Dear the distinguished members of the Human Rights Committee,

Our group, Society for Abolishing the Family Registration System and Discriminations against Children Born out of Wedlock (AFRDC), is one of the citizen’s groups endeavoring for abolishing discriminations against children born out of wedlock and for realizing a society where every lifestyle is respected and a woman who gives a birth outside of marriage is not discriminated.

For the consideration of the third, the fourth and the fifth reports of Japan, we submitted our counter reports to your Committee. We believe that our reports were helpful to you when the Committee considered on the reports of Japan.

Activities of your Committee have been highly evaluated by and have encouraged the people endeavoring to abolish discriminations against children born out of wedlock and to abolish human rights in general.

It is our great pleasure to inform that the big progress has been made on the issue of children born out of wedlock since the previous consideration of the report of Japan. The Grand Bench of the Supreme Court decided that the provision of the (Former) Civil
Code, which provided that the share in inheritance of a child born out of wedlock shall be one half of the share in inheritance of a child in wedlock, is in violation of the Constitution of Japan. As a result, the Civil Code was revised. Recommendations of international institutions, especially your Committee, were taken into consideration as one of the main reasons for the decision that the provision was against the Constitution.

However, regarding other court trials, to which plaintiffs appealed for abolishing discriminations against children out of wedlock, such recommendations were not enough taken into consideration and such a situation continues. Recommendations which refer to specific laws and cases, rather than the legal system in general, have been more effective to change the views of the government and courts.

We would like to report on the legal system discriminatory against children born out of wedlock. We believe that you will find the information helpful for the consideration on the Sixth Report of Japan. We would be happy if you would have a read through our report.

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Ⅰ. Improvements after the consideration of the Fifth Report of Japan
1. Acquisition of nationality by a child born out of wedlock whose mother is non-Japanese

With regard to a child born out of wedlock with a non-Japanese mother Article 3, paragraph (1) of the Former Nationality Act provided that Japanese nationality shall be
granted only where the child has acquired the status of a child born in wedlock as a result of the marriage of the parents and the acknowledgement by the father. A child born out of wedlock with a non-Japanese mother was not allowed to obtain Japanese nationality without the acknowledgement by the Japanese father before birth. Regarding the issue, on June 4 of 2008, the Supreme Court made the decision that the provision was against the Constitution. On December of 2008, Article 3, paragraph (1) of the (Former) Nationality Act was revised to remove the marriage requirement and to require only “acknowledged by the father or mother”. Now, even if a child is acknowledged after birth, the child can obtain Japanese nationality.

2. Abolishment of the provision discriminatory against children born out of wedlock in inheritance

The first half of the proviso of paragraph (4) of Article 900 of the (Former) Civil Code provided that “the inheritance of “a child not legitimate” is one half of that of “a legitimate child”. On September 4, 2013 the Grand Bench of the Supreme Court decided unanimously that the provision is against the Constitution. In response to the decision, in December of the same year, the Civil Code was revised to eliminate the provision.

The decision said that one of the main reasons for the court’s reversal of a Supreme Court decision in 1995 that ruled the provision constitutional was the recommendations of your Committee and the Committee of the Rights of the Child, as well as some changes in the system influenced by the civil society movements in Japan.

II. Discrimination that still remains in the legal system

Although the discriminatory provision in inheritance, which was the biggest reason for the distinction between a child born out of wedlock and a child in wedlock, was abolished, it has no impact on other discriminatory legal system which should be reconsidered. The following legal systems discriminatory against children born out of wedlock still remain.

1. Forced discriminatory description in birth notification: marking of whether the child is “legitimate child” or “child not legitimate”

(1) Discrimination begins with the birth.

Discrimination against children born out of wedlock in the legal system begins with the birth notification. In principle, in case of a child born in wedlock the mother or father has to notify the birth at a city, town or village office, and in case of a child born
out of wedlock the mother has to notify it. In accordance to Article 49 of the Family Register Act, at the time of notification, a parent has to specify whether the child is “a legitimate child” or “a child not legitimate” in the column of family relations with the mother and father.

(2) With regard to the discriminatory description in the birth notification, the Supreme Court decided the provision as constitutional.

The Grand Bench of the Supreme Court decided that the discriminatory provision on inheritance was against the Constitution. On 26 of the same month, the Small Bench of the Supreme Court with 5 judges decided unanimously that Article 49 of the Family Register Act, which provides for the discriminatory description, is constitutional. As a result, failing to reach an agreement in the ruling party, the Cabinet did not submit a revision bill.

(3) Unmarried mothers feel hurt.

