



Japan Disability Forum

For the List of Issues for Japan

Japan Disability Forum (JDF)'s Parallel Report

Submission to the Committee on the Rights of Persons with Disabilities

June 2019

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I. Introduction

1. About the Japan Disability Forum (JDF)

This parallel report was prepared by the Japan Disability Forum (JDF). The JDF was established in 2004 with the aim of promoting the “Asian and Pacific Decade of Persons with Disabilities” as well as to promote policies in Japan on persons with disabilities and their rights. The JDF consists of 13 national-level member organizations who are mainly organizations of persons with disabilities, as well as support organizations such as family organizations, service providers' organizations, and professional organizations. Its major activities are to promote (i) the International Convention on the Rights of Persons With Disabilities, (ii) the “Asian and Pacific Decade of Persons with Disabilities” and the “Asia Pacific Disability Forum (APDF)”, (iii) national policies including the “Basic Programme for Persons with Disabilities”, and (iv) national legislation on the rights/anti-discrimination of persons with disabilities. The JDF engages in these activities through the establishment of three expert committees with members selected from among its member organizations to advance its work.

Since its establishment, the JDF has been working to promote the Convention on the Rights of Persons with Disabilities (CRPD). It has dispatched a total of 200 related individuals to the Ad Hoc Committee meetings held at the United Nations Headquarters in New York between 2002 and 2006 and contributed to the establishment of the Convention. After the Convention was adopted, the JDF has addressed the reformation of national legislation from a civil society standpoint through activities such as exchanging opinions with the government and collaborating with the nonpartisan “Parliamentarian League for the Promotion of the UN Convention on the Rights of Persons with Disabilities,” aiming to facilitate Japan’s ratification of the Convention. Following the ratification of the Convention in 2014, the JDF has been working on initiatives to promote the implementation of the convention across the country.

● Member organizations of JDF

Japanese Federation of Organizations of the Disabled Persons, Japan Federation of the Blind, Japanese Federation of the Deaf, Japan Council on Disability, Japan National Assembly of Disabled Peoples' International, Inclusion Japan, Spinal Injuries Japan, The National Federation of Associations of Families with The Mental Illness in Japan, All Japan Association of Hard of Hearing and Late-Deafened People, Japan Deafblind Association, Japan National Council of Social Welfare, Japanese Society for Rehabilitation of Persons with Disabilities, Japan National Group of Mentally Disabled People

2. Method for the Preparation of this Submission

The parallel report was prepared by the JDF over a period of two years. In FY2017, it launched the “JDF CRPD Parallel Report Preparatory Committee” and held nine preparatory meetings. The JDF worked to broadly collect the opinions of each of its member organizations regarding problems and issues, regardless of form, for each article from Article 1 to Article 33 of the Convention. These were compiled over a period of one year and a summary report of the opinions was prepared as a basis for this submission.

In FY2018, the Preparatory Committee became the “JDF CRPD Parallel Report Special Committee” consisting of a total of 30 committee members selected from all JDF member organizations. Fifteen committee meetings were held. It also established the Drafting Committee under the Special Committee. Further, eight working groups were established under the Drafting Committee and a draft report regarding the articles handled by each group was prepared. For provisions on which many different opinions were expressed, several inspection tours and study meetings were implemented, and multiple, careful discussions were held. The draft report compiled in this manner was discussed by the Special Committee, modified, and then discussed again. This process was repeated, and opinions were compiled.

In addition to the opinions of JDF member organizations, in order to obtain an even wider range of

opinions, the JDF held regional forums in seven locations around the country, conducted interviews with related organizations, and reflected these opinions in its report.

The specific flow of work was as follows:

- (i) Eight working groups were established, and a draft report was prepared
- (ii) The Drafting Committee discussed and modified the draft report
- (iii) The Special Committee discussed and modified the draft report
- (iv) Regional forums were held in seven locations around the country
- (v) Interviews with related organizations
- (vi) Opinions obtained at the regional forums and from interviews were included
- (vii) The Special Committee and the JDF senior board members conducted a final review and the report was completed

Preparation of this parallel report was possible through the support of subsidy foundations. No financial support was received from the government. We would like to express our appreciation to The KIRIN Welfare Foundation, The Sumitomo Foundation, Sompo Japan Nipponkoa Welfare Foundation, and Yamato Welfare Foundation for their support.

- **Regional forums**

Regional forums were held in Toyama, Fukushima, Saitama, Tokyo, Aichi, Osaka, and Tochigi prefectures between August 2018 and March 2019. The status of the parallel report draft was reported and opinions from persons with disabilities in each area were obtained.

- **Interviews with related organizations**

Document-based interviews with related organization were conducted in the fall of 2018. These organization differ from JDF member organizations in that they are organizations for specific disabilities and those in related fields. Organizations from which opinions were obtained are as follows (in alphabetical order):

All Japan Teachers And Staffs Union
Association of People with Low Vision
DPI Women's Network Japan
General Incorporated Association of Cochlear Implant Transmitted Audition (ACITA)
Japan Developmental Disabilities Association
Japanese Trade Union Confederation
Japan Teachers' Union
People First of Japan
Social Heartful Union

3. Contact Information

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- **JDF CRPD Parallel Report Special Committee** *At the time of establishment in April 2018
Kazuhiko Abe, President, Japan Disability Forum
Satoshi Sato, Chairperson, Committee for the Promotion of the Convention on the Rights of Persons with Disabilities
Yoshiaki Iizuka, Executive Director, Japanese Federation of Organizations of the Disabled Persons
Kana Sato, Japanese Federation of Organizations of the Disabled Persons
Mitsugu Fujii, Director of Organization Division, Japan Federation of the Blind

Makoto Oogoda, Japan Federation of the Blind
Nobuaki Tanaka, Japan Federation of the Blind
Kumiko Nakanishi, Executive Director, Japanese Federation of the Deaf
Yasunori Shimamoto, Executive Director, Japanese Federation of the Deaf
Hideo Sonobe, Vice Chairperson, Japan Council on Disability
Hisao Sato, Board Member, Japan Council on Disability
Hidetomo Akamatsu, Japan Council on Disability
Koji Onoue, Vice Chairperson, Japan National Assembly of Disabled Peoples' International
Takanori Sai (CHOI, Yeongbeon), Japan National Assembly of Disabled Peoples' International
Osamu Nagase, Inclusion Japan
Shinya Ando, Vice President, Spinal Injuries Japan
Yukihide Ikeda, Spinal Injuries Japan
Yasuhiro Obata, Secretary General, The National Federation of Associations of Families with The Mental Illness in Japan
Toyokazu Sugimoto, Secretary General for National Survey, The National Federation of Associations of Families with The Mental Illness in Japan
Tomoyoshi Shintani, President, All Japan Association of Hard of Hearing and Late-Deafened People
Kazuhiko Seya, Executive director, International Division, All Japan Association of Hard of Hearing and Late-Deafened People
Yumiko Minami, Vice chief of International Division, All Japan Association of Hard of Hearing and Late-Deafened People
Satoshi Fukushima, Director, Japan Deafblind Association
Masatomo Yamashita, Executive Director/Secretary-General, Japan Deafblind Association
Satoru Iori, Japan Deafblind Association
Kaori Shimizu, Deputy Director, Senior Citizens/Persons with Disability Welfare Division, Japan National Council of Social Welfare
Ryosuke Matsui, Vice President, Japanese Society for Rehabilitation of Persons with Disabilities
Akihiko Sekiguchi, Japan National Group of Mentally Disabled People
Hisayuki Kirihara, Japan National Group of Mentally Disabled People
Yuhei Yamada, Japan National Group of Mentally Disabled People

Secretariat: Kiyoshi Harada, Japanese Society for Rehabilitation of Persons with Disabilities
Shinichiro Shirai, Japan National Assembly of Disabled Peoples' International
Natsuki Soda, Japan National Assembly of Disabled Peoples' International
Kyoko Hamashima, Japan National Assembly of Disabled Peoples' International

II. Objectives of Preparing the Report and Cross-Sectional Issues

1. Objectives of Preparing the Report

Prior to ratifying the Convention, since 2009 the Japanese Government promoted the reformation of policies for persons with disabilities and addressed legislative measures in harmonization with the CRPD. In 2011, the Government adopted the philosophies of the CRPD by amending the Basic Act for Persons with Disabilities to introduce the social model in place of the medical model. The Persons with Disabilities Abuse Prevention Act was put in place that same year and the Comprehensive Support Law for Persons with Disabilities was amended in 2012. In 2013, the Act to Eliminate Discrimination against Persons with Disabilities was put in place and the Disabled People Employment Promotion Act was amended to include the prohibition of discrimination against persons with disabilities in the area of employment. Following this series of law amendments, the Government ratified the Convention on the Rights of Persons with Disabilities in 2014. The ratification of the Convention and legislative measures in harmonization with the CRPD significantly changed and pushed forward Japan's measures for persons with disabilities. The introduction of the social model led to the start of recognizing the concept of the provision of reasonable accommodation and securing accessibility. Discrimination against persons with disabilities have been prohibited and it has indicated a direction to proceed in with respect to realizing an inclusive society that does not discriminate on the basis of disability, leading to an advance in efforts in various fields.

However, these efforts are still insufficient. As this parallel report shows in detail, there is a significant gap between the state of human rights and lives of persons with disabilities in Japan and the Convention on the Rights of Persons with Disabilities. There are five cross-sectional issues behind these various, specific problems:

(1) Change in perception of disability from the medical model to the social model/human rights model

Due to the effect of the Convention on the Rights of Persons with Disabilities, the Basic Act for Persons with Disabilities was amended in 2011 and the Act to Eliminate Discrimination against Persons with Disabilities was enacted in 2013. As a result, the concept of the "impact of barriers (social barriers)" was introduced in the definition of persons with disabilities, reflecting the concepts of the social model and human rights model. Nevertheless, as a whole, the positioning in legal policies of persons with disabilities as equal citizens and main rightsholders is weak, leading to a very large number of persons with disabilities having no choice but to remain hospitalized in psychiatric hospitals or live in residential facilities for long periods of time. In addition, many persons with disabilities are unable to receive necessary support because their qualification to use services is determined based on the type and degree of their disease or impairment rather than their personal needs.

(2) Participation of organizations of persons with disabilities in deciding policies/plans

The establishment of the Commission on Policy for Persons with Disabilities under the Basic Act for Persons with Disabilities and other similar organizations by local governments represents a significant step forward in the participation of persons with disabilities. However, because these commissions are essentially operated by public administrations, persons with disabilities are there only to provide their opinions. Participation by committee members with psychosocial or intellectual disabilities in particular is extremely low.

There was no financial support from the Government regarding the participation of organizations of persons with disabilities in deciding policies/plans, including the preparation of this parallel report.

(3) Acquisition and utilization of statistics and data

Some ministries and agencies have conducted surveys on the needs of persons with disabilities and

there are materials that summarize data from public administrations regarding special needs education, disability pensions, and other matters. However, there are no surveys on the actual living conditions of persons with disabilities that can be compared with those of the general public. There are almost no statistical data that can be classified by gender, disability, age, region, etc. Therefore, there is very little data that is useful for assessing the implementation status of the Convention on the Rights of Persons with Disabilities and formulation of implementation policies. In FY2019, the Government finally allocated funds to surveys to establish statistics on persons with disabilities. The Government is expected to steadily implement these surveys through close consultation with organizations of persons with disabilities.

(4) Enhancement of the monitoring system and establishment of an independent remedy system for human rights

The establishment of an independent human rights institution to monitor the implementation of the Convention is required under Article 33 of the Convention. The UN has repeatedly requested Japan to establish such an institution, but Japan has yet to do so. Meanwhile, although the Act to Eliminate Discrimination against Persons with Disabilities was enacted, there is the major issue of there not being a remedy system. Therefore, it is necessary to establish a human rights protection institution that receives allegations regarding discrimination against persons with disabilities and offers assistance in solving these problems. Establishment of a monitoring system for the Convention is required, including the functional enhancement of the Commission on Policy for Persons with Disabilities, which is currently the sole monitoring mechanism in Japan.

(5) Raising awareness of the Convention on the Rights of Persons with Disabilities

The Government prepared the Japanese translation of the CRPD and ratified it upon approval of the Diet. However, the Government has engaged in almost no efforts to spread and provide training to judicial and police officials; specialists in the fields of education, welfare, medical care, employment, etc.; mass media; local governments; persons with disabilities and their families. No guidelines in order for various ministries and agencies and local governments to implement the Convention have been prepared.

The initial report submitted by the Japanese Government in 2016 did not accurately report on these actual situations surrounding persons with disabilities in Japan. It only introduced laws and measures but did not report on what could not be accomplished and what sorts of problems are occurring in light of the Convention. Furthermore, the report is significantly insufficient in its content, in that it lacks such things as an understanding of actual living conditions as no comparisons can be made with persons without disabilities due to there being no statistical material.

The JDF prepared this parallel report to accurately report to the Committee on the Rights of Persons with Disabilities what sort of problems are being faced by persons with disabilities in Japan. This report summarizes, what problems exist from the standpoint of persons with disabilities as well as what has not been accomplished and problems in light of Articles 1 through 33 of the Convention. We hope that this report will help the members of the Committee on the Rights of Persons with Disabilities to accurately understand the actual situation faced by persons with disabilities in Japan and put forth an appropriate List of Issues and Concluding Observations. We also hope that the Japanese Government will take these issues seriously and strive to further improve measures for persons with disabilities in Japan through cooperation with organizations of persons with disabilities.

2. Issues for each article (excerpt)

Issues regarding Article 1 through Article 33 that are indicated in this report have been taken out and listed below.

Articles 1-4 "Purpose and general obligations"

- (1) Adoption of the social model/human rights model
- (2) Issues regarding the response to the stabbing incident against persons with disabilities at Tsukui Yamayuri En
- (3) Recognition of sign language
- (4) Use of assistive technologies and follow-up
- (5) Elimination of regional gaps
- (6) Abolishment of disqualifying clauses
- (7) Participation of persons with disabilities
- (8) Ratification of the Optional Protocol
- (9) Issues regarding the Japanese translation

Article 5 Equality and non-discrimination

- (1) Insufficient definition of discrimination
- (2) There are no specific provisions in the text of the Act to Eliminate Discrimination against Persons with Disabilities
- (3) The private business sector is only obligated to make efforts to provide reasonable accommodation under the Act to Eliminate Discrimination against Persons with Disabilities
- (4) Absence of a dispute resolution mechanism independent of the government
- (5) The Act to Eliminate Discrimination against Persons with Disabilities does not cover the legislature or judiciary
- (6) Absence of measures to promote the provision of reasonable accommodation
- (7) More widespread selection of life by reason of disability as a result of non-invasive prenatal diagnosis
- (8) Discriminatory treatment is in fact ongoing
- (9) Low establishment rate of Regional Support Councils for Eliminating Discrimination against Persons with Disabilities under the Act to Eliminate Discrimination against Persons with Disabilities

Article 6 Women with disabilities

- (1) Eliminating discrimination against women and girls with disabilities; ensuring their equal rights and freedoms
- (2) Appropriate measures to ensure the full development, advancement and empowerment of women and girls with disabilities, for the purpose of guaranteeing them the exercise and enjoyment of their human rights and freedoms

Article 7 Children with disabilities

- (1) Securing resources and reasonable accommodation for children with disabilities to ensure their right to express their views freely
- (2) Violence, including sexual violence, against children with disabilities and their inhuman treatment
- (3) More substantial budgets for children with disabilities

Article 8 Awareness-raising

- (1) Understanding the rights and new concepts under the CRPD
- (2) Education and awareness regarding disability
- (3) Training for Diet members, administrative officers and various specialists
- (4) Promote awareness among the media

Article 9 Accessibility

- (1) Insufficient understanding of the concept of accessibility

- (2) Absence of legislation obligating the insuring of accessibility in rural areas
- (3) Delays in making buildings barrier-free. There is no legislation obligating universal design that makes buildings open to the public accessible.
- (4) Absence of legislation for public procurement with accessibility requirements
- (5) Participation of persons with disabilities in product development and facility maintenance has not improved
- (6) Training on accessibility is not an obligation
- (7) The right of movement and the right to information accessibility are not specified.
- (8) Lack of accessibility

Article 10 Right to life

- (1) Average life expectancy
- (2) Legislation concerning death with dignity

Article 11 Situations of risk and humanitarian emergencies

- (1) Long-term measures and issues in normal/post-disaster circumstances
- (2) Measures and issues immediately following a disaster
- (3) Provision of information at the time of a disaster
- (4) Shelters and welfare evacuation shelters
- (5) Temporary housing
- (6) In relation to the nuclear plant disaster in Fukushima

Article 12 Equal recognition before the law

- (1) Problems in the system and operational situation of the adult guardianship system
- (2) System to support decision making
- (3) Necessary support to ensure the equality and exercise of legal capacity

Article 13 Access to justice

- (1) Matters relating to criminal procedure
 - (i) Investigation methods suitable to the particular characteristics of each disability are not being taken at the investigation stage
 - (ii) Appropriate questioning when a person with a disability becomes a victim of crime is not being conducted
 - (iii) Appropriate procedural accommodations are not being made for persons with disabilities when they become the litigant in criminal litigation
 - (iv) Long-standing prejudice against persons with disabilities by the citizen judges selected from the general public
 - (v) Insufficient provision of information to citizen judges with disabilities
 - (vi) Reasonable accommodation is insufficient for persons with disabilities serving time in prison
- (2) Matters relating to civil procedure
 - (i) Absence of provisions in the Code of Civil Procedure and related legislation that set forth an obligation to provide procedural accommodations by courts with respect to disabilities
 - (ii) Expenses incurred for accommodations in civil litigation proceedings are borne by the losing party
- (3) Matters common to both criminal and civil procedures
 - (i) Insufficient understanding of judicial officials about disability and insufficient training regarding the

provision of procedural accommodations

(ii) Restrictions on persons with disabilities when attending trials

(iii) Women with disabilities and legal proceedings

Article 14 Liberty and security of person

(1) The involuntary hospitalization system on the basis of psychosocial disabilities

(2) Interpretation of Article 14 by the Japanese Government

(3) Treatment such as physical restraints, segregation, closed treatment, etc.

(4) Communications by psychiatric hospital inpatients

(5) Absence of advocacy procedures; monitoring systems

Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment

(1) Forced medical treatment (drug administration and m-ECT) under the "Mentally Incompetent Persons Medical Care and Treatment Act" (Medical Treatment and Supervision Act)

(2) Inhuman or degrading treatment

Article 16 Freedom from exploitation, violence and abuse

(1) Reporting obligations under the Persons with Disabilities Abuse Prevention Act do not cover educational/medical organizations

(2) Effectiveness of informer protection

(3) Low level of effectiveness of abuse prevention and remedies for victims

(4) Insufficient measures to prevent the occurrence of abuse (in facilities/by users, in the home)

(5) Delayed amendment of the Persons with Disabilities Abuse Prevention Act and consideration of its amendment without persons with disabilities

Article 17 Protecting the integrity of the person

(1) Forced sterilization

(2) Invasive medical treatment

Article 18 Liberty of movement and nationality

(1) Discriminatory provisions of paragraph 2, Article 5 of the Immigration Control and Refugee Recognition Act regarding persons with mental or intellectual disabilities

(2) Measures that ensure and enable the exercise of the fundamental freedoms of persons with disabilities who moved to Japan from a foreign country

Article 19 Living independently and being included in the community

(1) Community transition

(i) Difficulties in exercising the right to choose where and with whom to live; stagnant community transition

(ii) The problems of long-term psychiatric hospitalization; stagnant hospital-to-community transition

(iii) Multiple difficulties of women with disabilities in community living

(iv) Problems of persons with disabilities with neuromuscular diseases (NMD)

(2) Absence of effective medium/long term plans and strategies for Community transition

(i) Absence of plans and strategies for community transition in the area of welfare services

(ii) Extremely insufficient plans for the hospital-to-community transition of persons with psychosocial disabilities

- (iii) Absence of laws regarding the right to live in a community as well as community transition
- (3) Insufficient community support services (social resources for community living and inclusion) and problems relating to such support
 - (i) A grant decision mechanism in which the needs of persons with disabilities are rarely respected
 - (ii) Restrictions and limitations on the use of services
 - (iii) Problems of community life support services

Article 20 Personal mobility

- (1) For persons with disabilities who need assistance in their mobility, there are limitations as to where they are able to go with the public helper system. It cannot be used to commute to and from work or school and cannot be used all year long or over a long period.
- (2) Problems with the national systems (Support (Visiting Care) for Persons with Severe disabilities under the Comprehensive Support Law for Persons with Disabilities, accompanying support services, activity support services)
- (3) Problems with local government systems (transportation support as part of community life support services)
- (4) Universal design taxis are still rare
- (5) Narrow coverage of assistance dogs
- (6) Difficulties in the mobility of women with disabilities

Article 21 Freedom of expression and opinion, and access to information

- (1) Absence of legislation that guarantees the right to information accessibility of persons with disabilities
- (2) Information accessibility issues under systems for the provision of accessibility, personal assistance and services, and other systems, including TV, web, telephone, product developments as well as guarantee of communication and services at public and other facilities
- (3) Issues relating to the development and securing of human resources and the establishment of official certifications

Article 22 Respect for privacy

- (1) Overall issues relating to privacy protection
- (2) Confidentiality and privacy protection obligations of the private business sector and persons engaged in communication support
- (3) Management of the personal information of persons with disabilities (My Number System)
- (4) Information held by companies and individual privacy

Article 23 Respect for home and the family

- (1) Issues in marriage and divorce
- (2) Lack of respect and support for the rights to sexuality, reproductivity, childbirth, and to retain fertility
- (3) Lack of respect and support for the right to maintain a family life and the right not to be separated from parents
- (4) Insufficient measures to support the transition of children with disabilities from institutions to a family-like environment in the community
- (5) Absence of data and policies regarding the rights of persons with disabilities to form a family and to family life
- (6) The necessity of withdrawal of the interpretative declaration

Article 24 Education

- (1) An increase in the number of children with disabilities being excluded from regular classes and those

enrolled in special needs education schools/classes (current situation)

- (2) Background to the current situation
- (3) Education provided in sign language
- (4) Guarantee of the right to education of persons with deafblindness
- (5) Issues in upper secondary education
- (6) Issues in higher education
- (7) Other issues
- (8) Legislation amendments required

Article 25 Health

- (1) Guaranteed access to medical treatments by right
- (2) Bearing of medical expenses
- (3) Provision of insurance services is not equal to that of others
- (4) Medical checkups and follow-ups according to life stage

Article 26 Habilitation and rehabilitation

- (1) Because there are few implementing institutions for development support and habilitation, it is difficult to provide early-stage development support for children with disabilities.
- (2) It is difficult to receive appropriate support depending on the type of disability. There are also large regional gaps.

Article 27 Work and employment

- (1) Matters relating to the current system for the promotion of employment of persons with disabilities
- (2) Matters relating to Public Employment Security Offices (Hello Work offices) and job coaches
- (3) Self-employment of persons with disabilities
- (4) Current situation of welfare employment
- (5) The issue where welfare administration is separated from labor administration
- (6) Monitoring systems relating to the prohibition of discrimination
- (7) Unfair discriminatory treatment
- (8) Provision of reasonable accommodation in the workplace
- (9) Awareness campaigns and publicity activities
- (10) Statistics on work and employment
- (11) Matters relating to the Industrial Safety and Health Act

Article 28 Adequate standard of living and social protection

- (1) Actual living conditions and insufficient disability pensions of persons with disabilities
- (2) Persons with disabilities who are not receiving pensions
- (3) Livelihood assistance
- (4) Housing
- (5) Bearing of expenses for welfare services
- (6) The so-called "65-year-old problem"
- (7) Expenses for helpers (or care givers)
- (8) The fact that persons with psychosocial disabilities are not applicable for the discount systems on public transport systems

Article 29 Participation in political and public life

- (1) Accessibility regarding voting methods, voting environment, paper ballots, etc.
- (2) Provision of information relating to elections
- (3) Guarantee of the right to hold office

(4) Participation in governmental councils, etc.

Article 30 Participation in cultural life, recreation, leisure and sport

- (1) Information accessibility to enjoy culture
- (2) Access to recreation, tourism, and leisure activities
- (3) Access to sports
- (4) Various artistic activities of persons with disabilities

Article 31 Statistics and data collection

- (1) It is necessary to position surveys on persons with disabilities as the Fundamental Statistics based on the Statistics Act.
- (2) Classification of data by gender, age, impairment, region, etc.
- (3) The necessity of data that can be compared with those of persons without disabilities
- (4) Other matters

Article 32 International cooperation

- (1) Measures for the field of disability in the implementation of Sustainable Development Goals (SDGs)
- (2) Participation of persons with disabilities in international cooperation
- (3) Support from the Japanese Government to promote the “Asian and Pacific Decade of Persons with Disabilities”

Article 33 National implementation and monitoring

- (1) Absence of national human rights institution in line with the Paris Principles
- (2) Absence of monitoring systems by legislature or judiciary regarding the implementation status of the Convention
- (3) The ambiguous position of the Commission on Policy for Persons with Disabilities in domestic monitoring
- (4) Absence of coordination with other human rights instruments
- (5) Absence of systems to implement and monitor the Convention by local governments that are responsible for many social services
- (6) Absence of measures to promote the involvement of organizations of persons with disabilities and civil society regarding the monitoring of the Convention

III. Issues for Each Provision and Suggested Questions and Recommendations by the Japan Disability Forum (JDF)

Articles 1-4 Purpose, Definitions, General principles, General obligations

1. Issues

(1) Adoption of the social model/human rights model

(i) A shift towards legislation and policies based on the social model/human rights model

According to Japan's Initial State Party Report (the initial report submitted by Japan [June 2016 CRPD/C/JPN1]), the Basic Act for Persons with Disabilities and the Act to Eliminate Discrimination against Persons with Disabilities reflect the social model, such as incorporating provisions including those relating to social barriers. However, actual policies (laws relating to the rights of welfare, education, income security, political participation, etc.) are removed from the social model/human rights model and rather show characteristics of the medical model. There is no law that specifies the right of persons with disabilities to use support services nor the obligation of the government to provide such services. There is a continuing history of persons with disabilities being considered as vulnerable and a burden to society requiring protection, rather than equal citizens with the same personalities and rights, with persons with disabilities and their families being responsible for supporting their lives. When their families could no longer provide care, their main choices became either hospitals or facilities.

As a result, Japan has the dishonorable distinction of being ranked fifth from the bottom among 32 OECD member countries with its disability-related public spending, which accounts for less than half (1.04%) the average of OECD member countries (2.11% in 2013). It has 340,000 psychiatric care beds (2015) accounting for 40.5% of the total psychiatric care beds of 34 OECD member countries <note>.

<Note> OECD Health Statistics 2018, Dataset: Health Care Resources, Psychiatric care beds

Many examples of human rights and fundamental freedoms not being guaranteed have been pointed out. For example, braille, audio, large print, electronic data, or plain-language versions of official gazettes for elections are not available. Political participation is also prevented due to a delay in the provision of sign language interpretation or captions for election broadcasts. Although there are already 190,000 persons with disabilities living in in-patient facilities, the progress of hospital-to-community transition is slow with little progress. On the other hand, even when their parents become too old or ill to take care of themselves, because of a lack of group homes and personal assistance, many persons with disabilities have no choice but to repeat short term in-patient stays. This social phenomenon spawned a new, strange term, "long-short." The current situation is where the reasons for persons with disabilities being admitted into a facility are, in many cases, reasons other than the will of the persons themselves, such as the intent of the family, consideration for their family, or insufficient support in the community. As required under Article 19, the choice made by persons with disabilities themselves as to where and with whom they live should be respected. There is an increasing number of cases where it is difficult for persons with disabilities to make a decision by themselves as users. Therefore, it is necessary to develop a support infrastructure that includes development of a living environment by the entire community so that persons with disabilities are able to choose a location and lifestyle that they desire, while also pursuing an ideal form of decision-making support. There is a need to consider social security, including income security, so that persons with disabilities are able to consider the use of services according to their needs without depending on support from their families.

A shift from the medical model to the social model/human rights model is one of the top priority issues with regard to Japan's policies for persons with disabilities.

(ii) The definition of disabilities and determination on qualification to receive support should be determined based on the social model/human rights model

The medical model spawned a new term, "disabilities in the niche" This refers to persons with disabilities who are unable to receive support despite having the need for support, with the main reason

being that those who can receive support are limited to specific types and degree of impairment. Types of impairments that are excluded include intractable diseases such as myalgic encephalomyelitis and fibromyalgia, impairments relating to pain or fatigue, skin impairments (e.g., unique faces and personal appearances), immune impairments (except those caused by HIV), one-sided blindness, syndrome of persistent difficulty in opening the eyes, and color vision deficiency.

Exclusion by degree (i.e., exclusion due to mild impairment) is, for example, persons with hearing disabilities being defined as have a hearing loss of 70 decibels or greater in both ears under the Law for the Welfare of Persons with Physical Disabilities, leading to hard of hearing persons with a hearing loss less than this being inapplicable under the Comprehensive Support Law for Persons with Disabilities, despite having a need. Even with respect to employment, they are not applicable under the Employment Quota System for Persons with Disabilities (assigned employment) and are not subject to transportation fare discounts or tax exemptions for persons with disabilities. Likewise, many persons with intellectual disabilities, developmental disabilities, visceral impairments, or higher brain dysfunction are not qualified to receive these services due to qualification criteria being primarily based on IQ and medical observations. Even with the disability pension system, because it makes assessments based on impairments and daily life capacities, there are many persons with disabilities who cannot receive disability allowances even if they are unable to work and earn money. Although there is the system of “absentee balloting by mail or by other means,” eligible persons are limited according to the type and degree of disabilities stated on the certificate of persons with physical disabilities (e.g., Classes 1 and 2 visual disabilities). So in fact, for persons with visual disabilities or persons with deafblindness, they are being prevented from voting due to the difficulties of transportation to polling stations and finding personal assistants in rural areas.

The government justifies this qualification system by saying that it is necessary to fairly and objectively qualify persons with disabilities by reference to such things as medical certificates from doctors because it is using taxpayer money. However, such a qualification system based on medical assessment violates the concepts of the social model/human rights model with respect to disabilities under the Convention on the Rights of Persons with Disabilities. The government should amend the qualification system to one based on the assessment of the need for support.

(2) Issues regarding the response to the stabbing incident against persons with disabilities at Tsukui Yamayuri En

On July 26, 2016, a stabbing incident against persons with disabilities occurred at Tsukui Yamayuri En, an in-patient facility for persons with severe disabilities (19 people were killed and 27 injured). The suspect had said things like, “The lives of persons with disabilities are not worth living.” His blatant eugenic thoughts shocked all of society. To prevent such atrocities from ever happening again, it is necessary to re-question the background to the incident and social attitudes that brought about these eugenic thoughts. We must realize an inclusive society where the rights and dignity of all persons with or without disabilities are respected. From this viewpoint, the government should express its strong protest against all speech and behavior that threatens the dignity of persons with disabilities and should carefully investigate and work toward a drastic response to this incident.

Nevertheless, the government did not engage in an effective response to guarantee the security of persons with disabilities and eliminate discrimination. Instead, it tried to change the compulsory hospitalization system through amendments to laws in order to prevent recurrence, which further encouraged prejudices against persons with psychosocial disabilities. Although the government expressed its protest to this incident, it did not explicitly criticize the “reasons” (e.g., “the lives of persons with severe disabilities are not worth living”) stated by the suspect. The government itself must clarify its stance in combating eugenic thoughts.

(3) Recognition of sign language

The use of sign language was prohibited in education for the deaf in the 1920s. Since then, the deaf had long suffered from unjustified discrimination of sign language and violation of their human rights as they were scorned for using sign language not only in school but in society as well. In light of such history, sign language was specifically included to be a language with the amendment of the Basic Act for Persons with Disabilities in 2011. Even despite this, there is still a deep-rooted impact from sign language being suppressed for such a long period of time. For the deaf, who are forced to have fragmented communications with spoken language alone, sign language is a language that allows for 100% understanding. Therefore, it is necessary to guarantee by law the rights of the deaf to “acquire sign language,” “learn using sign language,” “learn sign language,” “use sign language,” and “protect sign language.” It is also necessary to guarantee communication and the provision of information through sign language by developing an environment where sign language can be used as a language in such areas as judicial, legislative, administrative, medical and education. In particular, there is a need to establish a system to educate and train information providers such as sign language interpreters and promote their employment in various facilities.

In 2016, the “Written Opinion Calling for Enacting a Sign Language Act” was adopted by 100% of the total 1788 local municipal councils in the country. In 2017, the “Governors’ Group to Promote Sign Language” consisting of governors from all prefectures submitted a written request for the enactment of a sign language act to the government. By the end of June, 2019, a total of 277 local governments from 26 prefectures, 7 wards, 203 cities, 40 towns and 1 village have formulated and enacted sign language ordinances. Nevertheless, a sign language act at a national level has not yet been enacted.

If a sign language act is enacted, every child with a hearing impairment will be able to acquire the strength to live their life with pride in their disability and sign language. Sign language interpreters are needed not only by the deaf but also by all persons in society to access communication with the deaf.

(4) Use of assistive technologies and follow-up

In the disability field, there are opinions that necessary assistive technologies are not available and cannot be used. For example, a person with deafblindness stated, “There are very few assistive technologies that we can use. Almost all assistive technologies are made on the assumption that we can either see or hear. Some local governments do not approve mobile terminals for braille (e.g. Braille Sense), which allows persons with deafblindness to access information on their own, as being applicable for subsidies. Even if they are approved, because they are expensive, the cost far exceeds the subsidy amount provided by local governments. All this leads to a substantial financial burden for persons with deafblindness.”

These kinds of opinions have been received from various people and not just persons with deafblindness. The government and developers are lacking from the perspective of participation of persons with disabilities from the development stage.

There are guidelines such as the “Japanese Industrial Standards (JIS X8341-4) for product development that accommodate universal design. However, in actuality, they are not sufficiently used in the development of information and communication equipment, software and services for persons with disabilities. For welfare equipment for information assistance, although there are subsidies at the time of development, there are none once the equipment is placed on the market. As a result, rare equipment with high utility value have disappeared from the market despite there being a need for such equipment. Special mice and a keyguards cannot be maintained on the market despite the efforts of non-profit and other organizations.

There is also the problem of persons with disabilities no longer being able to use wheelchairs and other assistive technologies that match their individual needs once they turn 65 as they are transitioned to care under long-term care insurance.

It is also often the case that they are unable to make full use of assistive technologies even if they started using them. Aftercare (continued support for each individual) is required. According to the

“Survey on the Actual Conditions of ICT Utilization (2007)” conducted by organizations of persons with disabilities, 72.1% of persons with disabilities answered that “I had trouble” with personal computers, 68.6% with the Internet, and 55.5% with mobile phones. Almost no surveys have been conducted since.

(5) Elimination of regional gaps

There is a significant gap among municipal governments in terms of the number of hours spent for mobility support, personal assistance (support (visiting care) for persons with severe disabilities) and communication support, as well as the supply of technical aids and the combined use of disability welfare and long-term care insurance. For example, some municipal governments provide subsidies for persons with visual disabilities to acquire a Braille display as a technical aid, but some do not. There is also a large gap among municipal governments with respect to subsidies to purchase batteries for cochlear implants and expensive new model equipment. Although accompanying support services and support (visiting care) for persons with severe disabilities for persons with disabilities are services that are provided equally under the responsibility of the government, there are significant regional gaps in terms of monthly provision hours and provision requirements. Besides these social service areas, there are also regional gaps in various areas, such as barrier-free stations and streets, and employment of persons with disabilities.

The government must take necessary legislative and financial measures to correct the issue of regional gaps so that necessary services are provided in all regions.

Unfortunately, the government is reluctant to address these regional gaps, stating that decentralization is the general course of history. However, it is the obligation of the State Party to implement the Convention in every region of the country. The government should correctly understand accurately that the State Party is the overall governing structure comprising of legislative, judicial and (central/local) governments. Local governments are part of the State Party with the duty of implementing the Convention. The central government must make them understand such duty and provide financial and technical support so that they are able to fulfill their duty.

(6) Abolishment of disqualifying clauses

With respect to the government’s review of disqualifying clauses relating to disabilities, in and around 2001, absolute disqualifying clauses that denied all types of certifications of persons with disabilities were deleted by amending laws relating to 63 systems. However, relative disqualifying clauses that “may deny certification” due to a disability affecting a physical or mental function (such as a visual, hearing, or psychosocial disability) still remain in many laws such as the Medical Practitioners’ Act and the Act on Public Health Nurses, Midwives and Nurses. In addition, there are disqualifying clauses relating to the adult guardianship system (such as civil servants and security service providers) as well as for tax accountants and officers of corporations through language that evokes a disability, such as “physical or mental disorder,” which may exclude persons with disabilities.

Of these, with respect to the disqualifying clauses relating to the adult guardianship system, a “Bill for the Amendment of Acts Relevant to the Restrictions on Rights of Adult Wards to Ensure the Proper Implementation of Measures for Such Rights” was submitted and passed at the ordinary session of the Diet held in 2018. This bill is remarkable as it is intended to comprehensively review the disqualifying clauses relating to the adult guardianship system. However, there are some issues with this bill. Under this bill, of the 184 laws from which adult guardianship disqualification clauses will be deleted, only 19 laws (10%) will not include “physical or mental disorder” disqualifications, with 124 laws (68%) creating or adding “physical or mental disorder” disqualifications and 41 laws (22%) maintaining existing “physical or mental disorder” disqualifications.

Taking into consideration the ratification of the CRPD, the above relative disqualification clauses due to a disability affecting physical or mental function, disqualification clauses relating to the adult guardianship system, and disqualification clauses due to “physical or mental disorder” should be

abolished. With respect to individual certifications, the current certification method should be completely modified to one that certifies based on evaluation of specific abilities, including the provision of reasonable accommodation.

(7) Participation of persons with disabilities

In the State Party Report, it is stated that with respect to the Commission on Policy for Persons with Disabilities, “the majority of members are persons with physical disabilities...or intractable/rare diseases, or organizations or such persons and their families.” However, currently, there are no members with an intellectual disability, psychosocial disability or who are hard of hearing. The Commission’s commitment to including a diversity of disabilities is diminishing with each passing year. Furthermore, there are only two female members with a disability or disease out of 30 members.

In addition, although prefectural governments are obligated to establish local bodies with a council system (local policy commissions), this is voluntary for municipal governments. As a result, commissions have only been established by less than half of all municipal governments. These local committees are more insufficient compared to government committees in terms of the percentage and diversity of members with disabilities.

The Disability Section of the Social Security Council, which examines the measures for persons with disabilities by the Ministry of Health, Labour and Welfare, has never appointed a person with an intellectual disability as a member. The composition ratio of members with a disability has not even been surveyed for other committees that deliberate themes closely related to the Convention, such as employment, education and accessibility.

Furthermore, even if there are members with disabilities in various committees, they may be unable to substantially participate because reasonable accommodation has not been ensured. For example, if persons with deafblindness participate, they often receive the electronic data for meeting materials immediately before the meeting. As a result, they have no choice but to attend the meeting that day without being able to have read through all the material.

In terms of substantial participation in policy making, this is extremely inadequate and there are no assessment mechanisms (e.g., satisfaction surveys) in which persons with disabilities participate.

