dirty mats were piled in the corridor.

However, the results of the most recent assessment by a third party did not appear to recognize, or even remotely match, the problems that Human Rights Watch saw. For example, the latter facility was given an "A" in an evaluation carried out in 2013that had rated the institution in terms of whether "overall facility including bedrooms is clean." The same institution received a "B" rating forhow it "provides space for each child where children can feel secure and comfort."[127]

Lack of Reporting Mechanisms

The national government has taken some steps to give children the ability to expose institutional problems and abuses. According to government standards, each institution has to take necessary measures to treat opinions and complaints from children appropriately.[128] Many institutions have set up an "opinion box" to allow children to send

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[126] Human Rights Watch visit to institution, Osaka, December 13, 2011.

[127]Japan national Council of Social Welfare, "Alternative Care the Third Party Assessment Result,"（社会的養護施設第三者評価結果）http://www.shakyo-hyouka.net/search/index.php?forward=detail2&pref=&name=%E6%97%AD%E3%81%8C%E4%B8%98%E5%AD%A6%E5%9C%92&org=&ym_from=&ym_to=&page=1&id=282 (accessed January 13, 2014).

[128]Article 14-3, Ministry of Health, Labour and Welfare, "Overview of OrdinanceAmendment Put intoEffect in June 2011 Including Article 41 in 'Facility and Operational Standards for Child Care Institutions, Act No.63, December 29, 1948'

their views directly to the institution staffs. There is also a *Children's Rights Guidebook* that the national government strongly recommends prefecture governments develop and issue to the child guidance centers under their purview, although not all prefectures do so.

In addition, the government requires that each institution receive a third-party assessment every three years and involve a third-party totreat childrens' complaints.[129]

The *Children's Rights Guidebook* teaches children they have rights, and provides contact information for them to seek help if they are in trouble. The child guidance center also gives the book to children when they are sent to foster or institutional care. Human Rights Watch asked five high school students whether they actually used the guidebook; only one knewwhat it was.[130]

To satisfy the above-mentioned national government standards, many childcare institutions set up an external third-party committee consisting of experts, lawyers, scholars, and others, to provide external supervision and to ensure that children can voice their concerns to people outside the institution.

But the operation of the system depends on each institution, and there is a wide range of actual engagement between the third-party committee and the institution. For example, Human Rights Watch found that some institutions have the third-party committee

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Regarding Minimum Facility Standards in Child Care Institutions" ("児童福祉施設最低基準等の一部を改正する省令の概要 平成２３年６月公布施行"), undated, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/01.pdf (accessed August 10, 2013).

[129]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed October 1, 2013), p.40.Article 14-3, Facility and Operational Standards for Child Care Institutions, Ministry of Health, Labour and Welfare, Act No.88, amended May 31, 2012, http://law.e-gov.go.jp/htmldata/S23/S23F03601000063.html (accessed January 13, 2014).Alternative Care Review Committee Concerning Child Care Institutions, Social Security Council Child Alternative Care Committee, "Issues of Alternative Care System and Future Goals" ("社会的養護の課題と将来像"), July 2011, http://www.mhlw.go.jp/stf/shingi/2r9852000001j8zz-att/2r9852000001j91g.pdf (accessed June 20, 2013). UN guidelines provides that children in care should have access to a known, effective and impartial complaint mechanism. Resolution adopted by the General Assembly[on the report of the Third Committee (A/64/434)] 64/142. Guidelines for the Alternative Care of Children, http://www.mhlw.go.jp/stf/shingi/2r9852000001j8zz-att/2r9852000001j91g.pdf (accessed June 20, 2013),para. 99.

[130] Human Rights Watch interviews with five high school students living in institutions (2 males and 3 females—3 of whose institutions were located in the Kanto area and 2 of them in the Tokai area), Nagano, August 29, 2012.

members over for dinner every month to communicate with the children.[131]But other institutions only organize an annual visit to their facility of the committee members, who hardly interact with the children. Some interviewees pointed out that committee members are not properly selectedat some institutions—for example, because they are local notables rather than people with specific expertise in children's issues.[132]

At a house-based institutional care facility run by the child care institution Meguro Wakabaryo in Tokyo, sketches of the third-party members' faces alongside their contact information hung visibly in the dining room. Asked if they knew the people pictured, one childanswered, "I know one of them but I don't know the rest."[133]In other institutions, information about the third-party committee members is posted in obscure locations.

Professor Hiroyasu Hayashi, who sits on the advisory council of the Ministry of Health, Labor and Welfare, told Human Rights Watch:

> Both the third-party committee and the opinion box have turned into mere formalities and serve no practical purpose. The *Children's Rights Guidebook* is not used properly because the children just throw it away. In order to put it to real use, we need to make sure that the information will actually reach the children by going through the content with them or through other methods.[134]

Other suggestions for accountability mechanisms include setting up a toll-free contact number that a child could call to consult about problems, or distributing a pre-paid postcard (addressed to local governments, the child guidance center, or nonprofit child advocacy groups) for mailing comments and complaints.

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[131] Human Rights Watch interview with Kunio Kuroda, director of child caring institution "Futaba MusashigaokaGakuen," Tokyo, May 6, 2012. Setting up athird party committee is obligation of the institution under article 14-3 of the Facility and Operational Standards for Child Care Institutions.

[132]Human Rights Watch interview with Ayako Murata, professor in Odawara Women's Junior College, Tokyo, September 10, 2013.

[133]Human Rights Watch visit to Meguro Wakabaryo, August 1, 2012.

[134] Human Rights Watch interview with Hiroyasu Hayashi, professor of Social Welfare Studies in Japan Women's University, member of Institutional Management and Foster Parent Care Policies Working Group of the Ministry of Health, Labour and Welfare, Kanagawa, September 4, 2012.

Since 2012, third-party assessments by an external party have beenmandatory for every childcare institution and must be conducted every three years. According to Ministry of Health, Labor and Welfare, the objective of the third-party evaluation is to pursue a higher quality of welfare services while administrative inspections ensure that organizations are satisfying minimum standards.[135]

Professor Hiroyasu Hayashi also pointed out, however, that this has not developed into a significant or comprehensive enough evaluation process that could uncover and investigate children's claims and complaints, and that the assessments have largely remained a formality with little significant impact.[136] Moreover, the government's current regulations undermine the independence and impartiality of the assessments by granting institutions the right to select which organization would conduct the required external evaluation of the establishment.[137]

[135] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed October 1, 2013), pp.39-42. Family Welfare Division, Equal Employment, Children and Families Bureau & Welfare Division for Persons with Disabilities, Social Welfare and War Victims' Relief Bureau, Ministry of Health, Labour and Welfare, " Child Abuse Prevention Guidelines for Children in Alternative Care–For Prefectures and Cities with Designated Child Guidance Center" ("被措置児童等虐待対応ガイドライン～都道府県・児童相談所設置市向け～"), No. 0331002, March 2009.

[136] Professor Hiroyasu Hayashi expressed concerns that the assessments may be limited in depth to enable evaluation of the services regarding how appropriate they may be. Human Rights Watch interview with Hiroyasu Hayashi, professor of Social elfare Studies in Japan Women's University, member of Institutional Management and Foster Parent Care Policies Working Group of the Ministry of Health, Labour and Welfare, Kanagawa, September 4, 2012.

[137] Human Rights Watch interview with Tsuneo Yoshida, professor of Law at Surugadai University, Tokyo, July 6, 2012.

III. Problems in Foster Care System

Only 14.8 percent of the children who need alternative care in Japan are placed with foster parents.[138]

In 2010, the governmentset a goal to increase the percentage of children placed into the foster system to 16 percent by 2014.Furthermore, in 2011, an additional goal was set to change the distribution of children's placement in alternative care during the next 10-plus years to an equal ratio between main institutions (with capacity up to 45 children), house-based institutional care (for up to 6 children in settings like a local residence under the main institution's management), and foster parent care.[139]These figures still compare poorly to many developed countries, where 70 to 90 percent of children requiring alternative care are placed into foster parent care.[140]

In recent years, the Japanese government has taken a number of stepsto improve and expand the use of foster care.Although these changes are mostly positive,as this section details, problems persist, and a strong preference for institutionalization remains, which impedes the extent and likelihood of crucial reform.

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[138]This percentage is often used to show the rate of foster parent placement. The government of Japan also uses this percentage. It is the percentage of children in foster parents and family homes out of the sum of children in foster parents, family homes, child care institutions, and infant homes. It does not include children in the Group homes for independent living and short-term therapeutic institutions.Compared to other developed countries, the rate of foster parent placement, which was 14.8 percent in 2013, in Japan is extremely low.Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2014, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed April 17 2014), pp.22.

[139]"Children and Child Rearing Vision," The Cabinet Agreement, January 29, 2010, http://www.mhlw.go.jp/bunya/kodomo/pdf/vision-zenbun_0001.pdf(accessed January 10, 2014). "Attachment 2 Children and Child Rearing Vision: Specific Goals for the Measure" ("別添２　施策に関する数値目標"), January 29, 2010, http://www8.cao.go.jp/shoushi/vision/pdf/b2.pdf (accessed May 1, 2012); and Ministry of Health, Labour and Welfare "Issues and Goals of Alternative Care," July, 2011. This would mean all child-care institutions holding more than 45 children in one large residence have to change their structure soon.

[140] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed December 6, 2013) p.23.

Recent Steps Taken

Measured as a percentage of the children receiving care, the proportion of foster-parented children (including foster family group homes) has increased in the past decade from 7.4 percent (2,517 children) in 2002 to 13.5 percent (4,966 children) in 2011.

The Japanese government has implemented various measures to promote foster care system in the past decade, including:

- Establishing "specialized foster parent" and "kinship-based foster parent" status;[141]
- Implementing "respite care"—a service that offers foster parents a chance to take a break from child caring;
- Deploying special committeeto promote children's placement in foster care who can discuss how to increase the foster care placement and how to support foster care.[142]
- Implementing foster parent support organization projects (e.g., outsourcing foster parent support to private nonprofit organizations);
- Founding theFoster Family Group Home system, which provides family-based carefor five to six children in a residential settings;
- Significantly increasing the foster parent allowance;[143] and
- Issuing the Foster Parents Placement Guidelines (on March 30, 2011, revised on September 1, 2011 and March 29, 2012) declaring the FosterParentsFirstPrinciple. Under the principle, the child guidance center must consider foster care for children in social care before institutional care.[144]

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[141]The specialized foster parent status was established to care mainly children who are victims of abuse. They need experienced and skilledfoster parents who are able to care for traumatized children. Since care by relatives is in the child's best interest in many cases, and as there is a shortage of foster parent candidates, relatives are encouraged to care for children.The kinship-based foster parent status were created to promote the care by relatives.

[142]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed August 18, 2013), p.21.

[143]For example, foster parent allowances for registered foster parents were increased from 34,000 yen ($340) to 72,000 yen ($720). Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf, (accessed August 18, 2013), p.18.

[144]Foster Parents Placement Guidelines (里親委託ガイドラン), in the "Notice on Foster Parents Placement Guidelines" (里親委託ガイドラインについて), Equal Employment, Children and Families Bureau Chief of Ministry of Health, Labour and Welfare, issue 0330, No.9, March 30, 2011, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_11.pdf (accessed January 10, 2014).

These are useful steps. But problems persist with the foster care system in ways and for reasons detailed below.

Abuse in Foster Care System

Incidents of physical, mental, and sexual abuse persist in the foster care system, just as they do in institutions. In fact, information collected by the government's child abuse reporting system for children in alternative care show that the percentage of abuses at the hands of foster parents is higher than abuses recorded among children in an institutional care environment.[145]Care is harder to monitor because it occurs in a private family environment, and there is a higher risk than in institutions that it will take outside monitors longer to detect abuse. Failure by the government system and local officials to effectively monitor foster care placements and provide adequate support to foster parents and children placed with them is clearly a major problem.

In the worst (but very rare instances), children have died in foster parentcare. One case from Suginami Ward, Tokyo, in 2010, received considerable media attention. On the evening of August 23, 2010, foster mother ShizukaSuzuike allegedly struck her foster child Miyuki Watanabe, age 3 years and 7 months, in the head and the face multiple times over a five-hour period. The violence caused numerous injuries, leading to Miyuki's death at 2 a.m. on August 24.[146]At trial, Suzuike denied responsibility for the child's death, claiming an unknown person had broken into the house and beaten the child. However, the Tokyo District Court found the defendant guilty and sentenced her to nine years' imprisonment on the charge of injury causing death.[147]Although Suzuikemaintained her innocence, the Supreme Court rejected her appeal in February 2014 and upheld the ruling.

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[145] Ministry of Health, Labour and Welfare, " Abuse Reporting System for Children in Alternative Care Implementation Status in 2009" ("平成２１年度における被措置児童等虐待届出等制度の実施状況"), December 7, 2010, http://www.mhlw.go.jp/stf/shingi/2r9852000000ybr9-att/2r9852000000ybzv.pdf (accessed July 15, 2013).

Ministry of Health, Labour and Welfare, " Abuse Reporting System for Children in Alternative Care Implementation Status in 2010" ("平成２２年度における被措置児童等虐待届出等制度の実施状況"), January 16, 2012, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo04-03.pdf (accessed August 15, 2013).

Ministry of Health, Labour and Welfare, " Abuse Reporting System for Children in Alternative Care Implementation Status in 2011" ("平成２３年度における被措置児童等虐待届出等制度の実施状況"), October 15, 2012, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo04-04.pdf (accessed November 25, 2012).

[146]Prosecutor v. ShizukaSuzuike (Injury Causing Death, Suginami Criminal Case), Tokyo District Court, Judgment (Nine Years' Imprisonment), July 13, 2012.

[147]Prosecutor v. ShizukaSuzuike (Injury Causing Death, Suginami Criminal Case), Tokyo District Court, Judgment (Nine Years' Imprisonment), July 13, 2012.

In another case in Utsunomiya in 2002, a foster child was killed by her foster parent. And in 2006, a one-year-old child in Sakura, Chiba who would not stop crying died after being strongly shaken by their foster parent. [148]

Several more cases of foster parents injuring their foster child have been reported in recent years. For example, in February 2009 police arrested foster mother Yasuko Nemoto in Hokkaido because she stuck a pin in the neck of her seven-month-old foster child. The girl took two weeks to recover. A court found Nemoto guilty of causing injury and fined her.[149]In May 2009, a five-year-old foster child from Osaka suffered lacerations at the hands of her foster parent, Yoko Yoshimura, which were so serious they took six months to heal.The Osaka District court sentenced Yoshimura to three years imprisonment, but with a suspended sentence for five years.[150]

And in August 2009, in Miyazaki, foster mother Kei Yasunami bit her six-month-old foster child's buttock, resulting in an injury that took a month to heal. Police arrested her on the criminal charge of causing injury and a court sentenced her to 10 months imprisonment, with the sentence suspended for three years.[151]

Over-Institutionalization and Slow Increase in Foster Placements

Although Japan's government has started toencourage foster parent placement since mid-2000s,the decisions of the child guidance center—the authority that determines where the children should be placed—has shown little progress and most of the children are ending up in institutions.

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[148]In March 2006, Mizue Sato from Sakura City, Chiba, caused the death of her one-year-old foster child by strongly shaking his body which resulted in subdural hematoma. Investigators decided that the defendant did not have the intension to commit murder or inflict injuries so a summary indictment was issued for an accidental homicide. On April 20, 2006, Chiba Summary Court issued a judgment that the defendant should pay a penalty of 500,000 yen ($5,000). "Boy's Death in Sakura 'Accidental' – Defendant Ordered to Pay 500,000 Yen ($5,000)Penalty the Same Day," *Mainichi Shimbun*, April 21, 2006. Tetsuo Tsuzaki, Children of This Country: Japanese Alternative Care System Structure for Children in Need - Vested Interest of Adults and Welfare of Children (この国の子どもたち　要保護児童社会的養護の日本的構築　ー大人の既得権益と子どもの福祉ー) (Tokyo: Nihon KajoSyuppan, 2009), pp. 146-171. Reference materials for the accidental homicide of foster child in Sakura, Chiba include a newspaper article from Mainichi Shimbun ("Boy's Death in Sakura 'Accidental'") among others.

[149]"The Obihiro Summary Court order foster parent pay fine of 300,000 yen ($3,000) for injury the girl (里親に罰金３０万円命令　女児にけが負わせる　帯広簡易裁判所)" *Asahi Shimbun*, March 10, 2009; "Injury:Stuck a pin to seven-year-old child/Arrest 68-year–old foster parent (傷害：ピンで７歳刺す　容疑で６８歳里親を逮捕)"*Mainichi*, February 27, 2009.

[150] "Osaka foster child injury: unemployed female found guilty, admitted and apologized, with a suspended sentence (**大阪の里子傷害：無職の女に有罪判決　罪認め謝罪、猶予付き**)" *Mainchi Shimbun*, November 6, 2010.

[151] "Watch! Foster children abuse cases, Osaka city did inspection. Consultation system for foster parents needs to be improved. "Watch!：里子虐待事件、大阪市が検証　里親の相談体制強化を), *Mainichi Newspaper,* May 5, 2012.

While the child guidance center's decisions should be guided solely by the best interest of child, in reality they take into consideration other conflicting interests, such as keeping good communications with biological parents and not invoking a time consuming judicial process, which appearto contribute to over-institutionalization.

There seems little prospect that encouraging favorable attitudes to prioritize foster care placement will translate into the increased foster care decisions by the centersin line with international human rights standards.

While the number of children being placed in foster care increased in the last decade, for example, from 2,517in 2002 to 4,966 in 2011,the number of children being admitted to child care institutions has also increased slightly in the past 10 years from 31,592 children in 2002 to 31,693 children in 2011.[152]While some observers view these trends as proof that the proportion of children in foster parent arrangements are gradually increasing, others are more critical, analyzing the increaseonly as the result of the increase of the total number of children being placed into care.

Some children who could not enter a childcare institution due to overcapacity were merely diverted to foster parents, leading some experts andfoster parents to conclude the increase in fostercare placements were neither intentional nor the result of active involvement of the Japanese government.[153]

The plan to reach a target of one-third of children in foster parent care, when considered together with the plan's slow implementation, shows the government's measures are generally inadequate. Moreover, many people involved in alternative care question both these goals and whether the government plan can actually be implemented, pointing out that budget plans to support the changes are also unclear.[154]

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[152]Of the 34,109 children who were in alternative care (childcare institutions, infant care institutions, and foster care) in 2002, 28,903 were in child care institutions and 2,689 were in infant care institutions. In 2011, of the 36,656 children in alternative care, 28,803 were in child care institutions and 2,890 were in infant care institutions. There is also an increase in the number of infants admitted to institutions, who are especially in need of foster parent's care. Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed August 18, 2013), p.22.