Unmarried mothers, who gave birth to their children and went to public office windows with happy feeling to notify birth, were required to mark the discriminatory description, and felt hurt and sad.

(4) The operational change has not led to a solution.

Now, the new measures have been taken in order to avoid the non-acceptance of a birth notification due to no description in the column of family relations, and to avoid the non-creation of the child’s family register. In case that description such as “the child takes the surname of the mother” is written in the column of others, the birth notification is accepted, even if the mother does not mark “a child not legitimate”.

However, such information is not conveyed to mothers before notification. In most cases, a mother who goes to a public office to notify the birth is requested by a public officer to mark whether the child is legitimate or not. As a result, she marks the discriminatory description, although she feels distress. The column for marking “a legitimate child” or “a child not legitimate” is still retained in the notification form. The situation remains far from resolved.

2. There is the distinction between a child born out of wedlock and a child in wedlock in terms of surname and parental rights.

Article 790 of the Civil Code provides that a child born out of wedlock shall take the surname of mother and a child born in wedlock shall take the surname of the father and mother. In case of a child born out of wedlock, joint custody is not allowed. In case of a child born in wedlock, the husband of the mother becomes the father at birth. However, in case of a child born out of wedlock, through an acknowledgement by the father the
relation between the father and the child is decided.

3. **The distinction and the legal terms of “legitimate child” and “child not legitimate” are still retained.**

   The government says, “As far as there are differences between a legitimate child and a child not legitimate in terms of surname, parental rights and the identification of a father, it is necessary to have a distinction between them. “A child not legitimate” is the legal term which means a child born to unmarried parents. It has no discriminatory connotation.” It is, however, obvious that “a child not legitimate” has a discriminatory connotation.

   There is a situation, in Japan, that the problem of languages with discriminatory connotations and the serious problem that these languages are used in laws and public documents have not been understood deeply. The administration itself cannot break out of the view that it is natural to differentiate “a legitimate child” and “a child not legitimate”.

4. **Even now, a child born out of wedlock is discriminated against in terms of family relations of the family register: the description of “female/ male” still remains.**

   *Refer to Document (2)*

   The system for describing family relations in the family register has been changed. Before October of 2004, children born in wedlock were described as “first daughter/son, second daughter/son and so on”, and children born out of wedlock “female/ male”. Since November of 2004, in the family register created based upon the birth notification, the description for children born out of wedlock has been changed to “first daughter/son, second daughter/son and so on” that is the same as that of children born in wedlock. However, we cannot say that this amendment has eliminated discriminations against children born out of wedlock. The reasons are as follows.

   (1) **Description for children born in wedlock and children born out of wedlock is seemingly the same, but strictly differentiated.**

   With the change of the system, in case of birth notifications submitted after November 1 of 2004, children born out of wedlock are described as “first daughter/son, second daughter/son. However, the method for describing family relations is strictly differentiated between children born in wedlock and children born out of wedlock. After the change of the system, the method of counting birth order is as follows. In case of a child born in wedlock the birth order from the point of view of the mother and father is described by sex, and in case of a child born out of wedlock the birth order from the
mother’s point of view is described by sex.

In Japan, after a child was born as “a child not legitimate”, the child is allowed to obtain the status of “a legitimate child”, if the father acknowledges the child and the mother and the father get married. In this case, the description of the family relations in the column of the family register is rewritten with strikethrough. Therefore, it becomes apparent at a first glance that she/he was born as a child born out of wedlock. Even if the description, for example “the first daughter”, is the same both in case of the relations with the mother and in case of the relations with the mother and the father, the “first daughter” is struck through and, after that, the same description, “first daughter”, is entered in. The viewpoint of the government is as follows. ”As the child not legitimate obtains the status of the legitimate child, the description of the fact is not discriminatory.”

(2) In family registers created before the change of the system, the description for children born out of wedlock is “female/male” as before.

As a result of the system of the change in 2004, the family relations can be changed to “the first daughter (son), the second daughter (son) and so on” through the application of the child or the mother of the child.

However, From November of 2004, when the system was changed, to March of 2013 the number of the application for the correction of the description is only 30,903 among children born out of wedlock whose number is 2 million to 2.5 million (The number of them in our report for consideration of the fifth report of Japan was 1.5 million, but this number is correct.). The number of the application decreases year by year.