(8) Ratification of the Optional Protocol

Japan’s current remedy mechanism for the violation of rights of persons with disabilities and discrimination against them is extremely weak. First of all, there are no human rights protection organizations independent of administrative, judicial and legislative organs. The Legal Affairs Bureau of the Ministry of Justice has a human rights protection mechanism as an administrative remedy mechanism. However, its level of effectiveness is weak as, for example, its investigation authority is weak, such as having no authority to investigate respondents. It is also the reality that the remedy mechanism under the Act to Eliminate Discrimination against Persons with Disabilities is dependent on local governments and relevant administrative organs that serve as consultation windows. Therefore, although the only effective method is remedy under the judicial system, understanding by judicial personnel, including judges, on issues regarding persons with disabilities cannot be said to be sufficient. For example, in a criminal trial where a 30-year-old woman with a mild intellectual disability accused a man of indecent assault in September 2010, the Miyazaki District Court in the first instance held that the indictment submitted by the public prosecutor was invalid because the “woman does not have the capacity to initiate litigation,” denying the woman’s capacity to litigate itself. The court denied the woman’s right of access to the courts and in essence, slammed the door in her face. It is because of cases like these that the ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities is necessary. It will allow individual notification to the Committee on the Rights of Persons with Disabilities as a last resort for remedies regarding the rights of persons with disabilities.

(9) Issues regarding the Japanese translation

In the official translation of the Convention on the Rights of Persons with Disabilities published by the Japanese government on January 20, 2014, some English terms such as inclusion, inclusive, communication, accessibility, access, particular living arrangement, personal assistance, and habilitation were not translated into Japanese in a way that sufficiently conveys the intrinsic meaning of these terms in the official language (especially English). As a result, there is the risk that the concept of these terms may be narrowly interpreted.

2. Suggested Questions

(1) Adoption of the social model/human rights model

The Committee recognized that the State Party amended the Basic Act for Persons with Disabilities in accordance with the Convention on the Rights of Persons with Disabilities, introduced the concept of social barriers into the definition of persons with disabilities and included all persons with disabilities in the definition. With respect to the definition of persons with disabilities and reviews of the qualification criteria and examination processes to enable all persons with disabilities to receive support based on their needs, what measures has the State Party taken in recent years? Also, please indicate future plans, including discussions at the Commission on Policy for Persons with Disabilities.

(2) Issues regarding the response to the stabbing incident against persons with disabilities at Tsukui Yamayuri En

How is the government analyzing the background and causes of the Tsukui Yamayuri En incident? What measures has it put in place since 2016 to prevent similar incidents from occurring?

(3) Recognition of sign language

How did the government consider the requests of organizations of persons with disabilities and all local governments that called for the enactment of a sign language act? Also, please indicate planned response measures.

(4) Use of assistive technologies and follow-up

Are there any comprehensive consideration, consultation, and coordination organizations consisting of organizations of persons with disabilities, local governments, manufacturers, and support specialist organizations regarding the use of assistive technologies and follow-up (ongoing usage support)? Please indicate the current situation of any measures regarding this point and their issues.

(5) Elimination of regional gaps

What measures are being undertaken by the government to investigate the actual conditions of regional gaps among municipal governments in terms of the provision of social services and the development of barrier-free environments for persons with disabilities, publish those results and reduce gaps?

(6) Abolishment of disqualifying clauses

With respect to disqualifying clauses regarding disability, what is the government's perception on the need to abolish qualification requirements with language such as "mental or physical disorder," which evokes specific disabilities, and that amendment to laws is needed to change individual qualifications to a certification method that evaluates specific abilities, including the provision of reasonable accommodation?

(7) Participation of persons with disabilities

Please indicate the percentages of members with disabilities and members without disabilities of the national and local commissions on policy for persons with disabilities by type of disability, gender, whether they themselves or their family members have a disability, and other classifications. Please provide reasons and issues as to why there is a significant number of municipal governments that have not established commissions on policy.

Please indicate the percentage of committees members with disabilities as well as their attributes such as type of disability, gender, and whether they themselves or their family members have a disability with respect to various government committees, including the Disability Section of the Social Security

Council, which is particularly closely related to the implementation of the Convention and those committees relating to employment, education, accessibility and so on.

Are there mechanisms at the government level where persons with disabilities can participate and assess policies and services that are being implemented? If so, what sort of mechanisms are they?

Are there any governmental guidelines or support measures to ensure the provision of reasonable accommodation at meetings in which persons with disabilities participate?

(8) Ratification of the Optional Protocol

What is the perception of the Japanese government on the necessity of ratifying the Optional Protocol? In relation to this, are there any considerations being made within the government regarding the ratification of the Optional Protocol?

(9) Issues regarding the Japanese translation

Are future discussions regarding the official Japanese translation of the CRPD intended and planned based on the requests of organizations representing persons with disabilities?

3. Suggested Recommendations

(1) Adoption of the social model/human rights model

(i) Amend the basic nature of Japanese laws, policies and plans regarding persons with disabilities so as to base them on the social model/human rights model of disability. More specifically, establish the purpose of these laws, policies and plans as the realization of social participation by all persons with disabilities as equal citizens, make the development of environments and support to this end the obligation of national and local governments, and specify the rights of persons with disabilities to receive such necessary support.

(ii) With respect to the definition of disability under the law and the certification process to determine eligibility to receive support, shift from the medical model to the social model/human rights model. More specifically, introduce the concept of disability being created by interaction with social and environmental barriers in the legal definition of disability, and change the focus of the eligibility to receive support from the type and degree of impairments to the need for support.

(2) Issues regarding the response to the stabbing incident against persons with disabilities at Tsukui Yamayuri En

Conduct comprehensive investigations into the cause of the Tsukui Yamayuri En incident, while analyzing the trend and factors of eugenic thoughts in Japan. Establish measures to prevent the recurrence of this kind of incident, including the spreading understanding of the CRPD.

(3) Recognition of sign language

Recognize the right to use sign language in all areas such as medical care, education, employment, elections and broadcast, and promote the understanding and dissemination of sign language. Establish legislation (sign language act) that enables the development, allocation and dispatch of communication support personnel such as sign language interpreters.

(4) Use of assistive technologies and follow-up

Increase the types of assistive technologies covered by subsidies, such as cochlear implants and newly developed medical devices in order to expand the use of assistive technologies, including hearing aids, wheelchairs, communication devices, and IT-related assistance devices. Increase the upper limit of subsidy amounts in line with the actual situation, eliminate gaps between local governments in terms of types of assistive technologies and subsidy amounts, and provide more extensive training on usage methods as well as aftercare.

(5) Elimination of regional gaps

Take necessary legislative and financial measures to eliminate gaps between municipal governments in terms of the number of hours spent for mobility support, personal assistance (support (visiting care) for persons with severe disabilities and communication support, as well as the supply of technical aids and the combined use of disability welfare and long-term care insurance, as well as the status of

development of social resources.

(6) Abolishment of disqualifying clauses

Regarding disqualifying clauses regarding disabilities, remove qualification requirements with language such as “physical or mental disorder” which evokes a specific disability and that remains in many laws. Amend legislation to change the current certification method should be completely modified to one that certifies based on evaluation of specific abilities, including the provision of reasonable accommodation.

(7) Participation of persons with disabilities

- (i) Increase the percentage of members with disabilities on commissions on policy for persons with disabilities at national, prefectural and municipal government levels to at least half of all members, ensure the diversity of commission members (in terms of disability, gender, age, region and affiliated organization), in particular, ensure that women with disabilities are members, and obligate the establishment of committees by municipal governments.
- (ii) Investigate and publicize the percentage of members with disabilities in various government councils, and increase the proportion of members with disabilities. At the same time, if they handle matters closely related to the Convention, ensure member structures that are the same as those of the above policy commissions.
- (iii) Establish an assessment mechanism in various fields in which persons with different types of disabilities participate in order to improve the substantial nature of participation of persons with disabilities in policy making.
- (iv) The government should ensure basic environmental arrangement and reasonable accommodation to allow the participation of members with disabilities in the policymaking process and cause local governments to do the same.

(8) Ratification of the Optional Protocol

Ratify the Optional Protocol to guarantee the rights of persons with disabilities

(9) Issues regarding the Japanese translation

Conduct thorough discussions with organizations that represent persons with disabilities, organize issues regarding the official translation by the Japanese government, and conduct necessary modifications.

Article 5 Equality and non-discrimination

1. Issues

(1) Insufficient definition of discrimination

- (i) There is no definition of discrimination in the Basic Act for Persons with Disabilities, the Act to Eliminate Discrimination against Persons with Disabilities, and the Disabled People Employment Promotion Act. There are also no definitions of multiple discrimination/intersectional discrimination.
- (ii) The provisions of paragraph 1, Article 6 of the Act to Eliminate Discrimination against Persons with Disabilities states that the government must provide for a basic policy on the elimination of discrimination on the basis of disability. In this act, “disparate and unfair discriminatory treatment” and “non-provision of reasonable accommodation” are defined as discrimination. Within “disparate and unfair discriminatory treatment,” there is no mention about “indirect discrimination” and “related discrimination.”
- (iii) In the Disabled People Employment Promotion Act, the non-provision of reasonable accommodation by an employer is not defined as discrimination.

(2) There is no specific provision in the law

There are no examples by area in the law to specifically explain what kinds of acts are considered discrimination and who should provide reasonable accommodation in what manner.

(3) The private sector is only obligated to make efforts to provide reasonable accommodation

The private sector is only obligated to make efforts to provide reasonable accommodation under the Act to Eliminate Discrimination against Persons with Disabilities. There are no contact points where consultations can be made as to what specific kinds of reasonable accommodation should be provided.

(4) Absence of a dispute resolution mechanism independent of the government

There is no dispute resolution institution independent of the government. As a result, contact points and organizations that will receive consultations are unclear, and the details of consultations regarding discrimination against persons with disabilities, the number of consultations, and how they have been responded to are unknown. Working toward a shared understanding through actual examples has not been possible. Furthermore, dispute resolution organizations as they are now lack human resources who are able to determine disparate impact discrimination and disability-related discrimination.

(5) The Act to Eliminate Discrimination against Persons with Disabilities does not cover the legislature or judiciary

Under the Act to Eliminate Discrimination against Persons with Disabilities, establishing measures autonomously is considered appropriate from the viewpoint of separation of the three branches of government. The legislature and judiciary are not subject to the Act. Although the Supreme Court, the House of Representatives and the House of Councilors established handling directions, they are only internal guidelines and not legally binding.

Example: In May 2016, the Committee on Health, Labour and Welfare of the House of Representatives withdrew the summons of a man with amyotrophic lateral sclerosis (ALS) as an unsworn witness due to the reason that “it would take time to communicate with him.”

(6) Absence of measures to promote the provision of reasonable accommodation

There are no effective measures to promote the provision of reasonable accommodation at a national level. There are no public institutions to advance or manage progress, with this responsibility left to the private sector.

Akashi City implements a subsidy system to support the provision of reasonable accommodation. This system applies to the private sector, community associations and activity circles, and other private organizations; it provides subsidies for expenses required to create Braille menus, purchase and install wheelchair ramps, and so on. This system has achieved productive outcomes. In addition to Akashi City, other cities such as Tomakomai City, Kakogawa City, Tamba City, Tsukuba City, and Ibaraki City also implemented subsidy systems.

(7) More widespread selection of life by reason of disability as a result of non-invasive prenatal diagnosis

Non-invasive prenatal diagnosis was introduced in 2013. From April 2013 through September 2017, 51,139 women received the non-invasive prenatal diagnosis and 933 women were found to be positive. Of them, only 26 women (2.8%) continued their pregnancy. Some women who terminated their pregnancy said, "I don't have the confidence to raise a child with disabilities." One of the issues behind this trend is the insufficient provision of accessibility to support children with disabilities in society as a whole. However, considering the extremely low rate of pregnancy continuance after the diagnosis, the selection of life by reason of disability is an undeniable fact. Eugenic thoughts such as "persons with disabilities are unfortunate" and "persons with disabilities should not exist" are spreading throughout Japanese society. There have been no messages from the government to correct this and have society as a whole, support persons with disabilities. Against this background, there is a movement to drastically increase the number of facilities that conduct prenatal diagnosis.

(8) Discriminatory treatment is in fact on-going

(i) Refusal of entry to stores

- a. Persons being refused entry to stores, etc. because of their guide dogs: 52.9% Breakdown (multiple times): restaurants 80%, lodging facilities 33.3%, taxis 17.8% (Data: 2019 The Eye mate Inc. survey)
- b. According to the "Survey on the State of Acceptance of Assistance Dogs and Obstructive Factors (Questionnaire Survey of Assistance Dog Users)" conducted by the Japanese Service Dog Resource Center, the percentage of assistance dog users being refused use of public transport systems (including cases where they were allowed to do so after explaining the Act on Assistance Dogs for Physically Disabled Persons) shows an increasing trend, rising from 37.2% in 2005 to 39.1% in 2015. Particularly, there is a notable increase in the cases of buses (from 3.1% to 16.2%) and taxis (from 29.3% to 40.0%).
- c. In April 2018, four deaf people were refused entry to the LEGOLAND Discovery Center Tokyo. They were told, "You cannot enter without being accompanied by an individual who can hear because you will not be able to respond to calls to evacuate in a disaster." The Q&A page on their website stated that persons with disabilities could not enter by themselves and were required to have a person without disabilities accompany them. The government deemed this to be a prohibited act under the Act to Eliminate Discrimination against Persons with Disabilities and called for the facility to correct this. The operator indicated its intent to correct this.

(ii) Prohibition of discrimination relating to national public officers/public officers, actual conditions of the provision of reasonable accommodation

Eligibility to take examinations: persons who can perform duties without assistance 89%, persons who can commute on their own 71%, persons who can respond to printed questions 51%. Persons who are able to undergo a spoken (audio) interview 13%.

(iii) Provision of reasonable accommodation at civil service examinations: allocation of sign language interpreters 49%, taking the exam in Braille 44%, taking the exam in large print 42%, audio personal computers 6%, sign language interpreters 49%, interpreting writers 1% (Citizens' Committee to Eliminate Disqualifying Clauses on Disability 2013 Survey. Survey of a total of 108 local governments consisting of prefectures (47), designated cities (20) and core cities (41)).

(iv) Insufficient accommodations for various disabilities

- a. Many in the private sector conduct "identity verification" only verbally through a phone call from the person themselves.
- b. If a person has trouble with an automated teller machine (ATM) at an unmanned branch, inquiries can only be made by a telephone installed at that branch.
- c. There are limited access methods for deaf or hard of hearing persons for such things as consultations and calling for immediate assistance. In most cases, only a telephone number is given as a method to consult a public organization.

- d. A handwritten signature is required when concluding a contract. When a person with a visual disability applies for a passport, they are not allowed to ask someone to sign on their behalf.
- e. Matters registered in an official family registry or residence registry cannot be issued in Braille.
- f. When preparing documents that require a signature, if these documents generate rights or obligations, a person with visual disability will be required to ask someone to sign on their behalf. However, in such cases (e.g., when opening a bank account, making a bank transfer, or selling/purchasing property), it is often the case that they are unable to get someone to sign on their behalf. There is a legal issue to determine who the appropriate person is to act on their behalf.

(v) The problem of calculating lost profits

In March 2019, a man (15 years old at the time) with a severe intellectual disability (autism) escaped from a care facility and was found dead in the mountains. With respect to this incident, the Tokyo District Court awarded lost profits damages in the amount of 22 million yen. The amount of “lost profits,” which the man would have earned if he had worked in the future, was equivalent to the average total amount of wages that a person without disabilities would have earned up to the age of 19. As this example shows, the number of precedents awarding lost profits damages for persons (and children) with severe disabilities is gradually increasing in recent years. However, in many cases, children with severe intellectual disabilities or severe autism were considered to have “difficulties in employment” and “no potential” in earning income in the future and therefore, there is a trend of amounts for lost profits being low.

(vi) Discriminatory treatment relating to private rental housing

Even today, there are cases where deaf or hard of hearing persons are refused from renting a room in an apartment, etc. based on the false perception that there are risks associated with not being able to hear.

(vii) Refusal of participation in tours due to disabilities

There are cases where deaf or hard of hearing persons are unable to participate in tours.

(viii) Burden of expenses for reasonable accommodation

Persons with disabilities were asked to bear the expenses for the provision of information (i.e., sign language interpreters) at the meetings of local government committees, etc.

(ix) Education (for details, please see Article 24)

(9) Low establishment rate of Regional Support Councils for Eliminating Discrimination against Persons with Disabilities

To eliminate discrimination due to disabilities, in local communities, it is important to establish a network of relevant organizations that actively conducts measures to eliminate discrimination based on the actual conditions of the community. The provisions of paragraph 1, Article 17 of the Act to Eliminate Discrimination against Persons with Disabilities specify that local public organizations can establish Regional Support Councils for Eliminating Discrimination against Persons with Disabilities. However, the rate of establishment is only 41.4% as of April 2017.

2. Suggested Questions

(1) The private sector is only obligated to make efforts to provide reasonable accommodation

Are the cases of provision/non-provision of reasonable accommodation by the private sector reported to consultation windows being accumulated? What kinds of cases are there?

(2) Absence of a dispute resolution mechanism independent of the government

The Act to Eliminate Discrimination against Persons with Disabilities only specifies consultation windows and no dispute resolution mechanism. Where and how are discrimination cases resolved? Is a dispute resolution mechanism independent of the executive branch being considered?

(3) Understanding the actual situation of discrimination against persons with disabilities

After the enactment of the Act to Eliminate Discrimination against Persons with Disabilities and the amended Disabled People Employment Promotion Act, is discrimination against persons with disabilities decreasing? Are data on the details, number, whether cases are resolved or not, etc. of consultations received by consultation windows being accumulated?

(4) Current status of dispute resolution

How are discrimination cases reported to consultation windows resolved? What kinds of cases were successfully resolved?

(5) Measures by the legislature and judiciary to eliminate discrimination against persons with disabilities

What kinds of reasonable accommodation do the legislature and judiciary provide to persons with disabilities, including observers? Are there any plans to enact an anti-discrimination law covering the legislature and judiciary?

(6) Reasonable accommodation promotion measures

Are there any plans to establish measures, including financial measures, for the appropriate provision of reasonable accommodation by the private sector? Is there any data on reasonable accommodation promotion measures being implemented by municipal governments? When the national/municipal government employs a person with a disability, do they secure budgets to assign assistants (personnel expenses) and provide necessary facilities?

(7) More widespread selection of life by reason of disability as a result of non-invasive prenatal diagnosis

How have measures to combat eugenic thoughts been advanced? What kinds of measures are in place to prevent discrimination by reason of disability? In addition, what kinds of provision of information and accessibility are being undertaken for pregnant women who were diagnosed with the possibility of their unborn child having a disability so that they are able to give birth and raise a child with a disability with a sense of security?

3. Suggested Recommendations

(1) Include the definition of disability

Specify the definition of discrimination in the Basic Act for Persons with Disabilities, the Act to Eliminate Discrimination against Persons with Disabilities, and the Disabled People Employment Promotion Act. Specify that direct discrimination, disparate impact discrimination, disability-related discrimination and non-provision of reasonable accommodation are also discrimination. Also define the terms of multiple discrimination and intersectional discrimination.

(2) Include specific provisions

Include specific provisions in the law that explain specific examples of discrimination and provision of reasonable accommodation in each area.

(3) Obligate the provision of reasonable accommodation by the private sector as well

Obligate the provision of reasonable accommodation by the private sector as well. In addition, establish contact points where consultations can be made as to what specific kinds of reasonable accommodation should be provided. Also spread awareness among the private sector and the public.

(4) Develop a dispute resolution mechanism and a system of consultation windows

Establish a dispute resolution mechanism independent of the government. Until an independent dispute resolution mechanism is established, create a dispute resolution mechanism under the Cabinet Office Commission on Policy for Persons with Disabilities and understand the actual conditions and accumulate data on discrimination against persons with disabilities. In addition, establish a consultation system that enables consultations from persons with disabilities with a sense of security in their own community.

(5) Establish an anti-discrimination law in the judiciary and legislature to prohibit discrimination against persons with disabilities

The applicable scope of the Act to Eliminate Discrimination against Persons with Disabilities and the Disabled People Employment Promotion Act is limited only to administrative organs and the private sector. Establish appropriate measures, including law-making, to effectively prevent discrimination that is prohibited by the CRPD in the judiciary, such as in courts, and legislature.

(6) Financial measures and awareness for the provision of reasonable accommodation

Engage in financial measures, such as the establishment of a government subsidy system, in order to spread the provision of reasonable accommodation by the private sector. At the same time, work to spread awareness.

(7) More widespread selection of life by reason of disability as a result of non-invasive prenatal diagnosis

Establish measures to prevent the selection of lives by reason of disability. To achieve this, advance measures to combat eugenic thoughts that consider persons with disabilities “not worthy of living.” Also, advance awareness campaigns led by persons with disabilities and their family members who raised them, in order to promote the understanding that they “have varied lives even if they have disabilities.” Set strict requirements for facilities that provide non-invasive prenatal diagnosis in order to prevent the selection of life by reason of disability. Enhance medical, educational and welfare support so that women are able to give birth and raise children with disabilities with a sense of security.

Article 6 Women with disabilities

1. Issues

(1) Eliminating discrimination against women and girls with disabilities; ensuring their equal rights and freedoms

(i) Lack of basic principles for the elimination of multiple/intersectional discrimination against women with disabilities and insufficient systems

Disability policies of the central government such as the Basic Act for Persons with Disabilities, the Act to Eliminate Discrimination against Persons with Disabilities and the Basic Plan for Persons with Disabilities(2018-2013), do not provide the basic principles of eliminating multiple/intersectional discrimination against women with disabilities, while, in contrast, some local governments' ordinances such as in Kyoto Prefecture (enacted in 2015), Sendai City (2016), Tokyo (2018) and Shiga Prefecture (2019) state.

In addition, there are no comprehensive and systematic mechanisms, specific legislative measures, actual action plans and trainings for the elimination of multiple discrimination/intersectional discrimination experienced by women with disabilities, despite the Government Report (Paragraph 39) stating "the Basic Act for Persons with Disabilities provides the measures to support the independence and social participation of persons with disabilities must be formulated and implemented in accordance with the gender, etc of the person with the disability". Moreover, no future plans have been formulated with specific measurable goals setting or service provision, making the Paragraph 39 which mentioning "the basic policy based on the Persons with Disabilities Discrimination Elimination Act and the Fourth Basic Plan for Gender Equality specified the necessity to consider women with disabilities according to their "gender and age" something that exists in text only.

(ii) Lack of sufficient statistics by gender to understand actual conditions

As the "Summary of Discussions" Paragraph 211 by the Cabinet Office Commission on Policy for Persons with Disabilities (hereinafter, the "Policy Commission") states, gender-related statistics are insufficient to understanding the actual condition of multiple/intersectional discrimination against women with disabilities.

Additionally, there are no indications how the government will move forward with the issue stated in Paragraph 3 of the Government Report, indications which, for example, numerical or measurable goals set in the Basic Plan for Persons with Disabilities. The only statements that specify the issues relating to women with disabilities in the report says that "One of the challenges is to improve relevant statistical data," "In particular, the collection of data on the realization of each Convention right disaggregated by sex, age, type of disability, etc." and "the Japanese Government intends to improve such statistical data by the time the Second Report is submitted."

(iii) On supporting victims of violence and abuse and reducing its damage

According to the 2016 Implementation Report on the Women's Protection Project, 47.3% of women admitted to Women's Protection Facilities have some kind of disability or disease; and 26% of them have disability certificates. Paragraph 40 of the Government Report mentions the high percentage of women with disabilities among those who received protection under the Women's Protection Project. Nevertheless, the government has not taken any action, such as considering at the national level the necessity of understanding actual conditions or trans-sectional measures (Note1). There are no statistical data indicating the percentage of women and children with disabilities against the total number of women and children who are victims of violence.

Women with disabilities have difficulty in becoming financially independent due to their low income. For example, for single households, the average annual income for men with disabilities is 1.81 million yen while it is less than half that for women with disabilities at only around 900,000 yen (Note 2).

Generally, women with disabilities have higher risks of receiving sexual violence and abuse, including domestic violence, partly due to their low income. Nevertheless, they have difficulty in consulting, reporting, or using shelters and other facilities as victims because of their limited accessibility to necessary information and buildings. Therefore, their problems are difficult to solve. In this regard, women with disabilities suffer from multiple discrimination/intersectional discrimination (see Appendix 1-4). According to the data on “the number of consultations received by the Spousal Violence Counseling and Support Centers” published by the Cabinet Office, the number of consultations made by persons with disabilities is increasing at a rapid rate that is eight times greater than that from persons without disabilities (Appendix 2) and about 99% of consultations are made by women (Appendix 4).

In particular, according to the Annual Report of the Ministry of Health, Labour and Welfare, with regard to abuse in the home, of the total number of victims of abuse from guardians, about 64% every year are women. However, there is no statement regarding gender in the Persons with Disabilities Abuse Prevention Act. Paragraphs 115 and 116 of the Government Report state that the government is providing “rapid and proper response and support” with respect to actual conditions of domestic violence. However, there are no aggregate data or summary that proves this. It is necessary to indicate such things as the types of victimizers, the age group of the victims, details of the damage, as well as details of support provided upon consultation, and issues revealed through consultations. In addition, with respect to understanding the actual conditions of abuse in the workplace, there are no statements relating to gender in reports on abuse submitted by employers. This means that no surveys by gender have been conducted or no aggregation by gender has been made.

Furthermore, with respect to the provision of education and information to prevent domestic violence, it is often the case that information on support organizations is not provided in an accessible manner for women with disabilities.

One example is that a woman with a disability who had suffered from abuse by her relatives became independent from them for the first time following the Great East Japan Earthquake, because their residence was in an area designated an evacuation (no-entry) zone after the nuclear plant disaster. It is believed that the abuse would have continued if the area had not been designated an evacuation zone. Women with disabilities also face obstacles when it comes to access to evacuation shelters.

It is also necessary to conduct training and education for people engaged in health care, medical, welfare, education, law enforcement, judicial and other activities in order to help them understand the actual condition and issues of multiple discrimination/intersectional discrimination against women with disabilities and appropriately perform their respective duties. However, there are no measures being undertaken to promote such training and education.

(2) Appropriate measures to ensure the full development, advancement and empowerment of women and girls with disabilities, for the purpose of guaranteeing them the exercise and enjoyment of their human rights and freedoms

(i) Promoting participation in organizations representing women with disabilities

a. Insufficient positive actions

For the membership of various councils and experts' panels at which policies of the national and local governments are determined, only some positive action measures are promoted. However, for example, there are only two women with a disability or disease out of 30 commission members of the Commission on Policy for Persons with Disabilities and there are no considerations for provisional special measures being undertaken.

Paragraph 41 of the Government Report only quotes the opinion of the Policy Commission that “it is necessary to promote the establishment of measures focused on women, such as the enhancement of descriptions and statistics from the viewpoint of women with disabilities and the standard introduction of nursing care by persons of the same gender at welfare facilities, for example. For the membership of various councils and experts’ panels at which policies of the national and local governments are determined, positive actions are promoted. Positive actions, etc. should also be promoted for the Commission on Policy for Persons with Disabilities.” It does not indicate anything on understanding of the actual condition of women with disabilities or direction of specific measures.

2. Suggested Questions

Indicate what kinds of measures are in place based on the General Comment No. 3 particularly with respect to the following points, in order to eliminate multiple discrimination/intersectional discrimination against women with disabilities, so that they do not fall victim to domestic violence and sexual violence, and so that they are able to receive prompt support to resolve problems if they do fall victim in all measures of the State Party, including those for education and employment.

- (i) Principles for the elimination of multiple discrimination/intersectional discrimination
- (ii) Statistics by gender to understand actual conditions
- (iii) Measures to ensure the development, advancement and empowerment of women with disabilities
- (iv) Training, etc. for people working at public organizations
- (v) Positive actions

3. Suggested Recommendations

- (1) The Commission is concerned that resolving the issues of eliminating multiple discrimination/intersectional discrimination against women with disabilities and their full participation in society are not sufficiently mainstreamed under the measures for persons with disabilities of the State Party. Therefore, it recommends that the State Party conduct close discussions with organizations of women with disabilities and implements the following measures in accordance with General Comment No. 3 (2016) of the Commission as well as Targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals (SDGs):
 - (i) Mainstream the measures for the prohibition and prevention of multiple discrimination/intersectional discrimination against women with disabilities and formulate strategies and phased plans for such measures.
 - (ii) Establish measures so that women with disabilities do not fall victim to domestic violence and sexual violence, and so that they are able to receive prompt support to resolve problems if they do fall victim.
 - (iii) Provide training, etc. for people working at public organizations regarding the understanding of the actual condition and prevention of multiple discrimination/intersectional discrimination against women with disabilities.
 - (iv) Establish provisional special measures such as positive actions for the membership of various councils and experts’ panels at which policies of the national and local governments are determined.

(Note 1) According to the “Report on the Actual Conditions of Women’s Protection Facilities (2013-2015)” published by the Women’s Protection Sub-committee of the Tokyo Council of Social Welfare, women admitted to Women’s Protection Facilities for ten years or longer have psychosocial or developmental disabilities (P. 6). In addition, 70-80% of women using Women’s Protection Facilities are victims of violence (40% of victimizers are sex buyers, followed by fathers, mothers, husbands, and boyfriends) (P. 19).

According to the “Survey Research on the Actual Conditions of Support for Women’s Protection Projects” (by the Ministry of Health, Labour and Welfare), the attribute of “women (girls) with disabilities” is relatively common for cases that do not lead to temporary protection or admission to Women’s Protection Facilities just as with the attributes of “young women” and “women with a child.” Most of these are due to reasons such as disabilities and diseases, or because it was appropriate to provide support through other measures. In addition, when women who are counseling staff were asked about the support systems to be enhanced, they replied in order, “young women” and “women with a child,” followed by “women (girls) with disabilities” at 31.7%.

Also, with respect to the environment of Women’s Consulting Offices, temporary protection centers, and Women’s Protection Facilities, the provision of accessibility to support users and their admission is pointed out as one of the operational issues, such as accommodations to the layout of guest rooms for mothers and children, persons with disabilities and older people to be protected, and the use of common areas.

(Note 2) According to a survey on the income gap between unmarried persons in a certain region, when the income for men without disabilities was 100, women without disabilities was 66, men with disabilities was 44 and women with disabilities was 22. (Source: Katsumata 2008)

Appendix 1: According to the “Difficulty of Women with Disabilities in Living - Report on Actual Conditions of Multiple Discrimination” (DPI Women’s Network Japan, 2012), 35% of women with disabilities are the victims of sexual abuse. In addition to reports on being victims of sex crimes when outside their home, there are many reports of becoming a victim in places where they cannot escape, such as in the home or workplace. The guarantee of care by persons of the same gender at facilities cannot be said to be sufficient. It is common to receive assistance from persons of a different gender at these facilities, making them hotbeds for sexual abuse in the facility.

Appendix 2: “Number of DV consultations by women with disabilities increases drastically at a pace eight time greater than persons without disabilities due to their vulnerable position in their families” Mainichi Shimbun, October 12, 2017. <https://mainichi.jp/articles/20171012/dde/007/040/020000c>

Appendix 3: Tokyo Council of Social Welfare Women’s Protection Sub-Committee Research and Study Committee 2017 Report on the Actual Conditions of Women’s Protection Facilities (FY2013, FY2014, FY2015)

Appendix 4: Number of consultations received by the Spousal Violence Counseling and Support Centers (on the Cabinet Office website).
http://www.gender.go.jp/policy/no_violence/e-vaw/data/01.html

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Article 7 Children with disabilities

1. Issues

(1) Securing resources and reasonable accommodation for children with disabilities to ensure their right to express their views freely

There are situations where the “right to express their views freely on all matters affecting them” (paragraph 3, Article 7) is not often guaranteed in home, childcare, education and medical settings. It is necessary to ensure opportunities for children with disabilities to express their opinions in the same way as children without disabilities do when they choose a school (including majors) and place of residence (e.g., home, care facilities for children with disabilities, social care facilities, foster parents, and boarding houses for children with disabilities). It is also necessary to guarantee human and physical measures as a premise for the provision of support for children with disabilities to express their opinions, including the provision of reasonable accommodation (Notes 1 and 2).

(2) Violence, including sexual violence, against children with disabilities and their inhuman treatment

Children with disabilities are especially vulnerable to violence and inhuman treatment by their being a child and having disabilities. These problems are difficult to resolve, and they are placed in multiple, difficult situations. For example, if the child claims that they are a victim of violence, the credibility of their claim is often doubted. An example of this is a girl with an intellectual disability who claimed her teacher sexually abused her, but the teacher was found not guilty in a criminal court (Urayasu Case in 2011. The teacher was found guilty in civil court).

Inhuman treatment occurs in the home, childcare, education or medical settings (Note 3). Many of the victims of sterilization under the former Eugenic Protection Law were minors (Note 4) (also mentioned in Article 17). It is necessary to confirm the child’s will when it comes to medical treatment, in particular, surgery on reproductive organs. As an example of a case involving physical restraint, there was a case filed in 2018 where a 14-year-old girl with an eating disorder was placed under physical restraint for 77 days against her will as psychiatric care (Note 5).

(3) More substantial budgets for children with disabilities

There are cases where children with disabilities under the age of 18 cannot use services they need under the Comprehensive Support Law for Persons with Disabilities (e.g., dispatch of sign language interpreters). Recommendations 10 and 11 of the Fourth and Fifth Concluding Observations (2019) regarding the Convention on the Rights of the Child require the retention of the current level of and the establishment of budgeting procedures for the rights of children, as well as the enhancement of data collection systems relating to “child poverty,” “violence against children” and “early childhood care and development.”

2. Suggested Questions

- (1) What kinds of measures are being undertaken to ensure the right of children with disabilities to express their views when they choose a place of residence or school, or when they receive medical treatment?
- (2) In what way does the government ascertain the actual condition and issues of children with disabilities, who often face multiple and difficult situations, in the fields of childbirth, childcare, education, medical treatment, health care, and so on?
- (3) In the Fourth and Fifth Concluding Observations (2019) regarding the Convention on the Rights of the Child, the retention of the current level of and the establishment of budgeting procedures for the

rights of children, as well as the enhancement of data collection systems are required. In this regard, what kinds of improvement measures have been established?

3. Suggested Recommendations

- (1) We recommend the government implement measures to ensure the right of children with disabilities to express their views, ensure reasonable accommodation, and budget measures for children with disabilities within comprehensive measures to protect the rights of all children.
- (2) We recommend the government develop statistics by gender focusing on children with disabilities and reporting on this as well as issues in the Second Report.
- (3) We recommend the government thoroughly implement budget measures regarding the rights of children.

(Note 1) According to a survey of four facilities in the Tokai region, the majority of young people admitted to these facilities said that they had to live in facilities for children with disabilities since their childhood because it was difficult for their families to take care of them and moved to facilities for adults with disabilities when they turned 18 years old. The survey also indicated that some dropped out of high school and moved to another facility as soon as a spot was available in the facility for persons with disabilities. There are statements from these young people in the report such as, "This place was the only choice. I wasn't able to choose; my parents made the decision. They even didn't ask me" "I really wanted to live at home. I was sad."

(Mizuho Welfare Foundation FY2016 Subsidized Social Welfare Project Report (Digest Version)-Research on the ideal state hospital-to-community transition and community living support after the enactment of the Act to Eliminate Discrimination against Persons with Disabilities)

(Note 2) A survey of care facility staff (23 employees at 19 child care facilities and 12 employees at 8 facilities for children with disabilities) and a survey of children admitted to care facilities (25 children at 3 child care facilities and 6 children at 2 facilities for children with disabilities) by a local government indicated a need to introduce advocacy relating to care facility visits.

(Research on the introduction of external advocacy for children admitted to welfare facilities: Developing an ICAS provision model, lead researcher: Masatsugu Hori, duration: FY2013-FY2015)

(Note 3) "Papers were filed with prosecutors against a teacher at a school for children with disabilities for allegedly stepping on a student's foot" Asahi Shimbun, December 3, 2018.

<https://www.asahi.com/articles/ASLD33PP5LD3OIP00L.html>

(Note 4) Of the over 16,000 victims of forced sterilization under the former Eugenic Protection Law (1948-1996), a considerable number were minors (for example, of the 859 men and women in Miyagi Prefecture (FY1963-1981) minors accounted for over half that number at 52%, with the youngest victims being two 9-year-old girls and a 10-year-old boy).

(Note 5) Article 37 (a) of the Convention on the Rights of the Child "No child shall be subjected to...inhuman or degrading treatment" and Article 37 (b) "No child shall be deprived of his or her liberty unlawfully or arbitrarily."

"77 days of unjustified physical restraint: woman with eating disorder sues hospital" by Editorial Committee member Maki Okubo, 17:00 May 15, 2018

<https://www.asahi.com/articles/ASL5H4WKGL5HUBQU010.html?ref=yahoo>

Article 8 Awareness-raising

1. Issues

(1) Understanding the rights and new concepts under the CRPD

- (i) Even more effective measures are required for awareness-raising for citizens, including school children, teachers, administrative bodies and councils, various professionals, and mass media, regarding the rights of persons with disabilities and concepts based on the Convention. Including education and media reporting, problems relating to persons with disabilities must be taken up from a perspective that is rooted in rights and not just in the context of “morals” and “compassion.” It is necessary to not just deepen understanding as to what discrimination is, but to also raise awareness so that people are able to clearly convey that the provision of reasonable accommodation is not a benefit but something that is the responsibility of society. It is also necessary to raise awareness about the social model/human rights model of disability, the concept of support for decision-making, and the necessity of focusing on persons with disabilities instead of personal assistants and support personnel.
- (ii) With respect to sign language, use of sign language is increasing among to people with and without hearing disabilities, and understanding of the deaf is increasing. Sign language is recognized to be a language in the Basic Act for Persons with Disabilities. The United Nations established the International Day of Sign Languages (September 23). Recognizing these developments, the government should further raise the awareness of citizens.
- (iii) There is the “Public Opinion Survey on Persons with Disabilities” conducted by the Cabinet Office as a regular awareness survey on persons with disabilities conducted by the government. This report reveals the current situation on such things as the awareness, discrimination and prejudices relating to persons with disabilities. However, the report should be one that enables one to further understand the rights and concepts of persons with disabilities based on the Convention and to understand the actual condition of discrimination and rights violations.

(2) Education and awareness regarding disability

- (i) According to the “2017 Public Opinion Survey on Persons with Disabilities” as mentioned above, 77.9% of the respondents answered that they did not know about the Convention and 77.2% of the respondents answered that they did not know about the Act to Eliminate Discrimination against Persons with Disabilities. Compared to the 2012 survey results (81.5% and 73.8%, respectively), awareness has not increased.
- (ii) In Japan, persons with psychosocial disabilities have been subject to segregation and institutionalization since 1900. The ignorance and prejudice of society towards persons with psychosocial disabilities are deep rooted. In the white paper on crime, the item of “crimes, etc. by persons with mental disabilities” is specifically stated every year. It is necessary to correctly analyze and present those statistics and review the significance of the item, thereby contributing to the elimination of prejudices towards persons with psychosocial disabilities through the government’s white paper.
- (iii) Because internal disabilities are not visible, it is difficult to understand such disabilities and there are still many cases where internal disabilities are treated as feigned illnesses. For example, although myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS) is classified as a nervous system disease under the WHO International Classification of Diseases, ME/CFS is often misunderstood as simply being lax or a frame of mind due to a lack of the fundamental understanding of the nature of the disease. Persons with ME/CFS are sometimes unable to receive support because ME/CFS is not considered a disability or disease. The government should take the lead in conducting awareness campaigns.
- (iv) Under domestic law, the private sector has an obligation to make efforts to provide reasonable

accommodation. However, it is necessary to take measures to raise their awareness and promote their provision of reasonable accommodation. Some local governments have implemented promotion measures for the provision of reasonable accommodation, for example, establishing a grant/subsidy system. From an awareness raising perspective, these measures should be implemented widely.