[153]Human Rights Watch phone interview with Tetsuo Tsuzaki,Professor at Kyoto Prefectural University,Theory of Child Care and Comparative Social Welfare, July 8, 2013.Human Rights Watch interview with Katsumi Takenaka, formerly in institutional care and currently a foster father, Saitama, July 7, 2012.

The government also erodes compliance with the Foster Parents First Principle in the Foster Parents Placement Guidelines by permitting exceptions. For example, theguidelines allow a child to be institutionalized when they have "significant psychological problems and therefore special care in the institution is desirable," or when "the parents/legal guardian(s) clearly disagree with foster parent placement (except for article 28 cases)." Another problematic exception is possible when "the parents/legal guardian(s) are difficult to handle including when s/he makes unreasonable demands."

Theguidelines further allow the centersnot to consider an institutionalized child for foster care until the biological parents cease to meet the child for up to one year (and an infant, for six months).[155] This is particularly problematic for infants as it implies that an infant, whose institutionalization is strictly restricted by UN Guidelines, can be regularly be institutionalized for up to six months. In reality, most infants are in an institution for much longer than six months.

Why do child guidance centers continue to place children with institutions, not foster parents?

First, institutions are located at the core of the current alternativecare system and have been handled that way for a long time.Center staff are often invested in continuing existing systems, such as childcare institutions, and can point to reforms (such as reducing institution size and introducing unit-based care) as further justification for their continued preference to send children to institutions.As a result,center staff often hesitate to hamper the relationship with institutions, which operate with government subsidies based on the number of children they admit, by diverting children to foster care.

Second, there is no adequate assistancefor, or effective monitoring of, foster parents. This means that child guidance center staff members do not completely trustthe foster parentas a genuinely appropriate option to protect and support children. Wary of being held

[155]Foster Parents Placement Guidelines (里親委託ガイドラン), in the "Notice on Foster Parents Placement Guidelines" (里親委託ガイドラインについて), Equal Employment, Children and Families Bureau Chief of Ministry of Health, Labour and Welfare,issue 0330, No.9, March 30, 2011, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_11.pdf (accessed January 10, 2014). Apart from the three problematic exceptions, the guidelines also list two other exceptions; a) the child explicitly oppose foster parent placement and b) foster parent placements did not work out and institutional care is deemed necessary. Based on appropriate individual assessment, institutional care could be the best interest for older teenagers nearing independence, large families of siblings who wish to remain together, or a child that has endured multiple foster care breakdowns.

responsible for possible foster parentabuse,manycenter staff members choose to send children to established childcare institutions.

Third, because of a shortage of child guidance center staffs and lack of their specialties, the staff are not able to change the current situation which highly depends on institutions. Also, as discussedin greater detail in the next section, centers tend to prioritize the opinion of biological parents, who tend to prefer institutions, over the interest of children.

Children's best interests will usually lie in properly designed, implemented, and monitored family-based care. To achieve this, government officials should assume that family-based care should generally be the first choice for alternative care placements.

The national government must immediately instruct local governments and child guidance centers to strictly adhere to the best interest of the child to overcome conflict of interests between biological parents and institutions. The government should also consider legal reform to address the embedded conflict of interest child guidance centers are involved in, and task an independent mechanism, such as family court, to decide where they should receive care in alternative care settings.

Furthermore, reforms should be undertaken to shift reliance on institutions to reinforcing the foster parent system, andpotential problems implementing foster-based care should be assessed and appropriate action taken, including, for example, better support for children in family-based care.[156]

Staff members of child guidance centers, institutions, government policymakers, and other stakeholders should also change their mindset to recognize that depriving children of family through unnecessary institutionalization is itself abusive. Such changes in people's perspectives about the best way to approach alternative child care should happen at all administrative levels, including nationally at the Ministry of Health, Labor and Welfare, and locally at the level of prefectures, cities, and child guidance centers around the country.

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[156] "Notice on Foster Parent Placement Guidelines" ("里親委託ガイドラインについて"), in Foster Parent Placement Guidelines (里親委託ガイドライン), Equal Employment, Children and Families Bureau Chief of Ministry of Health, Labour and Welfare, Issue 0330/No.9, March 30, 2011. http://www.mhlw.go.jp/stf/shingi/2r9852000000 18h6g-att/2r9852000000 18hlp.pdf (accessed May 1, 2012).

The lack of foster care placement will likely never significantly change if existing institutional care facilities and the need to reform foster care are used as excuses to defend the status quo.

Government officials should instead assume that family-based care should generally be the first choice. If, in fact, moving towards foster parent systems face certain problems and issues in implementation, officials could assess what kind of systems could counteract those problems, including better support for children in family-based care, and take action accordingly. This change of perspective in assuming foster care, not institutional care, is the desired result, could build the foundation for a better system in all aspects, from the reinforcement of detailed foster parent support to adequate human resource deployment in child guidance centers.

Fukuoka and Oita Prefectureboth saw a considerable increase in the percentage of children placed with foster parents in recent years, and serve as good examples of what is possible with the right approach.[157] Officials in these two prefectures pointed out that thereis now "better understanding of the effectiveness of the foster parent's care among

[157]There is a significant gap between municipalities which show forward attitudes in foster parent placements and those that are more conservative in their approach. In Niigata Prefecture which marks the highest foster parent placement rate there are 39.0% of child placements in the foster parent's care, while in Sakai City with the lowest record there are only 4.2% of foster parent placements. At the prefectural level, Kagoshima Prefecture's placement of only 5.8% children in foster care is the lowest). Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf(accessed March 20, 2014)p.24.Sharp growths in the rate of foster parent placement in recent years are represented in a 21.0% increase in Fukuoka City (6.9%⟶27.9%), a 16.4% increase in Oita Prefecture (7.4%⟶23.8%), and a 11.7% increase in Fukuoka Prefecture (4.0%⟶15.7%). Note that the years covered by this increase are from 2004 to 2011. Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf.18, 2013(accessed March 20, 2014) p.25.According to analysis and local officials, some of the key measures taken that underpinned the increases in placements in foster parent care were the following: structural reinforcement of child guidance centers and building understanding of effectiveness of the foster parent system among the center staff; better interaction among foster parents including a number of foster parent meetings for interactive support; close cooperation with NPOs to spread information and best practices for effective systems; effective promotion of foster parent placements based on the child-centered viewpoint to "ensure the best interests of the child"; building mutual understanding and cooperation between foster parents and institutions to play a significant role in the project to promote the foster parent system; effective selection of foster parent program-suited children based on good understanding and cooperation of institutions and foster parents; and targeted reinforcement of child guidance centers' structure to create better understanding of effectiveness of the foster parent system among the center staff. "Practical Examples of Successful Foster Parent System Promotion Activities by Municipalities Resulting in a Considerable Increase in the Rate of Foster Parent Placements," Ministry of Health, Labour and Welfare, undated,http://www.mhlw.go.jp/stf/shingi/2r9852000001e5xt-att/2r9852000001e60p.pdf (accessed September 15, 2013)

the child guidance center staff" and "the child-centered viewpoint based on the concept of 'assuring the best interests of the child' in encouraging foster parent's care."[158]

The importance of attitude was noted during the July 2011 National Child Guidance Center Directors Conferencein Tokyo.Municipalities with low foster parent placement rates, it noted, tend to display "a high degree of caution" whenapproaching child-care related issues," while municipalities with higher foster care placement rates had a"forward-looking attitude, while remaining cautious where needed, to overcome these issues," by, for example, considering foster parent care first for infants before institutionalization. The conference noted:

> The positive and forward-looking attitudes of the child guidance center towards the family-based care in general, including infant placements in the foster parent's care, play an important role in increasing the rate of new foster care placements.[159]

From a cost perspective, it also makes sense to move away from institution-delivered care. One estimate suggests that it costs the government 83,732,000 yen ($837,320) to bring up a child in public institutions in a large city from birth until 18, and as little as 32 to 38 million yen ($320,000 to 380,000)[160]to raise a child from infancy to 18 in foster parent care.[161]

Biological Parents Control over Child Placement

It is customaryfor the Child Guidance Centers to obtain consent from a biological parent of a child before placing them in a foster family or child care institution. But, as a care worker at the Child Guidance Center in Tokyo told Human Rights Watch, it can be difficult to obtain parental consent to place children in foster care in part because "many fear that their child

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[158] Practical Examples of Successful Foster Parent System Promotion Activities by Municipalities Resulting in a Considerable Increase in the Rate of Foster Parent Placements," Ministry of Health, Labour and Welfare, undated, http://www.mhlw.go.jp/stf/shingi/2r9852000001e5xt-att/2r9852000001e6op.pdf (accessed September 15, 2013).

[159] National Child Guidance Center Directors Conference, "Report Child Guidance Center's Study on Foster Parent Placement and Placed Children (Issue 91)" ("全児相（通巻第 91 号別冊）『児童相談所に置ける里親委託及び行き児童に関する調査』報告書"), July 2011, p. 97.

[160] Human Rights Watch email interview with Tetsuo Tsuzaki,Professor at Kyoto Prefectural University,Theory of Child Care and Comparative Social Welfare, November6, 2013.

[161] Ibid.

will be taken away by the foster parents."[162] As a care worker at an institution in Tsukubasaid: "In Japan, the interest of the parents is seen as more important than the interests of the child."[163]Minoru Hasegawa, chief director at Miyagi Chuo Child Guidance Center, told Human Rights Watch:

> Generally speaking, most parents probably agree with the option of institutional care, in part because they are hoping to take their child back someday. There seems to be an image associated with the foster parent system that the child becomes somebody else's child.[164]

Setsuko Yamamoto, who has been a foster parent for 25 years, said:

> I always say it's time that we left behind that kind of excuse [about foster parents]. It's a matter of how you talk to the parents who don't have much idea what alternative care is about. Their attitudes change most of the time when you do it right…. It is really up to the child guidance center staff how they talk to the parents.[165]

A care worker from an infant care institution in Tokyo said thatchild guidance center staff could improve their efforts to get the consent of biological parents:

> Even for those children for whom we request foster parent's care, the child guidance center staff most often respond by saying they cannot get the parental consent. Sometimes we wish the child guidance center would try harder.[166]

When biological parents do not agree to the decisions of the child guidance centers, the director of the center or each prefecturemay apply to a family court for approval to place the

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[162]Human Rights Watch interview with Tokyo child guidance centers staff, Tokyo, May 29, 2012.

[163] Human Rights Watch interview with institution care worker, Tsukuba, December 14, 2011.

[164]Human Rights Watch interview with Minoru Hasegawa, chief director at Miyagi Chuo Child Guidance Center, Miyagi, August 17, 2012.

[165]Human Rights Watch interview with Setsuko Yamamoto, foster mother running a foster family group home, Tokyo, September 6, 2012.

[166] Human Rights Watch interview with infant care institution staff in Tokyo, Tokyo, June 29, 2012.

child in an institution or foster care under article 28 of the Child Welfare Act by demonstrating that the child's welfare is being seriously violated in the parents' custody.[167]

In order to protect the best interests of the child, child guidance centers should invoke the article 28 court process, when biological parents do not agree to placing their child into foster care. However, child guidance centers are reluctant to use the procedures. Out of 32,365 children either in child care institution and foster care in 2010, the child guidance center used the article 28 procedures only in 466 cases. Moreover, the centers appear to have requestedinstitution placementinstead of foster care in this article 28 court process. Therefore, almost all article 28 cases resulted in the child being placed in institutional care. Court ordered placements account for only 18 cases out of 2,610 foster parent placements, demonstrating that most children are put straight into institutions when the parent does not consent to foster care.[168]

The national government's Foster Parent Placement Guidelines also seem to tolerate the ongoing reluctance of the child guidance centers to invoke the article 28 legal motion. It says a child to be institutionalized when "the parents/legal guardian(s) clearly disagree with foster parent placement (except for article 28 cases)," without instructing the child guidance centers to invoke the article 28 court process when biological parents do not agree with foster parent placement arrangements made by the child guidance centers.[169]

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[167]Child Welfare Act, No.164 of December 12, 1947, final amendment made in No.67 of August 22, 2012.

Article 28 (1) In the case where a guardian abuses his/her child or extremely neglects the duty of custody of his/her child or in any other case where the guardian's exercise of custody extremely harms the welfare of said child, when taking a measure set forth in Article 27 paragraph (1) item (iii) is contrary to the intention of a person who has parental authority or a guardian of a minor for the child, the prefectural government may take a measure set forth in any of the following items:

Take a measure set forth in Article 27 paragraph (1) item (iii) with approval from the family court, when the guardian is a person who has parental authority or a guardian of a minor. Article 27 (1) (iii) Entrust the child to a foster parent, or admit the child into an infant home, a foster home, an institution for mentally retarded children, a daycare institution for mentally retarded children, an institution for blind or deaf children, an institution for orthopedically impaired children, an institution for severely retarded children, a short-term therapeutic institution for emotionally disturbed children, or a children's self-reliance support facility.

[168]As of January 31, 2010, out of all 29,755 children in child care institutions, there were 272 children to whom the article 28 procedure was applied from the start, 10 children to whom the procedure was applied after the initial parental consent was overturned, and 165 children whose article 28 procedure was discontinued after parental consent was given in the middle of the process. Similarly, out of all 2,610 children in the foster parent's care, there were 16 children whose placement was implemented through the article 28 procedure from the start, one child to whom the procedure was applied after the initial parental consent was overturned and also only one child whose article 28 procedure was discontinued after parental consent was given in the middle of the process. National Child Guidance Center Directors Conference, " Report: Survey Result Regarding Parental Authority System," ("『親権制度に関するアンケート調査』結果報告)"), May 2010,http://www.moj.go.jp/content/000048447.pdf (accessed July 5, 2013), p. 1.

[169]Foster Parents Placement Guidelines (里親委託ガイドラン), in the "Notice on Foster Parents Placement Guidelines" (里親委託ガイドラインについて), Equal Employment, Children and Families Bureau Chief of Ministry of Health, Labour and

While the court has approved most of the applications by the director of child guidance centers for alternative care placement—in fact 85 percent[170]—child guidance centers often avoid invoking the article 28 procedure, saying it can be troublesome and time consuming. Seeking a ruling on the application takes two to four months on average after it is filed,[171] plus possibly another month if one considers the preparation time before the legal motion is filed. During this time, the child is usually held in a "temporary custody" institution within achild guidance center.While there are no legal restrictions in placing children with foster parents for the temporary custody during the waiting period involved with the article 28 procedure, child guidance centers place children in the temporary custody facility in almost all cases. The article 28 procedure also requires another statement be filed with the family court two years later for status renewal.[172]

One worker in a child guidance center in Iwate Prefecture explained:

> If we go through the article 28 procedure, the child will need to stay in a facility for temporary custody for three or four months during which he or she cannot even go to school. As long as the parent gives consent for institutional placement, then an early placement in an institution would be a better solution for the children, wouldn't it?[173]

In addition, there is a financial rationale for seeking to persuade parents to voluntarily surrender their child to the alternative care system: parents must pay fees to the

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Welfare,issue 0330, No.9, March 30, 2011, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_11.pdf (accessed January 10, 2014).

[170] The Supreme Court Administration Office Family Bureau, "Trends of Child Welfare Act Article 28 Cases and Facts Behind the Case Procedures: January – December 2011" ("児童福祉法２８条事件の動向と事件処理の実情　平成 21 年 1 月～12 月"), undated, http://www.courts.go.jp/vcms_lf/20514011.pdf (accessed July 5, 2013).

[171] The Supreme Court Administration Office Family Bureau, "Trends of Child Welfare Act Article 28 Cases and Facts Behind the Case Procedures: January – December 2011" ("児童福祉法２８条事件の動向と事件処理の実情　平成 21 年 1 月～12 月"), undated, http://www.courts.go.jp/vcms_lf/20514011.pdf (accessed July 5, 2013).

[172] Child Welfare Act of 1947, Art. 28-2.The period for a measure taken pursuant to the provision of item (i) and the provision of item (ii) of the preceding paragraph shall not exceed 2 years from the date of commencement of said measure; provided, however, that the prefectural government may renew said period with approval from the family court, when it is found that the guardian is likely to abuse the child, extremely neglect the custody of the child, or cause any other harm to the welfare of said child, in light of effects, etc. of the guidance to the guardian pertaining to the referenced measure (which shall mean the guidance set forth in Article 27 paragraph (1) item (ii); the same shall apply hereinafter in this Article) unless the referenced measure is continued.

[173] Human Rights Watch interview with a child guidance center staff in Iwate, Iwate, August 2012.

government for taking care of their children in the alternative care system. If they do not give their consent, they often do not pay this fee.[174]

Another significant obstacle arises from the government's stated goal of promoting the return children to their biological parents if possible, sincesome child guidance centers are reluctant to press forward with foster care, which they see asriskingtheir continuing relationship with the child's biological parents. Minoru Hasegawa, chief director of Miyagi Chuo Child Guidance Center, said:[175]

> We want to make best efforts not to have any conflicts with the child's parent for the sake of future possibilities. If we can return the child to the biological parent, that would be most desirable. So this is why it's our preferred option to make efforts to obtain parental consent.

Takeo H., 15,was struggling living in an institution where he had been placed when he was 3 years old. A school teacher with whom he discussed the idea of foster care sought to dissuade him, telling him: "You might want to reflect a little bit more because you might not want to forget about your biological family [as you might] if you live with a foster family."

Takeo told Human Rights Watch:

> I had never thought about it that way … but after reflecting on what he told me, I began to see it that way…. I have a family who raised me until I was three years old and I didn't want to do anything that separated me from them.[176]

He remains in institutional care. Takeo's main communication with his biological parents since he was five has been via a letter sent each year on his birthday, and one meeting

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[174]Depending on the parent's income, a monthly fee of several thousand yen up to 50,000 yen is charged for a child placement in institution or a foster parent's care.Human Rights Watch interview with Yasuhiro Kamata, deputy associate director and deputy manager at Miyagi Chuo Child Guidance Center and Minoru Hasegawa, chief director at the same center, Miyagi, August 17, 2012.

[175]Human Rights Watch interview with Minoru Hasegawa, chief director at Miyagi Chuo Child guidance Center, Miyagi, August 17, 2012.

