

Few options for left-behind parents even if Hague OK'd

Without retroactive effect, treaty will leave past abductions in limbo

MASAMI ITO, The Japan Times, Thursday, December 29, 2011

In July 2003, Paul Toland arrived to an empty home at the U.S. Navy's family housing facility in Yokosuka, Kanagawa Prefecture. Gone were his Japanese wife and baby daughter. What was left was a note: "Contact my lawyers."

Since then, Toland, a navy commander, has been fighting to get his daughter back — and he's not alone. Hundreds of other fathers from the United States, Canada, the United Kingdom, France and other countries are also fighting the same battle.

"Hundreds of children have been abducted and none have ever been returned (from Japan)," Toland, now based in Maryland, said in a phone interview earlier this year. "It's frustrating — you know that you are in a losing battle."

For years, Japan was the object of international criticism for not joining the 1980 Hague Convention on the Civil Aspects of International Child Abduction that prevents cross-border parental kidnapping.

But in May, the government announced its decision to begin preparations for signing the treaty, which would make it the last country among the Group of Eight industrial powers to join the international convention.

Prime Minister Yoshihiko Noda in October said he would submit the legislation to the Diet when it opens in early 2012.

But for the international community, signing the treaty is only a step in the right direction. A larger problem for many is that the Hague Convention is not effective retroactively — meaning that even if Japan joins the pact, it won't help parents like Toland.

"Signing the Hague is just a very small step — there is so much else that needs to be done," Toland said. "The true test will be how many children do they actually return and how well will they work with us fathers in the existing cases."

U.S. President Barack Obama has reportedly urged Noda to take measures to ensure current cases get dealt with. But Noda has been evasive on that point.

"As indicated, the treaty is not effective retroactively . . . and we are in the middle

of making preparations to sign the Hague Treaty, as well as discussing what kind of appropriate measures can be taken for past cases," Noda said during an interview in October with The Japan Times and several other media outlets.

The recent case in Wisconsin, where Moises Garcia was reunited with his daughter, who had been abducted by his Japanese ex-wife, marked the first time an American child was returned to the United States. But observers believe this was an exceptional case since the child was returned after the mother was arrested in Hawaii on child abduction charges.

Frustrated with Japan's foot-dragging, Toland and about 100 other left-behind parents in 2010 formed Bring Abducted Children Home (BAC Home), a group specifically focused on children taken to Japan by former spouses. This group has lobbied the U.S. government to put pressure on Japan to deal with the problem. Members have been holding quarterly meetings with top government officials and politicians to get updates and discuss the issue.

U.S. Rep. Chris Smith stressed in an email interview with The Japan Times that the U.S. would continue to make sure that all current cases are settled.

Signing the treaty "is not enough. We must have resolution of the current cases," Smith said. "Congress will not let up until current cases are resolved. We cannot and will not forget our children."

Smith, a Republican, has been at the forefront of cases involving international child abductions. In 2009, he played a key role in successfully bringing back a boy who had been abducted to Brazil by his mother from his American father.

To ensure the compliance of the Hague Convention by member states, Smith in May sponsored the International Child Abduction Prevention and Return Act of 2011, which is being deliberated in the House of Representatives. The bill includes 18 types of action that can be taken by the U.S. president against uncooperative countries, ranging from public condemnation and the cancellation of official visits to economic sanctions.

"Allowing abduction without consequence only encourages abduction — tearing apart families and wounding the hearts and minds of children. Abductors should not be rewarded," Smith said.

The lawmaker also suggested that Japan and the U.S. sign a "memorandum of understanding" to address the current cases that would not be covered if Japan ratified the treaty.

According to a Foreign Ministry official in Tokyo, this sort of bilateral agreement has been made between some member states and Islamic countries that are not party to the Hague Convention. However, the official was not aware of any discussions in Japan to establish such an agreement with the U.S.

"If asked what we can do about current cases, all I can say is that (the left-behind parent) should use the current domestic law and file a lawsuit to the family court to see or have that child again," the official explained.

In the past seven months, Japan has been focused on drafting the bill necessary to be submitted together with the ratification to the Diet. The legislation would map out the details of the new "central authority" in the Foreign Ministry, which would oversee treaty-related cases as well as list the circumstances in which Japan can reject the return of the child.

Even if the bill is submitted to the Diet next year as planned, its fate remains murky. Public opinion over this issue is divided and some members of the ruling Democratic Party of Japan are opposed to it, as well. The Japan Federation of Bar Associations has proposed that a three year moratorium be imposed before Japan's ratification takes effect for preparations and to seek better public understanding.

The Japanese government, however, wants the treaty to take effect "within a practical time frame as soon as possible," the Foreign Ministry official said. "The longer we wait, the more people will go through difficult times."

But time is not on the side of left-behind parents.

Toland's daughter, taken when she was just 9 months old, is now 9 years old. Four years after the abduction, Toland's wife committed suicide, but instead of giving him — the sole living parent — legal guardianship, the mother of his late wife was granted custody.

Since his wife took their daughter in 2003, he has only seen his child three times: twice in a videotaped courthouse playroom with the grandmother and a courthouse employee while his wife and her lawyers watched through a one-way mirror and once when he was able to catch her on the street just long enough to give her a Christmas present.

And after the devastating March 11 earthquake and tsunami, Toland flew to Japan to see his only daughter and make sure she was OK. Instead, his former mother-in-law completely shut him out, refusing to let him even see his daughter, Toland said.

While his daughter remains thousands of kilometers away in Japan, Toland said he hopes that the U.S. government and Congress will continue to put pressure on Japan to make sure that it keeps its promise.

"If you have your own child stripped away from you, your human rights are violated," Toland said. "It's not a personal issue to us, it's a human rights issue. Every parent has the right to their child and every child has the right to know and love both parents."