- (v) Considering these actual conditions, the government should systematically spread awareness among citizens based on the Convention. In particular, it must provide education that deepens the scientific knowledge and correct perceptions of disabilities at the compulsory education stage.

(3) Training for Diet members, administrative officers and various specialists

- (i) It is necessary to implement campaigns to deepen understanding about persons with disabilities from the perspective of their rights under the CRPD, targeting members of national and local governments, administrative officers including police officers, various specialists as well as widely among citizens. For example, there are still many cases where people talk only to personal assistants and not to the persons with disabilities themselves. There are also still cases where deaf or hard of hearing persons are asked, "Can't you hear me? Can't you read my lips?" There is a need for effective training according to the various conditions that persons with disabilities are placed in. When doing so, it is necessary to allocate a sufficient budget as well as requiring the participation of persons with disabilities and organizations of persons with disabilities in every process from planning to implementation and assessment.
- (ii) For women with disabilities in particular, there are cases where they are considered "unable to have and raise children" based on the concept of gender roles and where the testimony of women with disabilities who were victims of this is considered "unreliable" (source: "Difficulty of Women with Disabilities in Living - Multiple Difficulties in Living Encountered in Their Lives - Report on Actual Conditions of Multiple Discrimination" (DPI Women's Network Japan, March 2012). It is necessary to provide further training on multiple discrimination/intersectional discrimination for a wide variety of public officials, such as those in education, healthcare, welfare and judiciary as well as the private sector.

(4) Promote awareness among the media

- (i) An example of an issue relating to how media should report matters is when a suspect of a crime has a history of receiving psychiatric treatment. When a person with a psychosocial disability or who has a history of receiving psychiatric treatment commits a crime, a lot of times, reports further emphasize this fact regardless of whether this is directly related to the crime, obstructing the correct perception of persons with psychosocial disabilities.
- (ii) Furthermore, discussions on the stabbing incident against persons with disabilities at Tsukui Yamayuri En (see Articles 1 to 4-1(2)) and the problem of anonymous hate speech cannot be said to be sufficient. There are also cases where the media covers persons with disabilities only in the context of emotional or heartwarming stories.
- (iii) Considering these conditions, the government must implement thorough measures for the media, such as creating guidelines, providing directions, awareness and discussions on how media should report matters in a State Party of the CRPD.

2. Suggested Questions

(1) Understanding the rights and new concepts under the CRPD

- (i) What kinds of surveys, etc. are being conducted for the purpose of widely spreading understanding of citizens regarding disabilities?
- (ii) What perceptions do citizens have of the rights of persons with disabilities, rights violations, discrimination based on disability, provision of reasonable accommodation, social barriers, sign language, support for decision-making, inclusion, accessibility and so on. What are the actual

conditions of these matters?

(2) Education and awareness regarding disabilities

- (i) What kinds of measures are being undertaken to raise the awareness of citizens regarding disabilities consistent with the spirit and concepts of the CRPD?
- (ii) What kinds of curriculums and educational materials have been introduced in compulsory education to ensure correct understanding of disabilities based on the CRPD?

(3) Training for Diet members, administrative officers and various specialists

- (i) What kinds of training are currently being implemented to enable members of national and local governments, administrative officers, and various specialists gain a correct understanding of disabilities (including different types of disabilities and multiple discrimination/intersectional sexual discrimination against women with disabilities)? Do persons with disabilities and organizations of/for them participate in this training?
- (ii) Are there any plans to introduce/implement this type of training in the future?

(4) Promote awareness among the media

- (i) What kinds of opportunities for discussion, communication and coordination are there on guidelines created by the government, symposiums and review sessions to raise awareness on how reporting should be regarding disabilities.

3. Suggested Recommendations

(1) Understanding the rights and new concepts under the CRPD

- (i) Regularly ascertain and publish the perceptions of citizens about and actual conditions of the rights of persons with disabilities, rights violations, discrimination based on disability, provision of reasonable accommodation, social barriers, sign language, support for decision-making, inclusion, accessibility in order to further spread understanding of the CRPD.

(2) Education and awareness regarding disabilities

- (i) Promote education and awareness concerning disabilities based on the spirit and concepts of CRPD.
- (ii) Introduce curriculum and educational materials in compulsory education that enables the gaining of a correct understanding of the spirit and concepts of the CRPD.

(3) Training for Diet members, administrative officers and various specialists

- (i) Implement training based on the CRPD with content that enable members of national and local governments, administrative officers, and various specialists gain a correct understanding of disabilities (including different types of disabilities and multiple discrimination/intersectional discrimination against women with disabilities).
- (ii) Ensure the participation of persons with disabilities and organizations of/for them in the planning and implementation of such training.

(4) Promote awareness among the media

- (i) Because media reports in particular have a significant impact on the understanding of citizens regarding disabilities, the government should actively raise awareness and work with the media regarding media reporting that is appropriate for a State Party.

Article 9 Accessibility

1. Issues

(1) Insufficient understanding of the concept of accessibility

- (i) Accessibility is a prerequisite condition for persons with disabilities to live independently as well as to fully and equally participate in society. The concept of accessibility is to ensure to persons with disabilities access to physical environments, transportation, information and communications, including information and communication equipment and systems, and to other facilities and services open or provided to the public in the same way persons without disabilities. However, understanding of this concept by both the government and society as a whole is insufficient. For example, as the title of Article 9 of the CRPD is “Accessibility,” it is a wide-ranging term that also includes information accessibility. However, the official translation by the Japanese government is “Ease of use of facilities and services, etc.” It is a limited translation and it is unclear if it includes information accessibility. This concept is insufficiently reflected even in Japanese laws such as the Basic Act for Persons with Disabilities. As a result, it becomes a legislative restriction on the promotion of accessibility, an extremely important concept, in Japan.
- (ii) In developing accessibility, the actuality is that wheelchair users and persons with visual disabilities are considered to be the main targets. The perspective of ease of use of facilities by deaf and hard of hearing persons, persons with intellectual and developmental disabilities, etc. is lacking.
- (iii) In addition, the perspectives of multiple discrimination/intersectional discrimination against women with disabilities, etc. are also lacking. For example, women with orthopedic disabilities are unable to use domestic violence shelters because they are not barrier-free.

(2) Absence of legislation obligating the ensuring of accessibility in rural areas

The Act on Promotion of Smooth Transportation, etc. of Elderly Persons, Disabled Persons, etc. (hereinafter the “Barrier-Free Act”) is a measure that focuses on metropolitan areas. For example, barrier-free access is actively promoted with a numerical target in railway stations with 3,000 or more arriving and departing passengers a day. In contrast, barrier-free access has lagged behind in rural areas. According to the “FY2016 Current Status of Accessibility in Railway Stations” published by the Ministry of Land, Infrastructure, Transport and Tourism, 87% of railway stations with 3,000 or more arriving and departing passengers a day (3,098 stations out of 3,559 stations) completed making stations barrier-free. In contrast, accessibility in terms of all railway stations in Japan is only 45.7% (4,334 stations out of 9,474 stations). In addition, barrier-free access in rural areas has fallen significantly behind with the percentage of stations with less than 3,000 arriving and departing passengers a day that have completed making station barrier-free at only 20.8% (1,236 stations out of 5,915 stations).

(3) Delays in making buildings barrier-free. There is no legislation obligating universal design that makes buildings open to the public accessible.

Under the Barrier-Free Act only specially specified buildings with a floor space of 2,000 square meters or more have an obligation to conform to the standards. Therefore, it is difficult access many small-scale stores used on a routine basis in a wheelchair, etc. In addition, regular schools and apartments also have no obligation to conform to the standards. Regular schools are used by many citizens such as students, teachers, and even local residents. However, their facilities and equipment do not provide barrier-free access for persons with various types of disabilities to use the facilities smoothly.

(4) Absence of legislation for public procurement with accessibility requirements

In some[TS1] foreign countries, there are public procurement mechanisms where the government only procures goods that meet accessibility standards. Therefore, manufacturers develop products to meet to the government's accessibility standards. Thus, there is a prevalence of technologies that are easy to use for persons with disabilities as well. Although accessibility standards (JIS·X8341-3) exist in Japan, they are lacking in effectiveness and there has been no spread in the development and prevalence of products with accessibility as there are no mechanisms for public procurement, etc. with accessibility requirements.

(5) Participation of persons with disabilities in product development and facility maintenance has not improved

- (i) With respect to product development and facility maintenance, participation by persons with disabilities from the planning stages has not improved. As a result, there are an increasing number of products that are hard to use for persons with disabilities. For example, there are many cash dispensers and coin operated lockers that only have a touch-panel display that cannot be used by persons with visual disabilities. Another example is spectator seats at theaters and sporting venues where although there is seating for wheelchairs, the view of the persons seated there are blocked by the handrail in front of them.
- (ii) Standards and designs for providing accessibility can be accumulated through the process of developing products and facilities with the participation of persons with disabilities. However, there is no mechanism to reflect this in standards and guidelines on a national level.

(6) Training on accessibility is not an obligation

Personnel training on accessibility for the private sector is only stated in the basic policy of the Barrier-Free Act and is not an obligation. As a result, training is not implemented by many in the private sector. Understanding on persons with disabilities is low in society as a whole and perspectives that consider the use, etc. by persons with disabilities have not spread among the private sector. It is the same for training on information accessibility.

(7) The right of movement and right to information accessibility are not specified

With respect to movement and accessibility in general, the right of movement and right to information accessibility are not specified in legislation.

(8) Lack of accessibility

- (i) There have been continued accidents where persons with visual disabilities have fallen from the platforms in stations with low automatic platform gate installation rates. According to data from 2010 onward, around 3,000 accident cases where a person has fallen off the platform have occurred every year. In 2017, there were 2,863 such accidents, of which about 70 involved persons with visual disabilities. According to survey conducted by the Japan Federation of the Blind, 40% of persons with visual disabilities have experienced falling off the platform. The government announced its target of installing automatic platform gates, an effective method to prevent people from falling off, in 800 railway stations by the end of FY2020 (2015 Basic Plan on Transport Policy). As of the end of March 2018, automatic platform gates have been installed in 725 stations. However, this figure only accounts for about 7.6% of the total number of stations in Japan (around 9,500 stations). In addition, the government is moving forward with this installation plan mainly at stations with 100,000 or more arriving and departing passengers a day. Therefore, stations with automatic platform gates are unevenly distributed, mainly in metropolitan areas, and dangerous conditions still persist in rural areas.
- (ii) Low installation rate of audible traffic signals
 - a. Audible traffic signals are vital in order for persons with visual disabilities to safely cross a road. However, the installation rate of audible traffic signals is very low, at around 9.4% (about 19,500 units

out of approximately 208,100 units as of March 2017). Even if they are installed, sound is turned off at night for many of them.

b. The prevalence of tactile traffic signals for persons with deafblindness is low.

(iii) Extremely low rate of barrier-free airport shuttle buses and long-distance buses

The Barrier-Free Act designates airport shuttle buses and long-distance buses as exempted vehicles.

There was no barrier-free installation target until 2010 and installation has fallen significantly behind. Of the approximately 10,000 buses running regular routes, only six buses have a wheelchair lift (as of June 2018). For regional airports in particular, most do not have railway access and are served by bus routes, but wheelchair users are unable to travel to city centers because there are no buses with wheelchair lifts.

(iv) Very few barrier-free rooms in hotels

a. In May 2017, the International Paralympic Committee (IPC) pointed out that the number of barrier-free hotel rooms is insufficient. According to a survey by the Ministry of Land, Infrastructure, Transport and Tourism, only 30% of hotels have barrier-free rooms and among hotels that have barrier-free rooms, 70% have only one barrier-free room.

b. The Ministry of Land, Infrastructure, Transport and Tourism revised the standards for hotels in 2018 and required that the number of barrier-free rooms comprise 1% of the total number of guest rooms. However, this 1% target is extremely low from the standpoint of international standards.

(v) Audio/visual information (sign language, printed letters, icons, etc.) does not reach those requiring it (information displays, etc.)

As “there are few markings that indicate the support needed by persons with disabilities,” persons with disabilities do not know where elevators are located even if they are installed in stations, etc. because there are no information displays or they difficult to understand.

(vi) Other issues

The Barrier-Free Act stipulates the obligation of providing parking spaces for persons with walking difficulty and although installation has advanced to some degree, there is a long-standing problem of persons requiring the space being unable to use it because of persons without walking difficulty parking there.

2. Suggested Questions

(1) Has the concept of accessibility stated in Article 9 of the CRPD been introduced as a legal concept regarding persons with disabilities? Does it assume deaf and hard of hearing persons, persons with intellectual and developmental disabilities as being applicable? Have any interviews with women with disabilities been conducted from the perspective of multiple discrimination/intersectional discrimination and their opinions reflected?

(2) What kinds of measures are being undertaken to promote accessibility in rural areas?

(3) What kinds of measures are being undertaken to advance barrier-free access at small-scale stores with a floor space of less than 2,000 square meters? Does the government understand the percentage of stores, schools, and apartments that have barrier-free access?

(4) Are measures for public procurement with accessibility requirements being considered?

(5) Are measures to ensure the participation of persons with disabilities in developing products and facilities being considered?

(6) Do the government and private sector obligate training to deepen understanding about persons with disabilities, including the concept of accessibility? Or is this being considered?

(7) Under the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the right to access is clearly provided for as part of international human rights law. Is the specifying of the rights of persons with disabilities to movement and information accessibility in domestic laws being considered?

3. Suggested Recommendations

(1) Include the concept of accessibility in comprehensive and fundamental laws relating to persons with disabilities, as a concept consistent with Article 9 of the CRPD

The obligation to provide accessibility is a prerequisite obligation and the State Party assumes the obligation to provide accessibility. Introduce the concept of accessibility in comprehensive and fundamental laws relating to persons with disabilities, as a concept consistent with Article 9 of the CRPD. The positioning of deaf and hard of hearing persons, persons with intellectual and developmental disabilities as well as women with disabilities as being applicable must be specified.

(2) Put in place legislation that obligates the ensuring of accessibility in rural areas

The Barrier-Free Act requires the private sector to provide barrier-free access for public transport systems, etc. However, because the current legal design assumes metropolitan areas, the provision of accessibility in rural area has not progressed and the gap is widening. Put in place legislation that obligates the provision of accessibility in rural areas.

(3) Establishment legislation obligating universal design that makes buildings open to the public accessible

Establish legislation that obligates the principle of universal design so that buildings open to the public, regardless of the size of such buildings, are fully accessible to persons with disabilities. Obligate barrier-free access in schools and apartments as well.

(4) Establish legislation for public procurement with accessibility requirements

It is necessary to ensure that all newly procured goods and services are fully accessible to persons with disabilities. Establish legislation for public procurement with accessibility requirements in order to promote the development and prevalence of accessible goods, products, and services.

(5) Promotion of the participation of persons with disabilities in developing products and facilities

Establish a mechanism that enables the participation of persons with disabilities from the beginning stages of product/facility development and reflects their opinions in order to increase products and facilities that are easy to use for persons with disabilities.

(6) Obligate training for government, the private sector, and all other related parties in order to promote understanding about persons with disabilities

Obligate authorities that issue building permits, broadcast/ICT administration committees, engineers' organizations, designers, architects, urban planners, transport authorities, service providers, academic societies, manufacturers and all other related parties to participate in training in order to deepen their understanding about persons with disabilities, including the concept of accessibility.

(7) Specify the rights of persons with disabilities to movement and information accessibility in legislation

Under the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the right to access is clearly provided for as part of international human rights law. Accessibility is a prerequisite for persons with disabilities to live independently and fully and equally participate in society. Specify the rights of persons with disabilities to movement and information accessibility in domestic laws.

Article 10 Right to life

1. Issues

(1) Average life expectancy

Japan has one of the highest levels of life expectancies in the world. However, there are research results that show that the average life expectancy of persons with severe psychosocial disabilities is 22.2 years shorter than the general average life expectancy due to physical conditions and suicide. We are concerned that the average life expectancy of persons with disabilities is shorter than the general average life expectancy.

(Kondo S., et al., "Premature deaths among individuals with severe mental illness after discharge from long-term hospitalization in Japan: a naturalistic observation during a 24-year period." *British Journal of Psychiatry*, 2017 Aug 11;3(4):193-195. <https://www.ncbi.nlm.nih.gov/pubmed/28811927>)

(2) Legislation concerning death with dignity

In 2012, the Parliamentary League to Discuss Legislation Concerning Death with Dignity announced the Second Bill to Respect Individual Will Concerning Medical Care in the Terminal Phase (provisional title) (Death with Dignity Act). The bill sets forth matters necessary for decision-making in the terminal phase, non-initiation and discontinuance of life-sustaining treatment based on the will of patients, and discharge associated with such actions. Organizations of persons with disabilities opposed the bill and as of the present day, it has not been submitted to the Diet. Another related movement is that, in March 2018, the Ministry of Health, Labour and Welfare revised "The Practice Guidelines for Process of Decision-Making Regarding Treatment in the End of Life Care." The new guidelines require the execution of a living will and promote the introduction of advance care planning (ACP; the patient, their surrogate decision-maker such as family members and a medical care team discuss treatments in advance, and the results of the discussion are recorded every time).

However, there are no laws that protect the rights of patients. Because support systems such as personal assistance services to guarantee the right to life are insufficient, patients have no choice but to depend on care by family members. Therefore, considering these conditions, we are concerned that if persons with disabilities are required to make a decision regarding life-sustaining treatment in accordance with the framework of the abovementioned law or guidelines, their right to life may be further at risk. Some persons with disabilities currently receiving assistance and living in a local community said that they would not have survived if they had presented a living will, because their family would have declined life-sustaining treatment based on the will. There are also many cases of ALS patients, etc. not being able to receive sufficient personal assistance services and died because they chose not to attach respirators as they "did not want to trouble their families."

2. Suggested Questions

(1) Present data relating to the average life expectancy of persons with disabilities, including those with psychosocial and intellectual disabilities. In the case of persons with psychosocial disabilities, indicate whether there are any data that shows the taking of drugs having an effect on average life expectancy.

(2) How do the developments making the Death with Dignity Act law and the concept of the revised "Practice Guidelines for Process of Decision-Making Regarding Treatment in the End of Life Care" affect the right of persons with disabilities to life? Also, in what way will Japan establish laws to protect the rights of patients and strengthen support systems to ensure the right to life, such as personal assistance services?

3. Suggested Recommendations

(1) We recommend that the government investigate the causes of death by disability type to determine whether the average life expectancy of persons with disabilities is shorter than that of persons without disabilities and establish specific measures to resolve this.

(2) We recommend the government ensure that developments make the Death with Dignity Act law and the concept of the revised guidelines do not threaten the right of persons with disabilities to life. We recommend the government establish laws to protect the rights of patients and strengthen support systems to guarantee the right to life, such as personal assistance services.

Article 11 Situations of risk and humanitarian emergencies

1. Issues

(1) Long-term measures and issues in normal/post-disaster circumstances

- (i) As also stated in the State Party Report, at the time of the Great East Japan Earthquake in 2011, the fatality rate of persons with disabilities was almost twice as high as the rate for overall affected residents. However, the government has not investigated the cause of this fact or conducted considerations of recurrence prevention measures based on such facts.
- (ii) There is no sufficient guarantee of persons with disabilities to substantively participate in discussions at councils of the national and local governments regarding disaster prevention plans, guidelines for responses to all phases of a disaster from occurrence to reconstruction, consideration of reporting systems and other measures. For this reason, although the “Guidelines for the evacuation support of residents who need assistance to evacuate during a disaster” and the “Guidelines for ensuring a good living environment in shelters” were established (both in August 2013 by the Cabinet Office (Disaster Management)), they did not function effectively at the time of subsequent disasters.
- (iii) In the case of the Great East Japan Earthquake, it is reported that the number of earthquake-related deaths due to changes in living environment and stress, etc. after the disaster is 3,676 as of March 31, 2018. Persons with disabilities are more vulnerable to changes in the environment than those without disabilities. In addition, because they are likely to be isolated in the local community, there is the issue of how to provide long term living support after a disaster.
- (iv) At the time of various disasters in the past, support from related organizations around Japan, including organizations of persons with disabilities, and local communities was significant. In conjunction with the government’s initiatives, it is vital for the government to support these non-governmental activities.
- (v) There are no statements relating to accommodations for persons with disabilities in the response manuals of international disaster relief activities conducted by the Japanese government. Therefore the support provided is not inclusive.
- (vi) Protection of the people in times of emergency other than natural disasters has not been considered in earnest. It is necessary to specify the humanitarian protection of the people in times of emergency, etc. in the Basic Program for Persons with Disabilities, etc.

(2) Measures and issues immediately following a disaster

- (i) At the time of the Great East Japan Earthquake, etc. the government did not disclose the list of persons requiring assistance and the list of disability certificate holders in its possession to non-governmental supporters on the grounds of protecting personal information. Thus, the issue became how to confirm the safety of persons with disabilities immediately following a disaster. In Minamisoma City and Rikuzentakata City, information held by the government was disclosed to supporters by utilizing an exceptional clause regarding serious situations affecting the life and assets of a person. This led to the confirmation of safety and subsequent continuing support.
- (ii) Emergency responses for those requiring medical treatment or life support are insufficient. At the time of the Great East Japan Earthquake, there were problems such as medicines that routinely taken and medical care products not reaching people who needed them and there being no batteries for artificial respiration devices.
- (iii) In times of emergency such as disasters, women may be placed in situations where they are unable to secure spaces where they can safely go to the bathroom or change clothes. In such situations, risks for women with disabilities increase, particularly the risk of sexual abuse.

(3) Provision of information at the time of a disaster

- (i) It is necessary for the government and the media to provide information required at each stage of a

disaster from occurrence to restoration and reconstruction in a form that accommodates the particular characteristics of each disability. In particular, the allocation of interpreter-guides for persons with deafblindness, the provision of information in print and sign language, and the installation of flashing lights, etc. is insufficient.

- (ii) The implementation of telecommunications relay service for deaf, hard of hearing, or late-deafened persons has many restrictions and cannot be used in times of emergency. In addition, the provision of information, including qualified sign language interpreters, is not implemented at shelters, etc.
- (iii) An environment in which information can be visually obtained, such as different colored lamps to inform people in times of disaster or emergency, has not been developed. Furthermore, there are no accommodations for the provision of information for persons with color vision deficiency by using colors they can distinguish or providing information by other means.
- (iv) There is almost no provision of sign language interpretation and text information in press conferences and reporting on disasters and emergency situations.
- (v) J-ALERT, a nationwide warning system, should be designed to provide both audio and visual information.
- (vi) With respect to private services such as NTT DOCOMO's "Area Mail" emergency early warning service that notify people of the occurrence of disasters, there have been problems of the alarm repeatedly going off more than necessary. As such, appropriate setting methods should be made known.

(4) Shelters and welfare evacuation shelters

- (i) Even when in a shelter, persons with disabilities are faced with physical and mental difficulties because of being unable to obtain information in an appropriate form or being unable to ask for reasonable accommodation due to reasons such as the fear of troubling those around them. As a result, they sometimes go back to their home, which is in a dangerous state, or live in their car. In September 2015, Ibaraki Prefecture was hit with massive floods. A mother with an eldest daughter and third daughter with autism tried to escape to a school for special needs. However, the school was not designated as a shelter and refused to take them in. They then went to a gymnasium that was a shelter. However, both the eldest daughter and third daughter became very nervous due to the change in environment. After one hour, the mother had no choice but to give up staying in the shelter.
- (ii) It is necessary to make it an obligation to provide reasonable accommodation for persons with disabilities at shelters operated by local governments. General schools are often designated as shelters, but they are lagging behind in eliminating physical barriers. Osaka City made it an obligation for general elementary and junior high schools to provide barrier-free access through an ordinance in 1992. Currently, the installation rate of elevators at these schools is 96%.
- (iii) General shelters make no assumptions for the evacuation of persons with disabilities. It is necessary to provide training for the operators of shelters. At the time of the Kumamoto earthquakes in 2016, Kumamoto Gakuen University's inclusive evacuation shelter successfully offered a shelter where anyone could evacuate to such as by ensuring space and corridors, communicating information, temporary toilets, and private rooms. In addition, the shelter at Mashiki-machi General Gymnasium offered an environment where persons with disabilities could live without having to be worried about bothering those around them by providing rooms for those who required support.
- (iv) Although an agreement on the establishment of welfare evacuation shelters has been concluded between local governments and welfare facilities, there are no standard operating procedures. Therefore, it is uncertain as to who, when, for whom and how transfers to welfare evacuation shelters will be decided and implemented. For this reason, there were many facilities contracted as welfare evacuation shelters that did not open at the time of the Kumamoto earthquakes.
- (v) There are many local governments that do not disclose information on welfare evacuation shelters to the public. Most welfare evacuation shelters are facilities for older persons. Of the 21 welfare

evacuation shelters in Tokyo's Minato Ward, only 2 accept persons with disabilities.

- (vi) Many facilities that have concluded an agreement with local governments to serve as welfare evacuation shelters are residential welfare facilities such as special homes for care of older persons. They are often short of beds and staff even in normal circumstances. In an emergency, because the staff of these facilities also become disaster victims, it is difficult for them to accept additional persons requiring support.
- (vii) At general shelters, reasonable accommodation is not sufficiently provided. There are cases where some persons with disabilities who are unable to secure access to welfare evacuation shelters voluntarily evacuate to a common sheltered workshop or a day-care center where they are used to going to regularly. However, it is difficult to send relief such as supplies to voluntary shelters.
- (viii) Persons with disabilities who are capable of independent living in normal circumstances and do not have a close relationship with organizations that support persons with disabilities or do not have a disability certificate have a higher chance of being isolated at home as they cannot go to evacuation shelters.
- (ix) If welfare evacuation shelters only accept persons with disabilities or limit the number of family members they accept, this will become a cause of the family being separated.

(5) Temporary housing

- (i) In the Great East Japan Earthquake and the Kumamoto earthquakes, temporary houses were not designed with universal design. There were many inconveniences for persons with disabilities such as steps at the entrance and inside rooms, gravel paths in the housing area making movement in wheelchairs impossible, and a lack of low-floor buses operating in the temporary housing region.
- (ii) Only a few public-funded rental accommodations are barrier-free.

(6) In relation to the nuclear plant disaster in Fukushima

- (i) At the time of the Great East Japan Earthquake, there was a need for people in Fukushima who had evacuated to an initial shelter to evacuate again because of the nuclear plant disaster. There were cases where people were forced to evacuate several times over a period of two to three days. While moving between shelters, there were some among those who were physically weak due to disability or disease who died due to hypothermia or other reasons.
- (ii) In the coastal areas of Fukushima where people were forced to evacuate because of the nuclear plant disaster, persons with disabilities are still unable to go back to their home because it is difficult to secure their assistants/supporters. According to a survey conducted by the Japan Association of Community Workshops for Disabled Persons Minamisoma Support Team in 2017, the average age of support staff at the welfare service facilities/workshops in Minamisoma City is 53.1, which is much higher than the average age of full-time care staff (38.7) at welfare facilities across the country (source: the 2013 Basic Survey on Wage Structure by the Ministry of Health, Labour and Welfare). We believe that this is a result of many young people moving away from Fukushima to avoid the effects of radiation contamination caused by the nuclear plant disaster, and it indicates that there is a lack of younger support staff in particular. In addition, the average annual income of full-time support staff is about 2.75 million yen, which is nowhere near than the 2015 average annual income of approximately 3.62 million yen for care works at welfare facilities/workshops across the country. Because of this shortage of younger support staff due to the nuclear plant disaster and low wages, it is even more difficult to ensure and maintain support for persons with disabilities.

2. Suggested Questions

- (1) The government should investigate the cause of the fact that the fatality rate of persons with disabilities during the Great East Japan Earthquake is almost two times higher than that of all persons affected by the disaster and indicate measures to prevent recurrence.

Indicate the establishment status of councils to discuss disaster prevention and reduction by the national and local governments as well as the number of persons with disabilities and their families out of the total number of council members.

When formulating the “Guidelines for the evacuation support of residents who need assistance to evacuate during a disaster” and the “Guidelines for Ensuring a Good Living Environment in Shelters” (both in August 2013 by the Cabinet Office (Disaster Management)), were any international accomplishments such as the Sphere Standards referenced? If so, where were they reflected?

Indicate data based on comparisons between persons with and without disabilities in relation to earthquake-related deaths after the disaster as well as measures to prevent the earthquake-related deaths of persons with disabilities.

(2) With respect to the confirmation of the safety of persons with disabilities immediately following a disaster, have any measures been established that effectively use personal information held by the government? Does the government understand the unique difficulties suffered by women with disabilities in times of emergency, such as a disaster?

(3) Have any measures been established that provide necessary information to persons with disabilities in a form suited to the particular characteristics of each disability at each stage of disaster occurrence, recovery and reconstruction?

(4) Is information on shelters/welfare evacuation shelters disclosed to the public even in normal times?

Indicate measures by the government to make not only welfare evacuation shelters but also general shelters accessible to persons with disabilities. In addition, have any measures been established to provide reasonable accommodation to persons with disabilities at general shelters?

(5) Are there any measures taken by the government to ensure the elimination of physical barriers of temporary housing in a form suited to the particular characteristics of each disability? Also, are these measures functioning effectively?

(6) At the time of the Great East Japan Earthquake, among persons with disabilities who were forced to evacuate from an initial shelter because of the nuclear plant disaster, there were some who died while evacuating again. Are measures that take this fact into consideration being considered?

3. Suggested Recommendations

(1) Investigate the fatality rates of persons with and without disabilities in recent disasters, including the Great East Japan Earthquake. If a gap between the two exists, investigate the reason for this.

Persons with disabilities and organizations of them are positioned as stakeholders under the UN Sendai Framework for Disaster Risk Reduction 2015-2030. With this in mind, establish measures to ensure the substantive participation of persons with disabilities and their families as members of national and local government councils regarding disaster prevention and reduction.

(2) From the perspective of making human life the top priority, discuss with organizations of persons with disabilities in normal times the methods to effectively use personal information held by the government in order to confirm the safety of persons with disabilities immediately following a disaster. Investigate the actual conditions of unique difficulties suffered by women with disabilities in times of emergency, such as a disaster, and consider measures with the participation of women with disabilities.

(3) With respect to the provision of information at the time of a disaster that takes into consideration the particular characteristics of each disability, establish a system to provide accessibility so that information on the occurrence of disasters can be confirmed visually, through, for example, using different colored lamps for disasters, emergency situations, etc. When doing so, provide accommodations for persons with color vision deficiency by using colors they are able to differentiate or adding information other than colors.

(4) On the national level, establish and spread practical measures to make general shelters accessible to persons with disabilities. In addition, increase the number of welfare evacuation shelters and provide information about these shelters to the public in normal times.

Establish practical measures to provide reasonable accommodation to persons with disabilities at general shelters.

(5) Establish and spread practical measures on a national level to ensure the elimination of physical barriers of temporary housing in a form suited to the particular characteristics of each disability.

Establish systematic and phased measures so that the basic form of temporary housing is barrier-free.

(6) Promptly arrange a meeting that includes persons with disabilities who were affected in Fukushima by the Great East Japan Earthquake discuss how persons with disabilities living near nuclear power plants in Japan can safely evacuate if a nuclear plant disaster occurs.

Article 12 Equal recognition before the law

1. Issues

(1) Problems in the system and operational situation of the adult guardianship system

(i) Alternative decision-making mechanism

The adult guardianship system is intended to limit the capacity to act of persons who have insufficient or constant lack of capacity to discern right and wrong due to psychosocial disability. In particular, the comprehensive authority of representation and the right to rescind of an adult guardian as well as the right to consent and the right to rescind of a curator inhibit the exercise of their legal capacity. For example, if the guardian category in the adult guardianship system is applied to an adult ward, they will be placed in a state of legal incapacity where they are unable to employ an attorney to change their guardian, curator, or assistant. The adult guardianship system must be replaced with a system that respects the will and preferences of an persons with disabilities based on the General Comment 1 of the Committee on the Rights of Persons with Disabilities.

(ii) The overwhelming use of the “guardian category”

The guardian and curator categories that limit various rights of a ward including disqualifying clauses account for around 95% of system use (adult guardians 81.6%, curators 13.8%, assistants 4.6% as of the end of 2014 according to the Government Report). Another serious problem is that the use of the guardian and curator categories, for which the comprehensive authority of representation, such as the right to consent and the right to rescind, is granted, accounts for the majority of use. In particular, a “guardian” designated under the adult guardianship system has extremely powerful authority. Not only can the guardian protect the assets of an adult ward from arbitrarily being managed by their family and relatives, but they also have the ability to rescind legal acts other than “daily transactions” of an adult ward with diminished mental capacity. As such, the reality is that other people cannot intervene in the decisions, etc. of guardians. Under the current system, it is impossible for a single guardian (although there are cases of multiple guardians) to respect the will and preferences of a ward. For the time being, it is necessary to decrease the use of the guardian and curator categories to the greatest extent possible, and change the system to one that supports the decision-making of the ward by multiple related parties based on their will and preferences by primarily adopting the assistant category.

(iii) Frequent cases of misconduct and rights violations by guardians, etc.

The number of and damage amount from fraudulent reports by guardians are substantial, and numerous incidents, such as embezzlement, have been reported. (831 cases (22 of which by specialists) with total damages of 5.67 billion yen in 2014. Although there has been a decreasing trend since, there have been 521 cases (37 by specialists) with 2.97 billion yen in damages in 2015 and 502 cases (30 by specialists) with 2.6 billion yen in damages in 2016. (Source: Current Implementation Status of Measures Related to Promoting the Use of the Adult Guardianship System (2011-2016) by the Cabinet Office <http://www.cao.go.jp/seinenkouken/houkoku/pdf/genjyou2904.pdf>) The current situation is that appointed adult guardians do not comply with Article 858 of the Civil Code which places an obligation to respect the will of the ward and consider their physical condition. Meanwhile, many adult wards bear substantial expense burdens of over 20,000 yen a month to use the guardianship system.

One example of fraud is a case involving Naoki Watanabe, a former lawyer. He abused his position as an adult guardian to embezzle a total of approximately 112 million yen from the savings of three older women with dementia who entrusted him to manage their assets. He was charged with professional embezzlement and sentenced to a six-year prison sentence (demanded sentence was seven years) by the Tokyo District Court in October 2016. According to the judgment, the defendant embezzled a total of about 112 million yen between 2011 and 2015 from the bank accounts of three women in their 80s to 90s who entrusted their assets to him through the appointment of adult guardianship and a voluntary guardianship contract.

The following is an example of a rights violation where an older sister became the guardian of her

younger sister who was unable to leave an institution and took away her home.

“Miss K has an older sister. When her parents became unable to care for her, she was admitted to a care facility. After her parents died, her older sister had become her guardian without Miss K knowing. Miss K became acquainted with us and started to want to leave the facility and live by herself. However, her older sister who was her guardian, would never allow this. The facility staff did not listen to Miss K’s opinions and listened to the opinions of her guardian, her older sister instead. The facility staff would do everything that the older sister said. We thought of consulting a lawyer and removing her older sister as an adult guardian. In order to remove the adult guardian, Miss K would have to leave the facility and do things such as go to a family court and go to a doctor to receive a psychiatric evaluation. The evaluation costs around 100,000 yen. However, there are normally things that Miss K cannot do without the consent of her older sister. None of facility staff who mindlessly followed what the older sister said tried to help. Because an adult guardian has authority of representation, the older sister was more important to the facility than Miss K. Miss K was not considered a “human being.” It was hard. Nevertheless, all of us continued to support Miss K and she was finally able to remove her older sister as an adult guardian. Immediately after that, Miss K started to live by herself. It took about ten years since Miss K said she wanted to live by herself. The parents of Miss K left the house and land to Miss K and her older sister as an inheritance. When Miss K left the facility, she told her older sister that she did not want the house or land. As such, the house and land from her parents became the property of her older sister. Since then, her older sister has not talked about Miss K at all.”

(iv) The ineffective supervision system

It is very important to supervise guardians who have significant authority under the guardianship system in order to protect the rights and interest of wards. Although this is essentially the role of family courts, it is not functioning due to an increase in the burden of tasks that family courts are responsible for. Family courts may appoint a supervisor of guardianship to take on the role in their place. The system is one where the expenses for this are borne by the user of the adult guardianship system and this is considered one of the reasons why the function of checking on guardians under the guardianship supervision system is not working.

(2) System to support decision-making

The “Guidelines for the Support for Decision-Making Relating to the Provision of Welfare Services for Persons with Disabilities” (Ministry of Health, Labour and Welfare) ultimately stipulate the provision of support for decision-making based on the “best interests” of persons with disabilities, but do not guarantee their will or preferences. In addition, there are no practical measures (that include budgets and plans) to promote support for decision-making. For example, there are no past examples of support for decision-making that lead to persons with intellectual disabilities who are admitted to residential facilities for long periods of time as well as patients who are hospitalized for long periods of time in psychiatric hospitals to be discharged and live independently in their community.

In addition, the services offered under the Comprehensive Support Law for Persons with Disabilities are insufficient for persons with disabilities requiring communication support, such as deaf, hard of hearing or deafblind persons, to make decisions on various matters.

(3) Necessary support to ensure the equality and exercise of legal capacity

Under the Civil Code, although there are provisions that explicitly state equality in the capacity to enjoy rights, there are no provisions that explicitly state equality in the capacity to act. Furthermore, there are no provisions that explicitly guarantee access to necessary support when exercising legal capacity.

For example, a case in which the right of access to the courts of a person with intellectual disabilities was violated was a case where a person with intellectual disabilities was appointed in March 2004 as a guardian of a man who was bedridden as a result of a traffic accident in order to manage ward’s assets.

The person with intellectual disabilities was sentenced to prison for 1 year and 8 months in 2009 on the charge of the professional embezzlement of approximately 38 million yen from the ward's savings. The defendant, who was a person with intellectual disabilities, was not informed of the fact that he was being taken to trial or the details of the trial hearings as he was deemed to have no capacity to be sued, and the trial proceeded without him.

2. Suggested Questions

- (1) With regard to the current adult guardianship system, what is the perception of the government on, for example, the problems of overemphasis of the use of the guardian category and frequent acts of fraud by guardians? Also, is the government considering a shift from the substitute decision-making mechanism of the adult guardianship system to a system of supported decision-making?
- (2) Do the decision-making guidelines deny intervention based on best interests and ensure the will and preferences of persons with disabilities?
- (3) Are there provisions in the Civil Code that explicitly state that persons with disabilities have an equal capacity to act as others and access to necessary support when exercising legal capacity.

3. Suggested Recommendations

- (1) Fundamentally review the current substitute decision-making mechanism of the adult guardianship system to a system of supported decision-making.
- (2) Enhance the system for supported decision-making that can sufficiently reflect not the best interests but the will and preferences of persons with disabilities regarding the exercise of legal capacity and decision-making. In addition, eliminate all barriers that prevent the exercise of legal capacity by all persons with disabilities, including women with disabilities.
- (3) Establish provisions in the Civil Code that explicitly state that persons with disabilities have an equal capacity to act as others and access to necessary support when exercising legal capacity.