[176] Human Rights Watch interview with Takeo H,, 15, who lives in an institution, Tohoku, December 11, 2011.

when he graduated from elementary school, although recently he said he had been corresponding more regularly by mail with his mother.[177]

Inadequate Resources in Child Guidance Centers

The position of child guidance centers is generally a decisive factor in the rate of foster parent placement.[178]But in the current system, many centerslack the resources to support foster parents adequately. As a result, they areoften not eager or forward-looking in promoting foster care.

"It takes time and effort to place a child under foster parent care. It's easier to put them in an institution without going through any troublesome, person-to-person process," explained Mika Hobbs, who fosters three children in Tokyo. She pointed out thatchild guidance centers do not generally have time to carefully match potential foster parents and a child.[179]

For example, child guidance centers are responsible for visiting each foster family after a child's placement throughout the time they are in the placement, until the expiration of the placement order.[180] A staff member of a child guidance center in Iwate prefecture said bluntly with respect to the foster parent system that "it is not possible given our capacity to satisfy all requirements written in the foster parent placement guidelines."[181]

The chief director at the Miyagi Chuo Child Guidance Center, Minoru Hasegawa, said there was "understandably pressure" on child guidance centers to avoid more incidents like the Suginami case in 2010, when a foster parent allegedly killed the child in her care. He added:

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[177]Human Rights Watch interview with Takeo H., 15, who lives in an institution, Tohoku, December 11, 2011.

[178] National Child Guidance Center Directors Conference, "Report: Child Guidance Center's Study on Foster Parent Placement and Placed Children (Issue 91)" ("全児相　（通巻第 91 号　別冊）『児童相談所に置ける里親委託及び行き児童に関する調査』報告書"), July 2011, p. 95, 97.

[179] Human Rights Interview with Mika Hobbs, foster mother in Tokyo, Tokyo, July 11, 2012.

[180]According to the "Foster Parent Placement Guidelines," a child guidance center workeror a foster parent support organization staff member is supposed to visit the child placed in foster parent's care every twoweeks after the placement for a period of two months, and then after that, monthly or bi-monthly for the period of two months after the placement to two years after the placement. After two years of placement, inspection visits will drop to just twice a year. "Notice on Foster Parent Placement Guidelines" ("里親委託ガイドラインについて"), in Foster Parent Placement Guidelines (里親委託ガイドライン), Equal Employment, Children and Families Bureau Chief of Ministry of Health, Labour and Welfare, Issue 0330/No.9, March 30, 2011. http://www.mhlw.go.jp/stf/shingi/2r9852000001 8h6g-att/2r9852000001 8hlp.pdf (accessed July 6, 2013).

[181]Human Rights Watch interview with Iwate child guidance center staff, Iwate, August 2012.

> We cannot see [how things are] once the child is under the foster parent's care. Institutions, in that sense, are more accessible [for regulators] and the fact that the child is in a place we know makes us feel safe in some ways.[182]

Hiroyasu Hayashi, a consulting member of Institutional Management and Foster Parent Care Policies Working Group of the Ministry of Health, Labor and Welfare, pointed to the sheer number of tasks that child guidance centers must perform as the biggest obstacle to the growth of the foster parent system.[183]

Child guidance centers also have other competing priorities for their work, including responding to reports of abuses (which included over 65,000 cases in 2012). This sometimes limits the amount of resources available for other tasks including providing consulting services.[184]

For example, Jun Yahagi, deputy manager of Iwate Prefecture Miyako Child Guidance Center, told Human Rights Watch that he handled 127 new cases in a year on his own, in addition to taking care of deputy manager duties that involved administrative tasks, dealing with child care institutions, and attending foster parent meetings.[185]

The number of child social workers in child guidance centers is also strikingly low compared to other developed countries, resulting in large individual caseloads. For example, Osaka prefecture has only 108 child social workers for 6.2 million people; each worker receives and handles 225 new cases per year, while continuing their work on cases from previous years. In comparison, New York City, with a population of 8 million people, has 2,058 child protection workers who each handle 12 new cases on average per year. New Zealand has a population of 3.9 million people but has 989 child social

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[182]Human Rights Watch interview with Minoru Hasegawa, chief director at Miyagi Chuo Child Guidance Center, Miyagi, August 17, 2012. The Suginami case is one in which a foster mother allegedly murdered her foster child. The details of the case were discussed in sectionIII.

[183] Human Rights Watch interview with Hiroyasu Hayashi, professor of Social Welfare Studies in Japan Women's University, and member of Institutional Management and Foster Parent Care Policies Working Group of the Ministry of Health, Labour and Welfare, Kanagawa, September 4, 2012.

[184]Ministry of Health, Labour and Welfare, "Investigative results of deaths etc. from child abuse and the number of child abuse consultations etc," July 25, 2013,
http://www.mhlw.go.jp/stf/houdou/2r9852000037b58.html (accessed April 17, 2014).

[185] Human Rights Watch interview with Jun Yahagi, deputy manager at Iwate Miyako Child Guidance Center, Iwate, August 21, 2012.

workers who each receive approximately 30 new cases year, including delinquency and alternative care cases.[186]

Such demands mean it is not surprising that centers are quite conservative when it comes to promoting foster parent care, according to Professor Tetsuo Tsuzaki. He said:

> There is no way that the child guidance center will push forward with the foster parent placement which is much more demanding than institutional care in terms of time, process, expertise, and efforts.[187]

Many child guidance center staff also lack necessary expertise for their jobs—what Tetsuro Tsuzaki, former director of Osaka Chuo Child Guidance Center, referred to as "knowledge and know-how."[188]Just 53 percent of center directors and 65 percent of social workers have child care-related education and qualifications, according togovernment data.[189]Often, educational backgrounds have little to do with child care: the head of one Tokyo-based child guidance center, for example, isa doctor, but a surgeon. It is also not uncommon to find that child guidance center staff members previously worked in a completely different field, such as construction or waterworks.[190]

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[186]Jun Saimura, "Table 3-3-1 International comparison of social worker arrangement and qualification"" (表３－３－１ソーシャルワーカーの配置状況及び資格要件にかかる国際比較)","Theory of Child Abuse Social Work""(子ども虐待ソーシャルワーク論)" (Tokyo, August 2005).

[187] Tetsuo Tsuzaki, Children of This Country: Japanese Alternative Care System Structure for Children in Need - Vested Interest of Adults and Welfare of Children (この国の子どもたち　要保護児童社会的養護の日本的構築　ー大人の既得権益と子どもの福祉ー) (Tokyo: Nihon KajoSyuppan, 2009), p. 142.

[188]Human Rights Watch interview with ProfessorTetsuroTsuzaki, Professor of Child Welfare Studies in Hanazono University and former director of Osaka Chuo Child Guidance Center, Kyoto, June 8, 2012.

[189] National Child Welfare Organization Chiefs and Child Guidance Center Directors Conference Materials 2012, "Appointed Director's Career Background Analysis in 2012" ("平成 24 年度　所長の採用区分構成割合") and "Appointed Child Social Worker's Career Background Analysis in 2012" ("平成 24 年度　児童福祉司の採用区分構成割合"), Ministry of Health, Labour and Welfare, July 26, 2012, http://www.mhlw.go.jp/seisakunitsuite/bunya/kodomo/kodomo_kosodate/dv/kaigi/dl/120726-01.pdf (accessed March 20, 2014)p. 19-20.

[190]Although commonplace around the country, a specific example can be given from Tokyo Metropolitan City Child Guidance Center and Miyagi Prefecture East District Child Guidance Center Kesennuma Branch. Human Rights Watch interview with the Tokyo Metropolitan City Child Guidance Center staff, Tokyo, May 29, 2012, and Human Rights Watch interview with Kaoru Nikaido, Miyagi Prefecture East District Child Guidance Center Kesennuma Branch director and Shinichi Fukushima, deputy manager at the same center, Miyagi, August 17, 2012.

Vested Institutional Interests, Lack of Investment

"To be honest with you," the director of a childcare institution in the Tohoku district told Human Rights Watch, "it's not exactly ideal for us if there were no more children to be admitted to our institution because our operation is based on receiving children to care for."[191]

The director's remark is unsurprising: child careinstitutions in Japan operate with subsidies they receive from the government based on the number of children they admit.

A close relationship between child guidance center staff and the institution's executives promotes placements of children in institution instead of foster parent care. Professor Tetsuo Tsuzaki observed that, "It has become customary for municipality related personnel to try and work things out as smoothly as possible to minimize conflicts with the localchild care institutions," which often results in more child placements in institutions than in foster care.[192]

More investment is needed in foster care if it is to flourish, according to Professor Hiroyasu Hayashi. He said:

> [If] we are to actually operate our system in a way that is centered around the foster parent program, we will need to invest as much money there as we do in institutions. Japan spends too little money on the foster parent system compared to Western counterparts.[193]

Lack of Awareness about Foster Care

Social awareness regarding the foster parent system in Japan is very low. A study conductedin 2010 by the National Child Guidance Center Director Conference concluded that

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[191] Human Rights Watch interview with child care institution head, Tohoku, August18, 2012.Similar comments were heard from a couple of foster parents and foster parent support groups.

[192] Tetsuo Tsuzaki, Children of This Country: Japanese Alternative Care System Structure for Children in Need - Vested Interest of Adults and Welfare of Children (この国の子どもたち　要保護児童社会的養護の日本的構築　ー大人の既得権益と子どもの福祉ー) (Tokyo: Nihon KajoSyuppan, 2009), p. 145.

[193] Human Rights Watch interview with Hiroyasu Hayashi, professor of Social Welfare Studies in Japan Women's University, member of Institutional Management and Foster Parent Care Policies Working Group of the Ministry of Health, Labour and Welfare, Kanagawa, September 4, 2012.

one reason the foster parent system has experienced limited growth is because "citizens have scarce awareness and interest in participating in the child's alternative care."[194]

In some prefecture and city governments, promotion of foster parent placements has successfully increased. The child guidance centers in those prefectures mentioned the importance of raising public awareness by collaborating with nonprofit organizations, creating and distributing leaflets,screening videos about foster parenting, and having foster parents share their experiences in information sessions.[195]

Furthermore, in terms of successfully soliciting more persons to become foster parent candidates, it is important that foster parents are better understood by Japanese society and that social prejudice against foster parents ends.[196] Mika Hobbs, a foster mother caring for three foster children in Tokyo, told Human Rights Watch that some foster parents are reluctant to reveal they are foster parents because of the accompanying social stigma, and also because believe their children could be singled out and bullied at school.[197]

Lack of Parent Diversity

Foster parents often lack sufficient diversity to cater to a wide range of children's needs.

"We don't have appropriate foster parents," one representative of the Kesennuma Child Guidance Center Branch Office said. "There are only five in our area. We could look for suitable foster parents for each child only if there are more registered foster parents."[198]

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[194] Hiroyasu Hayashi, "Alternative Care System Reform and How to Promote Foster Parent Placements" ("社会的養護改革と里親委託推進のあり方"), Journal of Foster Care (里親と子ども), Vol.7., October 2012, p.12. National Child Guidance Center Directors Conference, "Report: Child Guidance Center's Study on Foster Parent Placement and Placed Children (Issue 91)" ("全児相　（通巻第 91 号　別冊）『児童相談所に置ける里親委託及び行き児童に関する調査』報告書"), July 2011, p. 55.

[195] Ministry of Health, Labour and Welfare, "Practical Examples of Successful Foster Parent System Promotion Activities by Municipalities Resulting in a Considerable Increase in the Rate of Foster Parent Placements," undated, http://www.mhlw.go.jp/stf/shingi/2r9852000001e5xt-att/2r9852000001e60p.pdf (accessed November 3, 2013).

[196] The UN guidelines provides that states, agencies and facilities, schools and other community services should take appropriate measures to ensure that children in alternative care are not stigmatized. "Resolution adopted by the General Assembly: 64/142 Guidelines for the Alternative Care of Children," A/64/434, December 18, 2009, http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf (accessed December 10,2011), para. 95.

[197]Human Rights Watch interview with Mika Hobbs, Tokyo-based foster parent, Tokyo, July 11, 2012.

[198]The capacity of "AsahigaokaGakuen," a child care institution in the same district, is 70 children. A child placement outside of the child guidance center's area of authority within the same prefecture is permitted and there are actual cases of this happening. However, a judgment of whether a placement across a long distance is appropriate and advisable, or not, should be examined from several perspectives, including the child's ease of meeting their biological parents, having to take the child away from their original community, and other factors. Shinichi Fukushima, deputy manager of Miyagi Prefecture

The director of a child care institution in Iwate told Human Rights Watch that "most of the children in alternative care have issues like a developmental disability and cannot be handled by foster parents. We also lack foster parents with technical skills. Even specialized foster parents are not specialists in real sense."[199]

While child guidance centers have invariably recommended a household with a dedicated homemaker to be foster parents, moreneeds to be done to encourage households where both partners work to be foster parents, and unmarried individuals as well as LGBT couples should also be considered.[200]More also needs to be done to develop kinship-based fostering. Countries with a high rate of foster parent placements show an extensive use of the kinship-based foster parent system.While child placements in the kinship-based foster parent's care in Japan make up around 1.7 percent of the total of alternative care placements, they comprised 18 percent of placements in the United Kingdom, 23 percent in the United States, and 40 percent in Australia.[201]

There is also a lack of foster parents registered for the specialized foster care program set up to care for children who are abuse victims, according to the Ministry of Health, Labor and Welfare.[202] The ministry is aiming at recruiting a total of 800 special foster parents. Recruiting more people for the specialized foster parents program andimproving their training is a must. One more option is to implement a professional foster parent system

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East District Child Guidance Center Kesennuma Branch, stated, "When we are aiming to reintegrate the child with their biological parents, institutions in faraway areas are not very suitable, so it tends to be Asahigaoka [Gakuen]." Human Rights Watch interview with Shinichi Fukushima, deputy manager at Miyagi Prefecture East District Child Guidance Center Kesennuma Branch, Miyagi, August 17, 2012.

[199]Human Rights Watch interview with Iwate child care institution director (name withheld), Iwate, August 2012.

[200] Hiroyasu Hayashi, "Alternative Care System Reform and How to Promote Foster Parent Placements" ("社会的養護改革と里親委託推進のあり方"), *Journal of Foster Care* (里親と子ども), Vol.7., October 2012, p.11. The registration of a working couple as foster parents is allowed to a certain extent but a household with a dedicated homemaker is what is invariably recommended. Japan as a whole has more households with husband and wife both working than households where one person is a dedicated homemaker that does not work outside the home. Ministry of Health, Labour and Welfare, "Health, Labour and Welfare White Paper 2008" ("平成２０年版厚生労働白書"), undated,http://www.mhlw.go.jp/wp/hakusyo/kousei/08/(accessed December 6, 2013). p. 63.

[201] Hiroyasu Hayashi, "Alternative Care System Reform and How to Promote Foster Parent Placements" ("社会的養護改革と里親委託推進のあり方"), *Journal of Foster Care* (里親と子ども), Vol.7., October 2012, p.16.

[202] Specialized (registered) foster parents are applied for children recognized to be in need for special care. This type of children includes those with: 1. traumatic experience like child abuse which affected them mentally and physically; 2. delinquent behaviors or similar issues; 3. physical or mental disabilities or disorders. Specialized foster parents need to have more than three years of experience as a registered foster parent, have completed training for specialized foster parents, and be capable of dedicating time and resource to rearing the placed child. Their registration status needs to be updated every two years followed by a training session. There are 602 specialized foster parent couples in Japan in 2012.

that would be better equipped to care for children with a severe disability who are difficult even for specialized foster parents to handle.[203]

Furthermore, when necessary, another solution to overcome the lack of foster parent diversitycould be to promote cross-prefectural child placements to ensure that children are matched with appropriate foster parents. Although such cross-prefectural placements are possible, there are not many cases where children are placed in foster family located in a different prefecture.[204]

Inappropriate Certification and Matching

Thecertification process is a very lenient for foster parents. KatsumiTakenaka, formerly in institutional care and currently a foster father, describes it as "passable as long as one is over a certain age, married, and does not have a criminal record."[205]

One child guidance center staff member admitted to Human Rights Watch that "it is difficult to reject a foster parent application" unless age, residential space, or income conditions come into play.[206] Jun Yahagi, deputy manager at Iwate Miyako Child Guidance Center, told Human Rights Watch that some people are certified as foster parents despite clearly being inappropriate.[207]Foster parents whom center staff view as unsuitable may spend years on the foster parent list without any children placed under their care.

There are as many as 5,434 households without any foster child out of the national total of 8,726 registered foster parent households.[208]A child guidance center staff member in Tokyo explained the gap by saying they need many candidates to make the best possible matches for children having diverse needs. But Katsumi Takenaka, a foster parent in Tokyo,

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[203]Human Rights Watch interview with Junichi Komiya, journalist specialized in alternative care, Tokyo, October 9, 2012.

[204]Human Rights Watch interview with Kunio Kuroda, director of Tokyo-based child care institution "Futaba MusashigaokaGakuen", Tokyo, October 9, 2012.

[205] Human Rights Watch interview with Katsumi Takenaka, formerly in institutional care and currently a foster father, Saitama, July 7, 2012.

[206]Human Rights Watch interview with Jun Yahagi, deputy manager at Iwate Miyako Child Guidance Center, Iwate, August 21, 2012.

[207]Human Rights Watch interview with Jun Yahagi, deputy manager at Iwate Miyako Child Guidance Center, Iwate, August 21, 2012.

[208] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013,http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed November 3, 2013), p.1.

said, “The certification process for foster parents needs to be more careful and stringent, but at the same time those who were successfully registered as foster parents should immediately receive a child for care.”

He claimed that newly registered foster parents may lose their initial motivation and passion if no child is placed under their care for several years.[209]

Professor Tetsuo Tsuzaki said to Human Rights Watch that the foster parents assessment and matching process, as well as certification process, should be much stricter, pointing out the Utsunomiya case in 2002 in which a foster mother killed a foster girl. In that case, the foster mother was a non-Japanese woman not fully proficient in the Japanese language and was stressed by isolation from the Japanese society.Although the main care giver was the foster mother, the child guidance center communicated with the foster father. In addition, the 3-year-old child had a severe attachment disorder.Professor Tsuzakisaid he found persuasive the claim that the disastrous outcome in the case resulted from a high risk parent being matched with a high risk child.[210]

A former child guidance center staff told Human Rights Watch that he had not conducted enough inspections and assessments of the foster parents in question, andthat he regretted placing some children in inappropriate foster families. He cited a case in which he had placed a child with foster parents without closely assessing the particular casebecause a prior placement of another foster child to that foster familyhad gone well. But the second child’splacement did not work out and the foster parents sent the child back to the institution. In another case, he thought a foster family was appropriate based on the information he received from documents, but after the placement, he learned that only the husband wanted to take a child, but not the wife.