In addition, in case that the application is only for the correction of the description, the description is merely rewritten with strikethrough (In the electric database the previous family relations, “female/male”, is described.). As the previous record of the child remains, it makes more noticeable than before. In order to eliminate the previous record it is necessary to apply for remaking of the family register, in addition to applying for the correction of the description. However, as the public information is not enough, the number of the application for remaking of the family register is only 4,664 during the same period of time. Now, regarding 25,000 children, the fact that they are born out of wedlock is more apparent in the family register. Regarding most of 2 – 2.5 million children, discriminatory descriptions remain even after death.

(3) The administration should have a responsibility to eliminate the discriminatory description.
Due to no public information specifically on the change of the system, there is the situation that most of children born out of wedlock, whose descriptions are kept as before, don’t know the change of the system. Even if they become to know it, it is difficult for them to come to apply for the change in such a situation as social discrimination against them prevails.

There is no end to the number of public men whose speeches and behaviors are discriminatory against children born out of wedlock. Even at the Diet, discussions on the elimination of the inheritance discrimination were held amid the flurry of discriminatory words such as “a child of unfaithful wife” and “an adultery child”. When the Supreme Court decided that the provision of the discriminatory inheritance was against the Constitution, there were flood of blog posts on internet with hatred against the children born out of wedlock or plaintiffs, such as “It is natural for them to be discriminated. Otherwise, it would mean that the existence of mistress is permitted”.

(4) Description of the order, “the first, the second, the third and so on”, in the family relations is not necessary.

We frequently requested the Ministry of Justice to change descriptions of children born out of wedlock through the administrative responsibility. The Ministry rejected to do so, saying “We cannot identify “the first daughter/son, the second daughter/son, the third daughter/son and so on” without identifying each child born out of wedlock and retracing the mother’s family register back to her childbearing age. The burden of clerical work is too big.”

It is the real situation that, now, the order of “the first, the second, the third and so on” holds no meaning for the legal system and only has the discriminatory connotation of differentiating “a legitimate child” and “a child not legitimate”. Therefore, we made a proposal to eliminate the order of family relations such as “the first, the second, the third and so on” or to change to the description of only sex, because family relations are not necessary. However, these proposals were also rejected by the Ministry.

Although a certificate of the family register is requested in various situations such as the application for public housing, there are people who give up applications as they feel pain and uncomfortable each time due to the discriminatory description.

The discriminatory description has more negative impacts than the government’s view that it is only the description of the fact.

5. Discriminatory character of the Family Register
(1) The compilation principle of the family register, in which a unit of a family consists
of a married couple and their child(ren), produces discriminations.

A family register is created for a married couple and their child(ren) as a unit, not for each individual. In case that an unmarried woman bears a child, a family register is created only for her and the child. Just by looking at the family register, we can see whether the mother is unmarried or she was divorced. In addition to the discriminatory description of the family relations, such compilation of the family register reveals that the family consists of an unmarried mother and her child(ren).

(2) Infringement of the right to take the surname of a father

There are cases when a child born out of wedlock is denied the right to take the father’s surname. In order to take the father’s surname, it is necessary to apply to the family court for change to the father’s surname, in addition to the acknowledgement by the father. In case that the father has a wife, a family court checks whether the wife has the intention to consent it, because the change of the child’s surname to that of the father means that the name of the child is deleted from the mother’s family register and entered in (described in) that of the father and his wife. It is rare that the wife consents to it and it is difficult for the child to take the father’s surname.

Such a situation also is the negative impact of the compilation of the Family Register. If a personal registration system was adopted, such a problem would not occur, because the name of a child who takes the father’ surname would not be entered in the same family register as that of the father’s wife.

(3) Discrimination caused by a list of description

In case that the father does not acknowledge the child, the column is in blank. Therefore, it is obvious, at a glance, that she/he is “a child without the father”.

With regard to the discrimination in the description of family relations, we have already mentioned in 4.

6. Discrimination in the tax system (tax exemption for widows/widowers)

There is the tax exemption system, under certain conditions, for a woman who, after marriage, has become single due to the husband’s death or a divorce. However, as an unmarried mother cannot apply for such exemption, the taxable amount of income becomes bigger than that of widows. The income tax, the residence tax and the national health insurance tax become higher than those of widows. In addition to that, the burden of childcare fee, rent of public housing and so on, which are determined by the amount of tax, also becomes heavier. Therefore, a family of a mother/father and a child
(children) is placed in an economic situation more severe than that of a family of a mother/father who is divorced or whose husband/wife is dead, even if a parent’s income is the same.

It is the discrimination against persons unmarried and children born out of wedlock that the tax exemption for widows/widowers is not permitted to persons unmarried.