Article 13 Access to justice

1. Issues

(1) Matters relating to criminal procedure

- (i) Investigation methods suitable to the particular characteristics of each disability are not being taken at the investigation stage
- a. Persons with intellectual disabilities tend to pretend that they understand things even if they do not as a method of self-defense that has become a habit during their development up to that time. As such, they often tend to follow an investigator's lead. In addition, many persons with psychosocial disabilities (including developmental disabilities) and persons with intellectual disabilities have difficulty in understanding abstract concepts and communicating their thoughts. Therefore, if they are questioned without being accompanied by a person who understands them personally (or at least the particular characteristics of their disability), there is the risk of them considerably misunderstanding the facts. Despite this, because this type of investigation method is not being taken, cases such as false accusation cases of persons with intellectual disabilities (such as the Utsunomiya Case) have occurred.
 - b. Audio and visual recordings must be made for every step of the interrogation process of all cases for ex post fact verification whether there is leading if persons with, such as, intellectual disabilities are suspects. However, in the current situation, audio and visual recordings are made only at the interrogation process of the cases in which suspects are arrested and detained and are not applied to the cases in which suspects are not arrested nor detained. Hence, regarding to suspects without arrest, there is no way for ex post fact verification of what sort of communication occurred at the interrogation.
 - c. With respect to the provision of information, simply providing information in writing or through sign language/Braille is not sufficient. The means of communication should be one that the person with disabilities uses regularly and is familiar with. There have been reports of cases where deaf persons were interrogated using forms of sign language they do not normally use, and cases where interrogations were conducted in writing for deaf persons who were unable to read documents.
- (ii) Appropriate questioning when a person with a disability becomes a victim of crime is not being conducted

When a person with an intellectual disability becomes a victim of crime, it is sometimes difficult for that person to explain the physical characteristics of the perpetrator or to accurately pinpoint the place and time of the crime. For this reason, if questioning is not conducted by a person who fully understands the particular characteristics of each disability, there is the possibility that they will miss the opportunity to appropriately understand the damage situation and to properly punish the perpetrator.

Despite this, the current situation is one where police officers who conduct the interrogations do not have thorough knowledge of the particular characteristics of disabilities such as intellectual disabilities. As a result, even if a person with intellectual disabilities becomes a victim of a crime, there are many cases where the suspect is not caught.

- (iii) Appropriate procedural accommodations are not being made for persons with disabilities when they become the litigant in criminal litigation

At the stage of a public trial, courts should provide well-prepared procedural accommodation to defendants with disabilities in order to prevent unjust judgements due to such disabilities. Examples include the appropriate provision of information to persons with visual disabilities, deaf, hard of hearing and late-deafened persons, or persons with intellectual disabilities, as well as the allocation of attendants who fully understand the statement characteristics of defendants with intellectual or developmental disabilities.

Despite this, the current situation is one where there are no provisions that serve as grounds for procedural accommodation in relevant legislation, such as the Criminal Procedure Law. It cannot be said

that procedural accommodations are in fact sufficient. For example, there was a report of a case where a deaf defendant who was found guilty because he was unable to understand most of the trial proceedings because the skills of the sign language interpreter were insufficient.

(iv) Long-standing prejudice against persons with disabilities by the citizen judges selected from the general public

On July 30, 2012, the Osaka District Court sentenced a man with a developmental disability to 20 years in prison for stabbing and murdering his older sister. The sentence was longer than that demanded by the public prosecutor (16 years). The court imposed the maximum definite term sentence, ruling that “the defendant must be imprisoned for the maximum permitted period so that he can deepen introspection while incarcerated, and doing so will also contribute to the maintaining of social order.” The reasons for this decision were that “if the defendant returns to society without sufficient remorse...there is a concern that he will commit a similar crime again,” and that “there is nowhere in society currently or expected in the future that can handle persons with psychosocial disabilities such as the defendant’s Asperger’s syndrome.”

With this case, it can be considered that the lack of understanding and prejudices of the citizen judges made up one factor that led to this severe punishment. However, we cannot help but think that the court does not provide to citizen judges sufficient explanations of the particular characteristics of each disability and support systems in society for cases where the defendants are persons with disabilities, despite there being a need to do so. Regarding this point, not only does this apply to citizen judges but the same also applies to the Committees for the Inquest of Prosecution.

(v) Insufficient provision of information to citizen judges with disabilities

Because citizen judges are randomly selected from voter registration lists, it can be assumed that naturally, persons with disabilities will be selected as citizen judges. In fact, there have been reports of a number of cases to date where a person with a disability served as a citizen judge.

In order for a person with a disability selected as a citizen judge to fully perform their duties, it is necessary to appropriately provide information by using means with which they are familiar, such as Braille translations, transcripts, or arranging for sign language interpreters or note-takers. However, the current situation is one where these arrangements are insufficient.

(vi) Reasonable accommodation is insufficient for persons with disabilities serving time in prison

Understanding about persons with disabilities and the provision of reasonable accommodations are insufficient in penal institutions such as prisons. For example, there have been reports of deaf persons not being able to participate in prison programs because no sign language interpreter was provided, and a person with psychosocial disabilities being provided insufficient medical treatment in prison and consequently died as a result.

(2) Matters relating to civil procedure

(i) Absence of provisions in the Code of Civil Procedure and related legislation that set forth an obligation to provide procedural accommodations by courts with respect to disabilities

The current Code of Civil Procedure basically assumes that procedures will be conducted by persons without disabilities. Therefore, the current state is one where many persons with disabilities find it difficult to use civil litigation proceedings.

For example, under the current system, almost all proceedings are conducted in writing. These include documents relating to the allegations of a party (such as complaints), documents that indicate court decisions (such as judgments), evidence such as documentary evidence, and documents relating to the proceedings (such as witness application forms). This is a substantial obstacle for persons with visual disabilities who cannot freely read or write written information and persons with intellectual disabilities who find it hard to understand the details of complex litigation related documents to use civil litigation proceedings. In addition, communications on the date of oral arguments, the date of preparatory proceedings, as well as interrogations of the persons themselves and witnesses are based

on the natural assumption that they are able to engage in verbal conversation, creating a substantial barrier for deaf, hard of hearing or late-deafened persons, and for persons with intellectual disabilities who cannot easily understand difficult legal terms.

It is necessary for courts to provide sufficient procedural accommodations in order to eliminate these social barriers in litigation. However, the current situation is that there are no provisions in related laws such as the Code of Civil Procedure that obligates courts to provide procedural accommodation. Therefore, persons with disabilities have no legal grounds to request a court to provide procedural accommodation.

- (ii) Expenses incurred for accommodations in civil litigation proceedings are borne by the losing party
Under the current system, expenses for sign language interpreters and other accommodations are included in litigation expenses at the discretion of each individual court. If a person with a disability becomes the losing party, there are cases where they must bear such expenses based on the loser-pays principle. However, this causes a chilling effect where persons with disabilities refrain from initiating litigation proceedings due to the fear of having to bear litigation costs. This substantively harms the right of access to the courts of persons with disabilities (Article 32 of the Constitution of Japan).

(3) Matters common to both criminal and civil procedures

- (i) Insufficient understanding of judicial officials about disability and insufficient training regarding the provision of procedural accommodations

Even if a system to provide procedural accommodation to persons with disabilities is established under the current judicial framework, such a system will not function properly if personnel who are those implementing the system lack knowledge and understanding of the procedural accommodation. Therefore, it is necessary to develop a training system for them as well.

Despite this, training is insufficient. On September 25, 2007, a young man with autism and intellectual disabilities was detained by five police officers and died in Saga City. If persons without disabilities have misunderstanding and are confused, they can be calmed down by talking to them. However, persuading persons with autism by talking to them may be difficult due to their disability. Had any one of the five police officers noticed his autism, he might not have died. The bereaved family of the young man filed a lawsuit against Saga Prefecture to claim compensation for damages, but the Saga District Court dismissed the claim on February 28, 2014. The bereaved family appealed, and the Fukuoka High Court delivered its verdict on December 21, 2015. Although the court dismissed the appeal, it recognized that police officers have a general duty of care that takes into consideration the particular characteristics of disabilities. The court explained that, “at the very least, at the point in time when Kenta (author’s note: the name of the young man with autism) only gave off incomprehensible sounds as noted above when he was detained, the existence of intellectual disability should have been suspected. A search of his belongings should have been conducted and if Kenta’s intellectual disability becomes objectively apparent as a result, (omitted), there is an obligation to respond appropriately considering the particular characteristics of persons with intellectual disabilities.” The final appeal was also dismissed in this case.

This case shows that these police officers did not have sufficient understanding nor the opportunity to acquire knowledge of the particular characteristics of autism and intellectual disabilities. The government must take this case very seriously.

- (ii) Restrictions on persons with disabilities when attending trials

Although some local courts provide accommodations, there are cases where courts prohibit sign language interpreters from standing in a position easily viewed from deaf persons in the courtroom. When many people want to attend, the right to attend is decided by lot. There are cases where assistants for persons with disabilities are unable to enter because they too must draw a lot. Depending on how the court operates, there is a gap in the provision of information for observers between regions.

In addition, there have been reports of cases where persons using wheelchairs were unable to observe

a trial because, depending on the court, no space was secured for observation in a wheelchair.

Fundamentally, the opportunity to observe a trial should not be limited due to disabilities according to the principle of public trials (Article 82 of the Constitution) and the right to know (Article 21 of the Constitution). Therefore, the provision of information to observers with disabilities should be conducted by courts on their own responsibility and at their own expense. Courts should consider the provision of reasonable accommodations, such as allowing use of the court's screen to provide captioning for observers and arranging for sign language interpreters and note-takers. Despite this, currently, the provision of information to observers is basically secured at the expense of observers themselves. This is a serious problem.

(iii) Women with disabilities and legal proceedings

It is not rare for women with disabilities to become victims of violence, abuse or exploitation. However, allegations by women with disabilities are often considered unreliable by the people around them and judicial-related parties, or have difficulty in physically accessing judicial institutions. As a result, these women are unable to even report these crimes and are forced to reluctantly give in. Even if they are able to report their crime, because appropriate questioning that accommodates the particular characteristics of each disability is not conducted, women with disabilities are often placed at a disadvantage at subsequent criminal and civil procedures.

2. Suggested Questions

(1) Matters relating to criminal procedure

- (i) What kind of accommodations are being provided by courts and other judicial institutions to suspects, defendants, victims and other related parties with disabilities with regard to communication in criminal cases?
- (ii) Under what circumstances will audio and video recordings of interrogations be made when persons with intellectual disabilities become suspects?
- (iii) What kinds of communication-related accommodations are being provided to persons with disabilities incarcerated in prisons and other institutions?
- (iv) Please report what kind of explanations and information are being provided to citizen judges regarding the particular characteristics of each disability and support systems if a defendant in a citizen judge trial has a disability.
- (v) Please report what kind of communication accommodations have been provided to citizen judges with disabilities to date when they are selected to be such citizen judges.

(2) Matters relating to civil procedure

- (i) What kinds of communication-related accommodations are being provided by courts in civil litigations to litigants, witnesses, and other related parties if they have disabilities?
- (ii) Why are persons with disabilities sometimes required to bear the expenses for sign language interpreters and other types of accommodations as litigation expenses in civil litigations?

(3) Matters common to both criminal and civil procedures

- (i) Please report what kinds of training programs are being provided for court judges, court officials, public prosecutors, attorneys, police officers and other judicial-related persons regarding understanding on disabilities, the provision of procedural accommodations, etc. In addition, is receiving the training mandatory? Are measures being implemented for the purpose of understanding multiple discrimination against women with disabilities and eliminate discriminations in judicial procedure?
- (ii) What kinds of arrangements are being made for the structure and facilities of courts in order to make it easier for persons with disabilities to observe trials? In addition, what kinds of accommodations are being provided when persons with disabilities observe trials in terms of the treatment, such as arranging for sign language interpreters, and the bearing of expenses?

3. Suggested Recommendations

(1) Matters relating to criminal procedure

- (i) Amend the Criminal Procedure Law and other related laws and establish provisions that obligate judicial institutions to provide sufficient procedural accommodations to suspects, defendants, victims and other related parties with disabilities at every step of the process from interrogation to trial.
- (ii) Amend the Criminal Procedure Law and establish provisions that obligate audio and video records of every step of the interrogation process for suspects with suspected intellectual disabilities, even without a request from the suspect or other related persons.
- (iii) Amend the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees to establish provisions that obligate the allocation of persons who understand the particular characteristics of each disability and the provision of other accommodations to inmates with disabilities in prisons and other institutions.
- (iv) Amend the Act on Criminal Trials with the Participation of Citizen Judges and establish provisions that obligate courts to provide sufficient information relating to the particular characteristics of each disability to citizen judges when the defendant is a person with a disability, as well as provisions that obligate courts to provide sufficient procedural accommodations when persons with disabilities are selected as citizen judges.

(2) Matters relating to civil procedure

- (i) Amend the Code of Civil Procedure and establish provisions that obligate courts to provide procedural accommodations in civil litigations if litigants, witnesses or other related parties have disabilities.
- (ii) Amend the Act on Costs of Civil Procedure and establish provisions that obligate the National Treasury to bear the costs of procedural accommodations for persons with disabilities.

(3) Matters common to both criminal and civil procedures

- (i) Provide a mandatory regular training on the understanding of disabilities, to court judges, court officials, public prosecutors, attorneys, police officials and other judicial related persons.
- (ii) Laws should be established that obligate the provision of sufficient reasonable accommodation, including the bearing of costs by the National Treasury, in relation communication during observation of trials, as well as improving court facilities in order to sufficiently ensure opportunities for persons with disabilities to observe trials.

Article 14 Liberty and security of person

1. Issues

(1) The involuntary hospitalization system on the basis of psychosocial disabilities

- (i) Largely speaking, there are three types of hospitalization systems at psychiatric hospitals.
 - a. Involuntary hospitalization through administrative disposition (Article 29 “Compulsory Hospitalization”; Article 29-2 “Emergency Compulsory Hospitalization”)
 - b. Involuntary hospitalization through consent by family, etc. against the will of the person with a psychosocial disability (Article 33 “Hospitalization for Medical Care and Protection”; Article 33-7 “Emergency Hospitalization”)
 - c. Hospitalization according to the will of the person with a psychosocial disability (Article 20 “Voluntary Hospitalization”)

Of these, for voluntary hospitalization, although admission is voluntary, discharge is not. Consent of the person with a psychosocial disability for voluntary hospitalization is deemed to “include a state in which they are not actively rejecting (voluntary hospitalization).” Therefore, there are scattered cases where voluntary hospitalization is actually used as forced hospitalization.

- (ii) In the case of involuntary hospitalization, compulsory transport without consent from the home to the hospital is permitted under the transport system (Article 34).
- (iii) "Mentally Incompetent Persons Medical Care and Treatment Act" (Medical Treatment and Supervision Act) provides for the forced hospitalization of persons who have committed seriously criminal acts while they were mentally incompetent.
- (iv) The number of involuntary hospitalizations in Japan is instead increasing following the ratification of the CRPD. According to the Ministry of Health, Labour and Welfare, the number of compulsory hospitalizations has shifted from being level to an increasing trend, with 6,941 cases in FY2013, 6,861 cases in FY2014 (a decrease of 80 cases year-on-year), and 7,106 cases in FY2015 (an increase of 245 cases year-on-year). The number of reported hospitalizations for medical care and protection has been seeing an increasing trend from both before and after amendment of the law in 2013, with 170,079 cases in FY2014, 177,640 cases in FY2015, and 180,875 cases in FY2016. The number of forced hospitalizations in Japan is prominent, even when compared globally. The current situation is one where even persons without a therapeutic response or persons who do not even have a disease are hospitalized based on sloppy decisions.
- (v) Because the government has not implemented policies to reduce the burden on families, this is leading families to increase their dependence on hospitalization for medical care and protection. On the other hand, it has been pointed out that hospitalization for medical care and protection is a system that places responsibility on just the families when it comes to hospitalization.

(2) Interpretation of Article 14 by the Japanese Government

In Paragraph 105 of the State Party Report, the government states that the involuntary hospitalization system does not violate the objective of the Convention because it cannot be applied based only on the fact that a person has a psychosocial disability. The government has also repeated a similar answer in the Diet that “compulsory hospitalization, hospitalization for medical care and protection, as well as inpatient and outpatient treatments do not violate the provisions of Article 14 of the Convention on the Rights of Persons with Disabilities” (196th Diet Session (Ordinary Diet Session) Written Answer No. 63, April 17, 2018). However, the Guidelines on Article 14 submitted by the Committee on the Rights of Persons with Disabilities explicitly state that as soon as a disability is deemed to be a requirement, this goes against the objective of the Convention. The Guidelines on Article 14 submitted by the Committee on the Rights of Persons with Disabilities also state that the hospitalization treatment of persons who have committed seriously criminal acts while they were mentally incompetent violates the objective of the Convention.

(3) Treatment such as physical restraints, segregation, closed treatment, etc.

- (i) The standards for psychiatric medical care and treatment apply only to persons with psychosocial disabilities who are isolated from the general medical care system. Physical restraint, segregation, closed treatment and restriction on open treatment are justified on the basis of psychosocial disabilities under the treatment standards set forth by the Minister of Health, Labour and Welfare (paragraph 1 of Article 37 of the Mental Health Law).
- (ii) There has been an increase in the use of physical restraint as well as cases of cruel, inhuman or degrading treatment and fatal cases. The number of patients who were subject to physical restraint in psychiatric hospitals and in the psychiatric wards of general hospitals in Japan increased approximately two-fold in 10 years from 5,109 in 2003 to 10,682 in 2014. Despite this, no fundamental measures have been undertaken to introduce a safeguards and reduce the number of times restraints are used. There are also scattered cases of death caused by physical restraint and segregation (*1), such as the case of Kelly Savage, a 27-year-old man from New Zealand who died in April 2017 at a hospital in Yamato City, Kanagawa. However, the actual situation is unclear. It was pointed out that one of the reasons was that use of a five-point restraint (restraint of the wrists, ankles and waist) is used without thought at Japanese psychiatric hospitals. (*2)
- (iii) Treatment in closed hospital wards account for 80% of all treatment (Source: 2015 “Mental Health and Welfare Document” Ministry of Health, Labour and Welfare)
- (iv) Even for voluntary hospitalization, restrictions on open treatment account for 70% of all treatment. (Source: 2015 “Mental Health and Welfare Document” Ministry of Health, Labour and Welfare)

(4) Communications by psychiatric hospital inpatients

One of the issues relating to inpatients concerns communication with the outside. For example, the installation of public telephones even in the closed wards of psychiatric hospital are currently provided for and it is stipulated that if restrictions are placed on communications, that the reason for them be recorded and disclosed (treatment standards set forth by the Minister of Health, Labour and Welfare based on paragraph 1 of Article 37 of the Mental Health Law). However, the current situation is one where there are hospitals that have not installed telephones, or even if they are installed, being placed without surrounding walls next to the nurses’ station where conversations can easily be overheard. In addition, patients themselves are required to pay for calls and there are even cases where there are restrictions as the number of coins they can use. There are also cases where the telephones only accept telephone cards, but telephone cards cannot be obtained and cases where public telephones are installed on shelves that are out of reach. As such, the current situation is one where it cannot be said that communication freedom is being guaranteed.

(5) Absence of advocacy procedures; monitoring systems

- (i) There are many cases of human rights violations resulting in abuse deaths of patients in psychiatric hospitals.

Year of occurrence	Hospital name	Main details
1984	Utsunomiya Hospital	Patients were beaten to death by hospital staff. The hospital director and staff abused patients, had patients engage in forced labor, diagnoses by unqualified staff, illegal autopsies. Hundreds of patients were missing.
1985	Umayabashi Hospital	A nurse beat a patient, fracturing his skull
	Otaki Hospital	Sudden deaths of hospitalized patients, illegal autopsies, etc.

1992	Kawano Kasuya Hospital	Two patients died due to electric shocks
1993	Yamatogawa Hospital	A male patient was assaulted in the hospital and died under suspicious circumstances
	Minatogawa Hospital	A male patient was assaulted by someone and seriously injured
1995	Minagawa Memorial Hospital	A male patient was forced liquid food while restrained to his bed and died of suffocation
1997	Yamamoto Hospital	A female patient was killed by two staff members
2002	Wakaura Hospital	A male patient was beaten to death by a nurse's aide
2003	Sanseikai Hospital	A patient with chronic heart disease was given electric shock therapy. The patient died.
2008	Kaizuka Chuo Hospital	A patient under restraint died.
2012	Ishigooka Hospital	A patient was assaulted and injured in a segregation unit and died two years later.
2017	Yamato Hospital	A patient under restraint died.

- (ii) No procedures are available to guarantee the rights of patients when they are hospitalized. For example, there are no systems to allow checks by third parties such as advocates independent of medical care.
- (iii) Although there are examinations by designated psychiatrists, regular reporting to the psychiatric review board, requesting discharge, and requesting improvement in treatment, deficiencies, scandals and dysfunction have long been pointed out. The number of discharge requests received in 2014 was 3,432, the number of discharge requests carried forward from the previous year was 247, and the number of discharge requests for which reviews were started was 2,501. Of these, 92.3% called for maintaining current treatment and only 0.8% led to a recommendation for discharge.
- (iv) There have been cases of revocation due to the improper obtaining of qualifications by designated psychiatrists who determine the implementation of forced medical care (a total of 124 psychiatrists in 2015 and 2016). There have been almost no cases where a review by the psychiatric review board has led to discharge (of 2,501 cases for which reviews were started in 2014, 21 led to recommendations for discharge: 0.8%)

(*1) In May 2018, the "Alliance against physical restraint in psychiatric care" announced that they received several consultations regarding incidents of death during physical restraint. In 2016, a man (aged 40 at the time) who was a carpenter living in Ishikawa Prefecture and hospitalized in a psychiatric hospital in Nonouchi City, Ishikawa Prefecture died due to pulmonary thromboembolism (economy class syndrome). (sued by the bereaved family in August 2018) <https://dot.asahi.com/wa/2017091500054.html>

(*2) (Details) 16th Meeting of the Council for Institutional Reform for Persons with Disabilities (July 12, 2010) Material 2, Material provided by Attorney Ikehara
http://www8.cao.go.jp/shougai/suishin/kaikaku/s_kaigi/k_16/pdf/s2.pdf

2. Suggested Questions

(1) The involuntary hospitalization system on the basis of psychosocial disabilities

- (i) The government should clarify whether it is investigating the causes of increased involuntary

hospitalizations.

- (ii) The government should clarify that it is engaged in effective measures to reduce the number of involuntary hospitalizations.

(2) Interpretation of Article 14 by the Japanese Government

- (i) The government should clarify whether it is considering any reforms, based on equality with others, to abolish the involuntary hospitalization system on the basis of psychosocial disabilities.
- (ii) The government should clarify what kinds of measures have been established in accordance with the Guidelines on Article 14.

(3) Treatment such as physical restraints, segregation, closed treatment, etc.

- (i) The government should explain whether it is considering the abolishing of the standards that set forth physical restraint, segregation, closed treatment and restrictions on open treatment on the basis of psychosocial disabilities, as well as clarify whether it is considering reforms to establish a new system based on equality with others.
- (ii) The government must clarify that it is engaged in effective measures to reduce segregation and restraint.
- (iii) The government should clarify the causes of the increased use of restraints at psychiatric hospitals even while measures have successfully reduced the use of restraints (using leather belts) under criminal policy and restraints at healthcare facilities for older persons.

(4) Communications by psychiatric hospital inpatients

- (i) What methods are used to understand whether the freedom of communication for inpatients at psychiatric hospitals is being ensured?
- (ii) What kinds of training, instruction, and awareness-raising are conducted for hospitals and hospital staff in order to substantively ensure the freedom of communication of inpatients at psychiatric hospital?

(5) Absence of advocacy procedures; monitoring systems

- (i) The government should clarify whether it preparing a mechanism to visit, investigate and monitor the violation of human rights at psychiatric hospitals by establishing a third-party institution independent of health care in which persons with disabilities and their families participate as a measure to respond to such violations at said hospitals.

3. Suggested Recommendations

(1) Increased involuntary hospitalizations at psychiatric departments

We recommend the government establish measures to reduce the number of involuntary hospitalizations.

(2) Interpretation of Article 14 by the Japanese Government

We recommend the government start considerations regarding the amendment of laws with the participation of persons with disabilities, their families and other related persons to achieve the abolishment of the involuntary hospitalization system on the basis of disabilities.

(3) Treatment such as physical restraints, segregation, closed treatment, etc.

The Committee expresses serious concerns about the increasing number of segregations and restraints of persons with disabilities and the fact that no measures have been established to reduce such isolations and restraints. It recommends amendment of laws with the participation of persons with disabilities, their families and other related persons to achieve the abolishment of paragraph 1 of Article 37 of the Mental Health Law, which justifies segregation and restraint on the basis of disabilities.

(4) Communications by psychiatric hospital inpatients

Understand actual conditions as well as provide sufficient training, instruction, and awareness-raising for related persons to ensure the freedom of communication by persons hospitalized in psychiatric hospitals.

(5) Absence of advocacy procedures; monitoring systems

The Committee recommends establishing a mechanism to investigate and monitor the violation of human rights at psychiatric hospitals by establishing a third-party institution independent of health care in which persons with disabilities and their families participate.

Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. Issues

(1) Forced medical treatment (drug administration and m-ECT) under the "Mentally Incompetent Persons Medical Care and Treatment Act" (Medical Treatment and Supervision Act)

- (i) "Mentally Incompetent Persons Medical Care and Treatment Act" (Medical Treatment and Supervision Act) is a system that allows for forced medical intervention based on judicial decisions to prevent second offences by persons with psychosocial disabilities who have been found not guilty by reason of mental incompetence or other reasons.
- (ii) Yamanashi Prefectural Kita Hospital introduced a forced treatment review system in its ward under the Medical Treatment and Supervision Act, and conducts forced drug administrations and modified electroconvulsive therapy (m-ECT). Inpatients who indicate their will to refuse treatment even after 72 hours after their admission are subject to forced treatments. In such cases, the attending doctor is deemed to have applied for forced treatment (drug administration and m-ECT) and passed a review.
- (iii) In addition, the facilities under the Medical Treatment and Supervision Act in Tokyo conduct forced cognitive behavioral therapy known as "self-reflection programs" as medical intervention to prevent second offences. This program requires, for example, an inpatient to place the mortuary tablet of the victim of their acts next to their bed and apologize every day.

(2) Inhuman or degrading treatment

- (i) The government did not respond to the statements regarding mental health care (Paragraph 22) of the concluding observations by the Committee Against Torture regarding Japan's second periodic report (55th session (from May 6 to 31, 2013) of the Committee).

2. Suggested Questions

(1) Forced treatment (drug administration and m-ECT) under the "Mentally Incompetent Persons Medical Care and Treatment Act" (Medical Treatment and Supervision Act)

- (i) Has the government prepared considerations for the abolishment of the "Mentally Incompetent Persons Medical Care and Treatment Act" (Medical Treatment and Supervision Act)?
- (ii) Has the government prepared specific and effective measures to prohibit forced treatment (drug administration and m-ECT) and provide remedies for people who received forced treatment?

(2) Inhuman or degrading treatment

What kinds of specific and effective measures have been taken in responding to the statements regarding mental health care (Paragraph 22) of the concluding observations by the Committee Against Torture regarding Japan's second periodic report, taking into account its ratification of the CRPD?

3. Suggested Recommendations

(1) Forced treatment (drug administration and m-ECT)

- (i) The government should start considerations for the abolishment of the "Mentally Incompetent Persons Medical Care and Treatment Act" (Medical Treatment and Supervision Act).
- (ii) Establish specific and effective measures to prohibit forced treatment (drug administration and m-ECT) and provide remedies for people who received forced treatment.

(2) Inhuman or degrading treatment

Establish specific and effective measures based on the CRPD regarding the matters stated regarding mental health care (Paragraph 22) of the concluding observations by the Committee Against Torture regarding Japan's second periodic report.

Article 16 Freedom from exploitation, violence and abuse

1. Issues

(1) Reporting obligations under the Persons with Disabilities Abuse Prevention Act do not cover educational/medical organizations

- (i) The State Party Report (Paragraph 110) reports on the Persons with Disabilities Abuse Prevention Act. We commend the fact that a consultation system was established through the enactment of this law and it has become possible to ascertain the implementation of training and how many times they have been conducted.
- (ii) However, the applicable scope of the reporting obligations under the Persons with Disabilities Abuse Prevention Act is limited to only families, welfare facilities and workplaces. The reporting obligations do not cover schools, nurseries, hospitals, public agencies and other similar institutions. Regarding this fact, the Human Rights Committee questioned the Japanese government in Paragraph 15 of the List of Issues (November 14, 2017; CCPR/C/JPN/QPR/7) with respect to the status of the establishing of laws to cover psychiatric hospital under the reporting obligations.
- (iii) The Ishigooka Hospital incident was one where a hospitalized person with a psychosocial disability was kicked and assaulted in other ways by several hospital employees and died in January 2012. If other hospital employees had been obligated to report this as an incident of abuse, the worst-case scenario could have been avoided.
- (iv) In September 2018, it was revealed that a male teacher abused students with disabilities for about two years from April 2017 at the Nagoya Municipal Tenpaku School for Special Needs Education. The teacher kicked and otherwise acted violently, hit floors with a bat, and shouted abusive language. Even these abuse cases are not included in the reporting obligation scheme under the Persons with Disabilities Abuse Prevention Act and the Child Abuse Prevention Act.
- (v) In addition, in the case of psychiatric hospitals, a request for treatment improvement (Article 38-4 of the Mental Health Law) can only be made by the person themselves and their guardians. Therefore, it is not a mechanism by which hospital employees or other patients who have witnessed abuse can make a request, and the vulnerability of the system from the viewpoint of abuse prevention has been pointed out.

(2) Effectiveness of informer protection

- (i) Meanwhile, legal obligations are unclear because facility staff who make reports are protected from dismissal and other disadvantageous treatment under the supplementary provisions of the reporting obligations.
- (ii) There are cases where facilities are filing SLAPP lawsuits for defamation. Example: an employee reported suspected abuse at a support facility for persons with disabilities in Kagoshima to the municipal government and the facility filed a suit to claim damages. The former employee subsequently filed a countersuit against the facility for damages for mental suffering and eventually reached a settlement. This case shows that it is difficult to remedy damages unless you file a suit by yourself because informer protection is not functioning sufficiently.
- (iii) In addition, informer protection does not apply to reports made by places not covered by the reporting obligations under the Persons with Disabilities Abuse Prevention Act.

(3) Low level of effectiveness of abuse prevention and remedies for victims

- (i) In 2018, it was revealed that a child with psychosocial disability was confined to a small cage in a shed by his parents for more than 20 years in Sanda City.
- (ii) The State Party Report (Paragraph 110) reports on the functions of the municipal centers for the prevention of abuse of persons with disabilities and prefectural advocacy centers for persons with disabilities. We commend the establishment of consultation support organizations under the Persons

with Disabilities Abuse Prevention Act, which is not stipulated in the Child Abuse Prevention Act and the Act on the Prevention of Elder Abuse, Support for Caregivers of Elderly Persons and Other Related Matters. However, simply receiving consultations and making them public depending on the case does not lead to a fundamental resolution. In addition, the municipal centers for the prevention of abuse of persons with disabilities and the prefectural advocacy centers for persons with disabilities are basically passive. They are not mechanisms to actively detect and resolve abuse.

- (iii) In addition, no functions have been established where a third-party institution (e.g., an ombudsperson) independent of administrative organs intervene and check on the appropriateness of confirming whether each case is abuse or not, or on the response to consultation cases.
- (iv) Because many cases of abuse are not revealed, the Persons with Disabilities Abuse Prevention Act imposes reporting obligation on persons who discover cases where a person simply “appears to have been subjected to abuse.” However, it can be surmised that there are still cases of abuse that are not revealed because no reports are made. For example, compared to the number of reported cases of abuse in facilities, the percentage of confirmed abuse cases is 14%, which is significantly lower than the approximately 40% for abuse in the home and workplace. One reason for this is that it is not easy for people to consult with responsible section of local governments that approve facilities because the independence of these sections is not guaranteed.
- (v) According to the “Status of Abuse of Persons with Disabilities by Employers” published by the Ministry of Health, Labour and Welfare every year based on the Persons with Disabilities Abuse Prevention Act, of the total 2,219 cases reported/notified in FY2015 based on the Act, measures were taken for 978 cases where abuse of persons with disabilities by employers was confirmed. Of these 978 cases, 596 cases (approximately 60%) were cases related to the Minimum Wages Act (cases where minimum wages were not being paid). The majority of the victims of abuse are said to be persons with intellectual disabilities. The average wage of persons with intellectual disabilities who are employed in private sector offices (approximately 108,000 yen per month in 2013) is substantially lower than the minimum wage (the national weighted average wage was about 140,000 yen per month in 2015). This can be used to infer that this is just the tip of the iceberg and that reality is that actual situation is much worse.
- (vi) Women with disabilities are suffering from violence such as sex crimes (according to a survey by DPI Women’s Network Japan, 35% of all respondents answered that they were victim of a sex crime). The number of consultations by women with disabilities at domestic violence consultation organizations accounted for 99% of all consultations by persons with disabilities and is increasing at a faster pace than that for women without disabilities. However, because the majority of domestic violence consultation offices only provide a telephone number, access by persons with auditory and language disabilities is almost impossible. In addition, there are many cases where victims are sent to disabled and welfare administrations or daycare facilities instead of domestic violence consultations or domestic violence shelters because of their disabilities. This means that awareness of the issue of violence against women is insufficient. Furthermore, shortages of facilities such as shelters and protection facilities as well as of physical support make use by persons with disabilities difficult. In this regard, we point out that the statement, “Women’s Consulting Offices and Women’s Protection Facilities provide consulting services and necessary protection services to women, including women with disabilities” in Paragraph 40 of the State Party Report is considerably different from actual conditions. The Persons with Disabilities Abuse Prevention Act does not mention gender and excludes abuse at medical institutions, schools and nurseries from being subject to reporting. The strict hierarchical relationships and closed nature of these places makes abuse there that much more serious.

(4) Insufficient measures to prevent the occurrence of abuse

(i) Facilities and employers

Because of incidents of violence and abuse against persons with disabilities, there have been significant measures taken around the country to eliminate these. Groups, mainly organizations of

persons with disabilities, are emphasizing awareness campaigns in order to understand disabilities. In addition, training sessions on support methods were also held around the country. Although the government has been focusing on this, similar cases keep occurring. The background behind the occurrence of these problems is said to include the problem of absolute insufficiency in the amount awareness and training regarding disabilities and support methods.

(ii) Families

a. Because of provisions in the Civil Code on the duty to support, issues regarding various living matters are more likely to be kept within the family and sometimes connections with society grow weak. This is a potential background at which abuse occurs more easily in the home.

b. Another reason for abuse cases where abuse at home was suspected is fatigue from providing care. In addition to raising awareness, it is necessary to enhance welfare services, including emergency temporary protection.

(5) Delayed amendment of the Persons with Disabilities Abuse Prevention Act and consideration of its amendment without persons with disabilities

(i) In order to respond to these various issues, it is necessary to amend the Persons with Disabilities Abuse Prevention Act. Although the provisions of the Persons with Disabilities Abuse Prevention Act call for necessary amendments roughly three years after enactment, there are no plans for amendments to the law as of 2018, six years after its enactment.

(ii) In October 2017, organizations of persons with disabilities conducted out interviews based on the clauses of Article 2 of the Supplementary Provisions of the Persons with Disabilities Abuse Prevention Act. However, organizations of persons with psychosocial disabilities were not invited and considerations are being made without related parties present.

* Reference: “FY2014 Summary and Shared Research Report for the Research on the Prevention of Abuse Against Persons with Disabilities and Ways of Guardians and Victims of Abuse with Disabilities,” Comprehensive Research for Persons with Disabilities, the Ministry of Health, Labour and Welfare Grants-in-aid for Scientific Research program.

P12 Summary of Abuse Case Investigations

P63 Table 5 Examples of abuse of persons with disabilities after the Enactment of the Act (abuse by facility staff, etc.) <http://www.nozomi.go.jp/investigation/pdf/report/03/H26-1.pdf>

2. Suggested Questions

(1) The problem of reporting obligations under the Persons with Disabilities Abuse Prevention Act not covering educational/medical organizations

Why are schools, nurseries, hospitals and public agencies not included as organizations for which reporting obligations for abuse of persons with disabilities are imposed?

(2) Effectiveness of informer protection

Has the government prepared policies to enhance the effectiveness of informer protection in order to respond to protection of informers outside the Abuse Prevention Case and cases where defamation lawsuits have been brought against informers?

(3) Low level of effectiveness of abuse prevention and remedies for victims

(i) Has the government prepared policies to enhance the effectiveness of abuse prevention, such as through outreach and intervention of an institution independent of administrative organs?

(ii) Does the government understand the actual condition where there is a high percentage of women with disabilities who are victims of violence and abuse? If so, clarify this fact.

(4) Insufficient measures to prevent the occurrence of abuse

What kind of collaborative/cooperative systems with organizations of persons with disabilities have the government prepared as part of its policies to prevent abuse?

(5) Issues regarding amendment of the Persons with Disabilities Abuse Prevention Act

What kinds of preparations are being made by the government to amend the Persons with Disabilities Abuse Prevention Act based on the revision provisions?

3. Suggested Recommendations

(1) The problem of reporting obligations under the Persons with Disabilities Abuse Prevention Act not covering educational/medical organizations

The Committee recommends that all institutions, such as schools, nurseries, hospitals and public agencies, be included in the scheme for reporting obligation under the Persons with Disabilities Abuse Prevention Act.

(2) Effectiveness of informer protection

The Committee recommends enhancing informer protection under the Persons with Disabilities Abuse Prevention Act in order to establish effective measures to protect all informers.

(3) Effectiveness of abuse prevention and remedies for victims

(i) The Committee recommends that the government create functions as well as a comprehensive and effective mechanism across ministries and agencies for outreach as well as intervention and checks by third-party institutions independent of administrative organs in order to prevent abuse of children and persons with disabilities.

(ii) Enable women with disabilities who are victims of violence, including domestic violence, to make reports and use shelters as well as move forward in eliminating all kinds of access barriers.

(iii) Introduce text to eliminate multiple discrimination/intersectional discrimination against women with disabilities in relevant laws such as the Basic Act for Persons with Disabilities, the Persons with Disabilities Abuse Prevention Act, the Act to Eliminate Discrimination against Persons with Disabilities, and the Basic Act for Gender Equal Society.

(4) Awareness-raising and training to prevent the occurrence of abuse

The Committee recommends that the government create an effective mechanism to enhance various measures relating to awareness-raising and training for the prevention of abuse with the participation of organizations of persons with disabilities.

(5) Issues regarding amendment of the Persons with Disabilities Abuse Prevention Act

The Committee recommends that the government accelerate procedures for amendment of the law by reflecting the opinions of organizations of persons with disabilities who are persons concerned with medical and educational institutions that are not included in current informer protection provisions.

Article 17 Protecting the integrity of the person

1. Issues

(1) Forced sterilization

(i) Problems with the State Party Report

As a report from Japan regarding Article 17, the State Party Report simply indicates in paragraph 119 the provisions of Articles 1 and 3 of the Basic Act for Persons with Disabilities. As mentioned below, Japan has ignored the claims of victims who suffered serious violations of human rights under the former Eugenic Protection Law and did not respond to the recommendations of the UN Commission on Human Rights. The victims have grown old or died over the many years since 1996 when the Eugenic Protection Law was amended to the Maternal Protection Law and many related documents that identify these victims were disposed of. Considering these facts, it is obvious that the government has been violating the human dignity of persons without disabilities through neglecting to act. In this regard, the content of the State Party Report is in extremely bad faith.

(ii) Forced sterilization under the Eugenic Protection Law

It is reported that the number of sterilizations under the former Eugenic Protection Law was about 25,000. The number of forced sterilizations without consent of the persons themselves alone is about 16,500 for roughly 50 years from 1949 until 1996 (according to material from the Ministry of Health, Labour and Welfare). About 70% of these victims were women. According to a survey in a local community, the majority of victims were minors (Appendix 2). Furthermore, the documents indicate that even for surgery performed based on consent from the persons themselves, this confirmation for "consent" was based on such things as coercion from those around them and confirmation from deaf persons with no sign language interpreter present and was substantively forced. In addition, there are numerous testimonies that hysterectomies and irradiation, which were not provided for in the law, were also performed.