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[209]Human Rights Watch phone interview with a staff in Tokyo Child Guidance Center, December 5, 2013; and Human Rights Watch interview with Katsumi Takenaka, formerly in institutional care and currently a foster father, Saitama, July 7, 2012.

[210]Prosecutor v. RiEishin (Utsunomiya Case, Criminal Case of Injury Resulting in Death), Utsunomiya District Court, Case No. WA-832, 2002, Judgment (Four Years’ Imprisonment), October 7, 2003.Tetsuo Tsuzaki, Children of This Country: Japanese Alternative Care System Structure for Children in Need - Vested Interest of Adults and Welfare of Children (この国の子どもたち　要保護児童社会的養護の日本的構築　ー大人の既得権益と子どもの福祉ー) (Tokyo: Nihon KajoSyuppan, 2009), pp. 146-171.

He also told Human Rights Watch that child guidance center staff cannot reject registration of foster parents that they think are inappropriate. He explained that one of reasons for this is because in Japan some potential foster parentcandidatesthink the foster parent system is the same as adoption, and many foster parents apply because they cannot have their own biological child. These foster parents say to the staff, "Why do you reject us? We have our right to have a baby."[211]

Insufficient Preparation and After-Placement Support for Foster Parents

Foster parents received six days of mandatory training before certification: three days in a classroom and three days of practical training. The training is based on a national guideline but each prefecture devises and conducts its own programs.[212]No study has yet been conductedinto the outcomes of the training since it became mandatory in 2008.

The training should provide information on the role of alternative care in society. Given the circumstances in which more than half of the children in the alternative care are victims of abuse, it is crucial that training focuses on practical aspects of care giving in difficult situations and emphasizes the important role that foster parents play in caring for children traumatized by abuse—something currently apparently lacking.[213]

Many foster parents we interviewed also said that child guidance centers provided little or no aftercare. One Tokyo-based foster parent told Human Rights Watch, "Home visits only happen once a year or something like that."[214]Another said:

> Generally speaking, the child guidance center staff doesn't even come around once a year after things settle down. It's hard to consult or rely on them as well since workers change every two, three years.[215]

[211]Human Rights Watch interview with a former child guidance staff [name withheld], Tokyo, December 3, 2013.

[212]Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessedNovember 5, 2013) p.20.

[213]Human Rights Watch interview with a female foster parent [name withheld], Tokyo, July 7, 2012.

[214]Human Rights Watch interview with Mika Hobbs, Tokyo-based foster parent, Tokyo, July 11, 2012.

[215]Human Rights Watch interview with Setsuko Yamamoto, Tokyo-based foster mother running foster family group home, Tokyo, September 6, 2012.

Support for foster families through frequent home visits, observation, and consultation are vital, especially since nearly a quarter of foster care placements result in a mismatch and the child is sent back to the institution.[216]
Professor Tetsuo Tsuzakisaid:

> Foster parents do not simply come around, foster parents should be fostered and supported by the government administration as a precious resource for child welfare,as a resource which should be prioritized over institutions to look after the children in need. Training and support breed foster parents.[217]

Nearly half of specialized foster parents report that they have cancelled one or more of their foster care arrangements for a placed child in the past, but there is little information available about why they did so. These statistics indicate that even experienced foster parents face issues they cannot overcome,[218]and that system reform is crucial in order to better detect problems that foster parents faceand improve placements at an early stage.

Foster parents who fear losing their foster child said they do not consider the child guidance center, which has discretion to end the placement, to be an appropriate institution for discussing placement-relatedproblems or seeking advice. According to foster parent Naoko Yoshida: "I was constantly nervous about the relationship with the child guidance center and the institutions. I did not even think of forming a partnership with them.[219]

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[216] According to a study by the National Child Guidance Center Directors Conference, out of 647 cases, 156 cases (24 percent) were terminated because of a malfunctioning relationship with the foster parents. The156 cases' details stated: "reintegration with the biological parent due to a mal-relationship with the foster parent" (25 cases - 3.9%), "the change of measures due to issues of the foster parent (ex. health or family related problems) " (25 cases - 3.9%), "the change of measures due to a mal-relationship with the foster parent" (79 cases - 12.2%), and "the change of measures due to issues of the child" (27 cases - 4.2%). Out of the entire 647 cases, children who returned to their biological family for reasons other than a malfunctioning relationship with the foster parent made up 28 percent (179 cases) and those whose measure was discontinued due to adoption made up 23 percent (147 cases). National Child Guidance Center Directors Conference, "Report: Child Guidance Center's Study on Foster Parent Placement and Placed Children (Issue 91)" ("全児相（通巻第 91 号別冊）『児童相談所に置ける里親委託及び行き児童に関する調査』報告書"), July 2011, p. 64-66.

[217]Tetsuo Tsuzaki, *Children of This Country: Japanese Alternative Care System Structure for Children in Need—Vested Interest of Adults and Welfare of Children* (この国の子どもたち　要保護児童社会的養護の日本的構築　ー大人の既得権益と子どもの福祉ー) (Tokyo: Nihon KajoSyuppan, 2009), p. 164.

[218]Kazuko Mori, "How to Understand the Unsatisfactory Child Care – Examining from the Perspective of Researcher and Supporter" ("養育の不調をどう捉えるかー研究者 / 支援者の立場から"), *Journal of Foster Care* (里親と子ども), Vol. 6, October 2011, p. 10.

[219]Naoko Yoshida, "The Difficulties when people who experienced sterility become foster parents ("不妊経験者が里親になる場合の困難"), *Journal of Foster Care* (里親と子ども), Vol. 6, October 2011, p. 24.

Some support for foster parents is currently provided by nongovernmental organizations, foster parents groups, and private organizations that are entrusted to undertake these functions by the local government.Child care institutions and infant care institutions, which now hold foster parent support advisors, and child and family support centers established alongside the main institutions, also provide foster parent support.[220]However, thissupport remains limited in scope.

In addition, foster parents often receive insufficient information about the background and needs of a child before placement, which can make it difficult for them to decide the best guidance and care for the child. KeijiUmehara, a foster parent in Osaka, told Human Rights Watch:

> Although there have been some improvements in the recent years, we are not given enough information about the child regarding his or her background and the environment in which the child had been raised before.[221]

Unrealistic Expectations of Foster Parents

Child guidance center staff said that foster parents generally prefer a foster child who is healthy (with no disabilities), very young, and female.[222] Child guidance center staff said that foster parents frequently complain if they find out that their foster child turns out to have a disability. One staff member from a child guidance center in Tokyo said:

> If a child is a year old or younger, it is still too early to tell if he or she has a disability so we normally end up waiting until they are 2 or 3 years old before we can place them in foster parent's care.[223]

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[220] Hiroyasu Hayashi, "Alternative Care System Reform and How to Promote Foster Parent Placements" ("社会的養護改革と里親委託推進のあり方"), *Journal of Foster Care* (里親と子ども), Vol.7., October 2012, p.15. Human Rights Watch interview with Hiroyasu Hayashi, professor of Social Welfare Studies in Japan Women's University, member of Institutional Management and Foster Parent Care Policies Working Group of the Ministry of Health, Labour and Welfare, Kanagawa, September 4, 2012.

[221]Human Rights Watch interview with KeijiUmehara, Osaka-based foster parent, Osaka, June 7, 2012.

[222] National Child Guidance Center Directors Conference, "Report: Child Guidance Center's Study on Foster Parent Placement and Placed Children (Issue 91)" ("全児相　（通巻第 91 号　別冊）『児童相談所に置ける里親委託及び行き児童に関する調査』報告書"), July 2011, p. 22.

[223]Human Rights Watch interview with a staff from Tokyo Child Guidance Center, May 30, 2012.

A staff member from the Futaba Infant Care Institution told Human Rights Watch about a child who was placed in foster care but "was sent back after a little while because the foster parents didn't like the shape of the child's ears, which became apparent after having a haircut."[224] In general, institutional personnel said that they frequently saw that "a placed child is sent back after a short while due to unsatisfactory foster parent placement."[225]

Problems Adopting

Adoption is an appropriate and permanent solution for children. But despite the national government's "Notice on Adoption Administration," which directs child guidance centers to try to arrange adoption forchildren,[226] the centers have not prioritized adoption in their work, and therefore only around 250 to 300 children were adopted through centers annually from 2008 to 2011.[227]

One reason that child guidance centers do not make adoption a priority is because centers are already busy with responding tourgent abuse cases, andit is easier and less time consuming tosend a child already in their custody to an institution ratherthan individually arranging an adoption. [228]

A large number of children including infantsare in need of a permanent place to live, and often these cases are quite serious. According to Tokuji Yamanda, a former child social worker in Aichi prefecture, "abuse related deaths of children [in Japan] most often occurs

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[224] Human Rights Watch interview with Kumiko Nakagawa, care worker in Futaba Infant Care Institution, Tokyo, July 31, 2012.

[225]This was a response widely heard among the directors of child care institutions attended the symposium "Proposal of Alternative Care," which was hosted by the NPO, AsuniKakeruHashi. held in Tokyo on May 30, 2012. Examples are the opinions of KunifusaUtagawa, principal of a child care institution in Kanagawa, "KouboAijien," as well as Yuji Morita, principal of a child care institution in Chiba, "Koyama Home."

[226]Equal Employment, Children and Families Bureau chief, Ministry of Health, Labour and Welfare, "Notice on adoption administration" ("養子制度等の運用について"), Issue 0331016 , March 31, 2009, http://www.mhlw.go.jp/bunya/kodomo/pdf/tuuchi-24.pdf (Accessed December 2, 2013).

[227]According to the 2012 Court Statistics,there seems be close to 800 adoptions of minors approved by the court, including through the child guidance center.

Supreme Court of Japan, "Judicial Statistics 2012 Family Affairs Part" ("司法統計平成 24 年家事事件編"), undated, http://www.courts.go.jp/sihotokei/nenpo/pdf/B24DKAJ03.pdf(Accessed April 9, 2014), p.10-11. A comprehensive study of the situation of children adopted without the assistance of child guidance centers or the registered agencies is not available, to the knowledge of Human Rights Watch.

[228]Yasuhiro Okuda,"Needs for Adoption Service Law (養子縁組あっせん法の必要性)",in *Adoption Service—Explanation and Materials for a New Bill* (養子縁組あっせん---立法試案の解説と資料) (Tokyo: Nihon KajoSyuppan, 2012), p.5.

soon after they are born" and that more than half of such deaths occur when the child is less than one month old.[229]

He said that these infants should be adopted through the special adoption system.The child guidance center inAichi prefecture has been active on promoting the special adoptions byconducting consultations with pregnant women as well as placing newborn babies with foster parents who seek special adoption.However, this is an exception and only a few child guidance centersare active on adoption.Yamanda told Human Rights Watch that "child guidance centers are reluctant to do that because they do not have the know-how and do not want to come into collision with infant care institutions."[230]

Under the current system, adoptive parents or adoptive foster parents who eventually adopt are neither obligated, nor receive the chance, to receive training. Adoptive parents also do not receiveother assistance from thechild guidance center.Adoptive foster parents also receive only limited financial support, which does not include the foster parents' allowance. Some Japanese child care experts have recommended that adoptive foster parents and adoptive parentsreceive child care training and, when necessary, deserve similar support and assistance to that received by foster parents.[231]

[229]Human Rights Watch interview with Tokuji Yamanda, former child guidance center employee, certified social worker, Aichi, Tokyo, May 27, 2013.

[230]Ibid.

[231]RyuichiAizawa, "Difficult Adolescents and Supporting Foster Families Facing the Issues" ("思春期の荒れとそれに直面する里親家庭を支える"), *Journal of Foster Care* (里親と子ども), Vol. 6, October 2011, p. 39.

IV. Lack of Support for Independent Living

> When I was leaving the institution, I was excited, thinking, "Finally I'm out of this prison!" But life is not such a smooth ride. A day feels like it never ends. I cannot enjoy my life.
> —Masashi Suzuki, 21, Chiba, June 2012

A major problem faced by people who grow up in alternative care is how to live independently after graduating from their care program. In Japan, few children become completely independent from their parents at the age of 18. But participation in the alternative child care system can be terminated as soon as a child over 15 leaves school. Even children who successfully graduate from high school are expected to start living on their own as soon as they graduate.

The Child Welfare Act provides that alternative care, when necessary, can be extended until a person turns 20 years old, and the Ministry of Health, Labor and Welfare issued a recommendation in 2011 to actively extend the period of alternative care measures.[232] In reality, however, child guidance centers reject many applications for an extension.[233]

Once support is terminated, individuals lose their place to live. With no one to rely on, the life awaiting these young people is quite different from that facing people of a similar age who live in a family. Individuals who grow up in alternative care institutions are much less likely to go on to higher education or hold a steady job than those who grow up in families.

As Yuji Morita, the director of a childcare institution in Chiba explained:

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[232] "Regarding Period Extension of Alternative Care Measure Including Child Care Institutions and Foster Parents Care" ("児童養護施設等及び里親等の措置延長等について"), Equal Employment, Children and Families Bureau Chief of Ministry of Health, Labour and Welfarerelease, Issue 1228/No.2, December 28, 2011, http://www.mhlw.go.jp/bunya/kodomo/pdf/tuuchi-13.pdf (accessed June 15, 2013).

[233] KunifusaUtagawa, head of an institution in Kanagawa Prefecture, told Human Rights Watch in 2012, "We were told by the Child Guidance Center that there would not be any extensions of the program in Kanagawa this year [2012] because of the lack of financial resources."Human Rights Watch interview with KunifusaUtagawa, director of child care institution KouboAijien, Kanagawa, June 4, 2012. In 2013, one person finally got allowed to stay longer over 18 years old after the negotiation between the local government and Utagawa. Human Rights Watch phoneinterview with KunifusaUtagawa, director of child care institution KouboAijien, Kanagawa, December6, 2013.

> The current system is producing more citizens who need social welfare and other forms of public money after being released from institutions, thus making them a burden on society.[234]

A Path to Homelessness

The connection between leaving institutional care and homelessness has not been given adequate attention in Japan.[235] However, once individuals lose their access to staying in an institution, combined with low wages for menial entry-level jobs, many young people cannot stay on the same job that the institution helps them find when they leave institutional care. If they leave that first job, they struggle to find another.[236]

Masashi Suzuki, 21, grew up in a child care institution in Chiba from the age of 2 until 18. He has changed jobs at least 20 times in the three years since he left the institution. The furnishings company where he got his first job upon leaving the institution gave him little work and the monthly pay of 20,000 yen (US$200) was hardly enough to survive on.[237]The financial aid he received from the government to start an independent life after leaving the childcare institution was entirely used up purchasing furniture and buying other basic necessities to prepare his own apartment.[238] After less than half a year, he could not afford the rent and became homeless, sheltering in a manga cafe[239]or wherever he could.[240]

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[234]Human Rights Watch interview with Yuji Morita, director of child care institution "Koyama Home," Tokyo, April 24, 2012.

[235]A study conducted by the Big Issue Japan Foundation, interviewed 50 homeless persons and found 6 of them had previously been in institutional care. NPO Big Issue Japan Foundation, "White Paper on Homeless Youth" ("若者ホームレス白書"),December 2012. The study was based on interviews with 50 homeless people who were under 40 years of age during the two years between November 2008 and March 2010.Human Rights Watch was unable to find other studies researching this nexus between homelessness and institutional care, and the Ministry of Health, Labor, and Welfare was similarly unaware of any other similar studies.

[236]Human Rights Watch interview with Ryoichi Yamano, former child counselor at child guidance center in Kanagawa prefecture, currently professor at Chiba Meitoku College, Chiba, July 14, 2012.

[237] The first-year average monthly salary for a high school graduate in 2012 was 157,900 yen ($1,579). Ministry of Health, Labour, and Welfare, "Survey result of wage system, basic statistics: 1. First-year avarage monthly salary for each education level graduate in 2012"
("平成 24 年賃金構造基本統計調査結果（初任給）の概況：1 学歴別にみた初任給")
http://www.mhlw.go.jp/toukei/itiran/roudou/chingin/kouzou/12/01.html (accessed April 9,2014).

[238]He told Human Rights Watch that he received financial aid only once—an amount that was a little more than100,000 yen ($1000)that he got at the time when he left his child care institution. According the government document, financial aid available for preparation for college or employment was 216,510 yen ($2,165) until FY 2011, and was adjusted upwards to 268,510 yen($2,685) since FY 2012. Ministry of Health, Labour and Welfare, "Outline of the budget for alternative care, Ministry of Health, Labour and Welfare, FY2012""(平成２４年度厚生労働省社会的養護関係予算案の概要)"
http://www.mhlw.go.jp/stf/shingi/2r9852000000202we-att/2r9852000000202zc.pdf (accessed November 2, 2013) p.3.

[239] This is a place where people can stay in an independent/individual cubicle for a time-based charge to read comics, play games or use the Internet. Normally customers can get free drinks and order food as well. Because it is usually open

Those who start working straight after graduating from junior high school and are forced to leave their institutional care facility may be at a particularly high risk of becoming homeless.[241] Yu Kato (pseudonym), 29, was 15 when he left his child care institution because he decided not to go to high school. He returned home to live with his biological father, but ended up being abused once again and moved out. After working at various jobs, he eventually became homeless and has been on social welfare continuously ever since. Yu said he wishes he had been allowed to live in the alternative care until he turned 18.[242]

Limited Access to Higher Education

Just 73 percent of children living in the alternative care system complete high school in Tokyo, andjust 15 percent of children in alternative care complete a higher education (a course of study in a university, college, or vocational school)in Tokyo.

For children in the general population of Tokyo, school admissions start higher, with 98 percent of children in Tokyo entering high school and 65.4 percent going to higher education in Tokyo.[243] National high school completion rates stand at 81.5 percent, and higher education graduation rates are 36.1 percent in Japan.[244]

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throughout the night and cheaper to stay overnight than in a hotel, some people with a limited budget take shelter in these facilities for various reasons (although there is no bed, customers can sleep in a reclining chair or on the floor in their independent cubicle).

[240]Human Rights Watch interview with Masashi Suzuki, 21-year-old male formerly in child care institution, Chiba, June 25, 2012.