III. Items in violation of the Covenant

1. Item of description in the birth notification

   Article 49 of the Family Register Act, which requires the description of whether the child is a “legitimate child” or a “child not legitimate”, is in violation of Article 2, paragraph 1 and Article 24, paragraph 1 that prohibits discrimination based on birth, and Article 26 that provides the equality before the law. Requiring a mother to mark the description of a “child not legitimate” also violates Article 18, paragraph 1 that provides freedom of thought.

2. Family relations in the Family Register

   The description method in the column of family relations reveals unnecessarily that the child is born out of wedlock. It is in violation of paragraph 1 of Article 2, paragraph 1 of Article 24 and Article 26.

3. The right to take father’s surname

   There are cases that the right to take father’s surname for children born out of wedlock is infringed. It violates paragraph 1 of Article 2, paragraph 1 of Article 24 and Article 26.

4. Tax exemption for widows/widowers

   As an unmarried single parent is not permitted to apply for tax deduction for widows/widowers, it is harder for her/him to make a living than for widows/widowers. That is in violation of paragraph 1 of Article 2, paragraph 1 of Article 24 and Article 26.

5. The language of “a child not legitimate”

   The use of the discriminatory language for a child born to unmarried parents, “a child not legitimate”, in laws and public documents is in violation of paragraph 1 of Article 2, paragraph 1 of Article 24 and Article 26, and violates Article 7 that prohibits the degrading treatment.
IV. Documents


<table>
<thead>
<tr>
<th>Child</th>
<th>Name</th>
<th>(Surname)</th>
<th>(First Name)</th>
<th>Family Relation to the parents</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>□ Legitimate □ male</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>□ Not legitimate ★ □ female</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Time and Date of Birth</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Place of Birth</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Residence (Place of Resident Registration)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parents</td>
<td>Name and Date of Birth</td>
<td>(Father)</td>
<td></td>
<td>(Mother)</td>
</tr>
<tr>
<td></td>
<td>(Date of Birth)</td>
<td>(Date of Birth)</td>
<td>(Age)</td>
<td>(Age)</td>
</tr>
</tbody>
</table>

★A mother who notifies the child’s birth is requested to check whether the child is “Legitimate” or “Not legitimate”.

dd/mm/yyyy
Messrs Mayer ★★★★★

(omitted)
2. Document (2):  Family Register

(1) Columns of Family Relations in which discriminatory descriptions are retained and recognized at a glance

<table>
<thead>
<tr>
<th>REGISTERED DOMICILE</th>
<th>1-1 Ogikubo, Suginami-ku, Tokyo</th>
<th>Name</th>
<th>Kohno Taro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered on dd/mm/yyyy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Born at @@@@ on dd/mm/yyyy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married with Yamada Ume on dd/mm/yyyy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FATHER</td>
<td>Kohno</td>
<td>Tadashi</td>
<td>First Son</td>
</tr>
<tr>
<td>MOTHER</td>
<td>Yoshi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HUSBAND</td>
<td>Taro</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF BIRTH</td>
<td>dd/mm/yyyy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Born at @@@@ on dd/mm/yyyy |                                |      |            |
| The marriage with Kohno Taro was notified on dd/mm/yyyy |                                |      |            |
| FATHER | (blank) | Female |
| MOTHER | Yamada Haru |       |
| WIFE | Ume |        |
| DATE OF BIRTH | dd/mm/yyyy |       |

| Born at @@@@ on dd/mm/yyyy |                                |      |            |
| FATHER | Kohno Taro | First |
| MOTHER | Ume | Daughter |
| Kei |       |        |
| DATE OF BIRTH | dd/mm/yyyy |       |

★“Female” means that the child is a female child not legitimate.
★★★ The blank means that there is no acknowledgement by the father.
(2) Columns of family relations after applying for the correction of the description

<table>
<thead>
<tr>
<th>REGISTERED DOMICILE</th>
<th>1-1 Ogikubo, Suginami-ku, Tokyo</th>
<th>Name</th>
<th>Kohno Taro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered on dd/mm/yyyy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Born at @@@@ on dd/mm/yyyy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married with Yamada Ume on dd/mm/yyyy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FATHER</td>
<td>Kohno Tadashi</td>
<td>First son</td>
<td></td>
</tr>
<tr>
<td>MOTHER</td>
<td>Yoshi</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HUSBAND</td>
<td>Taro</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF BIRTH</td>
<td>dd/mm/yyyy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Born at @@@@ on dd/mm/yyyy |                                |          |            |
| Married with Kohno Taro on dd/mm/yyyy |                |          |            |
| Based on the application by Kohno Ume, made the correction of the description in the column of family relations with her father/mother on dd/mm/yyyy. ★ |          |            |
| FATHER               |                                |          |            |
| MOTHER               | Yamada Haru                   |          |            |
| WIFE                 | Ume                           |          |            |
| DATE OF BIRTH        | dd/mm/yyyy                    |          |            |

| Born at @@@@ on dd/mm/yyyy |                                |          |            |
| FATHER               | Kohno Taro                    | First daughter |            |
| MOTHER               | Ume                           | Kei       |            |
| DATE OF BIRTH        | dd/mm/yyyy                    |          |            |