For 23 years, the government has issued no apology or compensation and has not conducted verification of the past with respect to forced sterilizations (tubal ligation, tubectomy, vasoligation, and vasectomy), induced abortions, as well as unlawful hysterectomies, oophorectomies, and orchidectomies of persons with disabilities under the former Eugenic Protection Law. Even after the former Eugenic Protection Law was amended to the Maternal Protection Law, the government did not investigate that actual conditions regarding cases where actual forced sterilizations and abortions were recommended for persons with disabilities, and did not conduct necessary awareness raising and training in order to prevent something similar from occurring again.

In 1998, the UN Human Rights Committee regrettably pointed out that "the rights of people who were subject to forced sterilizations to receive compensation are not stipulated" and recommended taking "necessary legal measures." The Japanese government received another recommendation from the Human Rights Committee in 2014 and was recommended by the Committee on the Elimination of Discrimination against Women in 2016 to conduct investigations and research on forced sterilizations, take legal measures, provide compensation for victims and recover their rights.

The victims of forced sterilization have been alleging their claims for many years. For example, Ms. Chizuru Sasaki, who had cerebral palsy and passed away in 2013 after stating for many years that her uterus had been irradiated with cobalt 60 when she was 20 years old as a condition for being allowed into an institution. Ms. Junko Iizuka, who was regarded to have intellectual disabilities, underwent sterilization when she was 16 years old upon the consent of her parents but without being told anything herself. Those victims continued to state their cases and demand that information be disclosed.

In 2018, a woman with intellectual disabilities filed what was the first lawsuit against the government claiming she was forcibly sterilized at the age of 15. The government finally conducted investigations through confirming related documents from each prefecture. A total of 6,696 actual sterilization cases were confirmed. However, there are only 3,033 cases for which the names of victims could be identified.

Following media reports of this first lawsuit, other people who claim to have been forcibly sterilized consulted administrative organs and bar associations, and lawsuits have been filed around the country. In addition, surveys conducted by disability organizations have confirmed even more victims, such as 131 deaf persons (32 men and 99 women as of November 30, 2018).

Eugenic surgery violates the right to respect for physical and mental integrity (Article 17), the right to have a family (Article 23(a)) and the right to retain their fertility (Article 23(c)) of persons with disabilities or who are deemed to have disabilities. Furthermore, the majority of victims were women (Article 6) and children (Article 7). The government must recognize the serious violation of human rights of persons with disabilities brought about by the Eugenic Protection Law, provide sincere apologies and compensation, and conduct investigations and verifications so that something like this never occurs again.

Addendum: On April 24, 2019, the “Act on the Provision of Lump-sum Compensation to Persons Who Received Eugenic Surgery, etc. under the Former Eugenic Protection Law” was enacted. However, the amount of the lump-sum compensation was 3.2 million yen, an extremely small amount when compared with compensation for similar incidents. This lump-sum compensation will be paid at the request of victims. However, there are those who are unable to apply for this compensation by themselves due to the particular characteristics of disabilities and those who do not recognize they are victims because they were deceived and unknowingly received the surgery. The provision of accommodation to these persons who need support or interpreters to communicate is insufficient. Therefore, there are many issues that still remain. There are currently 20 plaintiffs claiming damage and demanding apologies and compensation at 7 district courts (as of March 5, 2019). They announced that they would continue their lawsuits even after the enactment of the law. Other new lawsuits are also expected.

(iii) Points to consider regarding the enactment of a law obligating apologies and compensation to victims

In enacting a law that provides for apologies and compensation for the victims of forced sterilization under the Eugenic Protection Law, it is important to consider facts such as most of the related documents to identify victims are already lost, that in some cases, victims who are deemed to have “consented” to the surgery on paper were actually forced, as well as the privacy of the victims and possible secondary damage. Therefore, it must be kept in mind that it is necessary to establish an application method that reflects the opinions of the victims themselves, victim support organizations and organizations of persons with disabilities.

(iv) Points to consider regarding recurrence prevention

To understand the actual state of the damage from forced sterilization under the Eugenic Protection Law and in order to prevent similar damage from occurring again, it is necessary for investigations and verifications to be conducted by independent third-party committee that includes representatives of organizations of persons with disabilities, while keeping the following points in particular in mind.

- a. Enactment process: Notwithstanding the provisions of the Constitution of Japan (Article 11 and others), why did the government enact the former Eugenic Protection Law, a law that significantly violates human rights?
- b. Confirmation of promoters: How did the national and local governments encourage forced sterilization such as the “Prefectural Movement to Not Give Birth to Unfortunate Children” initiated by Hyogo Prefecture? How did social workers, teachers and facility staff support promote this?
- c. Actual implementation conditions of forced sterilization: Cases of actual implementation at facilities that differ from the purpose and implementation guidelines of the former law, such as performing hysterectomy to reduce the burden of assisting women with disabilities during menstruation, as well as forced “consent” in a language other than the first language of the victim (such as in a location with no sign language interpretation for the deaf).

- d. Verification at the time of amendment: Why was it that the government conducted absolutely no verification or reflection on the former Eugenic Protection Law when it was replaced with the Maternal Protection Law, and has “not provided for a right of compensation to persons who were subjected to forced sterilization”? (Concluding Observations of the United Nations Human Rights Committee in 1998)
- (v) The actual condition of persons with disabilities still being forced to undergo sterilization or abortion even after transitioning to the Maternal Protection Law in 1996.
 - a. A man with psychosocial disabilities alleged in 2003 that he was forced by his family to agree to lose his fertility in exchange for his discharge from a psychiatric hospital and underwent sterilization (Appendix 2).
 - b. In recent years, there have still been people such as persons with multiple disabilities being sterilized.

(2) Invasive medical treatment

- (i) From the 1960s to 70s, basal ganglia surgery and elongation surgery for hand and feet joints were frequently conducted on children such as those with cerebral palsy at in-patient facilities, under the guise of “surgery will cure the disability.” These surgeries were conducted without much thought and without obtaining consent or providing explanations, and there were many cases where the surgery actually caused the disabilities to worsen. Orthopedic surgery is currently only conducted for children with cerebral palsy who have subluxation or other types of deformation. This indicates that the orthopedic surgery conducted under the guise of “curing or overcoming disabilities” was conducted experimentally. The government still has not apologized for or provided a summary of such history. Although invasive treatments such as orthopedic surgery on children with cerebral palsy and lobotomies were conducted against the will of the victims, no verification, apology or summarization of this history has been conducted.
- (ii) In Japan, electroconvulsive therapy (ECT), administration of highly invasive psychotropics and hospitalization in psychiatric hospitals are forcibly conducted on persons with disabilities against their will. No mechanisms have been prepared that prohibit the forcing of these irreversible and highly invasive medical interventions.

2. Suggested Questions

(1) Forced sterilization of persons with disabilities

- (i) How is the government ensuring that apologies and compensation as a country for victims of sterilization under the former Eugenic Protection Law are certainly reaching them while also carefully considering their privacy?
- (ii) How are the investigations and verifications of actual conditions being conducted by an independent third-party committee that includes representatives of organizations of persons with disabilities?
- (iii) How will the government investigate the actual conditions of forced sterilization that continued even after the enactment of the Maternal Protection Law and provide compensation?
- (iv) How is the government conducting investigations to understand actual conditions, as well necessary awareness-raising and training, in order to protect the sexual and reproductive rights of persons with disabilities?

(2) Invasive medical treatment

- (i) How is the government investigating and verifying the actual conditions of invasive medical treatment of children with disabilities against their will and apologizing to them?
- (ii) Are there any laws that prohibit irreversible and highly invasive medical interventions carried out for persons with disabilities, such as ECT or administration of psychotropics?

3. Suggested Recommendations

(1) Forced sterilization of persons with disabilities

- (i) Ensure that apologies and compensation as a country for victims of sterilization under the former Eugenic Protection Law are certainly reaching them while also carefully considering their privacy.
- (ii) Conduct investigations and verifications on the actual conditions of sterilization under the former Eugenic Protection Law by an independent third-party committee that includes representatives of organizations of persons with disabilities in order to prevent something similar from occurring again.
- (iii) The government should investigate that actual conditions regarding actual forced sterilizations that were conducted on persons with disabilities even after the former Eugenic Protection Law was amended to the Maternal Protection Law, and conduct necessary awareness raising and training in order to prevent something similar from occurring again.
- (iv) Conduct investigations to understand actual conditions, as well necessary awareness-raising and training, in order to protect the sexual and reproductive rights of persons with disabilities.

(2) Invasive medical treatment

- (i) Investigate and verify the actual conditions of invasive medical treatment of children with disabilities against their will and apologize to them.
- (ii) Establish legal measures that prohibit irreversible and highly invasive medical interventions carried out for persons with disabilities, such as ECT or administration of psychotropics.

Reference:

Al Jazeera "Japan's Disability Shame" 08 Nov 2018

<https://www.aljazeera.com/programmes/101east/2018/11/japan-disability-shame-181107083733896.html>

Mainichi News 20180130

Over half of forced sterilization surgeries performed on minors: Miyagi Pref. records

<https://mainichi.jp/english/articles/20180130/p2a/00m/0na/003000c>

"I state my claim - Unwilling sterilization by reason of psychosocial disabilities" by Tsukasa Katagata
August 16, 2018 <https://acppd.org/a/412>

Article 18 Liberty of movement and nationality

1. Issues

- (1) With regard to the provisions of Article 5 (Denial of Landing), Paragraph 2 of the Immigration Control and Refugee Recognition Act (“A person who, due to a mental disability, is constantly unable to understand right from wrong or whose capacity for such understanding is significantly lacking, and is not accompanied by those persons...to assist him or her”), because the provisions only refers to “mental disability” and states “mental disability,” “unable to understand right from wrong” or “whose capacity for such understanding is significantly lacking” despite their being other reasons where persons are unable to understand or significantly lack the capacity to understand right from wrong, this is the equivalent of discrimination by reason of disability.
- (2) Lack of accessibility and reasonable accommodation for foreign nationals with disabilities who are unable to read the Japanese language, including deaf persons. For example, although there are some brochures in foreign languages for general residents, brochures on welfare systems for persons with disabilities are sometimes only provided in written Japanese. It is necessary to ensure accessibility and reasonable accommodation for foreign nationals in their languages and sign language videos to help them understand not just welfare systems for persons with disabilities but also information on daily life in general.

2. Suggested Questions

- (1) Does the government recognize that the provision of “mental disability” in paragraph 2 of Article 5, of the current Immigration Control and Refugee Recognition Act is the equivalent of disability discrimination?
- (2) What kinds of specific measures have been taken to guarantee the rights of immigrant and permanent resident foreign nationals with disabilities to guarantee consultation systems and, for example, communication through sign language for the deaf?

3. Suggested Recommendations

- (1) We recommend that the government revise the discriminatory provisions of paragraph 2 of Article 5 of the Immigration Control and Refugee Recognition Act regarding persons with mental and intellectual disabilities.
- (2) We recommend that the government take measures that ensure and enable the exercise of the fundamental freedoms of persons with disabilities who moved to Japan from a foreign country.

Article 19 Living independently and being included in the community

1. Issues

(1) Community transition

- (i) Difficulties in exercising the right to choose where and with whom to live; stagnant community transition
- a. According to the 2018 White Paper on Persons with Disabilities, there are currently about 120,000 persons with intellectual disabilities and about 73,000 persons with physical disabilities living in institutions. The percentage of persons with physical disabilities against the total number of persons admitted to institutions is 1.7% and the percentage of inpatients with psychosocial disabilities against the total number of inpatients is 8.0%. In contrast, the percentage of persons with intellectual disabilities against the total number of persons admitted to institutions is particularly high at 11.1%. In addition, in five years, the number of persons with intellectual disabilities in institutions decreased by 8,000 (6%), while the number of persons with physical disabilities decreased by 14,000 (16%). This shows that the percentage of persons with intellectual disabilities who achieved community transition is low.
 - b. The number of institutions decreased by 217 (3.6%) from 5,951 in 2014 to 5,734 in 2017 (source: Ministry of Health, Labour and Welfare Survey on Social Welfare Facilities, Etc.).
 - c. The number of group homes increased by 1,158 (18%) from 6,432 in 2014 to 7,590 in 2017. However, the quality of services that enable persons with severe disabilities to live securely has not been ensured. Meanwhile, group homes are increasing in scale, with homes being able to accommodate 20 people.
 - d. The problem of persons waiting to be admitted is serious. For example, in Tokyo, 1,251 home-bound persons with disabilities are waiting to be admitted (source: January 2019 Welfare Administration Statistics by the Tokyo Metropolitan Government Bureau of Social Welfare and Public Health). In Saitama Prefecture, 1,569 persons with disabilities (1,215 persons with intellectual disabilities and 354 persons with physical disabilities as of May 1, 2018; survey by Saitama Prefecture) are waiting to be admitted, while 471 persons with disabilities in Shiga Prefecture are on the waiting list (as of December 22, 2018; survey by the Shiga Prefecture Citizens Group to Think About the Life of Persons with Disabilities; response rate of local governments: 73.6%). This is due to a considerable shortage of social resources for persons with disabilities to live in the community. Many persons with disabilities are forced to rely on their families to live, and the burden on their families is serious.
 - e. In addition, 9,083 persons with disabilities from Tokyo have been admitted to facilities. Of them, almost half, 4,526 have been admitted to facilities outside Tokyo, such as those in Hokkaido and the Tohoku region (source: January 2019 Welfare Administration Statistics by the Tokyo Metropolitan Bureau of Social Welfare and Public Health). This indicates a shortage of places to live in their communities.
 - f. "Community transition support" was created through an amendment to law in April 2012. However, only 603 persons around the country with disabilities used this scheme as of April 2018, six years after its establishment. Even compared with the expected number of users (4,375) in the 4th Welfare Service Plan, the service is not being utilized.
 - g. After living in a facility for over 40 years, a man with cerebral palsy in his late 50s was determined to start living by himself near his hometown. However, his younger brother, who was the adult guardian, never agreed to this. This is a case where the man hired a lawyer and removed his guardian following a trial to achieve independent living.
 - h. As seen above, the transition from institutions to places such as group homes is advancing to some extent. However, the total number of places to live is insufficient. Besides institutions and group homes, the number of persons with disabilities who live with their family is overwhelmingly

high. The percentage of persons with disabilities who live by themselves is low. Many persons with disabilities are still unable to exercise their right to choose where and with whom to live in the same manner as with persons without disabilities do.

(ii) The problems of long-term psychiatric hospitalization; stagnant hospital-to-community transition

- a. The average number of days spent in psychiatric hospitals in Japan is 250.5 days, much longer than the average 15.6 days spent in general hospitals (excluding cases of tuberculosis and psychosocial disabilities) (source: Hospital Report - June 2018 Estimate by the Ministry of Health, Labour and Welfare). In addition, when looking at the number of patients by length of admission, about 60% of patients were hospitalized for one year or longer, while about 20% of patients were hospitalized for ten years or longer. This is due to different systems for general medical care and psychiatric care (excerpts from 2017 630 Aggregate (630 Survey)). For details, see Table 1).
- b. In Japan, there are about 350,000 beds in psychiatric hospitals, accounting for 25% of the total number of 1.25 million hospital beds. Psychiatric medical care is mainly hospitalization and there is a trend of hospitalization being for longer period of time. About 70% of psychiatric hospitals are privately operated. The management of private hospitals took precedence over the fundamental reviews of the system to recover the rights of persons with psychosocial disabilities. The Vision for Reforming Mental Health Care and Welfare was formulated in 2005. There are about 72,000 social hospitalization patients who can be discharged if there is a support person or facilities for them. The vision aimed to reduce this to zero in ten years. However, with less than 20,000 patients achieving hospital-to-community transition in ten years, the vision was not achieved. The cause of this failure has not been sufficiently examined. In addition, there are no clear targets to eliminate social hospitalization thereafter.
- c. According to the Mental Health and Welfare Document, there are about 20,000 patients who were discharged due to death every year. A simple calculation shows that roughly 200,000 patients have been discharged due to death over ten years. In other words, the target of eliminating 72,000 social hospitalization patients in ten years indicated in the reform vision is something that can be achieved solely by discharge through death. The fact that the number of patients hospitalized for long periods of time despite this means that there is a problem not with the “exit” of discharge but the “entrance” of hospitalization, and that new social hospitalizations are being mass produced.
- d. In addition, there is a regional gap in terms of the number of inpatients. With respect to the average number of inpatients per 100,000 people, Kagoshima Prefecture is ranked highest (531.8 people) followed by Nagasaki Prefecture (495.3 people). In contrast, Kanagawa Prefecture (130.9 people) and Shiga Prefecture (139.9 people) are ranked lower. (2016 Medical Institution (Dynamic) Survey and Hospital Report Summary)

Table 1: Number of inpatients in psychiatric departments by length of hospitalization

Total number	Length of hospitalization								
	Less than 1 month	1 month or more but less than 3 months	3 months or more but less than 6 months	6 months or more but less than 1 year	1 year or more but less than 5 years	5 years or more but less than 10 years	10 years or more but less than 20 years	20 years or more	Unkn own
284,172	27,721	20,311	29,420	31,729	80,524	38,574	29,442	25,932	519

* Excerpts from 2017 630 Aggregate (630 Survey) by the Ministry of Health, Labour and Welfare

(iii) Multiple difficulties of women with disabilities in community living

Because of multiple discrimination/intersectional discrimination, many women with disabilities are in

situations where it is difficult to obtain support or information when making decisions by themselves on where and how to live. Their will is often denied by their family and those around them and they are also in high risk situations for sexual abuse.

(iv) Problems of persons with disabilities who have neuromuscular diseases (NMD)

Since the 1960s, there has been a policy to place persons with neuromuscular diseases (NMD) in special hospitals (former national sanatoriums) with attached long-term nursing homes. The independent living of persons with disabilities with neuromuscular diseases (NMD) who require medical care is increasing across the country after an assistance system was established. Nevertheless, this policy has still not been modified.

(2) Absence of effective medium/long term plans and strategies for Community transition

(i) Absence of plans and strategies for community transition in the area of welfare services

With respect to transition to the community from institutions, the Basic Guidelines for the 4th Welfare Service Plan published by the Ministry of Health, Labour and Welfare sets a target of at least 12% of the 132,000 persons at institutions (as of the end of FY2013) transitioning to community living in the two-year period up to FY2017. However, only 3.3% made the transition to community living over the two years of FY2014 and FY2015. Therefore, in the Basic Guidelines for the 5th plan, the target value for persons making the transition to community living between FY2015 and FY2017 was lowered to 9%. According to data presented by the Ministry of Health, Labour and Welfare, aging and aggravation of facility inpatients are advancing. Although the probability of inpatients who are young and with mild disabilities taking the lead in transitioning to community living cannot be ruled out, the government must formulate and implement effective strategies to enable persons with disabilities who wish to transition to community living to do so even if they are older or have more severe disabilities.

(ii) Extremely insufficient plans for the hospital-to-community transition of persons with psychosocial disabilities

Persons with “severe and chronic” disabilities are not included in the target value for hospital-to-community transition under the measures for the discharge and hospital-to-community transition of long-term inpatients with psychosocial disabilities in psychiatric hospitals. In the formula for calculating the amount of infrastructure development for persons with psychosocial disabilities (an indicator for the supply of social resources to achieve the hospital-to-community transition target value) it is deemed that a group of about 70% of long-term inpatients do not have to be discharged as they have medical care needs known as “severe and chronic.” This means that the severe disabilities of a person are used as a reason to not include them in the calculation for hospital-to-community transition target value and justifies placing them in facilities (hospitals) at the policy level. This is fundamentally inconsistent with the “right to live in the community while receiving necessary support services regardless of how severe the disability” stipulated in Article 19. In addition, with respect to discharge and hospital-to-community transition of “severe and chronic” persons, as a consequence of the spread of treatment known as “treatment impact value,” about 10% of “severe and chronic” persons will no longer be in a “severe and chronic” state and can be discharged and transition to the community. In other words, the basic plans of the government (medical care plans, disability welfare plans, etc.) are designed and set forth on the premise that hospital-to-community transition cannot be made unless disabilities are cured and the establishment of plans at the prefectural level have currently already moved forward.

(iii) Absence of laws regarding the right to live in a community as well as community transition

a. Essentially, all persons with disabilities have the right to live in the community and are eligible for community transition from institutions and hospitals regardless of the degree of disabilities, circumstances, the amount of support or other conditions. Community transition means not simply returning the place where persons with disabilities live from an institution or hospital to their original home, but also means each of them as citizens realize their own way of living by choosing where and with whom they live.

- b. However, as stated above, the progress of community transition is slow and a situation where many persons with disabilities are forced into social hospitalization and social admission still continues.
- c. Policies to promote community transition do not include transition plans for the current work styles (role, location, etc.) of institutions and hospital staff.
- d. This is due to a lack of laws that specify the right to live in the community and promote community transition. In addition, there are problems with Japan's laws and policies, such as community transition programs and community settlement support are not being conducted as policies associated with focused budget allocation measures.

(3) Insufficient community support services (social resources for community living and inclusion) and problems relating to such support

- (i) A grant decision mechanism in which the needs of persons with disabilities are rarely respected
 - a. Grant decisions for welfare services are conducted by municipal governments. However, the amount of services is often limited by municipal governments as they try to avoid fiscal burdens.
 - b. For grant decisions for welfare services, assessment mechanisms, such as disability support classifications and service use plan proposals, are in place. Service use plan proposals are care plans prepared by private counseling and support specialists. However, there are many cases where the plan details do not sufficiently reflect the needs of persons with disabilities, or even if they do, municipal governments do not sufficiently respect their needs. In actuality, grant decisions are greatly affected by disability support classifications. However, although disability support classifications were introduced with the intent to guarantee "objectivity" and "fairness," and caseworkers of municipal governments certify the degree of necessity of support, this certification mechanism is one that is actually based on the medical model.
 - c. With respect to home help services, the government established the national treasury billing criteria (the ceiling of disbursement from the national and prefectural governments to municipal governments) and the amount is determined in conjunction with disability support classifications. Municipal governments are able to make grant decisions for an amount of service that exceeds the national treasury billing criteria. Many persons with disabilities apply for grants of such service amounts based on their needs. However, there are also many cases where grant decisions are made for insufficient service amounts.
 - d. For other welfare services as well, there are cases where a minimum disability support classification is set for each service type. Therefore, if the certification results for the disability support classification is low, the person with the disability may not be able to use the type of service they need.
 - e. In addition to the above grant decision problems, there is also a gap between local governments in the number of service providers. There are many regions where sufficient public services necessary for persons with disabilities to live in the community are not being provided.
- (ii) Restrictions and limitations on the use of services
 - a. The use of "home-visit care for persons with severe disabilities," "activity support services," "accompanying support services," and the "transportation support service" that support the life of persons with disabilities in the community, while they are "commuting to/from or while at work," "commuting to/from or while at school," or "driving a car" is not permitted. There are also local governments that limit the use of such services while participating in politics or in religious, social, or leisure activities, which is a cause for persons with disabilities being prevented a life that is equivalent to that of those without disabilities.
 - b. In addition, there are cases where some local governments prohibit the use of service when persons with disabilities go to a movie or concert, eating out when it involves drinking alcohol, or going to a lawful public gambling, due to a broad interpretation of a notification from the Ministry of Health, Labour and Welfare that prohibits use "for inappropriate outing from the standpoint of social norms."

This prevents their social participation.

- c. The details of in-home support for persons with disabilities are strongly affected by the content of Long-Term Care Insurance. For such things as housework assistance, the scope and length of time of cleaning and cooking are significantly restricted.
- d. With regard to home help services, in addition to the grant decision problems pointed out in (3) (i) b above, there are few offices that provide these services. This has a serious effect on the community living of persons with profound disabilities, particularly those living in rural areas who require medical care such as sputum suction or tube feeding. The types of home-help services that can be used by persons with psychosocial or intellectual disabilities are limited. Use of home-visit care for persons with severe disabilities is limited only to persons with profound psychosocial or intellectual disabilities. The current situation is one where other persons with disabilities who need such care cannot use it.
- e. Many persons with psychosocial disabilities are unable to get used to the method of constant watching over at home, and therefore, a new mechanism such as standing by outside the home is required. Creating a weekly schedule and being restricted to this schedule and staying at home is also something that is unfamiliar when it comes to support for persons with psychosocial disabilities, who tend to have unstable physical conditions. A care system for persons with psychosocial disabilities has not been fully considered.

(iii) Problems of community life support services

- a. It is held that, for the community life support services budget classification, the national government and the prefectural governments “may subsidize” up to 50% and 25%, respectively, of support service expenses “within the scope of their budgets” to municipal governments. Conversely, municipal governments are forced to bear a substantial amount if the national or prefectural government budgets have shortfalls. In addition, the national and prefectural governments face serious budget shortfalls in this classification every year. Services in this classification include communication support and transportation support. Therefore, municipal governments with small fiscal scales in particular refrain from providing these services, and the regional gaps are widening. There are calls for law amendments to obligate the national and prefectural governments bear their share of expenses.
- b. The amount of transportation support supplied is limited and the regional gaps are large. In addition, some local governments require a plan in advance in order to receive the transportation support service, which is inconsistent with the needs and actual use of persons with disabilities.
- c. Although municipal governments currently implement the dispatch of sign language interpreters and note-takers as statutory undertakings, the regional gaps are large.
- d. In the “project for the dispatch of interpreter-guides for persons with deafblindness,” implemented by prefectural governments (including specified cities and core cities), there are large regional gaps in such things as the number of hours they can be used annually, the unit cost of compensation paid to interpreters and assistants, dispatch details, etc.

2. Suggested Questions

(1) “Right to live in the community” and “community transition”

Besides Articles 3 and paragraph 3 of Article 14 of the Basic Act for Persons with Disabilities, are there any laws that specify the right to live independently in the community to ensure that persons with disabilities “have the opportunity to choose their place of residence and where and with whom they live” and “are not obliged to live in a particular living arrangement”? Please explain what kinds of specific measures are being taken and their effects.

(2) Establish effective-community transition strategies

- (i) Has the government established regional infrastructure development strategies to systematically develop necessary social resources in order to realize the independent living and community inclusion

of persons with disabilities?

-
- (ii) Has the government made into law and obligated the formulation of individual plans (including support for decision-making and empowerment) for those in institutions, targeting their community transition? Please also indicate the actual number of individual plans formulated for community transition.
 - (iii) Has the government formulated any effective community transition or community settlement strategies, including the reduction of hospital beds, in order to help all persons with disabilities hospitalized in psychiatric hospitals live in their community?
 - (iv) Are community transition plans for current institutions and the ways in which hospital staff work (role, location, etc.) as resource allocation in the regional infrastructure development strategy.
 - (v) Does the government understand the actual conditions of the “independent living of persons with disabilities in the community,” such as lifestyles other than “living with family” or “in a group home,” for example, “living alone.”? In addition, does the government understand the actual condition of the multiple difficulties of community living faced by women with disabilities?

(3) Community support services (social resources for community living and inclusion)

- (i) Are there plans for the government to change the current mechanism for support services that is centered on a certification system based on the medical model (disability support classification), which is the cause of limits on the use of various support services, and introduce a new mechanism based on the social model/human rights model, which respects the needs of persons with disabilities and determine the provision and amount of support according to their needs in their daily and social lives?

3. Suggested Recommendations

(1) “Right to live in the community” and “community transition”

The government should specify the “right to live in the community” and “community transition” in the Basic Act for Persons with Disabilities, the Comprehensive Support Law for Persons with Disabilities, and the Mental Health Law, as well as implement as a policy with focused budget allocation measures, in order to realize the independent life and community inclusion of persons with disabilities.

(2) Establish effective community transition strategies

- (i) Make it law for regional infrastructure development strategies to explicitly state goals and deadlines for systematically developing social resources necessary for persons with disabilities to engage in community living. Establish individual plans (including support for decision making and empowerment) regarding community transition that centers on each individual person who is admitted to an institution or hospitalized for a long period of time, so that regional infrastructure development strategies enhance the practicality and effectiveness of community transition. Include community transition plans for current institutions and the ways in which hospital staff work (role, location, etc.) as resource allocation in the regional infrastructure development strategy.
- (ii) Shift from the allocations of budgets and resources that overemphasize medical care to those that enhance community welfare services, and propose and implement effective community transition and community inclusion strategies that include the reduction of hospital beds, in order to eliminate social hospitalization and to enable all persons with psychosocial disabilities hospitalized in psychiatric hospitals to live in the community.
- (iii) In implementing the above plans, the provision of information on community transition for persons with disabilities in institutions and their families, as well as hospitalized persons with disabilities, and the provision of support for decision making, provision of housing, and family support in accordance with the provisions of Article 12 of the Convention and General Comment No. 1 should also be included.
- (iv) Understand the actual conditions of the “independent living of persons with disabilities in the community,” such as lifestyles other than “living with family” or “in a group home,” for example, “living

alone.” Also understand the actual condition of the multiple difficulties of community living faced by women with disabilities and take necessary measures.

(3) Community support services (social resources for community living and inclusion)

- (i) Revise the mechanism under the current health and welfare services for persons with disabilities that limit the use of services based on the type and degree of disability and the existence of family members and housemates. Shift to a mechanism based on the social model, which respects the needs of persons with disabilities and determine the provision and amount of services according to their needs in daily and social life.
- (ii) These health and welfare services for persons with disabilities should guarantee social participation equivalent to that of persons without disabilities. All operational limitations in current legislation should be eliminated to achieve this.

Article 20 Personal mobility

1. Issues

(1) For persons with disabilities who need assistance in their mobility, there are limitations as to where they are able to go with the public helper system. It cannot be used to commute to and from work or school, and cannot be used all year long or over a long period.

- (i) This helper system that can be used to support mobility includes home-visit care for persons with severe disabilities, accompanying support services (for persons with visual disabilities) and activity support services (for hospital visits, hospital visit care as in-home care), which are national systems under the Act on Comprehensive Support for Persons with Disabilities. In addition, there is also transportation support under the Act on Comprehensive Support for Persons with Disabilities community life support services, for which municipal governments are the implementing bodies. However, none of these can be used to commute to and from work or school, and cannot be used all year long or over a long period. The Act for the Promotion of Employment for Persons with Disabilities does not provide for transportation support during commutes to and from work.
- (ii) There are problems of not being enough offices that dispatch helpers (of care givers) as well as there being few helpers (or care givers) to begin with. Thus substantively, this system cannot be used sufficiently. In particular, the more rural the area is, the more serious the problem.

(2) Problems with the national systems (Support (Visiting Care) for Persons with Severe disabilities under the Act on Comprehensive Support for Persons with Disabilities, accompanying support services, activity support services)

- (i) The many restrictions on use
 - a. “Commuting, outings relating to economic activities such as sales activities, regular outings throughout a year, or for long periods of time, and inappropriate outings from the standpoint of social norms” is not allowed (Q&A relating to accompanying support services, Ministry of Health, Labour and Welfare Notification No. 523).
 - b. Political and religious activities are also not allowed.
 - c. Some local governments broadly interpret the statement of “inappropriate outings from the standpoint of social norms” and even prohibit going to movie theaters, etc.
- (ii) The number of hours that services can be used is limited
 - Each local government sets and limits the maximum number of hours that services can be used. Regional gaps are also large.

(3) Problems with local government systems (transportation support as part of community life support services)

- (i) The many restrictions on use
 - The national government states that the services can be used for “outings necessary for social life and outings for social participation” and leaves specific handling up to the decision of each municipal government. However, there are no unified guidelines and many municipal governments set restrictions on use. Many local governments do not allow the use of the services for commuting to and from work, schools, or facilities, for regular outings throughout the year or long periods of time, or for political and religious activities. There are also restrictions such as not being able to use the services while admitted to a facility or while hospitalized.
- (ii) The number of hours that services can be used is limited
 - The number of hours that the services can be used a month is limited. There is a large gap between local governments.
- (iii) Not implemented by all local governments

Although a mandatory service under community life support service, only 91% of local governments (1,584 municipal governments out of a total of 1,741 municipal governments as of March 31, 2017) are implementing the service.

(iv) No transportation support for deaf and hard of hearing persons

Although a deaf or hard of hearing person who also has an intellectual, psychosocial or physical disability may use transportation support, most local governments restrict use by deaf and hard of hearing persons. It is important to provide persons and children with hearing disabilities with necessary information when they are moving about and wherever they are outside their homes using sign language or in writing instead of by voice, in conjunction with mobility support and other assistance for them.

(4) Universal design taxis are still rare

As of the end of March 2018, only about 2% of taxis are universal design (UD) taxis that are wheelchair accessible. Although the government implemented a UD taxi certification system in 2012, only three vehicles types have been certified to date. There are also problems when it comes to vehicle structure, such as requiring time to get on and off.

Reference: Prevalence of UD taxis

Number of UD taxis: 1,048 (as of March 31, 2017); 4,772 (as of March 31, 2018)

Total number of taxis: 237,348 (as of March 31, 2017; company-owned taxis: 188,792; welfare taxis: 13,406; privately-owned taxis: 35,150)(source: Japan Federation of Hire-Taxi Associations survey)

(5) Various restrictions on the use of airplanes

Some airline companies impose various restrictions on the use of their airplanes on the basis of disabilities. Persons with visual, intellectual or psychosocial disabilities and wheelchair users may be denied boarding if they are not accompanied by an assistant. There are also restrictions on the number of passengers with such disabilities per airplane. Some wheelchair users such as those with trunk impairment can only use specific types of wheelchairs. However, some airline companies require such users to switch to a standard wheelchair supplied at the check-in counter. Where they are able to sit is also restricted. Seats without any obstructions around them, such as those next to exits, are easier to transfer from the wheelchair and easier for personal assistants to provide assistance, but persons with disabilities are not allowed to sit there. Some airline companies require respirator users and persons with diseases to present a doctor's certificate or written consent.

(6) Narrow coverage of assistance dogs

Under the Act on Assistance Dogs for Physically Disabled Persons, there are only three types of assistance dogs, namely, "guide dogs," "service dogs" and "hearing dogs," and the use of assistance dogs is limited to persons with physical disabilities. However, there are various other types of assistance dogs, such as alert dogs that detect bouts of attacks and emotional support dogs that provide comfort and motivation. Users of such assistance dogs include not only persons with physical disabilities but also persons with autism and developmental disabilities as well as epilepsy patients. These actual conditions and needs are not understood.

(7) Difficulties in the mobility of women with disabilities

According to the "2015 Survey of the Current Living Conditions of Persons with Disabilities" by Hyogo Prefecture, 54.6 % of men responded, "I go out almost every day," compared to only 38.1% of women. This is a significant gap. With respect to barriers for the mobility of individuals, women with disabilities are bound by the concept of gender roles, as well as economic poverty problems such as difficulty in finding employment.

2. Suggested Questions

- (1) Is the government considering eliminating restrictions on the use of home-visit care for persons with severe disabilities, accompanying support services, and transportation support under community life support services?
- (2) Is the government considering eliminating restrictions on the number of hours of use for accompanying support services and transportation support under community life support services?
- (3) Is the government considering measures for all municipal governments to implement transportation support under community life support services?
- (4) Is the government considering the establishment of transportation support that can be used for commuting to and from work?
- (5) Does the government understand the actual state of airplane use by persons with disabilities by conducting surveys on airline companies to examine whether there are any conditions, restrictions and required documents imposed only on persons with disabilities? What kinds of specific conditions, etc. are there?
- (6) Does the government understand the actual conditions of whether there are needs for various kinds of assistance dogs other than those specified in the Act on Assistance Dogs for Physically Disabled Persons?
- (7) Does the government conduct multifaceted surveys on the mobility and gender of individuals?

3. Suggested Recommendations

- (1) Eliminate restrictions on the use of home-visit care for persons with severe disabilities, accompanying support services, and transportation support under community life support services. In particular, allow use for commuting to and from work and school.
- (2) Eliminate restrictions on the number of hours of use for accompanying support services and transportation support under community life support services.
- (3) Have all municipal governments implement transportation support under community life support services.
- (4) Establish a public support system that can be used for commuting to and from work.
- (5) Understand the actual state of whether there are conditions, restrictions and required documents imposed only on persons with disabilities. In addition, establish legislation and measures to eliminate these.
- (6) Understand the actual conditions regarding the needs for various assistance dogs and expand the scope of the law for users and assistance dogs.
- (7) Implement necessary measures so that women with disabilities will not suffer disadvantages by focusing on gender disparities in mobility.

Article 21 Freedom of expression and opinion, and access to information

1. Issues

(1) Absence of legislation that guarantees the right to information accessibility of persons with disabilities

The CRPD requires the provision of information intended for the general public to persons with disabilities in a form and with a device that is easy to use by and suited to various types of disability. However, there are no systematic laws or measures that guarantee information accessibility of persons with disabilities to achieve this. Measures and standards vary among ministries and agencies, and there is no obligation to apply them. In addition, there are no financial measures to promote information accessibility.

(2) Information accessibility issues under systems for the provision of accessibility, personal assistance and services, and other systems

<Television, Internet, telephones, product development and others>

(i) Television accessibility

a. Although the Ministry of Internal Affairs and Communications created the “Guidelines on Information Accessibility in the Field of Broadcasting,” the current situation is that many broadcasts are not accessible because there is no legal obligation. Implementing accessibility for election broadcasts and live broadcasts of Diet sessions in particular is insufficient. For example, with respect to election broadcasts, the House of Representatives proportional representation elections, the House of Councilors elections (partly allowed after a law amendment in 2018), and gubernatorial elections do not provide closed captions, while the House of Councilors elections do not provide sign language interpreters (allowed after a law amendment in 2018). There is no sign language interpretation or closed captioning for live broadcasts of Diet sessions. The reasons behind this are the provisions in Article 9 of the Broadcasting Act relating to correction of broadcasts. It has been pointed out that NHK has concerns that if there are errors in the closed captions in a live Diet session broadcast, or if there are delays in their display and cut off, members of parliament will file a complaint indicating that the broadcasts are untruthful.

Furthermore, the implementation of audio description broadcasts is insufficient and has not reached the goal set in the guidelines. In addition, there are many cases on broadcasts such as news broadcasts, audio of comments made by foreign nationals are broadcast in the foreign language and displaying only Japanese captions. Persons with visual disabilities who do not understand foreign languages are unable to understand what is being broadcast and this problem has been pointed out repeatedly to date.

b. Although some broadcasters provide closed captions for breaking news on natural disasters and extraordinary accidents, this cannot be said to be sufficient. For example, press conferences by the prime minister now provide sign language interpreters. However, information is not conveyed because the sign language interpreters do not appear on TV. Press conferences by the Japan Meteorological Agency regarding disaster and other information are broadcast without sign language interpreters or closed captions.

c. No measures have been implemented to help persons with deafblindness receive information by, for example, providing accessibility to television audio and video using a Braille display and making closed captions easier to read.

(ii) Web accessibility

a. Although there are accessibility standards (JIS · X8341-3), because they are not compulsory, web accessibility is not ensured, and many sites are inaccessible.

(iii) The telecommunications relay service is not one that connects to all telephone numbers 24 hours a day, 365 days a year

a. The telecommunications relay service, which is implemented as a communications service in other countries is not being implemented in Japan. Telephones play an important role in protecting the lives and lifestyles of the people and in supporting the security and safety of society. Deaf and hard of hearing persons suffer from various lost opportunities in their social lives because they do not know of the convenience of telephones. They are also unable to call some special numbers such as emergency phone numbers.