[241]Human Rights Watch interview with Ryoichi Yamano, former child counselor at child guidance center in Kanagawa prefecture, currently professor at Chiba Meitoku College, Chiba, July 14, 2012.

[242] Human Rights Watch interview with Yu Kato, 29-year-old male formerly in institutional care, Kanagawa, July 28, 2012.

[243] According to one study on children in alternative care in Tokyo, the academic background of people who were in the alternative care program was 23 percent junior high school graduates, 58 percent high school graduates, and 15 percent higher education program graduates. There were limits in the study's methodology, because questionnaires were only sentto those whose contact information was known to institutions, foster families or the like, it is quite likely that the percentages of junior high school and high school graduates would even higher when the entire population of former alternative care recipients is considered. The reason is because former children who have lost contact with their former child-care institution and/or foster parents are often those who received only lower education , according to professor Ryoichi Yamanowho noted that former children with only with junior high school education are at high risk of becoming homeless. Bureau of Welfare and Public Health, "Report: Survey Results of People Released from Child Care Institutions and Foster Care in Tokyo" ("東京都における児童養護施設等退所者へのアンケート調査報告書"), August 2011,

http://www.metro.tokyo.jp/INET/CHOUSA/2011/08/DATA/60l8u200.pdf (accessed July 13, 2013).

[244] "Table 2: Population of 15 Years Old and Over by Sex, Labour Force Status, Working Mainly or Partly, Wish for Work, Whether Wising to Work, Whether Seeking a Job, Age and Education" (総務省統計局　平成 24 年就業構造基本調査　第 2 表「男女、就業状態・仕事の主従、就業希望意識・就業希望の有無、求職活動の有無、年齢、教育別 15 歳以上人口」), 2012, Employment Status Survey, Statistics Japan, Statistic Bureau, Ministry of International Affairs and Communications,http://www.estat.go.jp/SG1/estat/GL08020103.do?_toGL08020103_&tclassID=000001048178&cycleCode=0&requestSender=search(accessed March 23, 2014).

A 28-year-old man in Chiba who was formerly in institutional care, told Human Rights Watch that he started working right after graduating from high school, giving up his desire to study further. He said, "It's impossible for those who don't have parental [financial] support to get higher education. I wanted to go to a college, too."[245]

In Japan, education can be free only until high school. Those who wish to obtain higher education after high school must invariably overcome financial shortcomings to study and save for education expenses after high school. One 19-year-old who was formerly in a child-care institution, and is now a vocational school student said:

> Even if we wanted to participate in extracurricular activities in high school, we can't because we need to get a part-time job right after we get into high school because we need money if we are to get higher education. Some people I know even work seven days a week. But then that doesn't leave us much time to study.[246]

Some high school students also told Human Rights Watch that they give up on the possibility of continuing their studies because they lack information about opportunities.[247]"We need more information on scholarship programs," one high school student in institutional care told Human Rights Watch.[248]

As SayuriWatai, chairperson of a self-help group of former children from alternative care, said: "Investment in children's academics has evident returns for their future."[249]

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[245] Human Rights Watch interview with a 28-year-old male, formerly in institutional care (name withheld), Chiba, May 3, 2012.

[246] Human Rights Watch interview with a 19-year-old male, currently a vocational school student, formerly in institutional care (name withheld), Chiba, May 4, 2012.

[247] Disparities among institutions are especially significant in terms of educational pursuits. Satoshi Hayakawa, a child care institution worker, states that children's participation rates in higher education after high schoolhighly depend on each institution whether helpful information is properly conveyed to the children with regards to available grants and scholarship programs as well as how to utilize them; Human Rights Watch interview with Satoshi Hayakawa, worker at child care institution Meguro Wakabaryo, Tokyo, August 1, 2012.Three high school children Human Rights Interviewed told that they don't have enough information about scholarships; Human Rights Watch interview with two female high-school students and one male high school student in institutional care (name withheld), Nagano, August 29, 2012.

[248] Human Rights Watch interview with a female high-school student in institutional care in the Tokai area (name withheld), Nagano, August 29, 2012.

[249] Human Rights Watch interview with SayuriWatai, 29-year-old female, formerly in institutional care, chairperson of self-help group "Hinatabokko," Tokyo, July 13, 2012.

Inability to Find a Guarantor, Afford a Driver's License

In Japan, individuals, regardless of age, need a "guarantor" to get an apartment or a job. Excluding a very limited number of cases, apartment lease agreements as well as employment contracts will always require an applicant to provide a guarantor. Individuals under 20 years old may also have trouble getting a mobile phone if they do not have any person with parental authority. Typically, family members take care of these arrangements. But children coming from an alternative care background usually have no one to serve this function.[250]

"The biggest problem of our society is that social systems exist on the assumption that one has a family and support,"[251] said TuyoshiInaba who works at Moyai, a homeless support organization.

In 2007, the Japanese government issued an ordinance which encourages the directors of alternative care institutions, child guidance centers, and foster parents to act as guarantorsfor youth leaving alternative care to seek a job and apartment. However, the government encourages those people to give this support onlyfor one year after the child leaves the institution or foster care arrangement.[252] Consequently, some former residents of alternative care have difficulties, and are unable to find a job or apartment. Kouichiro Miura, a 35-year-old man in Tokyo who grew up in an institution, told Human Rights Watch that he was asked for a guarantor after passing his employment examination for a securities company after graduating from high school but "could not get the job for not having one."[253]

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[250]SayuriWatai who grew up in a child care institution says, "There are many people who are feeling insecure, like 'I can't move to another place because of this.'" Human Rights Watch interview with SayuriWatai, 29-year-old female, formerly in institutional care, chairperson of self-help group "Hinatabokko," Tokyo, July 13, 2012.

[251]Human Rights Watch interview with Tuyoshilnaba, chairman of NPO support center for independent living "Moyai," Tokyo, July 9, 2012.

[252] Human Rights Watch interview withYuji Morita, director of child care institution "Koyama Home," Chiba, April 24, 2012; Since 2007, the institution head can receive subsidies from the government for their insurance, which is incentive for the head to become guarantors. Human Rights Watch interview with Family Welfare Division, Ministry of Health, Labour and Welfare, November 6, 2013.See also Ministry of Health, Labour and Welfare,"Implementation of project for ensuring guarantors" ("身元保証人確保対策事業の実施について"), April 23, 2007, http://www.zenyokyo.gr.jp/mimotokakuho/04a.pdf(accessed March 4, 2014).

[253] Human Rights Watch interview with Kouichiro Miura, 35-year-old male formerly in institutional care in Tochigi, Tokyo, July 13, 2012.

Another significant hurdle for people coming from an institution is paying for a driver's license, which costs between 200,000 to 300,000 yen ($2,000-3,000) and is often needed for jobs such as construction workers or craftsman that are popular among male graduates of childcare institutions. From FY 2012, the national governmentdecided thatit would provide 55,000 yen ($550) for those in the alternative care program who are in their senior year of high school as a support grant for obtaining a driver's license or other activities involved in preparing for a job.[254] However, this amount is far fromsufficient.

Need for Post-Graduation Independence Support

Ami Takahashi is constantly on the move between municipal offices, hospitals, police stations, and lawyers' offices. She is the director of the After Care Support Center "Yuzuriha," an organization that provides support for people who used to be in child care institutions. Yuzuriha is one of the few support centers in Japan for those who seek assistance after leaving institutional care.

Many who come to Yuzuriha are experiencing pressing problemsthat could even put their lives at risk. The flow of people visiting Yuzurhia's small office in a residential area in Tokyo never seems to slow down. Two full-time workers and one part-time worker conducted consultations and follow-up with 4,280 people in need in 2011.[255] Many visitors are junior-high school graduates who dropped out of high school.

Takahashi told Human Rights Watch: "Those released from institutional care] manage their living with a shockingly miniscule pay like 120,000 or 130,000 yen ($1,200 or 1,300) a month after tax." Having no parent and nowhere to go for help, many "live under pressure that they cannot even afford to be sick and some of them develop psychological problems as a result of the stress." Takahashi said that in her experience many formerly institutionalized youths never complete high school and often end up as welfare recipients, homeless, or in prison.[256]She said homeless support organizations criticize child care

[254] Ministry of Health, Labour and Welfare, "Reference Material: Current State of Alternative Care" ("社会的養護の現状について [参考資料]"), March 2013, http://www.mhlw.go.jp/bunya/kodomo/syakaiteki_yougo/dl/yougo_genjou_01.pdf (accessed July 13, 2013), p.13.

[255] After Care Support Center Yuzuriha, "2011 Business Report" (" 2011 年度事業報告書"), undated.

[256] Ami Takahashi argues the government should conduct a study on the post-discharge status of children in alternative care including those who are sentenced to imprisonment as well as those on social welfare, whose data currently do not exist. Human Rights Watch interview with Ami Takahashi, director of After Care Support Center "Yuzuriha," Tokyo, May 31, 2012.

institutions saying, "Those young people were supposedly protected growing up under the welfare system and yet, what kind of life do these institutions force on the children?"

"Some are still too traumatized to properly communicate with other people and others freeze when reprimanded or warned about something due to flashbacks," Takahashicontinued. The oldest persons among those whom Yuzurihasupports are in their 40s. "Still now, they are struggling. Time does not fix things. It's important that issues are detected early and plentiful protections are provided."[257]

Kouichirou Miura, 35, grew up in an institution. He told Human Rights Watch, "We don't have anywhere to run back to." After graduating from high school at the age of 18, he went to Tokyo. The institution staff told him when he left, "Turn to the government for help if you are in real trouble." After changing from one job to another, he became unemployed at the age of 19 and his money dwindled to 5,000 yen ($50). He said:

> I went to a government office to get some help but was told, "You were already helped to graduate from high school [by the country's tax money] so you shouldn't be needing any more help to cover your living expenses," and was sent away. I learned then that I couldn't rely on the government.[258]

Ayumi Takagi (pseudonym), a 24-year-old woman from Ibaraki who was formerly in institutional care said, "I didn't have anybody to talk to after I left the institution. My parents abandoned me when I was two months old so there was no way that I could go back to them. I couldn't go back to the institution and didn't want to either." Having to live on her own, she earned her living through sex work. "I was happy that somebody, even though a stranger, actually listened to me. I was looking for a place where I belonged."[259]

There is no specific public support system targeted to assist those who graduated from the alternative care program, although some institutions in Tokyo and other areas are deploying independence support counselors to provide aftercare for the post-release

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[257]Human Rights Watch interview with Ami Takahashi, director of After Care Support Center "Yuzuriha," Tokyo, May 31, 2012.
[258] Human Rights Watch interview with Kouichiro Miura, 35-year-old male formerly in institutional care in Tochigi, Tokyo, July 13, 2012.
[259] Human Rights Watch interview with Ayumi Takagi, 24-year-old female formerly in institutional care in Ibaraki, Tokyo, July 14, 2012.

youth. KiyomiMorikawa, a 30-year-old woman who grew up in a child care institution in Chiba said, "What you need after leaving the institution is someone, even just one, to whom you can talk about everything."[260]

Some of the graduated youths gather in self-help groups composed of people who have departed institutional care or foster family homes. One of the self-help groups in Tokyo is called Hinatabokko ("Basking in the sun"), and it serves as a place for youth to casually stop by and know there is a place where they can feel they belong, and receive assurance and support, before going back to their own daily lives again. "This is where I belong," said Kouichirou Miura, who frequently goes to Hinatabokko.[261]

However, there are only about 10 such self-help groups around the country, and the activities of many of them are still in a developmental stage and not sufficient to meet needs. In addition, many graduates from childcare institutions do not know these groups exist.

Failure to Follow-Up on Institutional Care Graduates

Until recently, it was up to each institution to keep track of the status of their graduated youths. It was not uncommon to come across institutions that said they had lost contact with their graduated youths just one year after their release. To date, there has been no comprehensive national study or statistics on the status of youths who were part of the institutional or foster parents care systems. As a result, there is little understanding of the full gamut of problems and issues that they have faced, continue to endure, or what kind of support they most need. "Proper studies need to be done in order to clarify what goals were achieved through the alternative care system and whether the measures taken were the right ones," saidSayuriWatai, head of the self-help group Hinatabokko.[262]

At the time of writing, the only existing government statistics come from the Tokyo Metropolitan Government in a study that covered only former children from institutions and foster families in Tokyo. The study, conducted from December 2010 to January 2011,

[260] Human Rights Watch interview with KiyomiMorikawa, 30-year-old female formerly in institutional care in Chiba, Osaka, June 6, 2012.

[261] Human Rights Watch interview with Kouichiro Miura, 35-year-old male formerly in institutional care in Tochigi, Tokyo, July 13, 2012.

[262] Human Rights Watch interview with SayuriWatai, 29-year-old female, formerly in institutional care, chairperson of self-help group "Hinatabokko," Tokyo, July 13, 2012.

revealed that graduates of alternative care institutions face extreme challenges: their education level is low, so only a small percentage have a job with a formal contract, and their income level is also low.[263] The research was implemented through questionnaires sent to those whose address was identified by institutions, foster families, and others. This suggests that those most in need—without a proper place to stay or any form of network to seek help—were likely left out of the study.[264]

Former Foster Children and Independent Living

The conditions of children in foster care transitioning to independent living are relatively better than those in institutional care, but many of the previous observations about the challenges of those leaving alternative care institutions are also true for foster children. Many foster parents continue to provide accommodation to their foster children using their own funds even after the child turns 18 and maintain a lifetime relationship with them.[265] However, the reliance on foster parent volunteers only increases the burden on foster families and creates disparities in children's conditions across different foster families. Furthermore, it is more difficult for children in foster parents' care than those in an institution to create their own network among similarly situated children.

The university and college participation rate of children in the foster parent care program is 47 percent, higher than children in childcare institutions.[266]But foster children also face

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[263]From the Tokyo study, 31 percent of former children earned 150,000-200,000yen ($1500-2000) monthly , 27 percent earned 100,000 to 150,000yen ($1,000-1,500) and 14 percent earned 50,000-100,000yen ($500-1,000). What this means is that approximately 80 percent of the persons who have left the child-care center earned less than 200,000 yen per month (USD 2,000) while the national average of the income for 22 year-old high school graduates is a little less than 200,000 yen ($2,000). KEIDANREN (Japan Business Federation)"Outline of the regular studyon Income, June 2010 ""(「2010 年 6 月度定期賃金調査結果」の概要) "Avarage salary" ("標準者賃金ー全産業、規模計ー"), January 25, 2011, http://www.keidanren.or.jp/japanese/policy/2011/006.pdf (accessed November 2, 2013) p.1.

[264] Bureau of Welfare and Public Health, "Report: Survey Results of People Released from Child Care Institutions and Foster Care in Tokyo" ("東京都における児童養護施設等退所者へのアンケート調査報告書"), August 2011, http://www.metro.tokyo.jp/INET/CHOUSA/2011/08/DATA/60l8u200.pdf (accessed November 2,2013). Other than the Tokyo study,there are some private organizations' research studies including "Interviews of the former children released from child care institution (FY2008)" by the Japan National Council of Social Welfare; a survey result report which asked institution workers about the status of children after graduating from their program by Bridge For Smile, "2012 National Study of Child Care Institutions—Regarding Support for Independent Living" ("全国児童養護施設調査 2012　社会的自立に向けた支援に関する調査"), April 2013, http://www.shakyo.or.jp/research/2009_pdf/09jidoujiritsu/jidou_2.pdf (accessed April 3, 2014).

[265] A foster parent Tomoya Maruyama says, "After (the child turns) 30 years old is when foster parents face the real challenge." Human Rights Watch interview with Tomoya Maruyama, foster parent running a foster family group home in Saitama, Saitama, September 12, 2012.

[266]HiromichiKinouchi, "Significance of Supporting Further Education and Voices of the Children" ("進学をサポートする意義と子どもたちの声"), *Foster Parents and Children*, Vol. 6, October 2011, p. 64. Human Rights Watch observed some of the key

major financial challenges given the high cost of college. As one foster mother told Human Rights Watch:

> I do want to send them to higher education programs but because I don't have financial resources to do so, there is not much I can do. I suggested to them to get a job first and save money as they can go to university anytime they want in the future.[267]

differences between foster parent's care and institutional care including the following: (1) foster parents often send children to universities using their own funds, (2) foster parents have enthusiasm towards further education and often insist children continue their studies; and (3) learning environments are different. However, participation in higher education still remains to be a difficult issue even for foster children and many children in a foster parent's care actually give up on higher education due to the care program termination at the age of 18 as well as for financial reasons.

[267]Human Rights Watch interview with foster parent, chairman of Iwate Foster Parents Association, Iwate, May 17, 2012.

V. International Human Rights Standards

The preamble to the Convention on the Rights of the Child recognizes the family as the natural environment for the growth and well-being of children. For the full and harmonious development of their personality, children "should grow up in a family environment, in an atmosphere of happiness, love, and understanding."[268] International human rights law ensures that the family is entitled to the widest possible protection and assistance by society and the state.[269]

The Convention on the Rights of the Child obligates governments to 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." Such a determination may be necessary in a particular case, such as involving parental abuse or neglect.[270]

The United Nations Guidelines for the Alternative Care of Children, which were adopted by the UN Human Rights Council in 2009 and welcomed by consensus by the UN General Assembly, are intended to enhance implementation of the Convention on the Rights of the Child "regarding the protection and well-being of children deprived of parental care or who are at risk of being so."[271] The guidelines start from the general principal that efforts should primarily be directed to enabling children to remain in or return to the care of their parents, or when appropriate, other close family members. As a result, governments should ensure that families have access to forms of support in the caregiving role.[272]

Removinga child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible

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[268]Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, preamble. Japan ratified the convention in 1994.

[269]International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, art. 23(1). Japan ratified the ICCPR in 1979; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, art. 10(1). Japan ratified the ICESCR in 1979.

[270]Convention on the Rights of the Child, article 9(1).

[271] United Nations Guidelines for the Alternative Care of Children, A/HRC/11/L.13, June 15, 2009, annex, preamble.