★ In the column of the matter of the personal status, it is described that Ume applied for the correction.
★★★ The description "Female" is crossed out, and the description “First Daughter” is added. It is recognized at a glance that Ume is born out of wedlock. We close up this column as below.

```
First daughter
Female
```
(3) Columns of family relations after remaking a family register

<table>
<thead>
<tr>
<th>REGISTERED DOMICILE</th>
<th>1-1 Ogikubo, Suginami-ku, Tokyo</th>
<th>Name</th>
<th>Kohno Taro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remade on dd/mm/yyyy★</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Born at @@@@@ on dd/mm/yyyy</td>
<td></td>
<td>FATHER</td>
<td>Kohno Tadashi</td>
</tr>
<tr>
<td>Married with Yamada Ume on</td>
<td></td>
<td>MOTHER</td>
<td>Yoshi</td>
</tr>
<tr>
<td>dd/mm/yyyy</td>
<td></td>
<td>HUSBAND</td>
<td>Taro</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DATE OF BIRTH</td>
<td>dd/mm/yyyy</td>
</tr>
<tr>
<td>Born at @@@@@ on dd/mm/yyyy</td>
<td></td>
<td>FATHER</td>
<td>Kohno Taro</td>
</tr>
<tr>
<td>Married with Kohno Taro on</td>
<td></td>
<td>MOTHER</td>
<td>Yamada Haru</td>
</tr>
<tr>
<td>dd/mm/yyyy</td>
<td></td>
<td>WIFE</td>
<td>Ume</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DATE OF BIRTH</td>
<td>dd/mm/yyyy</td>
</tr>
<tr>
<td>Born at @@@@@ on dd/mm/yyyy</td>
<td></td>
<td>FATHER</td>
<td>Kohno Taro</td>
</tr>
<tr>
<td></td>
<td></td>
<td>MOTHER</td>
<td>Ume</td>
</tr>
<tr>
<td></td>
<td></td>
<td>WIFE</td>
<td>Kei</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DATE OF BIRTH</td>
<td>dd/mm/yyyy</td>
</tr>
</tbody>
</table>

★ The description that the family register was remade is entered in the column for matters of the family register.
★★ The previous description of family relations is eliminated and only “First daughter” remains.
3. Document (3): Relevant laws in Japan (* The provisions of the laws are translated by the government except the provision of the Income Tax Act, which was translated by our group)

<Paragraph 2, Article 49 of the Family Register Act (Birth)>
The following matters shall be entered in the written notification:
1. the gender of the child, and whether the child is born in or out of wedlock;

<Article 13 of the Family Register Act (Entries in a Family Register)>
In addition to the registered domicile, the following matters shall be entered in a family register for each person in the family register:
4. the names of his/her natural parents and his/her relationship with his/her natural parents;
5. in the case of an adopted child, the name(s) of his/her adoptive parent(s) and his/her relationship with his/her adoptive parent(s);

<Article 790 of the Civil Code (Child’s Surname)>
1. A child in wedlock shall take the surname of his/her parents; provided that if the parents divorce before the child is born, the child shall take the surname of his/her parents at the time of divorce.
2. A child out of wedlock shall take the surname of his/her mother.

<Article 18 of the Family Register Act (A family register of a child and adoptive parent(s))>
1. The name of a child who takes the surname of his/her parents shall be entered in the parents’ family register.
2. Except for the case referred to in the preceding paragraph, the name of a child who takes the surname of his/her father shall be entered in the father's family register, and the name of a child who takes the surname of his/her mother shall be entered in the mother’s family register.
3. The name of an adopted child shall be entered in the family register of his/her adoptive parent(s).

<Article 81 of the Income Tax Act>
1. In case that the resident is a widow or widower, JPY270,000 shall be exempted from the total amount of income, retirement income and income from forestry for the year.
2. The exemption pursuant to the previous provision is called “tax exemption for widows and widowers”.

<Article 14 of the Constitution>
All the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.