(iv) Product development, etc.

a. With regard to product development, the Japan Standards Association has established a series of accessible design related Japan Industrial Standards (JIS). However, because they have no legal force, products that are hard to use or cannot be used at all continue to spread one after another.

b. For example, quiet engine cars, increased roundabout crossings, and touchscreen devices (e.g., self-checkout machines and coin-operated lockers) are problematic for persons with visual disabilities. The state of installation of automated teller machines that can be operated by persons with visual disabilities by themselves is 0% at major city banks, trust banks and labor banks and only 2-8% at regional banks and shinkin banks (Financial Services Agency, 2018).

c. For deaf and hard of hearing persons, there are few elevators (designed for hearing disabilities) with functions such as monitors with which they can check visually. In addition, visualization (videos with sign language and/or captions) of train and station announcements is insufficient. Some products used in daily life such as home electrical appliances (e.g., refrigerators and microwaves) emit warning tones and other sounds. However, such sound alerts cannot be detected by deaf and hard of hearing persons.

d. Persons with deafblindness find it difficult to use most facilities that mainly use touchscreens such as automated teller machines and ticket-vending machines. There is a necessity for facilities that can be operated using tactile tools such as buttons and Braille as they are unable to understand audio and visual information such as audio guides and screen displays. Another option is the necessity for systems that allow for the setting of text on the screen in a size and color that accommodates how the user sees things.

<Guarantee of communication and services at public and other facilities>

(v) Guarantee of communication at public activities and facilities

a. Communication at public facilities such as public libraries, public halls, museums, and public employment security offices (Hello Work offices) are not sufficiently ensured.

b. Communication with sign language interpreters, note-takers and interpreter-guides for persons with deafblindness are not sufficiently ensured in projects implemented by public administrations.

c. Publicity material and documents from public offices are not offered in a medium accessible by persons with deafblindness.

d. There is extremely little information provided for the general public that can be accessed by persons with deafblindness on their own.

e. Many consultation offices and support organizations only provide their telephone number as contact information, impeding use by persons who have difficulty in access through telephones.

f. Although Braille versions of maternal handbooks have offered since 1993, this is not widely known. This is an example of necessary information not reaching pregnant women because of their disabilities. As one can see, the lack of information accessibility brings about multiple difficulties particularly to women with disabilities who find it difficult to speak out.

(vi) Guarantee of communication at other facilities

a. Provision of accessibility to audio information is insufficient at facilities such as sports facilities, tourist locations, cinemas, theaters, art museums, museums, and leisure facilities.

b. The guarantee of communication at private facilities and in private activities is also insufficient.

(vii) Support for communication in medical care

a. Support for communications with medical personnel is insufficient. There was a case of a deaf woman who, when she consulted an obstetrician, was forced to have a Caesarean section without any consultation because of communication issues. There have also been cases where persons with disabilities do not receive information and are unable to consult on vaccinations and health checkups until it is too late.

(viii) Inquiries and information displays

a. Banks and credit card companies do not provide sufficient handling of emergency contact made by means other than voice telephone calls. For example, only 60% of major city banks, 9%-80% of other banks, 4.2% of insurance companies, and 22.7% of non-life insurance companies are able to handle telephone calls through sign language interpreters when contacted in an emergency. When it comes to handling through fax and email, 60% of major city banks and 20%-80% are able to do so. For handling of problems in using automated teller machines through means other than telephones, 20% of major city banks and 0%-8% of other banks are able to do so (Financial Services Agency, 2018).

b. Persons who are hard of hearing who are able to talk but have difficulty hearing can communicate if someone writes down what the other person is saying. However, banks and other institutions generally take the position that the persons themselves must be the one communicating. This is a barrier to telephone use.

c. Fax numbers and email addresses are not provided as contact information for inquiries. Only voice communication through intercoms are available to make inquiries at unmanned stations for various transportation systems, unmanned toll booths and for various equipment. The provision of information for guidance at cultural facilities is insufficient. Their announcements and guidance/promotion videos do not include captions or sign language, creating the problem of information not being conveyed.

(ix) Other issues

a. There are many hotels that do not provide TV remote controllers with a caption button to display closed captions on television. There is insufficient display of pictograms and marks to indicate that support for deaf and hard of hearing people is available. Development of a nationwide mechanism that enables deaf and hard of hearing persons to make emergency calls (e.g., to police cars and fire engines) has not progressed. The provision of accessibility to allow persons who are hard of hearing to hear more clearly has not progressed. There are also problems such as there being no standards regarding the development of buildings in which it is easy to hear things in the government's barrier-free facility guidelines.

<Issues in various systems>

(x) Accessibility to reading is insufficiently guaranteed

a. Reading environments for persons with reading difficulties is extremely insufficient. In Japan, restrictions on rights relating to the provision of information to persons with visual disabilities have been imposed under the Copyright Act. The current situation is one where these persons are able to access only a small portion of books that are published. Japan ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled in 2018 and amended the Copyright Act. With regard to legal systems for the provision of accessibility for reading, a new act to promote reading has been enacted recently. Electronic books sold to the public, however, are not accessible in that, for example, they are not compatible with being read aloud through speech synthesis and their screen size and color cannot be adjusted. There is a desire for more substantial services for persons with disabilities at public and school libraries. According to the "Research Survey on Services for Persons with Disabilities at Public Libraries (August 2018)" by the Japan Library Association, there are reports that the percentage of public libraries that provide and produce talking books and multimedia DAISY books or implement reading services is less than 20%.

b. Easy Read versions of books for persons with intellectual disabilities are not widely prevalent.

With regard to provision of information to persons with reading disabilities such as dyslexia, although textbooks and teaching materials such as multimedia DAISY book have been introduced and there are efforts by private organizations, it cannot be said that provision is widely prevalent.

(xi) Insufficient measures to support and promote the provision of information as reasonable accommodation

a. Despite the enactment of the Act to Eliminate Discrimination against Persons with Disabilities and the amended Disabled People Employment Promotion Act, there are still cases where the dispatch of sign language interpreters and note-takers is rejected by those in the private sector when conducting the development and training of employees and staff as they must bear the expenses for such dispatch. The deaf and hard of hearing are unable to fully exhibit their abilities as there is no provision of information in the workplace. This is a loss for both the company and society. Financial support is necessary for the private sector.

(xii) Problems with communication support under the Comprehensive Support Law for Persons with Disabilities

a. The requirements for the use of communication support are stipulated in the guidelines of local governments. However, there are many restrictions on users such as restrictions on the purpose of use, such as prohibiting use for profit-making or political purposes, restrictions on the length of use, and restriction by age, not allowing persons under 18 to use support services, and prohibiting hearing persons to request sign language interpretation. In addition, there are large regional gaps as each local government establishes their own requirements.

b. Persons with deafblindness require support from interpreter-guides for activities in various public settings. However, although measures for interpreter-guides have advanced, the current situation is one where they are unable to receive sufficient necessary support.

c. Support for communications such as dispatch service of sign language interpreters is improving but it is still vastly lacking when compared to the level of necessary support.

d. Support for communications for persons with aphasia is now available under the system, but only a very small number of local governments provide this.

(xiii) Absence of information accessibility requirements in public procurement

a. When conducting public procurement, there is system that requires information accessibility for persons with disabilities in the specifications of goods, etc. Although in Japan there are cases where procured items and their judgment standards are specified based on the "Act on Promotion of Procurement of Eco-Friendly Goods and Services by the State and Other Entities," there is a need for the same type of public procurement system regarding information accessibility as well.

(3) Issues relating to the development and securing of human resources and the establishment of official certifications

(i) Securing human resources through the development of supporters and the guarantee of their status

a. There are shortages of sign language interpreters, note-takers and captioners, interpreter-guides for persons with deafblindness, etc. Sign language interpreters, note-takers/captioners, interpreter-guides for persons with deafblindness, etc. are used not only by deaf, hard of hearing or deafblind persons but are required by all individuals who wish to communicate with them. However, the allocation of such supporters at places such as public facilities and contact offices are insufficient, and they cannot be freely used by everyone in society.

b. With respect to sign language interpreters and note-takers, there are some qualifications such as the certification of sign language interpreters as well as some training programs offered by the national and prefectural governments. However, registration mechanisms differ depending on the local government. They also do not lead to improvements in quality or number, nor do they lead to a guarantee of their social status, resulting in difficulty in securing human resources.

c. While social participation of persons with disabilities is increasing, it has been pointed out that there

are shortages of editors for audio books, Braille books, large-print books, and DAISY books as well as sign language interpreters, note-takers and captioners, and interpreter-guides for persons with deafblindness. It is urgently necessary to develop such human resources. In addition to development programs for teachers who will develop these human resources, there is a need for all prefectural governments to implement these development programs as soon as possible.

- d. It is reported that 91.1% of sign language interpreters employed by local governments are non-regular employees (2017 survey by the National Research Association for Sign Language Interpretation). There are many sign language interpreters who have to work while their status is uncertain, leading to health damage. Along with the introduction of the “fiscal year appointment staff system” by local governments from FY2020, it is necessary to change the status of sign language interpreters who are currently employed as non-regular workers to the position of full-time employees “for a job requiring full-time service.”

In addition, it is necessary to guarantee the status of editors for audio, Braille, large-print, and DAISY books and promote their employment as full-time employees in order to help them fully exercise their abilities as specialists.

- (ii) No official certifications have been developed

- a. With respect to sign language interpreters and note-takers and captioners, it is necessary to develop official certifications in order to guarantee their status and improve their social credibility.
- b. In addition, measures are necessary to further improve the quality of interpreter-guides for persons with deafblindness, while sufficiently taking into consideration the diversity of persons with deafblindness and the individualized nature of support.

- (iii) Absence of financial support

A human rights problem, not a welfare problem

- a. It is necessary to provide financial support to the private sector in order to avoid cases where they reject the dispatch of sign language interpreters and note-takers and captioners due to the financial burden of such dispatch.
- b. For communication support services (specified in the Comprehensive Support Law for Persons with Disabilities), it is necessary to establish measures in the budget and system areas in order to promote the installation of “information service centers for persons with hearing disabilities (specified in the Act on Welfare of Physically Disabled Persons)” and the employment of sign language interpreters by municipal governments.
- c. In order to enhance home assistance for deaf and hard of hearing persons, local governments should promote the increase of deaf and hard of hearing care workers and home helpers by providing funds to provide sign language interpretation, etc. in their training program.
- d. When deaf or hard of hearing staff members participate in care staff training, local governments should allocate sign language interpreters and note-takers through public expenditure of the local government.
- e. Under the Levy System for Employing Persons with Disabilities, the maximum period for which the commission subsidy (including the remote sign language service) for support persons such as sign language interpreters and note-takers can be provided is 10 years. If a deaf or hard of hearing person is employed for more than 10 years, financial support for the provision of information will cease.

2. Suggested Questions

- (1) Are there any plans to establish legislation that guarantees the right to information accessibility of persons with disabilities?
- (2) Information accessibility issues under systems for the provision of accessibility, personal assistance and services, and other systems
- (i) Are there any plans to establish legislation that promotes web accessibility?
- (ii) Are there any plans to establish an implementation system for a telecommunications relay service,

which connects the deaf and hearing as part of telephone communication services in public infrastructure?

- (iii) Is the government considering measures for the participation of persons with disabilities in product development in order to ensure information accessibility?
 - (iv) Is the government considering measures to promote the guarantee of communication at public and private institutions through the enhancement of personal support and services, etc.?
 - (v) Are there any plans to consider for public support measures to promote the provision of information as reasonable accommodation by the private sector?
 - (vi) For communication support under the Comprehensive Support Law for Persons with Disabilities, how will the government resolve the issue of large regional gaps in use requirements, such as the prohibition of use for business/political purposes? And how will the government promote the guarantee of communication?
 - (vii) Are there any plans to introduce information accessibility requirements in public procurement?
 - (viii) How does the government understand and perceive the multiple difficulties faced by women with disabilities due to information accessibility issues?
- (3) Development and establishing of official certifications for communication supporters, and promotion of full-time employment
- (i) Are there any plans to establish official certification and promote the full-time employment by administrative communication supporters such as sign language interpreters and note-takers in order to develop and enhance their quality and numbers?
 - (ii) Are there any plans to develop editors for audio, Braille, large-print, and DAISY books and promote the guarantee of their status as specialists?
 - (iii) In addition, are there any plans to implement measures to further improve the quality of interpreter-guides for persons with deafblindness, while sufficiently taking into consideration the diversity of persons with deafblindness and the individualized nature of support?

3. Suggested Recommendations

- (1) Establish legislation that guarantees the right to information accessibility of persons with disabilities
In order to guarantee information accessibility and communication for persons with disabilities as a human right, it is necessary to establish a basic law to ensure information accessibility and communication for persons with disabilities in addition to existing laws in individual areas (e.g., the Comprehensive Support Law for Persons with Disabilities).
- (2) Information accessibility issues under systems for the provision of accessibility, personal assistance and services, and other systems
- (i) Make web accessibility compulsory so as to enable use by persons such as those with visual disabilities.
 - (ii) Establish an implementation system for a telecommunications relay service, which connects the deaf and hearing as part of telephone communication services in public infrastructure. In addition, conduct social awareness campaigns for the telecommunications relay service.
 - (iii) Have various types of persons with disabilities participate in product development and reflect their opinions. In particular, if conducting product development that receives public support subsidies, make sure that persons with disabilities participate.
 - (iv) Implement measures to promote the guarantee of communication at public and private institutions through the enhancement of personal support and services, etc.
 - (v) To guarantee the accessibility of persons with disabilities, it is necessary to thoroughly implement public services combined with reasonable accommodation. To achieve this, financial support should be provided for the private sector so that they are able to appropriately provide reasonable accommodation.
 - (vi) For communication support under the Comprehensive Support Law for Persons with Disabilities,

resolve the issue of large regional gaps in use requirements, such as the prohibition of use for business/political purposes and establish specific measures to promote the guarantee of communication.

(vii) Introduce a system that establishes information accessibility requirements in public procurement.

(viii) Establish necessary measures to understand the multiple difficulties faced by women with disabilities due to information accessibility issues.

(3) Establish official certification and promote the full-time employment by administrative communication supporters such as sign language interpreters and note-takers in order to develop and enhance their quality and numbers. Develop editors for audio, Braille, large-print, and DAISY books and promote the guarantee of their status as specialists. Implement specific measures to further improve the quality of interpreter-guides for persons with deafblindness, while sufficiently taking into consideration the diversity of persons with deafblindness and the individualized nature of support.

Article 22 Respect for privacy

1. Issues

(1) Overall issues relating to privacy protection

- (i) With respect to the Personal Information Protection Law, in addition to the general provisions that apply regardless of whether a person has a disability, law amendments in 2015 established special provisions regarding sensitive personal information. However, knowledge of the public on measures regarding sensitive personal information is insufficient and there are still many persons with disabilities who feel concern regarding their privacy in various settings.
- (ii) While there are provisions that impose an obligation of confidentiality on facilities such as designated support facilities for persons with disabilities, confidentiality obligations and privacy protection in situations and locations other than these facilities are unclear.
- (iii) There have been no public surveys to understand the actual conditions of privacy violations at home, facilities and hospitals, etc.

(2) Confidentiality and privacy protection obligations of the private business sector and persons engaged in communication support

The private sector and persons engaged in the sector who are involved in communication support such as sign language interpreters, note-takers and captioners, and persons reading and writing for persons with visual disabilities are in a position to obtain personal information of persons with disabilities. These services are essential for persons with disabilities to go about their daily and social lives. While it is necessary to enhance these services, with regard to confidentiality obligations and privacy protection of persons with disabilities are only specified in guidelines, etc. by organizations and offices engaged in such services. They are not explicitly specified by law and there may be cases where such obligations and protection are not complied with.

In order to enable persons with disabilities to use these services without worry, further measures by the national and local governments are desired, including the enhancement of the development process and the establishment of necessary legislation regarding privacy protection.

(3) Management of the personal information of persons with disabilities (My Number System)

With the start of operations of the My Number System in 2016, the entry of a My Number (individual number) is required when applying for Physical Disability Certificate and Health and Welfare Certificate of Persons with Mental Disabilities, and even when applying for allowances and services for persons with disabilities.

Also, the full-scale operation of information coordination between the My Number System, Physical Disability Certificate and Health and Welfare Certificate of Persons with Mental Disabilities has been launched from October 2018.

There are cases where persons with visual disabilities who do not have a driver's license have no choice but to use their My Number Card as a photo identification card.

However, it is unclear as to when, where and how information regarding an individual's disabilities that are linked to the My Number will be used, and there are concerns of third parties who obtain such information will misuse it and treat individuals in a disadvantageous manner because of their disabilities.

(4) Information held by companies and individual privacy

Internet search sites and shopping sites hold huge amounts of information relating to personal users. Included in this information is that regarding the disabilities of individuals. In Japan, there is the Personal Information Protection Law, which was also amended in 2015 to include provisions regarding sensitive personal information. Nevertheless, despite information on disabilities being obtained on a routine basis from, for example, online sales purchase histories, it is unclear how that data is managed or used.

In addition, even if information regarding an individual's disabilities is provided with consent to, for example, home security companies, there are cases where it is unclear as to how that information is managed and how it will be used in an emergency.

There is a need for a mechanism to determine how such information regarding an individual's disabilities held by companies is managed.

2. Suggested Questions

(1) Overall issues relating to privacy protection

Does the government understand the actual conditions of privacy violations at home, in facilities and hospitals of persons with disabilities, including attributes such as disability type and gender?

(2) Confidentiality and privacy protection obligations of the private sector and persons engaged in communication support

(i) What kinds of training programs and instructions are being conducted to ensure privacy protection by the private sector and persons engaged in the sector who are involved in communication support?

(ii) What kinds of legislation and systems are there that include provisions for confidentiality obligations and privacy protection by the private sector and persons engaged in the sector who are involved in communication support? In addition, are there any plans to establish new legislation in the future?

(3) Management of the personal information of persons with disabilities (My Number System)

Is there any legislation or any measures that include explicit provisions regarding the protection of information regarding an individual's disabilities for which accommodations for privacy are deemed necessary under the My Number System?

(4) Information held by companies and individual privacy

(i) Have any surveys been conducted on how, among personal information such as customer information held by companies, information regarding disabilities is handled?

(ii) What kinds of measures are being taken to protect information (e.g., information management and misuse prevention) regarding an individual's disabilities that may be held by companies in various formats?

(iii) What kinds of measures are being taken to protect information in the Personal Information Protection Law that is designated as being sensitive personal information? How are such measures communicated to the public?

3. Suggested Recommendations

(1) Overall issues relating to privacy protection

Establish necessary measures to understand the actual conditions of privacy violations at home, in facilities and hospitals of persons with disabilities, including attributes such as disability type and gender.

(2) Confidentiality and privacy protection obligations of the private sector and persons engaged in communication support

Establish explicit and comprehensive provisions in legislation regarding the confidentiality obligations of and privacy protection by the private sector and persons engaged in the sector who are involved in communication support and provide sufficient training.

(3) Management of the personal information of persons with disabilities (My Number System)

Verify whether information regarding an individual's disabilities, which in particular require privacy accommodations, is being protected under the My Number System and establish necessary measures.

(4) Information held by companies and individual privacy

Among information such as customer information held by companies, understand the actual conditions of the handling of information regarding an individual's disabilities and establish necessary measures for privacy protection.

Article 23 Respect for home and the family

1. Issues

(1) Issues in marriage and divorce

- (i) Generally, the marriage rate of persons with disabilities, in particular, with intellectual or psychosocial disabilities is lower than that of persons without disabilities. (Note 1).
- (ii) As the discriminatory provisions on the basis of disability, Article 770-1(4) of the Civil Code specify mental disorders (“suffering from severe mental illness and there is no prospect of recovery”) as one of the divorce requirements.
- (iii) Parents with disabilities are, on the basis of disability, much more likely to lose their parental responsibility of their children than parents without disability when they divorce. There are cases that parents with disabilities are prevented to visit their children after divorce.
- (iv) Recipients of the Disability Pension are not eligible for the Child Rearing Allowance which is given to a single parent with limited income who is rearing a child/children under 18 years old (Note 2).

(2) Lack of respect and support for the rights to sexuality, reproductivity, childbirth, and to retain fertility

- (i) The reproductive health and rights of persons with disabilities are not respected; access to information, services and support are not enough or sufficient.
- (ii) There is no or limited supports available at hospitals for pregnant women using psychotropic medications during their pregnancy.
- (iii) In 2003 a man was forcibly sterilized with consent of his family members before being discharged from a psychiatric hospital (See. Article 17th Appendix 2).

(3) Lack of respect and support for the right to maintain a family life and the right not to be separated from parents

- (i) The rights for family life of persons with disabilities are not respected, and available supports for parents with disabilities are little or limited.
- (ii) For instance, there is no support for parents and siblings of children with disabilities as well as for children of parents with disabilities (e.g., opportunities to learn sign language and/or support for information of disability communities).
- (iii) Sufficient measures have not been established to support parents with disabilities and parents raising children with disabilities, nor are there sufficient support measures to prevent parent-child separation. About 10% of the children under social care, separated from their parents, had become the subject to child protection by reason of mental illness or other disorders of their mother (Note 3). In particular, as high as 21.8% of young children in infant institutions are by the reason; this could indicate the necessity of support after birth.
- (iv) There are cases that parents are losing the custody of their children on the basis of their disabilities. As an example, a mother, experiencing transient psychogenic reaction who was staying in a domestic violence shelter sought psychiatric treatment which was recommended to her by the child consultation center, and then received a diagnosis. This resulted in the child being placed in the custody of social care, separating her from her child. Even after her health recovered, she is still separated from her child.

(4) Insufficient measures to support the transition of children with disabilities from institution to family-like environment in the community

Half (equivalent to about 24,000) of the children in institutions have disabilities of the number of children (about 57,000) who live under public protection separated from their parents in institutions (childcare institutions and institutions for children with disabilities).

Of about 45,000 children in childcare institutions (2018), a significant number of children (11,171 out of 37,418, or about 30%, in 2013) have pervasive developmental disabilities, minor/moderate intellectual disabilities, or some other type of disabilities, such having to see psychiatrists. The percentage of such children with some kinds of disabilities is increasing every year.

Meanwhile, of the number of children living in institutions for children with disabilities (physical disabilities: 3,000; intellectual disabilities: 7,000; psychosocial disabilities: 3,000) the number children who are admitted to these institutions due to abuse, neglect, etc. is increasing (Note 4).

The government announced a shift from institutions to family-like care settings under the 2017 “New Social Care Vision” (Note 5). However, close to 90% of children admitted to childcare institutions are still living there. In addition, almost no measures have been taken for the transition to family-like care for children with disabilities living in institutions for children with disabilities. Moreover, there are children with disabilities living in institutions who are transferred to other institutions or hospitals.

(5) Absence of data and policies regarding the rights of persons with disabilities to form a family and to family life

There are no statements in the State Party Report about measures to prevent hindering of the right of children with disabilities to live with their family or about measures to support persons with disabilities to form a family and become a parent. There are no measures in the 4th Basic Program for Persons with Disabilities (2018-2023) from the viewpoint of persons with disabilities themselves forming a family.

For example, there are no supporting measures to ensure the freedom of persons with disability to marry and divorce, to make their own decisions on whether to bear or not to bear a child, provision of sex education and information, support for women with disabilities for pregnancy and childbirth, support for parents with disabilities in childrearing, or support for children with disabilities to grow up at home. It is a serious problem that the government does not deem these to be issues and is not trying to understand necessary data.

Official statistical data regarding **marriage** or spouse is scarce; the “Survey on Difficulties in Living” (2016) does not include aggregate analysis by gender, etc. In addition, there are no official survey materials of parents with disabilities raising children.

(6) The necessity of withdrawal of the interpretative declaration

In the provisions of paragraph 4 of Article 23 of the CRPD, it states that an exception to the prohibition of separating a child from his or her parents is when it is determined to be for the best interests of the child. However, the interpretative declaration of the Japanese government regarding this fact does not explicitly state this requirement. Because this leaves the possibility of separation being allowed for deportation based on the Immigration Control and Refugee Recognition Act even without considering the best interests for the child, this interpretative declaration should be withdrawn.

2. Suggested Questions

(1) Discrimination in marriage and divorce

- (i) What does the government plan to do with the existing law that states disabilities as one of the conditions of a divorce (item (iv) of paragraph 1 of Article 770 of the Civil Code) to eliminate institutional discrimination, on an equal basis with persons without disabilities?
- (ii) How will the government enhance basic data on the current situation of marriage and family formation by persons with disabilities and conduct aggregate analysis based on gender, etc. in official statistics going forward?

(2) Lack of respect and support for the rights to sexuality and reproductivity, childbirth, as well as to retain fertility

- (i) What kinds of measures are being taken in Japan’s health and medical care services as well as in education and welfare systems to prevent the violation of the rights of persons with disabilities to

sexuality and reproductivity on an equal basis with others?

- (ii) Regarding the rights of persons with disabilities of sexuality and reproductivity, childbirth, to retain fertility and access to information under the Basic Program for Persons with Disabilities, how does the government plan to create measures with the participation of persons with disabilities and how will it move forward in a way that accommodates the particular characteristics of each disability?

(3) Lack of respect and support for the right to maintain a family life and the right not to be separated from parents

- (i) What kinds of support measures are being taken for parents and siblings of children with disabilities to ensure that those children can live a family life?
- (ii) In what way does the government engage in support to ensure that the rights of children with disabilities to live with their parents are not obstructed on the basis of their disabilities?
- (iii) What kinds of measures, including support for a single parent with disabilities, are being taken to support childrearing by parents with disabilities? In addition, how will the government enhance these support measures in the Basic Program for Persons with Disabilities, etc. in the future?
- (iv) What kinds of measures are being taken to prevent the separation of parents with disabilities from their child on the basis of their disabilities?
- (v) Provide related statistics and data concerning the state of children who live separately from their parents who have disabilities.

(4) Insufficient measures to support the transition of children with disabilities from institution to family-like environment in the community

Please provide related statistics and data concerning the state of children with disabilities who live separately from their parents. How will the government advance the transition to family-like care in the community?

(5) Absence of data and policies regarding the rights of persons with disabilities to form a family and to family life

What kinds of measures are being taken to ensure that persons with disabilities can form a family and live a family life on equal basis with persons without disabilities? In addition, show relevant statistics and data.

(6) The necessity of withdrawal of the interpretative declaration

What is the intended schedule of the government to withdraw the interpretative declaration of paragraph 4?

3. Suggested Recommendations

(1) Discrimination in marriage and divorce

- (i) With respect to the existing law that states disabilities as one of the conditions of a divorce (item (iv) of paragraph 1 of Article 770 of the Civil Code), we recommend that the government eliminate institutional discrimination, on an equal basis with persons without disabilities.
- (ii) We recommend that the government enhance basic data on the current situation of marriage and family formation by persons with disabilities and conduct aggregate analysis based on gender, etc. in official statistics.

(2) Lack of respect and support for the rights to sexuality and reproductivity, childbirth, as well as to retain fertility

- (i) We recommend that the government move forward with measures in Japan's health and medical care services as well as in education and welfare systems to prevent the violation of the rights of persons with disabilities to sexuality and reproductivity on an equal basis with others.
- (ii) Regarding the rights of persons with disabilities of sexuality and reproductivity, childbirth, to retain fertility and access to information under the Basic Program for Persons with Disabilities, we recommend that the government create measures with the participation of persons with disabilities and move forward in a way that accommodates the particular characteristics of each disability.

(3) Lack of respect and support for the right to maintain a family life and the right not to be separated from parents

- (i) We recommend that the government take support measures for parents and siblings of children with disabilities to ensure that those children can live a family life.
- (ii) We recommend that the government engage in support to ensure that the rights of children with disabilities to live with their parents are not obstructed on the basis of their disabilities.
- (iii) We recommend that the government move forward with measures to support the childrearing of parents with disabilities, including support for single parents, under the Basic Program for Persons with Disabilities, etc.
- (iv) We recommend that the government collect relevant statistics and data and take necessary measures so as to ensure that parents with disabilities are not separated from their children on the basis of their disabilities.

(4) Insufficient measures to support the transition of children with disabilities from institution to family-like environment in the community

We recommend that the government collect relevant statistics and data on the state of children with disabilities who live separated from their parents and move forward with the transition to family-like care in the community.

(5) Absence of data and policies regarding the rights of persons with disabilities to form a family and to family life

We recommend that the government collect relevant statistics and data and take necessary measures so as to ensure that persons with disabilities are able to form and live a family life on an equal basis with persons without disabilities.

(6) The necessity of withdrawal of the interpretative declaration

We recommend that the government withdraw the interpretative declaration in paragraph 4.

Reference:

(Note 1) The percentage of their being a spouse as a person living together is 54.2% for persons with physical disabilities, 10.1% for persons with intellectual disabilities, and 26.5% for persons with psychosocial disabilities (source: 2016 “Survey on Difficulties in Living, Etc.”). When compared with the fact that 61.3% of all men and 56.6% of all women are married (aged 15 or older; 2015 “National Census”), the marriage rate of persons with intellectual or psychosocial disabilities is significantly low.

(Note 2) Previously, persons who received a public pension were not eligible to receive childcare allowance. However, after a partial amendment of the Child Rearing Allowance Act in 2014, persons receiving a public pension in an amount less than that of the child rearing allowance can now receive child rearing allowance in the amount that is equivalent to the difference between the two.

(The following is a reference material) The problems of comprehensive income security for families of persons (including children) with disabilities

The current social security framework in Japan is fundamentally based on the “Recommendations Concerning the Social Security System” (1950) by the Advisory Council on Social Security. This is to promote social security through public assistance at the core and with social insurance playing a central role and provide a safety net for citizens (residents) to guarantee a minimum standard of living. This framework also applies to income security for persons with disabilities, for which public assistance is at the core and disability pensions play a key role in the income security of persons with disabilities. Various social allowances fill the gap between these two systems. However, there are gaps in the safety net for persons with disabilities due to the inflexible operation of the system. There are also problems with inclusive income security for the families of persons (including children) with disabilities.

A. Single parents with disabilities cannot receive both the child rearing allowance and disability pension

A typical case of this is the restriction on concurrent provision of child rearing allowance and disability pension.

Child rearing allowances are social allowances provided for children of single parent families that are lacking when it comes to raising a child due to divorce or other reasons. Meanwhile, disability pensions are public pensions provided for persons with disabilities whose earning capacities are reduced or lost due to disabilities. It should be noted that the “additional amount for a child” for disability pensions is the “affirmative action” for persons with disabilities who are raising a child and the grounds for payment differ from single parent families that are lacking when it comes to raising a child.

The problems regarding restrictions on concurrent provision of income security whose coverage and purposes fundamentally differ are also apparent in the Horiki Lawsuit (Case No. 1976 (Gyo-tsu) 30). Following the judgment in the first instance, the government amended the Child Rearing Allowance Act and abolished the provisions of prohibiting concurrent provision for persons receiving the then disability welfare pension. However, after a decision by the supreme court, an inconsistent response was taken in that the provisions regarding concurrent provision were reinstated, and still remain to this day.

However, it is possible to receive both the child rearing allowance and the special child allowance, which is a social allowance to promote the welfare of children with disabilities, when the grounds for provision are the same disability. This can also be said to be an extremely inconsistent response.

B. Families receiving public assistance cannot receive both the maternal premium and the disability premium

The abovementioned prohibition on concurrent provision also affects public assistance, the core of the safety net, and in particular, the premium system for livelihood assistance.

Public assistance includes a premium system in order to supplement individual special demands, such as persons with disabilities requiring more expenses compared to persons without disabilities. This premium system guarantees eligible persons a life of substantively the same standard as other citizens (residents).

As stated earlier, while the grounds for provision are individual, special demands under the premium system, because the child rearing allowance and maternal premium are basically linked, the maternal premium and disability premium cannot be provided concurrently. (Hiroshi Isono)

(Note 3) Of a total of 47,776 children the number of children whose reason for protection is mental illness of the mother is 4,994. (source: 2013 Survey of Children Admitted to Child Care Institutions)

(Note 4) In particular, abuse, neglect, or parents having disabilities are given as reasons for admission of children with intellectual disabilities to an institution. “Because of issues concerning the ability to raise children of the guardians or disabilities of the guardians themselves, the inability to create an appropriate child rearing environment in the home for children with disabilities who require support in particular, it is assumed that this is leading to ADL and the inability to establish lifestyle habits” (page 25) (“Current Situation and Issues of Social Care,” Urisu, 2015; “2012 National Survey on Actual Conditions of Children with Intellectual Disabilities in In-Patient Institutions,” page 79, Table 30).

(Note 5) The Ministry of Health, Labour and Welfare states in its “New Social Care Vision” (August 2017, Study Group on an Ideal New Social Care) the importance of the transition to family-like environment for children with disabilities admitted to institutions for children with disabilities.

○ It is necessary to guarantee care at home of children with disabilities and those receiving medical care. It is necessary to understand the actual condition of the use of in-patient institutions for children with disabilities and infant institutions attached to hospitals, and establish a system for foster care for children with disabilities and children who require medical care.

○ It is also necessary for in-patient institutions for children with disabilities to deepen their awareness of the fact that they play a role in social care.

○ Many children are admitted to in-patient institutions for children with disabilities due to care at home being difficult. Accommodations such as home family support specialist counselors are necessary in order to appropriately implement care and home environment adjustments according to the needs of each child.

Article 24 Education

1. Issues

(1) An increase in the number of children with disabilities being excluded from regular classes and those enrolled in special needs education schools/classes (current situation)

- (i) In the Initial State Party Report from the Japanese government, it states that “the Policy Commission” has noted that it is necessary to discuss the state for which Japan should aim and to develop indicators for monitoring the status of progress and collect data in order to promote inclusive education. The Policy Commission then noted that there are specific challenges related to the improvement of the environment, including individualized education support plans, ensuring the effectiveness of individualized education plans, enhancement of reasonable accommodation, respecting the will of persons with disabilities and their parents/guardians, the allocation of special needs education assistants, and the provision of texts in accordance with educational needs.”
- (ii) According to material from the Ministry of Education, Culture, Sports, Science and Technology (trends regarding schools and classes in which children are enrolled), the total number of children and students in compulsory education is 9.99 million. While this number is on a declining trend, as of May 2016, about 71,000 children (0.71%) are currently attending special needs education schools (an increase of 1.3 times compared to 2005), about 218,000 children (2.18%) attending special needs education classes (an increase of 2.3 times compared to 2005), and about 98,000 children (0.98%) receiving special support service in resource rooms in mainstream classes (an increase of 2.3 times compared to 2005). The inclusive education aimed for in Article 24 is not being promoted.
- (iii) The Ministry of Education, Culture, Sports, Science and Technology does not accurately understand the actual condition of all children and students with disabilities in mainstream classes. The only material that can be confirmed is the “survey results on children and students with possible developmental disabilities enrolled in mainstream classes and require special educational support (summary) - published December 2012 (Ministry of Education, Culture, Sports, Science and Technology survey)”
- (iv) According to the Ministry of Education, Culture, Sports, Science and Technology survey on children and students with disabilities attending public elementary and junior high schools who fall under the categories defined in Article 22-3 of the Order for Enforcement of the School Education Act (May 1, 2017), there were 1,575 such children enrolled in normal classes at elementary schools across Japan as of May 1, 2016. In 2017, however, this number declined to 1,444 and the percentage of such children compared to the total number of students also declined.

(2) Background to the current situation

(i) Absence of inclusive education system

- a. With the amendment to the Order for Enforcement of the School Education Act in September 2013, the mechanism for deciding which schools children will attend became one based on a comprehensive determination. From a legislation perspective, a system where children were uniformly assigned to special needs education schools and classes depending on the type or degree of disability was abolished. However, attending regular schools and classes in the community has not been established as a principle.
- b. There are serious problems in the quality of education at regular schools due to such things as a lack of necessary reduction in class size, insufficient basic environmental arrangement such as accessibility of school facilities and insufficient provision of reasonable accommodation. Meanwhile, special needs education schools are also in a dire situation in that their development of education conditions is unable to handle the rapid increase of students.
- c. The “inclusive education system” advocated by Ministry of Education, Culture, Sports, Science and Technology remains within the conventional framework of “special needs education.” It is necessary to

implement effective measures to realize inclusive education at regular schools and verify the outcome of such measures.

- d. With respect to items b and c above, there are no statements in the current Government Curriculum Guidelines regarding “inclusive education” or “reasonable accommodation” to achieve this.
- (ii) The advance of excessive competition, elitism and meritocracy in the educational field
 - a. In the concluding observations and recommendations by the U.N. Committee on the Rights of the Child in 2010 noted its concerns about Japan’s education stating that the “highly competitive school environment may contribute to bullying, truancy, drop-out and suicides” and called for improvement of the “excessively competitive education that distorts the development of children.” However, the current situation is one where education is becoming increasingly more competitive. Due to the advancement of elitism and meritocracy at schools, the decline in academic ability is more noticeable among children from poor households and the problems of bullying and truancy is becoming more serious. Many children with disabilities are excluded from mainstream classes and creating a situation where children who would normally not be allocated to special needs education schools and classes are placed in such schools and classes.
 - (iii) Issues in the admission of children and students with disabilities to elementary and junior high schools
 - a. With respect to the provision of necessary support and reasonable accommodation in compulsory education, the mechanism is one where large differences are seen depending on which school and class a child attends. Although the phrase “diverse places of learning” is used, the direction of fundamental inclusion is not clear. To receive some form of support and accommodation, many children with disabilities and their guardians will feel “pressure” to go to special needs education schools and classes, and have no choice but to give up studying in mainstream classes even if they wanted to. There are many cases where children with disabilities are directed to attend special needs education schools and classes by the boards of education and schools. In such cases, the provision system for reasonable accommodation is often given as the reason. For example, guardians who wish for their child with a disability to attend mainstream classes are forced to be prepared for a variety of matters, such as a condition for doing so being cooperation from the guardian. This is causing numerous cases of children not being able to attend school in their desired community. With respect to the provision system for reasonable accommodation under paragraph 3 of Article 5 and paragraph 2 of Article 24 of the Convention, it is stated that the government of the State Parties (including local governments) should take all necessary steps for the provision of reasonable accommodation. Legal background for the provision of reasonable accommodation should be established through financial and legislative measures by the national and local governments.
 - b. Schools have not ensured a communication method desired by deaf and hard of hearing children who study in mainstream classes and their guardians. In addition, the allocation of sign language interpreters and text interpreters as well as the introduction of hearing assistance systems, voice recognition technologies and voice assistive technologies for conversations are slow. There are situations where schools borrow and use personal belongings of the students to conduct classes. These issues should essentially be resolved through the injection of public funds. The same can be said for infants, children and students who wear hearing aids or have cochlear implants.
 - c. With respect to children and students with visual disabilities, although it is necessary to provide reasonable accommodation through Braille, audio, large-print, and DAISY versions of not just textbooks but of all educational material, this has not been done.
 - d. The boards of education determine schools for children and students with disabilities other than those with intellectual disabilities from among mainstream classes, special support service in resource rooms, special needs education classes and special needs education schools, while respecting their wishes to the greatest extent possible. However, the fact that only children with intellectual disabilities are unable to choose the option of special support service in resource rooms is considered “discrimination on the basis of disabilities.”