[272]UN Guidelines for the Alternative Care of Children, para. 3.

duration.[273]Children temporarily or permanently deprived of their family environment, or in whose best interests cannot be allowed to remain in that environment, are entitled under the Convention on the Rights of the Child to special government protection and assistance.[274] Such alternative care can include "foster placement … adoption or, if necessary, placement in suitable institutions for the care of children."[275]

All decisions about the alternative care for children should be made on a case-by-case basis, and grounded in the best interests and rights of the child concerned. Governments need to ensure to a 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 should be given due consideration in accordance with the child's age and maturity.[276]

All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his or her habitual place of residence, in order to facilitate contact and potential reintegration with the child's family and to minimize disruption of the child's educational, cultural, and social life.[277]

Decisions regarding children in alternative care should have due regard for the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their care givers, with permanency generally being a key goal.[278]

Residential Institutions Measure of Last Resort

The Convention on the Rights of the Child provides that one form of alternative care can include "if necessary," placement in suitable institutions for the care of children.[279] This language indicates that institutions are generally less preferable than an alternative family, while recognizing that for some children institutional care may indeed be the best placement—for example older teenagers nearing independence, large families of siblings who wish to remain together, or a child that has endured multiple foster care breakdowns.

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[273]UN Guidelinesfor the Alternative Care of Children, para.14 .

[274]Convention on the Rights of the Child, article 20(1).

[275]Convention on the Rights of the Child, article 20(3).

[276]Convention on the Rights of the Child, arts. 9(1), 12 (1).

[277]UN Guidelines, for the Alternative Care of Children para.11 .

[278]UN Guidelines for the Alternative Care of Children, para.12 .

[279]Convention on the Rights of the Child, article 20(3).

Indeed, the Committee on the Rights of the Child—the independent body of experts that monitors states' compliance with the treaty—has stated that governments should, "Ensure that the institutionalization of a child is a measure of last resort and only occurs when family-type measures are considered inadequate for a specific child."[280]

The committee has found that placing young children into institutions is particularly inappropriate:

> Research suggests that low-quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long-term social adjustment, especially for children under 3 but also for children under 5 years old. To the extent that alternative care is required, early placement in family-based or family-like care is more likely to produce positive outcomes for young children. States parties are encouraged to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long-term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families.[281]

While accepting that sometimes institutionalization may be necessary, the committee has stated that countries should ensure that "the placement of children in these facilities is regularly reviewed … to ensure that such placement is only used as the last resort and for the shortest time possible."[282]

The UN Alternative Care Guidelines also elaborate on the position of residential institutional care as a form of alternative care for children, stating:

[280] Committee on the Rights of the Child, Concluding Observations: Latvia, CRC/C/LVA/COI2, para. 33.

[281] Committee on the Rights of the Child, General Comment No. 7, "Implementing child rights in early childhood," 2005, para.36(b).

[282] Committee on the Rights of the Child, Concluding Observations: Nepal, CRC/C/15/Add.261, para. 50.

Use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests….[283]

In accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings. Exceptions to this principle may be warranted in order to prevent the separation of siblings and in cases where the placement is of an emergency nature or is for a predetermined and very limited duration, with planned family reintegration or other appropriate long-term care solution as its outcome….[284]

While recognizing that residential care facilities and family-based care complement each other in meeting the needs of children, where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy, with precise goals and objectives, which will allow for their progressive elimination. To this end, countries should establish care standards to ensure the quality and conditions that are conducive to the child's development, such as individualized and small-group care, and should evaluate existing facilities against these standards. Decisions regarding the establishment of, or permission to establish, new residential care facilities, whether public or private, should take full account of this deinstitutionalization objective and strategy….[285]

The competent national or local authority should establish rigorous screening procedures to ensure that only appropriate admissions to such facilities are made….[286]

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[283]UN Guidelines for the Alternative Care of Children, para.21.

[284] Ibid., para.22.

[285] Ibid., para.23.

[286] Ibid., para.125.

> States should ensure that there are sufficient carers in residential care settings to allow individualized attention and to give the child, where appropriate, the opportunity to bond with a specific carer.[287]

Regarding the condition of such institutions, the UN Guidelines also provide that there should be"frequent inspections comprising both scheduled and unannounced visits.[288]

Foster Care

Although international standards recognize that foster parents generally provide better care for children than institutional care, providing substantial financial and administrative support is important in order to maintain a rights-respecting foster parent system. The UN Alternative Care Guidelines point out administrative and other measures needed to provide appropriate foster parents systems:

> The competent authority or agency should devise a system, and should train concerned staff accordingly, to assess and match the needs of the child with the abilities and resources of potential carers and to prepare all concerned for the placement.
>
> A pool of accredited foster carers should be identified in each locality who can provide children with care and protection while maintaining ties to family, community, and cultural group.
>
> Special preparation, support, and counselling services for foster carers should be developed and made available to carers at regular intervals, before, during and after the placement.
>
> Carers should have, within fostering agencies and other systems involved with children without parental care, the opportunity to make their voice heard and to influence policy.

[287] Ibid., para.126.

[288] Ibid., para 128.

> Encouragement should be given to the establishment of associations of foster carers that can provide important mutual support and contribute to practice and policy development.[289]"

Adoption

The UN Alternative Care Guidelines specify that adoption is an appropriate and permanent solution. For each child, the government should make efforts to find an appropriate and permanent solution before making other long-term arrangements, such as foster or institutional care.

This is consistent with UN Alternative Care Guidelines that support efforts to keep children in their family's care, and should this fail, to find another appropriate and permanent solution, such as adoption. Whatever solution is sought, the alternative care should be under conditions "that promote the child's full and harmonious development."[290]

Thus, when agencies are approached by a parent wishing to relinquish a child permanently, and other care efforts by family members have failed, the government should make efforts to find a permanent family placement such as adoption.

The UN Alternative Care Guidelines provide that government officials should ensure that the family receives counseling and social support to assist them in caring for the child. If this fails, a social worker should determine whether there are other family members who wish to take permanent responsibility for the child, and whether this would be in the best interests of the child. The Guidelines state: "Where such arrangements are not possible or are not in the best interests of the child, efforts should be made to find a permanent family placement within a reasonable period."[291]

Children with Disabilities

The guiding principles of the Convention on the Rights of Persons with Disabilities (CRPD),which Japan ratified in January 2014, include dignity, autonomy, nondiscrimination,

[289] Ibid., paras 118 – 122.

[290]Ibid., para 2.

[291] Ibid., para 44.

participation, inclusion, respect and acceptance, equality of opportunity, and accessibility for persons with disabilities.[292]

The CRPD shifts the paradigm of disability rights: disability is no longer viewed as a medical condition of which someone needs to be "cured." Rather the treaty emphasizes that disability is inherently human, requiring society itself to adapt to ensure that persons with disabilities are able to participate fully and equally in society.[293]

The CRPD provides that respect to children with disabilities, governments should:

> [T]ake all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children….
>
> In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
>
> [E]nsure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.[294]

The treaty articulates a shift from institutionalization to community-based living, with support as needed.[295]

The CRPD also sets out actions to take during situations of risk and humanitarian emergencies, noting specifically that governments should take, in accordance with their

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[292]International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD), G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, article 3. The CRPD does not explicitly define "persons with disabilities" but instead describes this group as including "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Ibid., article 1.

[293] See CRPD, Preamble.

[294]CRPD, art. 7.

[295] Ibid., art. 19.

international legal obligations, "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters."[296]

Right to Family Life for Children with Disabilities

Under the CRPD, governments should ensure that children with disabilities have equal rights with respect to family life. To realize these rights, and to "prevent concealment, abandonment, neglect and segregation of children with disabilities," governments are obligated "to provide early and comprehensive information, services, and support to children with disabilities and their families."[297]

Governments are also required to ensure that "a child is not 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, and that such separation is necessary for the best interests of the child." Furthermore, "In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents."[298]

Non-Institutionalization and Inclusion of Children with Disabilities in the Community

In instances where the immediate family is unable to care for a child with disability, the CRPD requires that governments undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.[299]

Under the CRPD, governments are obligated to recognize the equal right of everyone with disabilities to live in the community, with choices equal to others, and to take effective and appropriate measures to facilitate this right and their full inclusion and participation in the community, including by ensuring that:

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[296] Ibid., art. 11.

[297] Ibid., article 23(3).

[298] Ibid., article 23(4).

[299] Ibid., article 23(5).

> Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; …
>
> Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.[300]

The explicit right to live in the community contained in the CRDP stems from a long history of institutionalization of persons with disabilities, which has increasingly been recognized as discriminatory and unnecessary.

Countries should shift social service systems for children with disabilities away from those focused on institutional care towards a system of community-based support services, including housing.[301] Such a system should allow for equal choice, independence, and full inclusion and participation in the community. The lack of any reference in the CRPD to institutional housing and care reflects an evolving body of research and experience that over the last 40 years has shown that even those with the most severe disabilities can live and integrate into the community if given adequate support.

The committee of experts who oversee implementation of the CRPD has called on governments to take "immediate steps to phase out and eliminate institutional-based care for people with disabilities."[302]

Inclusive Education for Children With Disabilities

Inclusion in education is rooted in the concept that everyone has the right to education. The CRPD obliges governments to guarantee an "inclusive education system at all

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[300]Ibid., article 19(a)-(b).

[301]Office of the High Commissioner of Human Rights, "Thematic Study," January 26, 2009, HRC/10/48,http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf (accessed April 2, 2014),para. 50 ("The recognition of the right of persons with disabilities to independent living and community inclusion requires the shift of government policies away from institutions and towards in-home, residential and other community support services").

[302]CRPD Committee, Concluding Observations on China, September 27, 2012, para 32.

levels."[303] Specifically, the convention requires governments to ensure that children with disabilities "are not excluded from the general education system on the basis of disability" and that they have access to "inclusive, quality and free primary and secondary education on an equal basis with others in the communities in which they live."[304] The convention goes further by requiring governments to provide reasonable accommodations and the "individual support required, within the general education system, to facilitate their education...consistent with the goal of full inclusion."

The Committee on the Rights of the Child has also recognized the importance of modifications to school practices, provision of support services to students and training of mainstream teachers "to prepare them to teach children with diverse abilities and ensure that they achieve positive educational outcomes."[305]

In an inclusive education system, all students participate in ordinary classes in their district schools.[306] This includes "disabled and non-disabled, girls and boys, children from majority and minority ethnic groups, refugees, children with health problems, working children, etc."[307] Furthermore, inclusive education requires that students are provided with support services and an education based on their individual needs.[308]

Inclusive education focuses on removing the barriers within the education system itself that exclude children with special educational needs and cause them to have negative experiences within school.[309] It places the burden on teachers and classrooms to adapt, rather than for the child to change. Support services should be brought to the child, rather

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[303]CRPD, article 24(1).

[304]Ibid., article 24.

[305] UN Committee on the Rights of the Child, General Comment No. 9 (2006): The rights of children with disabilities," February 27, 2007, CRC/C/GC/9, http://www.unhcr.org/refworld/docid/461b93f72.html (accessed 17 June 2011), para. 62.

[306]Enabling Education Network, "Report to Norad on desk review of inclusive education policies and plans in Nepal, Tanzania, Vietnam and Zambia," November 2007, http://www.eenet.org.uk/resources/docs/Policy_review_for_NORAD.pdf (accessed June 17, 2011), p. 56.

[307]Enabling Education Network, "Report to Norad on desk review of inclusive education policies and plans in Nepal, Tanzania, Vietnam and Zambia," November 2007, http://www.eenet.org.uk/resources/docs/Policy_review_for_NORAD.pdf (accessed June 17, 2011), p. 9. Save the Children, "Making Schools Inclusive," 2008, http://www.savethechildren.org.uk/en/docs/making-schools-inclusive.pdf (accessed March 5, 2011), p. 10.

[308] While there is no agreed international definition of the term "inclusive education," relevant international institutions such as UNESCO, UNICEF, the CRC and the UN Special Rapporteur on the Right to Education use the term along the lines of this description.

[309] Save the Children, "Making Schools Inclusive," 2008, http://www.savethechildren.org.uk/en/docs/making-schools-inclusive.pdf (accessed March 5, 2011).

than relocating the child to the support services.[310] In an inclusive education classroom, children with disabilities have individual education programs to guide the teacher, parents and student on how to achieve the best educational outcomes for the child.

Diversity in the classroom is understood to benefit all children, including by addressing stereotypes, and improving understanding and learning. Studies in both Organization for Economic Co-operation and Development (OECD) and non-OECD countries increasingly recognize that students with disabilities achieve better academic results in inclusive environments, surrounded by their non-disabled peers and provided with special support when needed.[311] As noted by Vernor Muñoz, the former UN special rapporteur on the right to education, schools with an inclusive orientation are the most effective means of combating discrimination, and are thus essential to securing the full right to education for children with disabilities.[312] The Committee on the Rights of the Child also acknowledged that inclusive education can show a child with a disability "that he or she has recognized identity and belongs to the community of learners, peers, and citizens."[313]

Inclusive education needs to be distinguished from the system of integrated education. The latter focuses on developing the skills of children with disabilities so that they can join a mainstream school, sometimes through classrooms located within the mainstream school itself. However, this model tends to regard the child itself as the problem rather than addressing whether children with disabilities are in fact learning and the system-wide barriers in the education system.[314] Specialized classes within mainstream schools may be beneficial for some students with disabilities to complement or facilitate their participation in regular classes, such as to provide Braille training or physiotherapy.[315]

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[310] UNICEF, "Examples of inclusive education: Nepal," 2003, http://www.unicef.org/rosa/InclusiveNep.pdf (accessed May 17, 2011).

[311]UNESCO, "Inclusive Education," 2011, http://www.unesco.org/new/en/education/themes/strengthening-education-systems/inclusive-education/ (accessed May 17, 2011). Inclusion International, "Better Education for All: A Global Report," October 2009, http://inclusion-international.org.cluster.cwcs.co.uk/wp-content/uploads/Better-Education-for-All_Global-Report_October-2009.pdf (accessed May 17, 2011).

[312] United Nations Human Rights Council, "The Right to Education of persons with disabilities: Report by the UN Special Rapporteur on the Right to Education Vernor Muñoz," February 19, 2007, A/HRC/4/29, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/108/92/PDF/G0710892.pdf?OpenElement (accessed June 17, 2011).

[313] UN Committee on the Rights of the Child, General comment No. 9 (2006): The rights of children with disabilities, February 27, 2007, CRC/C/GC/9, http://www.unhcr.org/refworld/docid/461b93f72.html (accessed 17 June 2011), para. 64.

[314] Enabling Education Network, "Report to Norad on desk review of inclusive education policies and plans in Nepal, Tanzania, Vietnam and Zambia," November 2007, http://www.eenet.org.uk/resources/docs/Policy_review_for_NORAD.pdf (accessed June 17, 2011), p. 10. Sightsavers International, "Policy Paper: Making Inclusive Education a Reality," July 2011, p. 4.

[315]Sightsavers International, "Policy Paper: Making Inclusive Education a Reality," July 2011, p. 4.

Right to be Consulted and to be Heard

The Convention on the Rights of the Child sets out that children have the right to express their views and their views should be given due weight in accordance with the child's age and maturity.[316] Therefore, a child has the right to be consulted as well as to be fully informed about the alternative care options.[317]

The views of the child, including those with a disability, must be taken into account in order to determine what are the best interests of the child not only at the time of the separation from parents, but also at the time of decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family.[318]

Moreover, according to the UN Guidelines on Alternative Care:

> Children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement. Such mechanisms should include initial consultation, feedback, implementation and further consultation. Young people with previous care experience should be involved in this process, and due weight being given to their opinions.[319]

Support Systems for Independence

The UN guidelines recognize the importance of the preparation and training for life after care. They also note that the child should be allowed to be consulted with a specialized person regarding his or her independence when leaving care.[320]

Committee on the Rights of the Child, Concluding Observations on Japan

The Committee on the Rights of the Child monitors countries' compliance with the Convention on the Rights of the Child. At its most recent review of Japan, in June 2010, the

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[316]Convention on the Rights of the Child, article 12(1).

[317] UN Guidelines for the Alternative Care of Children, para 57 and 64.

[318]Committee on the Rights of the Child, General Comment No. 12: "The right of the child to be heard" (2009), paras. 53-54. CRPD, article 7.

[319] UN Guidelines for the Alternative Care of Children, para 99.

[320]Ibid., para 131-136.

committee noted "with concern the lack of a policy on alternative, family-based care for children without parental care, the increase in the number of children taken into care away from their families, the inadequate standards of many institutions, in spite of efforts to provide small-group and family-type care, and the reportedly widespread abuse of children in alternative care facilities."[321]

The committee expressed support for the mandatory training and increased allowance received by foster parents, but was concerned that some categories of foster parents—adoptive foster parents and kinship based foster parents—are not financially supported.[322]

The committee made the following recommendations to Japan:

a) Provide care for children in family-like settings, such as foster families or small group settings in residential care;

b) Regularly monitor the quality of alternative care settings, including foster care, and take steps to ensure the compliance of all care settings with appropriate minimum standards;

c) Investigate and prosecute those responsible for child abuse in alternative care settings and ensure that victims of abuse have access to complaints procedures, counselling, medical care and other recovery assistance as appropriate;

d) Make sure that financial support is provided to all foster parents;

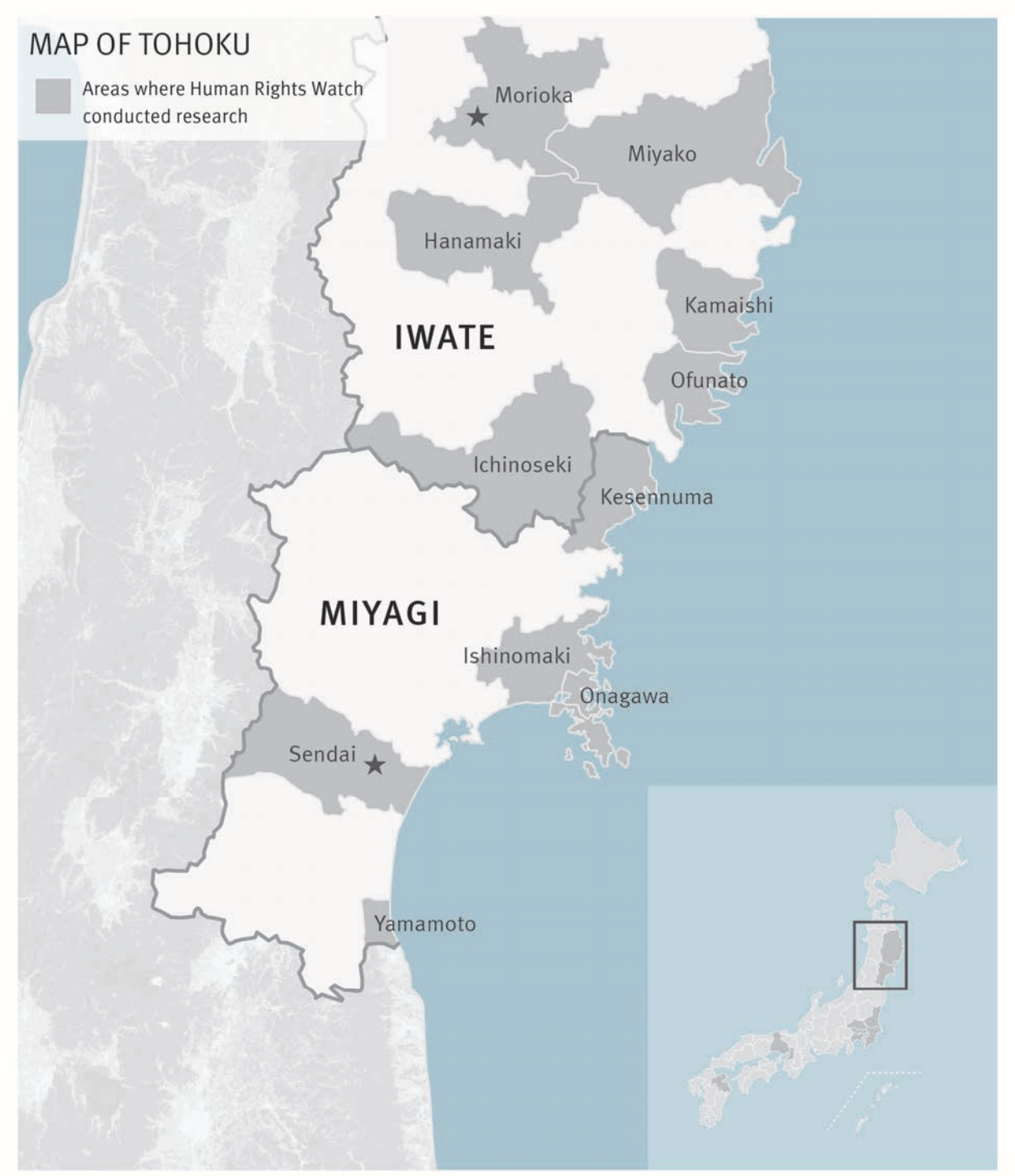
e) Take into account the UN Guidelines on Alternative Care of Children.[323]

[321]Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding Observations: Japan, CRC/C/JPN/CO/3, June 11, 2011, para. 52.

[322] Ibid., para 54.

[323]Ibid.para 53.

VI. Orphans of the 2011 Earthquake and Tsunami



The earthquake of March 11, 2011, was the strongest ever recorded in Japan, with a magnitude of 9.0 on the Richter scale. The severity of the combined damage from the earthquake and resulting tsunami crippled nuclear power plants and inflicted unprecedented damage on the Tohoku region of northeast Japan. The disaster resulted in 15,884 deaths, 2,633 missing persons (now presumed dead), 127,302 completely destroyed houses, 272,849 half destroyed houses, 748,777 partially destroyed houses, and 58,421 destroyed non-house buildings.[324]

Elementary school students walk beside the rubble after school in the tsunami-devastated town of Otsuchi, Iwate prefecture, May 2011. © 2011 Toshifumi Kitamura /AFP/Getty Images.

In addition, the disaster left 241 children completely orphaned or without their legal guardian: 126 in Miyagi prefecture, 94 in Iwate prefecture, and 21 in Fukushima prefecture.[325] As of 2012, all but five of them were living with extended relatives. Of the

[324]National Police Agency Emergency Disaster Headquarters, "Situation of damage from the Great East Japan Earthquake in 2011 and measures taken by police "("平成 23 年(2011 年)東北地方太平洋沖地震の被害状況と警察措置 ")March11, 2014, http://www.npa.go.jp/archive/keibi/biki/higaijokyo.pdf (accessed March 22, 2014).

[325]Cabinet Office, Government of Japan, "White Paper on Countermeasures against declining child birth rate, 2013" ("平成 25 年版少子化社会対策白書") (accessed March 22, 2014). p.107. Besides the cases in which both parents died, the definition of orphans includes the cases in which the following person died or went missing: the parent with parental authority of a divorced couple, or grandparent or relative with a responsibility to care for the child. In Japan, only one of the parents retains parental

remaining five who were in child care institutions, two were in child care institution before the earthquake.[326] Nationwide, a total of 1,483 children lost at least one of their parents to the earthquake and tsunami.[327]

Right after the earthquake struck, child care institutions and child guidance centers prepared to accept orphans at the national level. Yet when staff visited the evacuation centers a week after the disaster to check on the situation of orphans, all children who had lost their parents had already been taken in and were being cared for by relatives[328]—in most cases, grandparents, uncles, and aunts, and older siblings over 20 years old. Many relatives who opted to care for the orphans were also victims of the disaster themselves.

ManamiKajiwara from Ishinomaki, Miyagi prefecture, was in first grade when the earthquake struck and the resulting tsunami swept her mother away. Previously, Manami had lived with her mother and grandmother, but after the disaster she was left alone with her grandmother. Just like many other cities and towns along the coast of northeastern Japan, the tsunami caused catastrophic damage to Ishinomaki City, transforming the city into mountains of debris. When Human Rights Watch met Manami, she and her grandmother were living with Manami's uncle and his family.

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authority after divorce and, thus, the official counts of children who are considered to be an orphan include those who lost their father or mother who was their legal guardian. In some of these cases, the other biological parent (who did not have legal guardianship of the child) was still alive but officially the government considered the child an orphan.

[326] The figures are as of October 22, 2012. Human Rights Watch phone interview, Family Welfare Division of Ministry of Health, Labour and Welfare, November 14, 2012.

[327] Cabinet Office, Government of Japan, "White Paper on Countermeasures against declining child birthh rate, 2013" ("平成25年版少子化社会対策白書"), undated, http://www8.cao.go.jp/shoushi/shoushika/whitepaper/measures/w-2013/25pdfgaiyoh/pdf/s7.pdf(accessed March 22, 2014). p.46.

[328] Human Rights Watch interview with Koujiro Nakano, director of Miyako Child Guidance Center in Iwate, Iwate, May 16, 2012.

Children being visited by a Catholic sister at the earthquake-damaged Fujinosono child care institution in Ichinoseki, Iwate prefecture, November 2011. © 2011 FulvioZanettini/ADH/Laif/Redux

After living in an evacuation center for a few weeks and in an uncle's house for two months, Manami was able to finally return to her original house. When Human Rights Watch met her, her home was still surrounded by her largely destroyed neighborhood but she was keeping busy every day, going to school and attending extracurricular activities. She said she is trying her best to live a normal life, encouraging people around her. Seeing her grandmother who still spends her days in tears mourning her lost daughter, Manami tried to cheer her up. On the flower Manami offered at her mother's altar, she wrote: "Grandma, don't cry."[329]

Use of Foster Care System

TomoakiHiraga, Ichinoseki Child Guidance Center director in Iwate, said, "We as the Child Guidance Center actively promoted the application of the foster parent system" for the

[329]Human Rights Watch interview with ManamiKajiwara, female disaster orphan in her fourth grade, Miyagi, June 11, 2012. Human Rights Watch interview with Seiko Kajiwara, grandmother and kinship-based foster parent of ManamiKajiwara, Miyagi, June 11, 2012.

orphans.[330] As a result, the 168 people who accepted to take care of their relative's child (after the child's parent or parents died) all registered under the foster parent system. Of those, 95 did so through the kinship-based foster parent system and 73 through the regular foster parent system.[331]

In the past, relatives with a third degree of relationship could only register under the kinship-based foster parent system, which does not grant any foster parent allowance, because the civil law defines them as persons who are naturally responsible to support the child. However, after the 2011 earthquake, a new government policy enabled the child's uncle and aunt or relatives of a similar status to be certified as registered foster parents and receive foster parent allowance.[332]

The remaining 68 orphans, who are not under the foster parent system, were adopted by their relatives or live with their other parent who regained parental rights that had previously been lost after divorce.[333]

A former staff member of Miyagi Chuo Child Guidance Center who was in charge of the foster parent system at the time of the earthquake, said that the disaster should provide the optimal opportunity to reconsider what the country's alternative care system should be like.[334] The former staffer said that soon after the earthquake, the phone at the center kept

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[330]Human Rights Watch interview with TomoakiHiraga, Ichinoseki Child Guidance Center director in Iwate, Iwate, May 17, 2012.

[331] The figures are as of October 22, 2012. Phone interview by Human Rights Watch, Family Welfare Division of Ministry of Health, Labour and Welfare, November 14, 2012. Kinship-based foster parents only receive basic coverage for the child's medical and living expenses and not 72,000 yen ($720) of monthly allowance provided to regular registered foster parents.

[332] Equal Employment, Children and Families Bureau, Ministry of Health, Labour and Welfare, "Regarding the Implementation of Partially Revised Ordinances for Minimum Standards of Child Care Institutions and Child Welfare Act Enforcement Regulations" ("児童福祉施設最低基準及び児童福祉法施行規則の一部を改正する省令等の施行について"), Issue 0901/No.1, September 1, 2011. The biggest difference between kinship-based foster parents and general registered foster parents is the availability of foster parent allowances. Relatives within a third degree of kinship are only allowed to register as kinship-based foster parents and not eligible to receive foster parent allowances. The relatives within a third degree of kinship include great-grandparents, grandparents, parents, aunts/uncles and siblings. However, as the Japanese civil law provides, it is only the lineal relatives by blood and siblings who are given unconditional responsibility to care for the child. On this ground, the current law makes an exception for aunts and uncles to make them eligible for foster parent allowances. The Civil Law, art. 877, provides: "Article 877 The lineal relatives by blood and siblings must share child care responsibility."

[333]As of October 22, 2012. Human Rights Watch phone interview with Family Welfare Division of Ministry of Health, Labour and Welfare, November 14, 2012.

[334] Human Rights Watch interview withMiyagi Chuo Child Guidance Center worker in charge of foster parents affairs at the time of the earthquake (name withheld), Miyagi, May 13, 2012.

ringing for days with domestic and also international calls from those who wished to foster any children in need.

According to the Child and Family Division of Iwate Prefectural Office Health and Welfare Department, the number of registered foster parents increased by 30 households annually after the earthquake and tsunami as opposed to the normal rate of approximately 15 households a year beforehand.[335]The earthquake increased the publicity around the foster parent system and helped boost the number of people who wish to foster a child. The fact that most of the orphans who lost both of their parents to the disaster were taken into care by their relatives also represents an aspect of what protection and care for children should be like. Family-based care that provides a familiar environment with familiar people should be, in many cases, the form of alternative care that is in the child's best interests.

Future Concerns

Despite the positive side of things, the difficulties that relatives who have taken on the care of children are considerable.

The oldest kinship-based foster parent is 90-year-old Norio Kato from Iwate Prefecture. He had been living with his oldest son and his family but lost his oldest son to illness before the earthquake and his daughter-in-law to the disaster. Now he is left with two grandchildren, in third grade and sixth grade. Managing his new life with the two children with the help of a housekeeper who takes care of the household chores, his spirited, lively demeanor does not belie his nine decades. However, he expresses his concern saying, "I never know when my health will turn for the worse. I don't know how long I can look after these children."[336]

Initially, the child guidance center checked on the status of these orphans once a month through home visits. However, many households objected, saying that they are "simply keeping their normal lives as before as a family." Many centers have reduced their number

[335]Human Rights Watch interview with Child and Family Division of Iwate Prefectural Office Health and Welfare Department, Iwate, August 23, 2012.

[336] Human Rights Watch interview with Norio Kato, Iwate-based 90-year-old kinship-based foster father, Iwate, August 20, 2012.

of visits in response.[337] Foster parent groups in each prefecture are also hosting gatherings on a regular basis to support the foster parents who have started caring for an orphan after the disaster. However, many of these relatives do not really consider themselves to be "foster parents" and their attendance is infrequent.[338]

Concerns among some of the foster parents do exist, however, and problems in future years cannot be discounted. For example, an Iwate Prefectural government official heard the following concern from the foster parents:

> The junior high school boy [we're taking care of] does not say much in general, nor does he express his grief regarding the disaster or his longing for his parents. Is it okay to just leave him like that?
>
> I'm concerned with what could happen in the future given the environment of temporary shelters where multiple children of both sexes are living together in limited space.[339]

TadamiTakahasi, president of the Iwate Foster Parents association, told Human Rights Watch that although there were no special issues found with the orphans through 2012, some reports have reached the association in 2013 showing some delinquent behavior among the orphans, even though the cases have not been severe.[340]

Reports related to the Great Hanshin Awaji (Kobe) earthquake in 1995, in which more than 6,000 people died, show that issues around children, including psychological stress, most commonly becomes evident three or four years after the incident.[341]

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[337]Child guidance centers in Miyagi ranked children into the categories of A) Observation needed, B) Average, C) Safe, and adjusted the frequency of their home visits accordingly: every month for group A, every three months for group B and every half a year for group C.

[338]Human Rights Watch interview with Tadami Takahashi, chairman of Iwate Foster Parents Association, Iwate, August 21, 2012.

[339] "Iwate Prefecture Reporting Material for the Meeting of Six Tohoku Prefectures and the Ministry of Health, Labour and Welfare Regarding the Great East Japan Earthquake" ("東日本大震災に係る東北６県と厚生労働省の打合せ　岩手県説明資料"), November 30, 2011.

[340]Human Rights Watch phone interview with Tadami Takahashi, foster father, Iwate, Dec 1, 2013.

[341]Shigeo Nakamizo, guidance chief, Secretary of Kobe City Education Comittee, "Mental Care Practice after the Earthquake""(震災後の心のケアの実際　～阪神淡路大震災の経験から～)," December 1, 2011

Financial Security of the Orphans

Various forms of support from the government as well as donations from nongovernmental sources have reached the orphans and to date, there has not been much indication that they have experienced financial hardship.

Public funds include 5 million yen ($50,000) of disaster condolence money, 500,000 yen ($5,000) for the first distribution plus 815,000 yen ($8,150) for the second distribution of donation money for disaster victims, and 65,741 yen ($657) monthly payments of a basic pension for each bereaved family. There are also nongovernmental sources, such as 2.82 million yen ($28,200) of Ashinaga one-time emergency relief grant and 3 million yen, or $30,000 from the Asahi Shimbun Social Welfare Organization child support fund for elementary school children, 2 million yen (US$20,000) for junior-high school children and 1.5 million yen (US$15,000) for high-school children.[342] A list of scholarships and support funds is put together on each prefectural government's website homepage and there are many other public and private run support systems that are not included in this list.

Some of the orphans ended up with over tens of millions of yen, including inheritance from their parents' estate as well as receiving payouts from life insurance policies.[343]

Indeed, the concentration of support on orphans has been pointed out as a problem, creating a disparity between what they andother victims have received. The director of the Ashinaga one-time emergency relief grant program told Human Rights Watch:

> Financially speaking, orphans are in a situation in which people tell them they are "lucky" to be an orphan. There are children who had already been orphans before the disaster, single mother households, and households without income after the disaster cost them their jobs. We want to extend our support to a wider range of people but the situation is tough, because a considerable portion of donations is specifically given to children who lost

[342] The Child and Family Division of Iwate Prefectural Office, "Major Supports for Children Whose Parents/Guardian Went Missing or Deceased Due to Great East Japan Earthquake and Tsunami as of July 2011" ("東日本大震災津波で保護者が行方不明・死亡の被災児童への主な支援 [平成 23 年 7 月現在]"),July 2011, http://www.pref.iwate.jp/dbps_data/_material_/_files/000/000/001/670/20110728-1.pdf, (accessed April 9, 2014).

[343]Human Rights Watch interview with Nobuyuki Hanashima, lawyer and chairman of Commission of Child Rights in Sendai Bar Association, Miyagi, May 11, 2012.

> one or both of their parents in the disaster and, thus, we cannot use the fund for other purposes.[344]

A mother of one junior high school student and one high school student told Human Rights Watch:

> Thankfully my family all survived, including my two children, and our house was only half-destroyed. But my husband, who is a designer, lost most of his clients to the tsunami and hardly had any income last year. I check the newspaper section for victim support and grants everyday but most of them are for children who lost one or both parents. Nothing is applicable for our family and I'm now concerned whether we can send our children to seek higher education.[345]

Psycho-Social Assistance for Affected Children

While the recovery of the disaster victims' lives depends heavily upon the reconstruction of the area itself, the process has only been moving forward very slowly. Yoshinori Sato, a psychiatric nursing instructor, told Human Rights Watch:

> After the disaster, children were having issues like bad temperament, moodiness and inability to sleep or eat. You can't really tell easily though that they lost their parents. I've been spending time every month for the past year with the children who lost one or both of their parents, but most of them don't mention anything related to it. Some kids may let spill a few words when they are playing but it doesn't happen often."[346]

Groups of child psychiatrists and counselors have visited the evacuation sites in Tohoku since the early days after the disaster to care for children's mental health. The child guidance centers in the region have also formed a team that included child counselors and

[344]Human Rights Watch interview with YoshijiHayashida, director of Ashinaga Tohoku Office, Miyagi, May 14, 2012.

[345]Human Rights Watch interview with a female worker of Onagawa Collaborative School who was also affected by Tohoku earthquake and tsunami (name and details withheld), Miyagi, May 14, 2012.

[346]Human Rights Watch interview with Yoshinori Sato, director of NPO Sendai Griefcare Association and instructor of psychiatric nursing, Sendai Aoba Gakuin College, Miyagi, May 16, 2012.

experts tovisit affected children, respond to children who lost one or both parents,and to liaise with medical organizations whenever problems were detected.[347]

Child psychiatrists have been consulted since the earthquake and tsunami regarding symptoms of trauma such as unusual behavior, infantile regression, bed-wetting and crying in the night.[348]

The mental distress experienced by children affected by the quake first came to light two years after the disaster. KazuroOvama, chief of the child care team in Miyagi prefectural government, told Human Rights Watch that the children's problematic behaviors were first reported from the affected area in 2013.[349] From April 2012 to March 2013, Miyagi prefecture had the highest rate nationally of junior high school students who were not able to go to school.[350] Kazuo said it may have been a consequence of the earthquake.[351]

In January 2014, a research team from theMinistry of Health, Labor and Welfare issued a report focusing on the situation during the first two years after the earthquake. It reported that 28 percent of the smallchildren, from 3 to 6 years old,in the three affected prefectures (Iwate, Miyagi and Fukushima) suffer from what the reports called the "introvert issue" such as serious unease and depression, which sometimes manifested in a reluctance to go outside and a strong preference to stay indoors. The research mentioned that 21 percent of the children studiedhadwhat the report termed the "extrovert issue," which included behavior to take aggressive actions, and 26 percent of them showedwhat was termed "general issues," which includedifficulties in social adaptability. The report concluded all of those children require medical treatment and some have multiple issues that require urgent action.[352]

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[347]Human Rights Watch interview with KazuoOyama, leader of the Child Care Support Division of Miyagi Prefectural Office Health and Welfare Department, Miyagi, May 18, 2012.