- e. Children and students who are hospitalized for long periods of time need to enroll in-hospital classes to receive education. However, there are cases where they need to be transferred to special needs education schools to do so. The right to receive an education of children and students who attended regular schools and are hospitalized for long periods of time is not protected. In addition, there are no in-hospital classes for high school students. The current situation is one where educational opportunities are not guaranteed. Therefore, changes in legislation should be made so that children are able to receive education at in-hospital classes while still enrolled in regular schools.
 - f. Medical staff who are able to sufficiently handle children and students who require medical care are not allocated. The allocation of medical staff particularly to schools other than those for children with orthopedic disabilities is extremely insufficient. There are cases where children without orthopedic disabilities have no choice but to attend schools for orthopedic disabilities or required to be accompanied by their guardians. Even at schools where nurses have been allocated, the nurses are non-regular employees or part-time employees as there are no allocation standards for nurses. In addition, there are many cases where children and students who require medical care are unable to use school buses and require being accompanied by guardians for events outside the school (especially events that require overnight stays). As a result, it cannot be said that the right of children and students who require medical care to in the same manner as other children and students is being guaranteed.
- (iv) Development and allocation of teachers, etc.
- a. With respect to allocation of teachers in compulsory education, there are large differences in systems and other aspects in mainstream classes at regular elementary and junior high schools in the community, special needs education classes and special needs education schools. For example, the number of teachers that are allocated still varies largely depending on whether they are allocated to multiple disability classes, special needs education schools, special needs education classes, or mainstream classes (1/3, 1/6, 1/8, 1/40). Although there are guarantees to some extent through assistant systems and the like in mainstream classes and special needs education classes, it does not fill the gap noted above. This issue is one of the reasons that inhibit the learning of students and children with disabilities in mainstream classes.
 - b. There are no systems to support allocation of teachers who specialize in children with disabilities to all elementary and junior high schools, and the allocation of specialists other than teachers has not been institutionalized. At special needs education schools as well, the allocation of specialists other than teachers has not been institutionalized. It is necessary allocate specialists by determining the type and number of specialists required for each school.
 - c. There is no allocation of highly specialized teachers in order to handle all types of educational needs of all children with disabilities regardless of the type and degree of their disabilities. It is necessary to provide development and training for teachers in order for them to learn various communication methods such as sign language and Braille as well as gain an understanding of disabilities, which are currently extremely insufficient.
 - d. The type of certificates for special needs education school teachers are classified into five fields, namely, persons with visual disabilities, persons with hearing disabilities, persons with intellectual disabilities, persons with orthopedic disabilities and persons who are weak from illness (including persons who are physically weak) (paragraph 5 of Article 2 of the Education Personnel Certification Act). The area of deafblindness should be established. It is necessary to develop a system that partners the educational institutions of each prefectures with the National Institute of Special Needs Education, etc. for teacher training.
 - e. Compared to the required number, there is a substantial shortage of special needs education assistants who provide assistance in the daily lives and learning support.
- (v) Teachers with disabilities
- a. The Convention requires State Parties to take measures to employ teachers with disabilities. However,

the percentage of teachers with disabilities against the total number of newly recruited teachers in Japan is extremely low, at 0.22-0.33%. There are cases where reasonable accommodation is not adequately provided for teachers with disabilities or where teachers with disabilities are placed at a disadvantage when it comes to appointments to positions such as homeroom teacher. For example, there was a case where a teacher with a visual disability working at a junior college was not provided reasonable accommodation and received unfair treatment where they were given an “order for discharge from classroom responsibilities and surrender of the laboratory” on the basis of visual disability. In this case, the teacher won their case in court, but the college continues to deny their return to class.

- b. It is necessary to improve the workplace environment where teachers with disabilities, including those who are deaf, can exhibit their abilities to the fullest in performing their duties as well as to enhance training opportunities.
 - c. In relation to the padding of the statutory employment rate of persons with disabilities, according to the “Results of re-inspection on the appointment and dismissal status of persons with disabilities at prefectural and municipal organizations, the prefectural boards of education, and independent administrative agencies as of June 1, 2017 (source: press release on October 22, 2018 from the Ministry of Health, Labour and Welfare), the prefectural boards of education had the lowest actual employment rate and the highest rate of padding among those organizations.
- (vi) Actual conditions at schools and classes other than regular schools and mainstream classes
- a. With respect to the places of learning for children who are hard of hearing, it is necessary to promote the development of an education system where they can attend both classes for deaf children and mainstream classes (special support service in resource rooms) according to their needs and choices, and address the provision of accessibility to help them acquire language skills.
 - b. Due to the advancement of elitism and meritocracy, children with disabilities including those excluded from mainstream classes who attend special needs education schools increased by 1.3 times from 2006 to 2016, while those who attend special needs education classes increased by 2.1 times and those who receive special support service in resource rooms increased by 2.4 times during the same period. As a result, education conditions have deteriorated due to an increase in the number of enrolled students. Therefore, children with disabilities are unable to receive sufficient education even at special needs education schools due to a lack of developing conditions. In order to guarantee equal educational opportunities for children with disabilities on an equal basis with others, it is necessary to develop educational conditions necessary for them wherever they are learning. In particular, in order to realize principally inclusive education, it is necessary to establish a budget for children with disabilities who attend regular schools at the same level as that of special needs education schools.
 - c. The number of hours for “visiting education” for children and students with profound disabilities (two hours per visit, three times a week) is only about one-fifth of the number of class hours in full-time schools. The percentage of children allocated to this form of education varies depending on region. For remote areas in the mountains, the percentage of visiting education is high. If teachers in charge of visiting education are in unstable employment such as part-time teachers, there may be educational blanks due to the difficulty of securing teachers. It is also necessary to be mindful of visiting education not taking away opportunities to actually attend school.

(vii) Absence of statistics by gender on children and students with disabilities

No accurate statistics by gender on children and students with disabilities in various schools have been created in materials on special needs education and the Basic Survey of Schools by the Ministry of Education, Culture, Sports, Science and Technology.

(3) Education provided in sign language

- (i) Opportunities to acquire sign language and a linguistic identity in the deaf community are not guaranteed.

- (ii) It is necessary to take measures to help children who are deaf to acquire sign language and a linguistic identity in all educational stages from elementary education to higher education. For example, a sign language learning program should be introduced in the Government Curriculum Guidelines. Paragraph 161 of the Government Report states that “guidance by selecting and utilizing various means of communication, including sign language, is provided.” However, there is no reference to the acquisition of sign language in the Curriculum Guidelines for Kindergartens revised in FY2018. The Government Curriculum Guidelines for Elementary, Lower Secondary and Upper Secondary Schools state that “Devise teaching methods to ensure accurate communication by appropriately utilizing voice, text, sign language and the manual alphabet.” However, linguistic identity cannot be acquired through just the use of sign language as a means of communication in daily life. There is no statement regarding education guidance methods to promote the active use of sign language as the language of instruction and learning.
- (iii) Teachers must also have acquired sign language in order to teach it. Currently, there is no sign language learning program in the teacher training curriculum at universities. The current situation is that most teachers are assigned to schools with children and students who are deaf without acquiring sign language. In addition, although there is the National Sign Language Certification Test to certify the skills of everyday communications in sign language, there are no certification mechanisms to certify skills in teaching sign language.

(4) Guarantee of the right to education of persons with deafblindness

- (i) Paragraph 3 of Article 24 positions deafblindness as a unique type of disability. Measures in Japan should follow this concept. Although there are a few statements in the Case Study of the supplementary materials for the new Government Curriculum Guidelines revised in FY2017, deafblindness is not positioned as a unique disability. Therefore, special accommodations are not provided in education for children with deafblindness, a disability state that is different from hearing and visual disabilities.
- (ii) Even when consulting a local educational organization, families of children with deafblindness are unable to receive appropriate advice regarding childrearing methods at home and on where to go to school as those organizations do not have specialized knowledge or skills on how to handle children with deafblindness. It is necessary to establish a consultation system that can be used after a child is found to be deafblind.

(5) Issues in upper secondary education

- (i) Advancing to high schools and the problem of rejection before the admission quota is filled
 - a. The number of children and students enrolled in special needs education schools is 39,000 for elementary schools, 31,000 for junior high schools, and 67,000 for high schools (FY2016). This is more than two times the number of children attending regular junior high schools for the same enrollment period of three years. The overall advancement rate of students from junior high to high schools is 96%. However, many students with disabilities who graduate from the compulsory education stage are in situations where they have no choice but to choose special needs education schools as their next level of education. In addition, the government does not understand the actual conditions of advancement by students with disabilities who are unable to go to special needs education schools.
 - b. It is necessary to provide various accommodation for disabilities when selecting entrants for high schools (e.g., provision of alternative questions in Braille and through hearing, an extension of examination hours, allocation of personal assistants). However, this is severely insufficient. There was a case that occurred recently where a child was refused admission because the school “could not confirm the will of the child” despite the number of applicants being less than the quota. Furthermore, the provision of physical and personal accessibility lags behind in high schools even after enrollment. For this reason, some children with disabilities are substantively rejected, even before they take the

entrance examination, when they visit their desired high schools for consultation.

(ii) Provision of reasonable accommodation by high schools

- a. No supports systems have been developed at high schools to enable students with disabilities to receive education that includes accommodations according to the particular characteristics of their disabilities.
- b. Under the Act to Eliminate Discrimination against Persons with Disabilities, the private sector only has an obligation to make efforts to provide reasonable accommodation. Therefore, there may be cases where institutions such as private schools reject the provision of reasonable accommodation.
- c. There are issues regarding the provision of specified books used as textbooks needed by students with disabilities. For example, enlarged textbooks needed by students with low vision are not provided for all subjects in high schools, even in special needs education schools for children with visual disabilities. Furthermore, for high schools in rural communities, they are faced with situations where they have no choice but rely almost entirely on volunteers. If enlarged textbooks are created by volunteers, the out-of-pocket expenses would be tens of times those of authorized textbooks.
- d. The “special support service in resource rooms” at high schools that started in 2018 is not available in all high schools. Students who need this support service have limited choices when it comes to future paths after high school and equality with others is not ensured.
- e. In places like the United States and Northern Europe, they have achieved compulsory education that lasts 10 years or more. For example, in Northern Europe, the number of years of education is further extended so that persons with intellectual disabilities are able to slowly and thoroughly learn up until around the age of 20 if they so wish. However, in Japan, students with intellectual disabilities face the barrier of a selection method known as entrance exams in order to advance to high school. In addition, not one “advanced courses at upper secondary departments,” which are places of learning after graduating from high school, has been established at any of the 1,067 public schools.

(6) Issues in higher education

(i) Current situation of persons with disabilities in higher education

According to a survey on the actual condition of the future paths of students who graduated from the upper secondary departments of special needs education schools (FY2016 Basic Survey of Schools), the percentage of students with disabilities who go on to universities is 1.9% (396 students), even when adding those who go on to advanced vocational schools, the percentage is 2.2% (466 students). These rates are significantly low compared to the percentage of students without disabilities who go on to universities (54.7%) and the percentage of students without disabilities who go on to universities or advanced vocational schools (71.1%). When looking at the education continuance rate of students who graduate from the upper secondary departments of special needs education schools by type of disability, 29.7% of students with visual disabilities and 35.9% of students with hearing disabilities continued their education. In comparison, 0.4% of students with intellectual disabilities, 3.1% of students with physical disabilities, and 4.9% of students who are weak from illness or physically weak continued their education, indicating a significantly large gap between types of disability. There are no official statistics regarding the actual condition of admission of students with disabilities apart from the survey on the actual condition of the future paths of students who graduated from the upper secondary departments of special needs education schools for higher education after 18 years of age and so the actual conditions are not understood.

(ii) Issues regarding entrance examinations, etc.

- a. There was a case at a university in the Kansai region that had admitted numerous students with severe disabilities. After a change in the president of the university, a male high school student with cerebral palsy who was going to take the entrance exam was called to the school before the exam. He was told that, “even if you are admitted, the university can’t do anything for you and so we would like you to be accompanied by a guardian.”

- b. University entrance exams for persons with visual disabilities are handled by a limited number of staff fluent in Braille. Therefore, whether they will pass or not often depends on the results of trial examinations, or the number of schools they can take an exam for are limited.
- c. There are many cases where reasonable accommodation during listening comprehension tests for entrance examinations is not provided. Even after they are enrolled, they are often forced to quit school because of insufficient provision of information.
- d. With respect to foreign language tests in the National Center Test for University Admissions, English language proficiency CBT tests, TOEIC and TOEFL were introduced for second year high school students in 2020. Allowing persons with developmental disabilities to take the examination in a separate room was the only accommodation provided to them. There is the possibility of reasonable accommodations not being provided to persons with learning disabilities (dyslexia and dysgraphia).

(iii) Issues after enrollment

- a. Some universities do not provide reasonable accommodation desired by students with disabilities in lectures, etc. For example, there is a limit to the number of hours note-takers can be used and so there are cases where the students have no choice but to rely on the goodwill of friends and volunteers. There are operational expense grants for national and public university corporations and a subsidy system for private universities. However, there is the possibility that students with disabilities who do not fall under the categories defined in Article 22-3 of the Order for Enforcement of the School Education Act, such as those who are mildly hard of hearing, will not be able to receive such aid.
- b. Because each university is itself responsible for the acceptance of students with disabilities and the provision of reasonable accommodation, there is a growing disparity among universities in terms of the quality and availability of support for students with disabilities. After the enactment of the Act to Eliminate Discrimination against Persons with Disabilities, there have been cases where students with disabilities were forced to withdraw their enrollment. At the unified entrance examinations (the National Center Test for University Admissions) implemented by the government, it is still common to provide inflexible accommodation according to the state of physical impairments based on the “medical model.” These are different reasonable accommodation based on the individual needs of persons with disabilities.
- c. Support for persons with visual disabilities, deaf, late-deafened or hard of hearing persons, and persons with orthopedic disabilities is expanding. However, there are still issues in attending classes and school life, such as the quality and availability of support and the burden of costs. Considering the facts that the credits of the English language are not given to students with selective mutism and lessons are given to students on the autism spectrum in a separate classroom, support for students with disabilities lags considerably behind and requires changes to educational methods closely relating to grade evaluations. There are also other issues such as support for students with psychosocial disabilities returning to school (in particular, support for the process from hospital discharge after being hospitalized in the acute stage to returning to school), support for commuting to and from school, support for students with intellectual disabilities, and support for teachers with disabilities.

(7) Other issues

(i) Lifelong Learning

The provisions of paragraph 5 of Article 24 of the Convention specify that the State Parties should ensure that persons with disabilities are able to access lifelong learning, including the provision of reasonable accommodation, without discrimination and on an equal basis with persons without disabilities. In addition, paragraph 8 of General Comment 4 specifies that various types of education should be provided under an inclusive education system. The Ministry of Education, Culture, Sports, Science and Technology created the Office for Promotion of Lifelong Learning of Persons with Disabilities under the Lifelong Learning Promotion Division of the Lifelong Learning Policy Bureau. However, there are no systematic initiatives to promote lifelong learning. Because the operation of

lifelong learning under the Act to Eliminate Discrimination against Persons with Disabilities is not clear, it is necessary to clarify this in the basic policy and handling guidelines of the Act. (For example, in the Republic of Korea, the national and local governments engage in various measures based on the “Lifelong Education Act” and the “Special Education Law for Persons with Disabilities”)

(ii) Private education

In the area of private education such as cram schools and preparatory schools, even if students request reasonable accommodation such as the provision of information using sign language, captions and text, they are unable to receive sufficient accommodation.

(iii) Matters relating to Sustainable Development Goal 4 and problems with the government’s implementation guidelines

Under Sustainable Development Goal 4 to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” is Target 4.5 to “ensure equal access to all levels of education for persons with disabilities” and Target 4.A to “build education facilities that are disability sensitive and provide inclusive and effective learning environments for all.” However, the Japanese government noted in the “Specific Measures (Appendix Table)” of its Implementation Guidelines (determined in December 2016) that it established measures “to promote education responding to special needs” corresponding to Target 4.5 above as targets relating to the general education system, such as the “enhancement of education for elementary and junior high schools,” without mentioning “inclusion” at all. The wording of these measures is not consistent with the intent of the SDGs advocating “inclusion” and therefore, these measures need to be modified, etc.

(iv) A survey of preschool education and daycare by a news agency revealed that “one in seven children is not accepted to licensed daycare” and “(daycare) is still lacking in metropolitan areas for 0- to 2-year-old children.” The number of public daycare centers and kindergartens is decreasing and the admission of children with disabilities is becoming increasingly difficult. Private kindergartens often refuse to accept children with disabilities because no financial measures are available even if they do. Because of this, there are children with disabilities who cannot receive preschool education or daycare suited to the particular characteristics of their disability.

(v) After-school activities

a. The accessibility of children with disabilities to “after-school care programs (after-school children’s club)” as part of general measures for after-school activities is insufficient. About 26% of clubs set an admission quota for children with disabilities. The percentage of registered children with disabilities compared with the total number of registered children is about 3% (2016; Ministry of Health, Labour and Welfare survey). Meanwhile, with the efforts of parents and related parties who wish for a “safe and secure place for children to spend time after-school,” the number of after-school children’s clubs that accept children with disabilities and the number of children with disabilities who registered with these clubs have increased from 7,200 children in 4,060 locations (National Liaison Council for After-school Care Programs FY2003 survey) to 33,058 children in 12,926 locations (Ministry of Health, Labour and Welfare FY2016 survey). Although currently, one additional assistant is now allocated for one child with disabilities and an additional staff member is now allocated for three or more children with disabilities admitted, this is insufficient.

b. Because the after-school care program environment is not well developed, the number of people who use the “after school day care service,” a welfare service measure, is rapidly increasing (from 53,000 in 2012 to 112,000 in 2015). In particular, the participation of the private business sector for commercial purposes is significant (52% in 2016) and there have been cases of fraudulent billing and abuse.

(8) Legislation amendments required

(i) The provisions of Chapter 8 “Special Needs Education” of the School Education Act and Chapter 6 “Special Needs Education” of the Enforcement Regulations for the School Education Act have not been amendment to be consistent with the intent of Article 24 “Education” of the Convention on the

Rights of Persons with Disabilities. The provisions of Article 72 of the School Education Act specify the purpose of special needs education as education “to overcome difficulties in learning or living due to disabilities” and are based on the medical model. Similar provisions are specified in paragraph 1 of Article 81 of the Act and for special education curriculums implemented in special needs education classes. The same intent also exists in Article 140 of the Enforcement Regulations for the School Education Act relating to “special support service in resource rooms.”

- (ii) In paragraph 1 of Article 4 “Equal Opportunity in Education,” of the Basic Act on Education (amended in 2006), the examples of discrimination in education that persons should not be subjected to do not specify “disabilities.”
- (iii) In Article 16 “Education” of the Basic Act for Persons with Disabilities (amended in 2011), the intent of the amended Act is not achieved due to the restrictive provision of “insofar as possible” stated in the Act.
- (iv) In Article 8 of the Act to Eliminate Discrimination against Persons with Disabilities, private schools are only obligated to make efforts to provide reasonable accommodation.

2. Suggested Questions

- (1) The Commission on Policy for Persons with Disabilities pointed out that it is necessary to discuss where Japan should be heading as well as to develop indicators and gather data to monitor the state of progress. The Policy Commission then noted as specific issues, that there are problems regarding development of the provision of accessibility, including individual education support plans, ensuring the effectiveness of individual guidance plans, enhancement of reasonable accommodation, respecting the will of persons with disabilities and their guardians, the allocation of special needs education assistants, and the provision of educational material in accordance with educational needs. How is the government responding to this? In addition, does the government have any plans to collect statistical data relating to the gender of students and children with disabilities?
- (2) Issues of inclusive education as a principle
 - (i) Is the government considering reforming the legal system, including the “necessary legislation amendments” pointed out in (8), to realize a principally inclusive education system under which students and children with disabilities can attend mainstream schools and classes in the communities where they live? Is the government prepared to add the phrases “inclusive education” and “reasonable accommodation” in the Government Curriculum Guidelines?
 - (ii) Is the government prepared to formulate effective plans, including numerical targets for the introduction of education curricula, school facilities and equipment to accept students and children with disabilities in regular schools and normal classes, as well as to promote basic environmental arrangement and the provision of reasonable accommodation to meet the needs of the particular characteristics of each disability?
- (3) Students and children who are deaf
 - (i) Is the government moving forward with specific plans to ensure the provision of education in sign language, such as the development of teachers using sign language and education systems to conduct education in sign language? Does the government know the number of teachers who have acquired sign language? If yes, please provide data on how many teachers there are and the number of schools to which they are allocated.
 - (ii) Does the government have any plans to introduce a sign language learning program in the teacher training curricula at universities?
- (4) Guarantee of the right to education of children with deafblindness

Is the government preparing to advance specific measures that explicitly position “deafblindness” as a unique disability in school education, develop curricula and train highly specialized teachers?

(5) High school (upper secondary education)

(i) Future path after graduating from junior high school

Please provide data on the future path of children with disabilities after graduating from junior high school.

(ii) Problems with high school admission

Despite the Ministry of Education, Culture, Sports, Science and Technology stating that the “principle of selecting qualified persons” was abolished, the problem of children with disabilities being rejected by high schools has been occurring across Japan. Does the government have any plans to understand the actual conditions and establish necessary measures?

(iii) Problems with reasonable accommodation

Does the government have any plans to understand the current situation and implement necessary measures for cases, as in the example issue, where persons with visual disabilities who require large-print textbooks are forced to bear a substantial burden of expenses?

(6) Universities (higher education)

Please provide information on the implementation status and issues at each university regarding the provision of reasonable accommodation to students with disabilities who are taking an entrance examination (including exams other than National Center Test for University Admissions) as well as the provisions of reasonable accommodation and accessibility to students with disabilities after their enrollment.

3. Suggested Recommendations

(1) Development of indicators and collect data to monitor the state of progress of inclusive education

(i) We recommend that the government develop indicators and collect data to monitor the state of progress of discussions on where Japan should be heading in order to promote inclusive education. This should include the development of the provision of accessibility, including individual education support plans, ensuring the effectiveness of individual guidance plans, enhancement of reasonable accommodation, respecting the will of persons with disabilities and their guardians, the allocation of special needs education assistants, and the provision of educational material in accordance with educational needs.

(ii) We recommend that the government collect statistical data regarding the number and status, as well as gender, of persons with disabilities in all educational institutions.

(2) Issues of principally inclusive education

(i) We recommend that the government conduct the “necessary legislation amendments” pointed out in (8), to move forward with reforms of the legal system to one that is a principally inclusive education system under which students and children with disabilities can attend mainstream schools and classes in the communities where they live in principle. We recommend that the government add the phrases “inclusive education” and “reasonable accommodation” in the Government Curriculum Guidelines.

(ii) We recommend that the government propose effective plans, including numerical targets for the introduction of education curricula, school facilities and equipment to accept students and children with disabilities in mainstream schools and classes, as well as to promote the provision of accessibility and the provision of reasonable accommodation to meet the needs of the particular characteristics of each disability.

(3) Students and children who are deaf

- (i) We recommend that the government propose plans to ensure the provision of education in sign language, such as the development of teachers using sign language and education systems to conduct education in sign language. We recommend that the government introduce a sign language learning program in the teacher training curricula at universities as part of this.
 - (ii) We recommend that the government implement measures to allocate teachers who acquire sign language to mainstream classes, regular schools, special needs education classes and special needs education schools in the community.
- (4) Guarantee of the right to education of children with deafblindness
- We recommend that the government advance specific measures that explicitly position “deafblindness” as a unique disability in school education, develop curricula and train highly specialized teachers.
- (5) High school (upper secondary education)
- (i) Future path after graduating from junior high school
- We recommend the government collect data on the future courses of children with disabilities after graduating from junior high schools.
- (ii) Problems with high school admission
- We recommend that the government take measures to guarantee the opportunities of students and children with disabilities to receive sufficient upper secondary education without discrimination and on an equal basis with others. We recommend that the government, for example, consider the inclusion of upper secondary education in compulsory education and a system to extend the years of learning according to the particular characteristics of each disability. We recommend that the government, for example, consider the inclusion of upper secondary education in compulsory education and a system to extend the years of learning according to the particular characteristics of each disability.
- (iii) Problems with reasonable accommodation
- We recommend that the government improve the current situation where persons with disabilities and their family are forced to bear the cost of reasonable accommodation in high schools, and to maintain the level of reasonable accommodation at least in compulsory education.
- (6) Universities (higher education)
- (i) We recommend that the government review the current state of National Center Test for University Admissions so that reasonable accommodation during the test is based on the needs of students with disabilities taking it. In addition, we recommend that the government establish a system to provide accommodation to students with disabilities according to the type and particular characteristics of their disability, such as developmental disabilities, when they use systems or mechanisms other than the National Center Test for University Admissions, for example, foreign language tests.
 - (ii) With respect to reasonable accommodation in entrance exams and after enrollment at each university, we recommend that the government monitor the implementation status at each university on whether reasonable accommodation based on the needs of students with disabilities is being provided, and to establish necessary measures.

Article 25 Health

1. Issues

(1) Guaranteed access to medical treatments by right

(i) Absence of laws that explicitly state the rights of patients

Informed consent is not legally guaranteed. Persons with psychosocial disabilities rarely receive explanations on the effects of treatments. They are sometimes denied medical care because of a second opinion.

a. Their access to medical care on an equal basis with others is not guaranteed.

[Example] When individual A, who is an ALS patient, developed gallstones, was told at the first hospital they were taken to that, “It is better to leave the gallstones in place because you have ALS.” However, upon consulting a doctor who was an acquaintance, A was told that “it is dangerous to not do anything.” Individual A then went to be seen at another hospital where they said, “normally, you would undergo surgery immediately or else it may be too late.” Although individual A’s surgery was successful, it can be said that access to medical care for individual A, an older person with ALS, is not on an equal basis with others based on how the first hospital handled the situation.

b. There is a shortage of medical care materials needed by patients and choosing medical equipment is difficult.

[Example] It is said that there are about 117,000 patients with type 1 diabetes. Of these patients, it is estimated that 92,000 patients show a complete depletion of insulin secretion, which makes glycemic control difficult (source: Health and Labour Sciences Research Grant (Comprehensive Research Project for Measures Against Lifestyle-Related Disease Such As Circulatory Diseases and Diabetes) Shared Report “Estimation of the Number of Persons with Type 1 Diabetes and Type 1 Diabetes with Insulin Secretion Depletion in Japan by Utilizing NDB”). Many of these patients require irregular and frequent blood sugar measurements. However, the number of chips that are provided for measurement remains limited due to unit price settings for medical fees. For this reason, the number of times persons with diabetes are able to measure their blood glucose is less than what they need and as a result, there are limitations to their social participation because of their inability to control their blood glucose.

In addition, although devices for self-monitoring of glucose and insulin pumps are produced and sold by multiple medical device manufacturers, many hospitals (341 hospitals in Japan) have not introduced insulin pumps in the first place (source: <http://www.dm-net.co.jp/pumpfile/medical/> accessed on February 18). The will of patients to choose which device to use is not sufficiently respected as their choices are already determined by what products the hospitals use.

c. Currently, there are about 2,000 persons with severe disabilities with a neuromuscular disease and require medical care who are forced to live in former national sanatoriums (current muscular dystrophy wards of the National Hospital Organization). One of the reasons for this issue is that community living is difficult because there are no medical care provision systems in the communities.

[Example] Individual S has been hospitalized in a muscular dystrophy ward in Kanazawa City, Ishikawa Prefecture for more than 30 years. From about two years ago, individual S has been expressing the desire for independent living but is restricted from doing so because of the medical institution and family being uncooperative and not understanding. Individual S initially thought about living independently in Fukui Prefecture, but this was difficult due to issues such as a shortage of caregivers and medical care in the community. The family of individual S considers it to be impossible because S is unreliable. At the case meeting, doctors repeatedly stated that individual S would be in mortal danger and repeated statements from the family that individual S is unreliable.

(ii) Regulation for Enforcement of the Medical Care Act and the refusal of medical care for persons with psychosocial disabilities

a. There was a case in the past where an inpatient with complications who was hospitalized in a single department psychiatric hospital was denied treatment at a regular hospital (details below). Article 10 of

the Regulation for Enforcement of the Medical Care Act was amended with the “Enforcement of the Ministerial Ordinance to Partially Amend the Regulation for Enforcement of the Medical Care Act” notification on June 10, 2016. Even after being amended so that it “explicitly states that persons with mental disabilities are able to be hospitalized in a hospital room other than a psychiatric room in order to receive treatment for a physical disease,” there are still cases that go against this, where persons with psychosocial disabilities are refused from being seen at other departments.

[Example] A man lost his appetite and lost nearly 10 kilograms in weight. When he went to an internal medicine clinic and mentioned that he has schizophrenia, he was sent away and told to go to the psychiatric hospital where he is an outpatient. (Male in his 60s with psychosocial disabilities)

b. A man was refused surgery on his eye because he was an outpatient at a psychiatric hospital. (Male in his 50s with visual disabilities)

c. Upon finding out that a patient being hospitalized had schizophrenia, the doctor suddenly started to recommend transferring hospitals. A man, after stating he had schizophrenia, was refused admission because of reasons such as there being no staff that can handle such a disability. (Male in his 60s with internal disabilities)

d. While receiving outpatient treatment at a surgical treatment for a foot injury, a man was faced with problems because he was told to go to another hospital if he wanted surgery. There were few hospitals where he could be hospitalized. (Male in his 40s with psychosocial disabilities)

e. A man was refused from being seen at an internal medicine department because he was taking a tranquilizer prescribed by a psychiatric department. (Male in his 50s with psychosocial disabilities)

* Source of the examples: Survey Examples of Cases of Discrimination Against Persons with Disabilities on the Basis of Disabilities

(<http://www.dinf.ne.jp/doc/japanese/resource/handicap/h21-sabetsujirei.pdf>
accessed February 18, 2019)

(iii) Current situation and problems of the so-called psychiatry exception (from the perspective of equality with other departments)

The psychiatry exception, which has been implemented in Japan since 1958, stipulates that the number of doctors allocated to psychiatric hospitals is one-third that of regular hospitals and for nurses, two-thirds that of regular hospitals. In addition, the amount of public funds provided by the government to psychiatric hospitals is one-third those provided to regular hospitals. As a result, the number of psychiatric beds in Japan accounts for 19% (a total of 370,000 beds; 27 beds per population of 10,000) of the total number of psychiatric beds in the world. In addition, the average number of days spent in hospital in Japan is 284, which is long compared to the roughly 18 days in developed countries. These circumstances hinder the community living of persons with psychosocial disabilities. As one can see, the “care of the same quality as others,” which is specified in the Convention, is not provided to persons with psychosocial disabilities. This gap preserves prejudice and discrimination in medical institutions and leads to scandals, etc. due to physical restraint or a shortage of staff. It is necessary to shift from discriminatory psychiatric medical care focusing on hospitalization to a system where patients are able to live their lives while receiving necessary support in their communities.

(iv) Providing medical care that accommodates genders (including sexual minorities)

a. The sexual identity of women and sexual minorities with disabilities is not respected when they receive treatments or physical assistance, even in medical institutions.

b. Women with disabilities often do not receive due respect for their sexual identity, and are exposed to the prejudice that they are unable to bear and raise a child. Educational opportunities relating to sexuality, reproductivity and health are not provided from the viewpoint of the rights of these women. In particular, the provision of education relating to sexuality, reproductivity and health focusing on persons suffering from multiple discrimination/intersectional discrimination is insufficient.

- c. It is necessary to provide support and accessibility for women regardless of whether or not they have a disability so that they are able to bear and raise children without worry. It is not easy for them to acquire necessary information on medical institutions.
- d. There are no active measures being taken to develop a contraceptive method that is easy to use for women with disabilities, to provide medical and health facilities and equipment (e.g., gynecological examination tables and mammography equipment) as well as treatment and examination methods that can be used by women with disabilities, and so on.
- e. A system has not been developed to provide care for pregnant women with disabilities who wish to become pregnant and give birth while taking medication.
- (v) Absence of the participation of persons with disabilities in the systematic development of a medical care provision system

The Japanese government is systematically moving forward with the development of a medical care service provision system based on the national medical care plan. However, of the 16 members constituting the Review Conference on the review, etc. of medical care plans, although there is 1 member who is from a patient support organization, there are no members who are persons with disabilities, and most members are medical care personnel. We must say that this plan is only for the convenience of medical care providers without the participation of persons with disabilities.

(Members of the Review Conference on the review, etc. of medical care plans:

<https://www.mhlw.go.jp/file/05-Shingikai-10801000-Iseikyoku-Soumuka/0000124776.pdf>)

(2) Bearing of medical expenses

- (i) Issue related to the System of Medical Payment for Services and Supports for Persons with Disabilities
 - a. The Convention on the Rights of Persons with Disabilities states to “Provide persons with disabilities with free or affordable health care and programmes.” However, the current system to reduce the self-pay burden of medical costs is insufficient, especially in the provision of accommodations to the low-income class.
 - b. More specifically, with the medical aid for children with disabilities under the System of Medical Payment for Services and Supports for Persons with Disabilities, the reduction in the burden of expenses is merely a three-year special transitional measure. In addition, with respect to medical rehabilitation service, the burden of expense is not reduced for expensive procedures such as cardiac surgery because no maximum burden amount has been set for persons 18 years old and older.
 - c. Considerations regarding the “current important issue of the burden of expenses borne by the users of medical support for self-help” stated in the basic agreement concluded between the government and a plaintiffs group claiming the unconstitutionality of the Services and Supports for Persons with Disabilities Act (January 7, 2010).
- (ii) The inadequate public expense assistance system for persons with intractable or chronic diseases
 - a. Diseases covered by the medical expense subsidy system for intractable diseases are limited. (Example) Diseases such as type 1 diabetes and myalgic encephalomyelitis are not covered
 - b. The financial burden of low-income individuals is substantial due to insufficient public assistance. As with medical support for self-help, low-income individuals in income tax exempt households must bear expenses under the medical expense subsidy system of the Act on Medical Care for Patients with Intractable/Rare Diseases, resulting in an excessive burden.
 - c. There are many persons with intractable or chronic diseases who are not covered by the medical expense subsidy system of local governments, leading to excessive burdens under the regular public medical insurance system.
 - d. The number of diseases that are eligible for medical expense subsidies under the Act on Medical Care for Patients with Intractable/Rare Diseases is only 331 (as of April 2, 2018), while the number of diseases covered by the medical expenses subsidy system for children who require treatment for specific chronic

pediatric diseases is 722. Therefore, the so-called “transition problem” where subsidies are cut off when a person turns 20 has not been resolved.

e. Persons with mild disabilities or diseases are not eligible under the medical expense subsidy system and some have no choice but to refrain from consulting a doctor due to the substantial burden of medical expenses.

(iii) Public aid for the newborn hearing screening test

According to a survey on the actual conditions of newborn hearing screening (NHS), about 4,000 (0.4%) of babies out of roughly one million babies are considered every year to be possibly hard of hearing and undergo detailed hearing examinations at an otolaryngology department. Of these babies, about 30% are diagnosed as being bilaterally hard of hearing and a further approximately 60% of them started rehabilitation wearing a hearing aid. Currently, public aid for newborn hearing screening tests is very limited. It is considered that most tests are paid for out of pocket (the average fee being 5,000 yen). Various research studies have revealed that early detection of and intervention for hearing disabilities enables responses such as an early acquisition of a language such as sign language, greatly improving the quality of life of persons who are deaf and hard of hearing. Hearing screening tests for all newborns in Japan are not implemented through public expense.

(3) Provision of insurance services is not equal to that of others

(i) There are still cases where persons with disabilities are denied enrollment in private insurance (Tokyo insurance cooperative). The handling guidelines for the Act for Eliminating Discrimination against Persons with Disabilities published by the Financial Services Agency lists the denial of the provision of services only on the basis of disabilities as an example of unfair discriminatory treatment. Upon confirming with the Financial Services Agency, we received a response that “such services include life insurance.” As such, denial such as in the case above is not consistent with the intent of the Act.

(ii) There are also many cases where persons with disabilities are imposed higher insurance premiums compared to persons without disabilities. The government should monitor whether persons with disabilities are receiving equal treatment as persons without disabilities when enrolling in insurance.

(4) Medical checkups and follow-ups according to life stage

(i) Develop a system for early support and rehabilitation of children with disabilities

The national average medical examination rate for newborn/infant health examinations is 90%. However, systems to handle children who do not undergo examinations and children with possible disabilities vary depending on the local government. It is necessary to create guidelines and establish financial measures in order to provide high quality health examinations for children with disabilities suited to the particular characteristics of each disability as well as follow-ups, including support for their families, at the responsibility of local governments.

(ii) Health examinations according to life stage and access to information that contributes to early support

High quality health examinations such as hearing tests are not implemented according to the life stages of children, from newborn and school age to adulthood.

Therefore, they are unable to receive appropriate medical care and have difficulty in sufficiently recovering their hearing.

There are many other issues, such as cases where information on medical care and rehabilitation could not be obtained and thus not leading to the acquisition of language (including sign language) and communication support for families and others.

2. Suggested Questions

(1) Guaranteed access to medical treatments by right

(i) Has the government enacted any laws that explicitly state the rights of patients?

- (ii) Does the government guarantee the access of persons with disabilities to necessary medical care regardless of where they are in Japan in order to help them realize community living that is equal to that of others?
- (iii) Are inclusive and accessible medical care facilities and services that accommodate genders (including gender minorities) being properly provided, taking into account the fact that many medical institutions had not assumed use by women with disabilities?
- (iv) The government has not conducted surveys on the conditions after the notification on and amendment of Article 10 of the Regulation for Enforcement of the Medical Care Act (“Enforcement of the Ministerial Ordinance to Partially Amend the Regulation for Enforcement of the Medical Care Act” notification on June 10, 2016). Does the government understand the actual status?
- (v) Will the government move forward with the participation of persons with disabilities in the formulation process of future medical care plans?

(2) Bearing of medical expenses

- (i) Does the government provide persons with disabilities with free or affordable medical care and health services necessary for them, regardless of the type and degree of disability or disease?
- (ii) Are the expenses an excessive burden on low-income individuals in particular?

(3) Provision of insurance services is not equal to that of others

Does the government understand the actual conditions of persons with disabilities on whether they are able to enroll in private insurance services on an equal basis as others without being discriminated against?

(4) Medical checkups and follow-ups according to life stage

- (i) Has the government established any effective and specific measures to prevent the further aggravation of disabilities and to improve quality of life through support such as early diagnosis and rehabilitation of disabilities?

3. Suggested Recommendations

(1) Guaranteed access to medical treatments by right

- (i) The government should establish laws that specify and substantively guarantees the rights of patients.
- (ii) The government should establish an appropriate medical care provision system to be able to provide necessary medical care to persons with disabilities, regardless of where they live, so that they are able to realize community living that is equal to that of others.
- (iii) The government should conduct surveys to understand actual conditions after the notification on and amendment of Article 10 of the Regulation for Enforcement of the Medical Care Act (“Enforcement of the Ministerial Ordinance to Partially Amend the Regulation for Enforcement of the Medical Care Act” notification on June 10, 2016).
- (iv) The government should ensure a system to provide medical care facilities and services to enable persons with disabilities to access medical care in an equal manner as other, and when doing so, include persons with disabilities in the medical care planning creation process. When doing so, carefully take into account the accommodation of genders (including gender minorities), including women with disabilities.

(2) Bearing of medical expenses

The government should establish effective and specific measures so that all persons with disabilities are able to access free or affordable medical care and health services they need.

(3) Provision of insurance services is not equal to that of others

The government should gain an understanding of the actual conditions of the degree to which persons with disabilities are able to access private insurance services and establish effective and specific measures so that they are able to use insurance service without discrimination.

(4) Medical checkups and follow-ups according to life stage

The government should establish a system to prevent the further aggravation of disabilities and to improve quality of life through support such as access to early diagnosis of disabilities and appropriate rehabilitation for each life stage.

Article 26 Habilitation and rehabilitation

1. Issues

(1) Because there are few implementing institutions for development support and habilitation, it is difficult to provide early-stage development support for children with disabilities.