[348]Human Rights Watch interview with TomoakiHiraga, Ichinoseki Child Guidance Center director in Iwate, Iwate, May 17, 2012.

[349]Human Rights Watch phone interview with Kazuo Oyama, chief of child care team, child care support division, Health and Welfare Department, Miyagi prefectural government, November 29, 2013.

[350] "The rate of junior high school students who cannot go to school, Miyagi hits the highest in the country. Is it because of the earthquake impact?" ("不登校の中学生、宮城県が全国最多　震災が影響か"), *Asahi Shimbun*, August 7, 2013,

[351]Human Rights Watch phone interview with Kazuo Oyama, chief of child care team, child care support division, Health and Welfare Department, Miyagi prefectural government, November 29, 2013.

[352]Asahi Shimbun News Paper, " About 30 percent of small children in the three affected prefecture suffers from serious mental issues, The Ministry of Health, Labor and Welfare Research" (被災 3 県の幼児、 3 割に深刻な心の問題　厚労省調査")January 27, 2014,

The fact that many children are now under the care of their relatives should not be a reason not to extend further attention. It is important that child guidance centers, schools, and communitiescollaboratively monitor and interact with these children continually in order to identify distress they may be experiencing.

A number of care providers worry that psychosocial care for children in disaster-affected areas will not be adequate.[353] They point to very few psychiatrists for children in the region—for example, in Iwate prefecture there is only one psychiatrist for children although the total population is 1.3 million. As a result, the affected areas have been receiving external support from child psychiatrists and psychologists located elsewhere, but this cannot continue indefinitely. Given such conditions, some local officials have called on the government to "set up a special team on constant standby to be dispatched in emergency occurrences and stay in affected areas for a period of months or years."[354]

Organizations like Ashinaga and Sendai Grief Care Society host monthly gatherings for the children in the area, mainly elementary school students, who lost one or both of their parents. At these meetings, the children are able to meet similarly positioned peers as well as to play and talk freely with facilitators.[355]Yoshinori Sato, organizer of the Sendai Grief Care Society, told Human Rights Watch that it takes time to care for these children. He said, "I can't say that this support can be a quick fix for their grief but I hope it will be one of the options for them."[356]YoshijiHayashida, chief of the Ashinaga Sendai office, also pointed out the difficulties of reaching children in need saying that "those who are suffering the most don't come to gatherings. It's important to spread the word to those people that these gatherings exist."[357]

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[353]Many specialists told Human Rights Watch that psycho-social care in disaster affected areas has been insufficient, including Yagi Junko and Yoshinori Sato.Junko Yagi, psychiatrist for child in Iwate Child Care Center, Iwate, at a speaking event "Play-Maker project to support children affected by the great disaster(大災害で被災した子どもを救う「プレイメーカー・プロジェクト」)" April 27.2012. Human Rights Watch interview with Yoshinori Sato, director of NPO Sendai GriefCare Association and Instructor of Psychiatric Nursing at Sendai Aoba Gakuin College, Miyagi, May 16, 2012.

[354]Human Rights Watch interview with Koujiro Nakano, director of Miyako Child Guidance Center in Iwate, Iwate, May 16, 2012.

[355]Human Rights Watch interview with Yoshinori Sato, director of NPO Sendai Griefcare Association and instructor of psychiatric nursing at Sendai Aoba Gakuin College, Miyagi, May 16, 2012. Human Rights Watch interview with YoshijiHayashida, director of Ashinaga Tohoku Office, Miyagi, May 14, 2012.

[356]Human Rights Watch interview with Yoshinori Sato, director of NPO Sendai Griefcare Association and instructor of psychiatric nursing at Sendai Aoba Gakuin College, Miyagi, May 16, 2012.

[357]Human Rights Watch interview with YoshijiHayashida, director of Ashinaga Tohoku Office, Miyagi, May 14, 2012.

Furthermore, both organizations provide a place for parental psychological care through creating opportunities for the child's guardians to interact and communicate with each other. "Usually parents are more unstable mentally. And when the parent or guardian is not mentally stable, it is most certain that it echoes to the child as well. That's why parental psychological care is very important," said Sato.[358]

Another staff member from Ashinaga told Human Right Watch how difficult it is to uncover the problems facing the children. She discussed her experience visiting one affected family saying:

> When I visited them at their house and talked to the mother, she said, "My child is strong. He is always trying hard and I'm really getting strength from him. But I'm not strong enough," bursting into tears. I then went to the child's room wondering if he was doing all right. It turned out he was crying like a baby. At the moment, I realized that the child is certainly going through a lot, too. He just doesn't show it in front of his mother because of his sense of responsibility to support his mother.[359]

She stressed her view that long-term monitoring and care will be needed to support children in the region affected by the earthquake and tsunami.[360]

[358]Human Rights Watch interview with Yoshinori Sato, director of NPO Sendai Griefcare Association and instructor of psychiatric nursing at Sendai Aoba Gakuin College, Miyagi, May 16, 2012.

[359] Human Rights Watch interview with a female child care worker in charge of home visits to households with a disaster orphans as an Ashinaga volunteer worker (name and details withheld), Miyagi, May 19, 2012.

[360] Human Rights Watch interview with a female child care worker in charge of home visits to households with a disaster orphans as an Ashinaga volunteer worker (name and details withheld), Miyagi, May 19, 2012.

Recommendations

To the Japanese Diet

To ensure that all children have an opportunity to grow up in a family:

- Revise the Child Welfare Act so that an independent mechanism, such as family court, can decide where a child should be cared for in the alternative care settings to ensure their best interests are met, in line with the UN Guidelines for the Alternative Care of Children.
- Amend the Child Welfare Act and add adoption and special adoption as measures of alternative care.

To the Ministry of Health, Labor and Welfare

To ensure that all children have an opportunity to grow up in a family:

- Close all infant care institutions as part of a clear plan to transition the care of infants from institutions to families. Ensure that the plan is time-bound and has adequate resources and political support to reach its goals. Provide children under the age of 3 years with care in family-based settings.
- Amend the Foster Parents Placement Guidelines in line with the UN Guidelines for the Alternative Care of Children, which require that institutional care is limited to "cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests," anddirect prefecture governments, ordinance designated cities and child guidance centers to implement the revised guidelines. The amendments should include, among others, the listed exceptions deemed suitable for institutional care, which significantly undermine the "foster parents first policy" in the Foster Parents Placement Guidelines;[361]

[361]UN Guidelines for the Alternative Care of Children para 22 limits exceptions to the cases to prevent the separation of siblings as well asto the cases where the placement is of an emergency nature or to the cases when it is only for a predetermined and very limited duration, with planned family reintegration or other appropriate long-term care solution as its outcome.

- Revise the instruction on infants to comply with the UN Guidelines for the Alternative Care of Children, which specifies that the alternative care of children, especially those under age 3, should be provided in family-based settings;
- Specify a certain short period, such as 6 months for a child and 3 months for an infant, as the maximum period a child can remain in an institution before being cared in family-based settings unless this is against the best interest of the child, by amending, among others, guidance that suggests a child can stay in an institution for 6 months or a year.[362] This setting should be temporary only until the institutions, such as infant homes, are terminated.
- Directthe use of the Child Welfare Act article 28 court process to place children with foster parents if any biological parents found to be abusive refuse to give consent to placing children in family-based care.

- Assign an independent panel of experts to develop a set of policy recommendations to ensure that adoption is considered when family reintegration proves impossible within an adequate and appropriate period, or return to the biological parents is considered contrary to the best interests of the child. The panel should:
  - Consider ways to make sure that adoptions are considered before any other long-term arrangements such as foster or institutional care;
  - Utilize special adoption for newborns by consulting with pregnant women who are not willing or able to raise their babies;
  - Examine what, if any, support and training that the government provides foster parents, including foster parent allowance, is also desirable to be given to adoptive foster parents and adoptive parents.
  - Recommend concrete measures to improve the child guidance center's ability to promote adoption, including providing necessary human resources.
- Cease building new child care institutions and ensure that any construction of child care facilities, including infrastructure to support smaller-scale child care units, does not concentrate resources on institutional care options for children at the expense of appropriate growth of care in a family.

[362] The Foster Parents Placement Guidelines state: "children without any exchange with parents/guardians for more than a year, and in the case of infants more than 6 months" should be considered for foster parent care.

- Review the government's current goal of placing only one-third of children with foster parents or family home in "ten-plus years" from 2011, allowing the rest to be still institutionalized and come up with a more robust goal for children to be adopted or placed with foster parents that aims to enable all children to have a chance to grow up in a family. This new goal should be developed along with a specific plan of actions, supported by a finding scheme different from the current, which incentives institutions to admit more children for more government subsidies.

To ensure better foster parenting:

- Make sure that all foster parents, including kinship-based foster parents and adoptive foster parents, receive adequate training, monitoring, and support including foster parent allowance. In order to come up with the improved comprehensive programs, assignanindependent panel of expertsto make recommendations regardingthe comprehensive training programs, support programs, and monitoring mechanism of foster parents. The panel should examine the types of training foster parents currently receive, and conduct a training needs assessment. It should also recommendconcrete measures to improve the child guidance center's ability to support foster parents, including through home visits and more effective, regular monitoring systems, and necessary human resources to implement such reforms.
- Assess and review the current foster parent selection criteria and practices as well as government outreach measures to prospective foster parents. Develop fairer and more transparent criteria to ensure that all those candidates with a strong commitmentand ability to care for children in their best interests in an atmosphere of happiness, love, and understanding are registered without discrimination, without excluding couples in common-law marriageand persons not married, or any other groups of people who are committed and able to care children in their best interest. Inappropriate candidates, who are not willing and able to care any children for their best interest, should not be included in the list. Run a more effective nationwide outreach campaign to encourage qualified candidates from diverse backgrounds to apply for foster parent registration.

- Set out systems to ensure that local government, expertsincluding but not limited to teachers, counselors, medical doctors and lawyers, and community organizations provide the necessary support and quality monitoring of foster parent placements and the care.

To ensureadequate living standards for children with disabilities:

- Assignan independent panel of expertsincluding people with disabilities, parents of children with disabilities, and representatives of disabled people's organizations, to review and assess the situation of children with disabilities in alternative care institutions and develop comprehensive recommendations for transition of these children to a community-based care system, supplemented by special measures needed to assist foster parents of children with disabilities.The recommendations should make sure that children with disabilities are in the regular school system in the community.
- Within a planned period of time, de-institutionalize the children living in the short-term therapeutic institutions into family-based care in the community and transform the institutions into a more accessible community based support mechanism for children with disabilities. Make sure that the prefecture or city local government, experts including but not limited to teachers, counselors, medical doctors and lawyers, and organizations in the community fully support the foster parents and the children.
- Set out systems, such as support groups and expert advisors, to ensure that local government, experts and disabled people's organizations and parents' organizations in the community provide support to specialized foster parent placements and the care.

To ensure adequate temporary shelter for children removed from biological parents:

- Issue policy guidance to child guidance centers to end potentially abusive practices in temporary shelters such as restricting school attendance, limiting freedom of movement, unless based on an individualized assessment that such measures are in the best interests of a child.
- Develop a transition plan to move all children out of child guidance centercontrolled "temporary shelter" arrangements after they are removed from

their biological parents' care, and into more appropriate, temporary humanitarian placements that allow the child to interact with other children, continue school, and live their life with minimal disruption. Solutions could include systems similar to current temporary protection entrusting children with foster parents or family in the community.

To improve care for children in alternative care institutions:

- Extensively revise the conditions of the child care institutions, such as expanding living space requirements per childor private space for each child, to ensure those conditions meet international best practice.
- Undertake frequent inspections—comprising both scheduled and unannounced visits—by the child guidance centers and other local officials as well as independent third parties working for the best interests of the children to check conditions in the institution. The inspections also check bullying among children. These should involve discussion with, and observation of, the staff and the children.
- Increase staffing levels in institutions so that ratios of child care workers to childrenare in line with international best practice.

To increase child participation in decisions affecting them:

- Issue regulations to require the development of an effective external, third-party committee to monitor child care institutions at the prefecture level, and provide the committee with resources and appropriate personnel to engage with the children in alternative care. Ensure the committee has regular, unrestricted access to child care facilities and develops confidential methods for children to contact the committee to relay complaints regarding treatment and conditions. The committee should have unfettered access to the foster children as well.
- Develop other forms of complaint mechanisms to ensure that children can confidentially reach out and seek redress for abuses suffered, and ensure all institutions in the alternative care system established a "zero tolerance" policy regarding any retaliation against children raising complaints. Young people with previous care experience should be involved in this process, due weight being given to their opinions.Ensure that these complaint mechanisms are accessible to

children with diverse disabilities, including by providing independent support people, if needed.

- Promote organizationsand activities of peergroups of children in alternative careand graduated youth.

To support independent living for older children:

- Ensure that all children under alternative care, upon their request, can extend their care arrangements until they are 20 years old as an interim measure until such time that appropriate reforms have been carried out to support independent living for graduated youth.
- Provide more financial assistance to support independent living, such as tuition assistance and other costs connected to attending high school and college, as well asfees for obtaining a driver's license.
- Providea designated person to consistently act as the child's guarantor for the purpose of securing an apartment lease, employment contract, and to serve as a guardian formundane, yet criticaltasks like securing a mobile phone service contract. Come up with effective measures to make sure that issues surrounding parental authority are not obstacles to these contracts. Guarantors should be permitted to serve in this role at any occasions if necessary.
- Develop proper post-care peer support system, including allocating whenever possible, a specialized person who can facilitate the child's independence after leaving care.
- Launch a comprehensive research and analysis project based on perspectives of youths released from the alternative care system. Such a report should consider recommendations for reforming the entire alternative care system.

To support earthquake-tsunami orphans

- Monitor children for an appropriate period—up to 10 years—after the earthquake to make sure that they allreceive all needed care for mental or physical trauma, and receive appropriate other support as necessary.

To Prefectures and Ordinance Designated Cities:

To ensure that all children have an opportunity to grow up in a family:

- Follow the foster parents' first policy in the national government's policy guidelines "Foster Parents PlacementGuidelines", and make available adequate resources to effectively implement the principlein line with the UN Guidelines for the Alternative Care of Children.
- Follow the national government's policy guidance "Notice on Adoption Administration"that directs directors of child guidance centers to try to arrange appropriate adoption for children.
- Whenever biological parents do not agree with foster care placements, use the authority granted to the child guidance centers under article 28 of the Child Welfare Act that allows them to place a child in foster parents care with family court permission.

To improve foster parenting:

- Develop a system of more comprehensive and regular trainings, including providing information about care of children, for would-be foster parents.
- Ensure foster parents receive ample information required for caring for the child as a foster parent, including the reason for the child entering alternative care, environment(s) where the child has been in prior to the placement, the history of care for the child, and other related information.
- Improve the quality of the prospective foster parent support and monitoring system, including increasing the expertise and numbers of people providing support and conducting monitoring.

To ensure adequate temporary shelter arrangements for children removed from biological parents:

- Assess and review the potentially abusive practices of temporary shelters for children, including restricting school attendance andlimiting freedom of movementin the absence of individualized assessment that such measures are in the child's best interests.

To ensure adequate living standards in the community for children with disabilities:

- Recruit more qualified specialized foster parents to care and assist children with disabilities, and ensure that they receive appropriate training and support to undertake such care.

To increase child participation in decisions affecting them:

Undertake a range of measures to improve children's participation in the alternative child care system, including but not limited to:

- Significantly improving distribution of the *Children's Rights Guidebook*, including ensuring its contents are properly communicated to the children, and effective avenues are created for implementing and following-up on the provisions contained in the guidebook. Standardized curriculums and regular courses should instruct staff on using the guidebook. The guidebook should include postcards to allow children to reachthe child guidance center and other third parties free of charge, as well as provide toll-free phone numbers and email address.
- Listen to and appropriately take into account children's opinionswhen making decisions about the alternative care arrangements and institution/foster home where they reside. Develop practical steps to promotesuch consultation in a more effective manner.
- Encourage regular interactions between the responsible individuals or committee membersoutside of the institutions who oversee the institution and the children.

To improve support for independent living arrangements for graduated youth who have left alternative care:

- Instruct each child guidance centerto designate a specialized person, and provide that person with appropriate resources and authority, to serve as a liaison to children who have left alternative care and support them with independent living arrangements. Each child guidance centershould also modify schedules, programs and routines for children in the institutions to help them gradually yet consistently prepare to live independently.

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JAPAN SOCIETY

WITHOUT DREAMS

Children in Alternative Care in Japan

More than 39,000 children in Japan live in alternative care settings because authorities determined that their parents were either unable or unwilling to care for them properly. However, the alternative care system is heavily dependent on placements in group institutions, with only a fraction of the children entering foster care, and even a smaller number being adopted. Japan is setting up some of its most vulnerable children to fail: many of these children are not taught necessary life-skills and are not given the continuing support they need to live independent, productive lives in Japanese society.

Without Dreams examines Japan's alternative care system for children. It analyzes the system's organization and processes, highlights problems found in the institutionalization of most children (including infants), and documents abuses that take place. It also considers the difficulties many children experience when they leave alternative care, and outlines continuing problems with foster care. Finally, it examines the experience of orphans of the 2011 earthquake and tsunami.

The report draws on more than 200 interviews, including with children and adults who previously lived in alternative care settings, foster parents, administrators of group institutions, child care workers, government officials, and experts specializing in child care issues.

Human Rights Watch recommends that Japan undertake urgent reforms to transition its alternative care system away from reliance on institutions toward greater use of foster care and adoption where children can live in family-like settings. Japan should also reform its Child Welfare Act to support more child rights-friendly processes and ensure adequate resources and political commitment to support children in alternative care.

Beds in sleeping quarters for elementary school girls at a child care institution in Iwate prefecture. Eight girls share a room, and the space on their own bed is the only place children are allowed some privacy. Even such privacy is guaranteed only by a simple curtain surrounding each bed, August 2012.

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