“Begin at the earliest possible stage” (item (a) of paragraph 1 of Article 26) is a right that is also stipulated in the “Convention on the Rights of the Child.” However, it cannot be said that development support and habilitation implementation institutions are necessarily sufficient and are difficult to guarantee particularly in rural areas. In the 2018 “Basic Guidelines for the Welfare Plan for Children with Disabilities (FY2018-FY2020),” the government sets a goal to establish at least one “child development support center” in each municipality. However, it cannot be said that specialists such as physical therapists, occupational therapists, speech-language-hearing therapists, and psychological specialists are sufficiently allocated in such development support centers in each area (source: “2014 Survey Report on the Actual Conditions of Child Development Support Centers” page 166, Japanese Association on Intellectual Disability). In addition, no mechanisms such as those for adding remuneration for specialists.

(2) It is difficult to receive appropriate support depending on the type of disability. There are also large regional gaps.

(i) Persons with deafblindness cannot receive support appropriate for the particular characteristics of deafblindness as there are no facilities specializing in deafblindness.

As there are currently no specialist facilities that can handle the unique disability of deafblindness, even if a person is diagnosed as being deafblind (particularly congenital deafblindness) at a medical care health institution, there is no system that will lead habilitation for such persons. Children with congenital deafblindness often have multiple disabilities other than deafblindness. Because learning by natural means such as through seeing or listening is significantly difficult, it is necessary to not only provide training from an early stage according to how the child sees or hears but also to take necessary specialist approaches to the learning of communication methods and the concept of language.

The current situation is one where they have no choice but to use existing facilities for children and adults with visual or hearing disabilities. However, they are unable to receive appropriate support according to the particular characteristics of deafblindness at those facilities.

(ii) Persons with visual disabilities have difficulty in obtaining necessary support and information, particularly in rural areas. It is also difficult for them to receive support for employment.

Particularly in rural areas, children and adults with visual disabilities have difficulty in obtaining information regarding necessary habilitation and rehabilitation, especially in their neighborhoods (as a result, information provision by leveraging “smart sites” in the U.S. through a partnership between the American Academy of Ophthalmology and private organizations is being advanced). However, even if they are able to obtain information, the number of specialists and their location where services are provided is limited. In addition, because no mechanisms have been developed for wide area use of services and dispatch of specialists, persons with visual disabilities are often left isolated, unable to receive support.

(iii) There are large regional gaps when it comes to rehabilitation for persons with higher brain dysfunction. They also have difficulty in their daily lives, including education and employment.

There are also large regional gaps when it comes to support for medical care and living of persons with higher brain dysfunction. There have been cases where people have “rehabilitation emigrated” overseas or other areas in Japan to receive sufficient rehabilitation (examples: a case where a person moved the U.S. to receive rehabilitation at the Rusk Institute of Rehabilitation Medicine at New York University for substantial out-of-pocket costs. There are also multiple cases where persons have moved from distant

prefectures to Kanagawa or Oita Prefectures). In addition, because the state of this disability is not widely known, persons with higher brain dysfunction often face difficulties in work and educational settings, being unable to receive necessary support. (Example: a person who sustained a brain injury in a traffic accident while studying at a graduate school moved back to their hometown. This person commuted to a sheltered workshop but had difficulties such as paralysis of the limbs, strabismus, and difficulty in hearing, remembering new things and making decisions. This person fell into a state of lethargy and depression from their failures. Source: "Living with Higher Brain Dysfunction," Brain Injury Association of Japan) Although the government is implementing model projects and training, they are still extremely insufficient.

(iv) Other

There is the issue of the number of hours and days one can receive rehabilitation at medical institutions being limited due to restrictions on health insurance medical fees.

There have also been cases reported where women using above-knee prosthetics find it difficult to receive sufficient adjustments because most prosthetists are men (source: "Difficulties in the Daily Lives of Women With Disabilities - Multiple Difficulties Faced in Their Lives -; Report on a Survey of the Actual Conditions of Multiple Discrimination (March 2012)" by DPI Women's Network Japan). In these types of cases, there is a need to accommodate gender, such as by providing necessary assistance by having a female prosthetist there as well.

As one can see, it is necessary to provide appropriate accommodation in the habilitation and rehabilitation settings as well according to gender and the type of disability.

2. Suggested Questions

(1) Has the government made any arrangements or established any measures for the allocation of necessary specialists along with the planned establishment of child development support centers in order to achieve early development support services, etc. for children with disabilities?

(2) It is difficult to receive appropriate support depending on the type of disability. There are also large regional gaps.

(i) What kinds of support services are being provided for children and adults with deafblindness (including children with congenital deafblindness), which should be positioned as a unique disability, according to the needs and particular characteristics of their disability? In addition, what kinds of facilities are there where these services can be received?

(ii) What kinds of things are being conducted to communicate information about necessary support and services to children and adults with visual disabilities (including persons who are adventitiously blind)? In addition, what kinds of support centers and mechanisms such as outreach are available to receive services in local neighborhoods?

(iii) What kinds of things are being conducted to increase the number of facilities that provide rehabilitation appropriate for children and adults with higher brain dysfunction? In addition, what kinds of mechanisms are available to receive support and services in local neighborhoods?

3. Suggested Recommendations

(1) Make arrangements and conduct measures for the appropriate allocation of necessary specialists along with the establishment of support centers in each area in order to implement development support and habilitation for children with disabilities.

(2) Ensure that appropriate support can be received regardless of the type of disability. Eliminate regional gaps.

(i) Position "deafblindness" as a unique disability as well as create and enhance support services and support centers where these services can be received that are suited to the needs and particular

characteristics of children and adults with deafblindness (including children with congenital deafblindness).

(ii) Enhance the provision of information regarding necessary support and services for children and adults with visual disabilities (including persons who are adventitiously blind) to prevent them from being isolated due to not being able to receive support. In addition, enhance the mechanisms of support centers and outreach in local neighborhoods.

(iii) Enhance the number of facilities that are able to provide appropriate rehabilitation for children and adults with higher brain dysfunction. In addition, enhance mechanisms for persons to receive support and services in their local neighborhood.

Article 27 Work and employment

1. Issues

(1) Matters relating to the current system for the promotion of employment of persons with disabilities

- (i) In August 2018, it was revealed that 27 out of a total of 33 administrative organs of the national government had padded the number of employees with disabilities. Although the number of persons with disabilities employed by the above administrative organs was published as being 6,867.5 with an employment rate of 2.49% as of June 1, 2017, the actual numbers were 3,407 and 1.19%. This padding of numbers had continued for more than 40 years. It was also revealed that local governments had also engaged in similar padding of numbers. Under the current Employment Quota System for Persons with Disabilities, persons with disabilities are in principle holders of disability certificates. The current situation is one where disability certification standards in Japan are very strict and the number of persons who have disability certificates being significantly low. Essentially, in a system that should promote the employment of persons with disabilities who are motivated to work, this type of handling where the government itself narrowed the certification scope of persons with disabilities and arbitrarily manipulated the scope of persons with disabilities to achieve the employment rate cannot be allowed.
- (ii) In response to the problem of the number of employees with disabilities being padded as described in (i), a simultaneous recruitment examination for persons with disabilities in the public sector was implemented in February 2019. Amid this, a person with a developmental disability who applied directly without going through an employment support center of persons with disabilities was asked at the interview for the secondary examination, “why don’t you have a supporter (job coach)?” This person felt significant pressure and was not hired. This person reported that they received an impression that it was the norm to take the examination through an employment support center for persons with disabilities.
- (iii) According to the 2011 Labour Force Survey, the overall employment rate of persons aged 15-64 years was 70.3%. However, according to the 2011 Survey to Understand the Actual Condition of Employment for Persons With Disabilities (targeting persons aged 15 or older but younger than 65), the employment rate of persons with physical disabilities was 45.5%, that of those with intellectual disabilities was 51.9%, and that of those with psychosocial disabilities was 28.5% . This indicates that there is a clear disparity in the employment rate between persons with disabilities and those without disabilities. In addition, 77.8% of persons with intellectual disabilities who are employed are non-regular employees. The percentage of welfare employment is high, with the breakdown being 46.0% in “employment transition support centers for persons with disabilities, Type B employment continuation support centers for persons with disabilities, sheltered workshops, etc.” and 18.4% in “community activity support centers, community workshops for persons with disabilities.”
- (iv) The reduction of minimum wages for employment of persons with disabilities is discriminatory and alternatives must be considered. Even if this provision is applied for the time being, it is necessary to conduct individual on-site investigations and thoroughly understand the actual conditions of work capabilities of the relevant workers.
- (v) Although it has been decided to move toward abolishing the exception rate system, under which the obligation to employ persons with disabilities in certain industries is reduced, it still remains as a transitional measure. Development of employment environments and enhancement of support for offices should be advanced and the exception rate lowered towards abolishment as soon as possible.
- (vi) Compared to the statutory employment rate (which was 2.0% until FY2017), the actual employment rate is 1.97%, with the percentage of companies achieving the statutory employment rate being 50.0%. Further improvement is necessary. In addition, the data is limited to companies with 50 or more employees and does not show the overall employment status of persons with disabilities.
- (vii) There are significant gaps between persons with physical disabilities and those with other disabilities in terms of the number employed and income. It is necessary to eliminate these gaps.
- (viii) A system that double counts persons with severe disabilities when calculating employment rates is

one that erodes the dignity of persons with disabilities and it is necessary to verify how much the system contributes to the increase and promotion of the employment of persons with severe disabilities.

- (ix) The special subsidiary company program has contributed to the increase and promotion of employment of persons with disabilities. On the other hand, however, because there are also issues with the system such as their salary systems being inferior to those of their parent companies and being not able to be promoted to the parent companies, there should be verifications of the system from the viewpoint of inclusiveness.
- (x) Because there is no rehabilitation system for employees who later became deafblind so that they are able to return to work, these employees have no choice but to retire. It is because of reasons such as these that open employment by persons with deafblindness is difficult, with most working as welfare employees at sheltered workshops or working at home.
- (xi) According to data in the State Party Report, the percentage of men with physical, intellectual or psychosocial disabilities who are employed is 60% or more. In addition, the percentage of full-time employees is high for men while the percentage of limited term employment other than as a full-time employee is high for women. There are many cases where women with disabilities filed complaints against this inequality in employment that are dismissed due to discriminations and prejudices. Furthermore, some surveys on persons with disabilities who are employed do not collect gender data and so understanding of the gender gap is insufficient.

(2) Matters relating to Public Employment Security Offices (Hello Work offices) and job coaches

- (i) Sign language supporters are allocated to Hello Work offices only for up to eight hours per month, once a week for 1 hour 45 minutes. Therefore, there is insufficient access to information. There are also few job coaches who are able to communicate in sign language.
- (ii) The selection of jobs for Persons with visual disabilities at the Hello Work offices is limited to those such as an acupuncture/massage therapists and clerical positions. There is also a shortage of job coaches who are able to accommodate persons with visual disabilities.
- (iii) The initial consultation for the employment of persons with disabilities at the Hello Work offices, only requires holders of a Health and Welfare Certificate of Persons with Mental Disabilities to submit a written opinion of a specialist. This leads to a substantive screening and prevents access to information and consultations regarding work, creating a situation where persons have no choice but to force themselves to work by hiding their disabilities.

(3) Self-employment of persons with disabilities

Many persons with visual disabilities are engaged in self-employed businesses such as acupuncture/massage therapy, for which support is not provided for administrative procedures and mobility.

(4) Current situation of welfare employment

- (i) Persons with disabilities in Japan must choose either open employment under labor measures or welfare employment under welfare measures. Those for whom open employment is difficult have no other choice other than welfare employment. However, there are issues such as their rights as workers not being guaranteed and low wages. Under such circumstances, some local governments have created unique systems known as “social firms” and “social employment” to fill the gap between labor measures and welfare measures, adopting mechanisms that provide wage subsidies and enable persons with disabilities and those without disabilities to work together. Meanwhile, welfare employment facilities are widely accepted as places for persons with severe disabilities to work. They are valuable workplaces for persons who have difficulty in open employment and for those who found open employment but were forced to retire from their job. In terms of future issues, it is necessary to further promote the transition from welfare employment to open employment, and create a new framework so that persons with disabilities can work and earn

sufficient income by receiving necessary support through an organic partnership between labor and welfare measures.

- (ii) According to the “Survey on the Actual Conditions of Community Living for Persons With Disabilities” conducted by an organization that supports persons with disabilities (published May 2016), 81.6% of persons with disabilities working under the welfare employment system have an annual income of 1.22 million yen or less, which is said to be living in relative poverty. According to the Comprehensive Survey of Living Conditions conducted by the Ministry of Health, Labour and Welfare in 2012, the relative poverty rate for the entire population is 16.1%. This means that the rate for persons with disabilities five times higher. To improve this situation, it is necessary to establish income security that enables the independent living of persons with disabilities in their communities, apply labor laws to welfare employment, and enhance the orders of products and services placed by administrative organs and the private sector to employment support facilities for persons with disabilities.
- (iii) The collection of a 10% usage charge in principle for employment support services for persons with disabilities has been pointed out as violating ILO Convention No. 159, Recommendation No. 168 and Recommendation No. 99, and should be abolished.

(5) The issue where welfare administration is separated from labor administration

- (i) Workplaces for persons with disabilities in Japan are classified into “open employment” under labor measures and “welfare employment” under welfare measures. However, organic partnership between the two is insufficient. Therefore, persons working under welfare employment are regarded as users of welfare services and not as workers covered by labor laws.
- (ii) There are persons with disabilities who have no choice but to give up on working despite the will and capabilities to do so, due to reasons such as a lack of transportation support for commuting and being unable to receive support for living such as those for going to the toilet and for meals while working.
- (iii) With respect to commuting assistance and physical assistance in the workplace for persons with severe disabilities, the draft framework compiled by the General Welfare Committee of the Council for Institutional Reform for Persons with Disabilities in 2011, states that “the mechanism that restricts the scope of usage of home-visit care for persons with severe disabilities should be abolished with no exception. Use for commuting to and from work or school, hospitalization, outings that exceed one day and for driving assistance should be allowed if it is within the determined provision amount.” In addition, the committee opinions compiled by the Discrimination Prohibition Committee of the Commission on Policy for Persons with Disabilities in 2012 also state that, “The government should continue to consider whether transportation support for commuting to and from work and physical assistance in the workplace are reasonable accommodations that should be provided by employers, or if they are welfare services to be provided by the government.” Furthermore, at an interview with disability organizations and other organizations conducted by the Committee on Persons with Disabilities of the Social Security Council in 2015, many organizations stated that “use of home-visit care for persons with severe disabilities should be allowed during commutes and in the workplace. Despite this, no conclusion regarding this problem has been reached to date.
- (iv) In response to the allegation submitted to the ILO in August 2007 by the National Union of Welfare and Childcare Workers, the ILO Review Committee noted in its report dated March 2009 points out that, “We believe that it is extremely important to include the work by persons with disabilities at sheltered workshops in the scope of labor laws to the extent deemed appropriate.”

(6) Monitoring systems relating to the prohibition of discrimination

The prohibition of unfair discriminatory treatments and the provision of reasonable accommodation are

stipulated as discrimination prohibition provisions in the Act for Eliminating Discrimination against Persons with Disabilities and the Act for the Promotion of Employment for Persons with Disabilities. However, the government's monitoring system on the implementation status is not functioning sufficiently.

(7) Unfair discriminatory treatment

- (i) With respect to the prohibition of discrimination and the obligation to provide reasonable accommodation by public officers, at the 183rd annual session of the House of Councillors Committee on Health, Welfare and Labour held on May 28, 2013, the Senior Vice-Minister answered that these are being guaranteed by stating, "The prohibition of discrimination in employment is specified in Article 27 of the National Public Service Act and Article 13 of the Local Public Service Act. These are the principles of equal treatment. ...With respect to the provision of reasonable accommodation, for national public servants...Article 71 of the National Public Service Act, this is an article that sets forth the fundamental standards for efficiency... this are handled through Article 71 and other articles as well as the Rules of the National Personnel Authority. For local public servants, the provision of articles 36-2 to 36-5 of the Act for the Promotion of Employment for Persons with Disabilities will be directly applied."
- (ii) However, according to a survey on employee hiring targeting 108 local governments across Japan conducted by the Citizens' Committee to Eliminate Disqualifying Clauses on Disability in April 2014, 71% of recruitment examinations require "the ability to commute by themselves" as an application requirement and 89% require "the ability to perform duties without assistants." The prohibition of discrimination against persons with disabilities is not substantively guaranteed in the public sector, including education-related workers. In addition, there are cases where conditions for promotions are obviously disadvantageous to persons with certain disabilities.
- (iii) Even when persons with disabilities are employed by administrative organs, equality with employees without disabilities is not realized in that where they work and the departments, they work in are limited because of their disabilities.
- (iv) Article 38 of the National Public Service Act and Article 16 of the Local Public Service Act explicitly specify an "adult ward or a person under guardianship" as a disqualifying provision.
- (v) The current situation is one where persons with adventitious disabilities, persons who develop intractable diseases during employment and persons who do not have a disability certificate but whose work is restricted due to symptoms or medical treatment cannot receive accommodation in employment and cannot continue working.

(8) Provision of reasonable accommodation in the workplace

- (i) The provision of reasonable accommodation such as sign language interpreters and note-takers in the workplace lags behind. Furthermore, persons with disabilities cannot receive reasonable accommodation necessary for promotions.
- (ii) There are still many cases where matters such as the installation of equipment necessary in the workplace and adjustment of work times are not possible because of insufficient understanding of reasonable accommodation. Through a partnership between administrative organs and the private sector, efforts to ensure the provision of reasonable accommodation from their respective positions is urgently required. For example, accumulating and sharing examples of reasonable accommodation.

(9) Awareness campaigns and publicity activities

According to the "Survey on Reasonable Accommodation and the Prohibition of Discrimination in the Employment of Persons With Disabilities" conducted by the Shogaisha (Disability) Research Institute in June 2016, (1) Although 69% are aware of the enactment of the Act for Eliminating Discrimination against Persons with Disabilities and the Revised Act for the Promotion of Employment for Persons with

Disabilities, only 27% of the respondents understand the details. (2) Only 8% responded that this law amendment has led to fewer occasions where they feel that “they have been discriminated against” in job hunting and while working, and 14% believe that it is now easier to request accommodation from companies. They point out that the results show that the effects of the law amendment are still limited.

(10) Statistics on work and employment

- (i) It is necessary to understand the actual conditions of persons with disabilities by focusing not only on disability type and degree, but also on gender in order to eliminate inequality in employment by gender. The results should also be reflected in the State Party Report.
- (ii) It is important that in the Basic Policy on Economic and Fiscal Management and Reform (June 15, 2018), it states that the government intends to enhance statistics on persons with disabilities in order to allow comparisons between persons with and without disabilities. It is necessary to realize this as soon as possible.

(11) Matters relating to the Industrial Safety and Health Act

- (i) There are cases where the private sector unilaterally forces a person with psychosocial disabilities to take a leave of absence and excluded them from the workplace by abusing the Guidelines for Maintaining and Promoting the Mental Health of Employees based on the Industrial Safety and Health Act.
- (ii) An adult employed by an employer is obligated to receive a health examination once a year under the Industrial Safety and Health Act, including a hearing test. However, there are many cases where appropriate medical institutions were not provided after examinations.

2. Suggested Questions

(1) Indicate the actual conditions, and those in retrospect, of the national and local governments with respect to the padding of employment of persons with disabilities revealed in August 2018. Has the government established a third-party institution including persons with disabilities to verify the cause and background of this padding, which has been conducted by numerous institutions, including the national and local governments, for many years? Indicate the verification system and the details verified. In addition, indicate measures established based on these verifications, if any.

Indicate data on the gaps in employment status due to the existence and type of disabilities. Indicate measures that have been established to eliminate such gaps.

Indicate the current situation and issues of the double count system and the special subsidiary company system under the system for the promotion of employment of persons with disabilities.

Has the government compiled data by gender in its survey on the employment of persons with disabilities? If not, indicate future measures.

(2) What kinds of measures are being taken to promote the provision of information and the allocation of job coaches at the Hello Work offices who have communication skills suited to the particular characteristics of each disability? In what way does the government confirm that someone is a person with a disability for applicants with disabilities at the Hello Work offices?

(3) Indicate support measures for self-employed persons with disabilities.

(4) Indicate the measures that are being taken to eliminate income gaps between persons with disabilities working in welfare employment and other citizens. Does the government plan to delete the provision on the collection of a usage charge in welfare employment from the text of the law?

(5) Does the government plan to establish measures to include such things as commuting support and support for living in the workplace in the scope of home-visit care for persons with severe disabilities from the viewpoint of enhancing such support? What kinds of measures are being taken based on the opinions of ILO, etc. that persons with disabilities working in welfare employment should be covered by labor laws?

(6) What kinds of responses are planned, including legislative measures, to monitor the implementation

status and remedies from the viewpoint of ensuring the effectiveness of the prohibition of discrimination on the basis of disabilities in the employment field?

(7) Indicate measures being taken to understand the actual conditions of unfair discriminatory treatment of employees working in the public and private sectors on the basis of their disabilities, and indicate these actual conditions.

(8) Indicate measures being taken to understand the actual conditions of the provision of reasonable accommodation to employees working in the public and private sectors on the basis of their disabilities, and indicate these actual conditions.

3. Suggested Recommendations

(1) Conduct thorough verifications on the incident regarding the padding of numbers for the employment of persons with disabilities revealed in 2018. Based on these verification results, secure a budget to provide reasonable accommodation and necessary support, etc. in order to develop an environment where persons with disabilities can work in the public sector. In addition, create and implement a roadmap that includes the necessary budget to achieve the statutory employment rate in the public sector. The government should review the current statistical methods relating to persons with disabilities and understand their employment status as a whole, in order to clarify gaps in employment status due to the existence of disabilities. The government should verify the current situation and issues of the double count system and the special subsidiary company system and establish necessary measures. The government should compile data by gender in all surveys relating to the employment of persons with disabilities so as to be able to verify the causes of the employment gap between men and women.

(2) The government should move forward with the provision of information and secure communication methods by job coaches according to the particular characteristics of each disability at Hello Work offices. The Committee expresses serious concerns that confirmation on the disability of an applicant at the initial consultation at the Hello Work offices is a condition of access to consultations, which is substantive screening to determine the suitability of the person for employment as a person with disabilities.

(3) The government should establish measures in order to provide necessary support for self-employed persons with disabilities.

(4) The government should establish a full-fledged income security system to eliminate income gaps between persons with disabilities working in welfare employment and others. The government should abolish the provision on the collection of a usage charge in welfare employment from legal text in order to protect the dignity of persons with disabilities.

(5) The government should establish measures to expand situations in which home-visit care for persons with severe disabilities, etc. are applicable so that persons with disabilities can receive commuting support while working and support for living in the workplace. In addition, the government should establish an income security system for persons with disabilities working in welfare employment facilities (Type B employment continuation support centers) so that they do not lose places where they are able to work, as well as guarantee their rights as workers to which labor laws apply.

(6) The government should understand the actual condition of discrimination by strengthening monitoring of the implementation status of the prohibition of discrimination against persons with disabilities in employment in the public and private sectors on the basis of their disabilities, as well as verify a remedy mechanism and take necessary measures from the viewpoint of ensuring the effectiveness of the elimination of discrimination.

Article 28 Adequate standard of living and social protection

1. Issues

(1) Actual living conditions and insufficient disability pensions of persons with disabilities

(i) The income of persons with disabilities is lower when compared to that of persons without disabilities. In addition, women with disabilities are often in more severe states of poverty. They are unable to gain equal opportunities to use social security. (For income gaps between gender, see 1. Issues (1) (iii) of Article 6 as well as 1. Issues (2) of Article 31.

(ii) Many persons with disabilities are working with low wages under welfare employment for long periods of time. Persons with disabilities working in the general labor market also face problems such as wage gaps. The disability pension system, which compensates for such situations, is insufficient.

(iii) The number of disability social security pension and disability basic pension recipients is about 1.7 million people. More than 80% of which are recipients who only receive disability basic pension. The monthly disability basic pension payment is about 80,000 yen for Grade 1 disabilities and roughly 65,000 yen for Grade 2 disabilities, accounting for only one-third and one-fourth, respectively, of the average monthly salary of citizens overall (240,000 yen). In addition, the average monthly wage of persons with disabilities working at Type B employment continuation support centers under welfare employment is about 14,000 yen, which is, together with the disability basic pension, less than half of the average monthly income of citizens overall. There are also persons with disabilities who are eligible for the disability basic pension but unable to apply for and receive the pension due to their difficulty in completing the application procedures.

(iv) Because persons with disabilities cannot live on just the disability pension, the ratio and number of recipients for tandem payment of disability pension and livelihood assistance are increasing. In addition, the number of persons with disabilities, mainly those with psychosocial disabilities, who receive livelihood assistance and not the disability pension is rapidly increasing.

(v) In 2017, 2,933 persons who became disabled at the age of 20 or later (of which, 1,326 (45.2%) are persons with psychosocial disabilities) and 1,282 persons who became disabled before reaching the age of 20 (of which, 932 (72.7%) are persons with psychosocial disabilities) had their disability pensions discontinued because their disabilities were deemed to have improved. However, among these people are those for whom their pensions were discontinued despite there being no change in their income status.

(2) Persons with disabilities who are not receiving pensions

(i) The payment rate for Japanese national pension premiums is about 60%, while the number of persons who are delinquent in payment exceeds 3.3 million. If these persons become severely disabled due to disease or injury, there is the risk of them becoming persons with disabilities who will not receive pensions.

(ii) Even in terms of full-time employment, it is estimated that there are 630,000-700,000 business offices that have not submitted notifications despite their obligation to enroll in the Employees' Pension Insurance system. If the roughly 2.67 million workers who work in such offices become severely disabled due to disease or injury, there is the risk of them becoming persons with disabilities who will not receive pensions.

(iii) Considering the current condition where uncollected insurance premium amounts increased from 280 billion yen in FY1996 to 350 billion yen in FY2004, even if a business office is enrolled in the Employees' Pension Insurance system, there is the risk of being not eligible for the employees' pension insurance despite (depending on the office) insurance premiums for the insurance being deducted from salaries (as those premiums are not paid to the social insurance offices).

(iv) Foreign nationals with disabilities who turned 20 years old before the deletion of nationality requirements under the National Pension Act in conjunction with the ratification of UN Refugee Convention in 1982 are excluded from the application scope of transitional measures to prevent the

occurrence of persons who will not receive pensions. Foreign nationals with disabilities are also excluded from the scope of the “Act on the Payment of Disability Welfare Pensions to Persons with Disabilities Not Receiving Pensions” in 2004. The number of local governments providing remedies through the payment of welfare benefits, etc. is limited.

(3) Livelihood assistance

(i) The number of households receiving livelihood assistance under the livelihood assistance system (about 1.639 million households according to the preliminary results in February 2017) that have persons with disabilities, diseases or injuries is about 430,000. If the reduction of livelihood assistance planned for October 2018 is implemented, their minimum cost of living standard will drop further.

(ii) With respect to the reduction in the amount of livelihood assistance, on May 24, 2018, UN human rights experts requested the Japanese government to reconsider this. They insisted that this reduction will pose a threat to the minimum social security of the poor, particularly persons with disabilities, single-parent households, and older persons, as well as violate the right of persons with disabilities to equally and independently live in their community, which is guaranteed by the Convention on the Rights of Persons with Disabilities. The Japanese government objected to this.

(4) Housing

(i) The standards for accessibility relating to condominiums and multiple dwelling housing are not explicitly specified in Japanese law. It is therefore extremely difficult to ensure accessible private housing.

(ii) Measures to provide public housing exist only in an extremely limited form, such as admission quotas for public housing for welfare purposes. This makes it very difficult to secure housing for persons with disabilities (including the problem of guarantors).

(5) Bearing of expenses for welfare services

(i) According to a report, etc. at the 2012 Conference of the Japan Society for Disability Studies, many parent-child suicides in families with persons with disabilities occurred in and around April 2006 when the Services and Supports for Persons with Disabilities Act was enacted. Under the Act, users were required to pay a fixed rate 10% user charge for welfare services. Many of these suicides occurred because parents became pessimistic about the future of their child with a disability with such a burden. With this situation, movements to oppose this act spread further, and a lawsuit alleging the unconstitutionality of the Services and Supports for Persons with Disabilities Act was started. Through a basic agreement concluded between the plaintiffs and the government (January 2010), persons who are exempted from paying municipal inhabitant taxes are able to use welfare services free of charge. Although this measure is still in place today, there are still issues such as this measure to allow use free of charge not being applied if the person’s spouse has an income. Meanwhile, there are debates over introducing user charges again due to the fiscal situation of the government and other reasons.

[Example] Newspaper article from the general news page of the Chunichi Shimbun dated December 6, 2006

The heavy burden of two daughters with disabilities - the impact of the Services and Supports for Persons with Disabilities Act

“A father and two daughters died quietly at an ancient temple in lake country, famous for its autumn foliage. A murder-suicide occurred on December 4 in Koura Town, Shiga Prefecture. The cause of death for the father (43), a company employee from Hino Town in the same prefecture, and his oldest daughter (14) and second daughter (10) who went to a school for children with disabilities, was carbon monoxide poisoning from charcoal briquettes. The mother died three years ago, and the father worked hard to raise his precious daughters by himself through the use of home assistance services. One of the causes that made their lives so hard was the Services and Supports for Persons with Disabilities Act enacted in April.

This Act placed an excessive burden on the father.”

(<http://www.yamanoi.net/blog/archives/2007/02/>)

(Source: Minutes of the February 2007 Budget Committee Meeting (political funding, the Services and Supports for Persons with Disabilities Act, and hepatitis litigation) 166-Shu- Budget Committee-No. 6, February 9, 2007)

(ii) The Comprehensive Support Law for Persons with Disabilities makes communication support services mandatory. Nevertheless, because they are municipal services, there are some local governments that do not implement such services or some that may be considering charging a usage fee. Therefore, the exercise of the right to freedom of expression, including the receipt of information, is not ensured.

(iii) Article 23 of the UN Convention on the Rights of the Child (rights of a child with disabilities) states that special care appropriate to the child's disabilities should be provided free of charge, whenever possible. Nevertheless, they are obliged to bear the costs when using rehabilitation and training services as well as assistive devices, etc. In addition, there are cases of the double burden of bearing the cost of nurseries or kindergartens, which are general measures, as well as the cost of rehabilitation.

(iv) The amount in excess of the predetermined standard amount for assistive devices and technical aids must be paid out of pocket. Therefore, a substantial financial burden may occur depending on the products to be purchased.

(v) With respect to cochlear implant, costs such as those for upgrades of external devices, purchase of batteries and repairs are outside the scope of welfare services. There are various difficulties that come with including external devices in medical insurance coverage, such as submitting a certificate stating that the repairs are not possible.

(6) The so-called “65-year-old problem”

(i) The Long-term Care Insurance System takes priority for persons aged 65 or older with disabilities or persons aged 40 or older who have a specified disease. Therefore, transition from the welfare service system to the Long-term Care Insurance System is required. Some local governments end the provision of welfare services if the person does not comply. This has sometimes even led to litigations alleging the violation of the right to choose the use of services. This is called the “65-year-old problem.”

(ii) Although households that are exempted from paying municipal inhabitant taxes are able to use the welfare service system free of charge, under the Long-term Care Insurance System, user charges are incurred even for households exempt from taxes. Due to insufficient income security for persons with disabilities, many persons with disabilities who transitioned to the Long-Term Care Insurance are forced to purchase necessary support services by reducing the food and daily living budgets, or refrain from using support necessary for them to live. They are unable to maintain a standard of living that is equivalent to others.

(iii) There are 134 municipal governments who end the provision of welfare services for persons with disabilities for persons with disabilities who do not transition to the Long-term Care Insurance System when they reach 65 years of age (Japan Center for Persons with Disabilities survey: 2015).

(7) Expenses for helpers (or care givers)

(i) There is no airfare discount system for persons with disabilities and their helpers (or care givers) in the current airfare system for international routes. Therefore, overseas travel with a helper (or care giver) incurs substantial costs.

(8) The fact that persons with psychosocial disabilities are not applicable for the discount systems on public transport systems

(i) In Japan, there is a discount system on public transport systems that apply to persons with physical or intellectual disabilities and their caregivers. However, they do not apply to persons with psychosocial

disabilities. This problem of the burden of the cost of transportation that includes an accompanying supporter inhibits the accessibility of persons with psychosocial disabilities regarding the use of public transport systems.

2. Suggested Questions

(1) Does the government have an understanding of the gaps in the actual conditions of living between persons with disabilities and those without disabilities, through the conducting of surveys on the actual conditions of living, etc. of persons with disabilities? In addition, has the government verified the appropriateness of standards and coverage scope of the disability pension based on the survey results? If yes, please provide the results. Regarding persons whose disability basic pension was cut off in FY2017, has the government conducted any surveys on the living conditions of these persons after being cut off and the impact it had? If yes, please provide the results. In addition, please explain why many of the persons for whom pensions were cut off in FY2017 are persons with psychosocial disabilities.

(2) Indicate the number of persons with disabilities who qualify for the disability pension on account of the state of the disabilities, etc. but are unable to receive the pension because of reasons such as their business office not being enrolled, non-payment of insurance premiums, or deficiencies in the system. Please also indicate their state according to type of disability.

(3) Provide an official opinion of the Japanese government on the warning from UN human rights experts regarding the reduction of livelihood assistance planned in October 2018. Has the government conducted any surveys on the living conditions of persons with disabilities who are affected by such reduction? If yes, please provide the results.

(4) Does the government plan to establish accessibility standards for multiple dwelling housing? Indicate measures to improve the accessibility of persons with disabilities regarding private and public housing.

(5) With respect to the income status of persons with disabilities, provide information on a comparison of income status between the present and 2010, when the basic agreement for litigation on the unconstitutionality of the Services and Supports for Persons with Disabilities Act was concluded, as well as a comparison with persons without disabilities. Does the government plan to expand and permanently adopt the scope of current measures under which persons who are exempt from municipal inhabitant taxes are able to use welfare services without having to pay a user charge? Or does it plan to eliminate such measures?

(6) Has the government established sufficient measures so that persons aged 65 or older with disabilities or a persons aged 40 or older who have a specified disease can continue using necessary welfare services free of charge, just as they had up until that time?

(7) Has the government established measures to reduce the burden of helper expenses and other expenses incurred for the social participation of persons with disabilities?

(8) Has the government established countermeasures for the fact that persons with psychosocial disabilities are unable to receive the same measures as persons with other disabilities when it comes to fare discounts in the public transport system.

3. Suggested Recommendations

(1) Understand the actual living conditions of persons with disabilities and clarify the gaps in living conditions between persons with disabilities and those without disabilities. The government should

review the payment amount and eligibility standards of the disability pension based on the actual living conditions of persons with disabilities, and work to resolve the gaps that exist between types of impairment and between regions.

For persons with disabilities whose disability pensions were cut off in and after April 2017, understand their living conditions, etc. after such cut off and establish necessary measures as soon as possible. In addition, the fact that the disability pensions were cut off for persons with specific disabilities in particular should be verified and appropriate measures established.

(2) Establish remedy measures for when persons with disabilities qualify for the disability pension based on the state of their disability, but do not receive the pension through no fault of their own.

(3) Cancel the reduction of livelihood assistance standards planned for implementation in October 2018 based on the warning of UN human rights experts, and carefully verify the possible impact of the reduction on persons with disabilities. When doing so, also verify the impact of the previous reduction of livelihood assistance standards implemented in 2013.

(4) Formulate standards regarding the accessibility of persons with disabilities relating to private and public housing.

(5) With respect to user charges for persons with disabilities who use welfare services, at the very least, continue current measures based on the results of a comparison of the actual conditions of income for persons with disabilities between when the current measures to make use free of charge and the present day. In addition, review the current way the system is operated where the income of the spouse is included when calculating user charges to treat persons with disabilities with spouses in the same manner as those without spouses. Include such things as the upgrade, repair and purchase of batteries for medical devices such as cochlear implant in the scope of coverage for medical insurance or welfare services to reduce the financial burden of users.

(6) Long-Term Care Insurance requires, in principle, the payment of a fixed rate. If a person is unable to pay the usage charge or insurance premium, they are unable to receive necessary support. It is a system that makes the guarantee of reasonable living standards difficult. For this reason, the government should modify Article 7 of the Act on Comprehensive Support for Persons with Disabilities that specifies that Long-Term Care Insurance take priority over welfare services for persons aged 65 or older with disabilities. Ensure that the private sector and those engaged in sectors that are involved in the provision of welfare services, including long-term care insurance-related persons, fully understand the intent and content of the Convention on the Rights of Persons with Disabilities in order for persons aged 65 or older with disabilities and persons aged 40 or older who have a specified disease are able to continue receiving support based on the social model/human rights model in the Convention.

(7) Establish necessary measures to compensate persons with disabilities for special expenses associated with their disabilities incurred for social participation, such as the expenses for helpers (or care givers).

(8) Especially necessary measures so that all persons with disabilities can receive fare discounts for the public transport system in the same way as others regardless of the type of disability.

Article 29 Participation in political and public life

1. Issues

(1) Accessibility regarding voting methods, voting environment, paper ballots, etc.

(i) Limited to voting through writing by themselves:

Because the voting method is limited to ballots written by electors themselves (including ballots in Braille and paper ballots on which the name, etc. of a candidate selected by persons who cannot write by themselves is written by a helper) under the Public Offices Election Act and the Order for Enforcement of the Public Offices Election Act, no treatment according to the particular characteristics of each disability is provided for electors. For example, persons with deafblindness with low vision are able to fill in the ballot themselves with felt-tip marker but not with a pencil. However, use of felt-tip markers is not allowed. One example of good practice is Kumamoto and Kagoshima Prefectures separately specifying in ordinances that for gubernatorial elections, voting is conducted not through writing by themselves but by circling the names of the candidates.

(ii) A ballot by official as proxy:

a. For persons with deafblindness, the help of interpreter-guides is necessary when asking officials of the election administration committee to write in the ballot on their behalf. However, there are many polling stations that do not allow accompaniment by interpreter-guides.

b. In addition, the right to vote of persons who have difficulty in indicating their will is not guaranteed. General polling stations do not allow the family or supporters of these persons to vote by proxy on their behalf based on the will of persons who have difficulty in indicating their will. There are privacy problems when persons with disabilities cast a ballot in the presence of an official of the election administration committee depending on the particular characteristics of each disability. There may be cases where they cannot express their will on a paper ballot.

[Example] In December 2014, a young adult who has autism and an intellectual disability went to a polling station in Minato Ward, Tokyo, for the first time when they came of age. However, they were unable to vote there. Because the young adult had difficulty in expressing their will verbally, the young adult was accompanied by family to the polling station and asked an official of the election administration committee to vote through a ballot by proxy. The family suggested a method through which they would show the young adult the names of the candidates written on pieces of paper. However, the election administration committee refused voting assistance due to the fact that they could not determine a method to confirm the will of the young adult and returned the voting postcard.

c. As mentioned in the State Party Report (Paragraph 190), an amendment to the Public Offices Election Act in 2013 allowed the right to vote of adult wards. Since then, the participation of persons with autism and intellectual disabilities in voting has increased. For persons who are unable to write by themselves at the time of voting, they are able to have two voting assistants and cast a ballot by proxy. However, because the number of polling station officials is limited, there is an issue of communication between the elector and the polling station official.

(iii) An absentee balloting:

As mentioned in the State Party Report (Paragraph 187), an absentee balloting mechanism has been developed. However, those persons who are eligible are limited according to the class of disability certificate and other factors based on the medical model. For example, persons eligible for the system that allows for entry by proxy for absentee balloting by mail or by other means are currently “persons for whom the physical disability certificate indicates them as having a degree of upper extremity or visual disability that is Grade 1.” However, many persons with deafblindness have difficulty in traveling to a polling station and casting a ballot in rural areas due to a shortage of interpreter-guides, even though they are not classified as having Grade 1 visual disabilities.

(iv) Early voting:

Although this is available in municipal offices, there are many who are unable to use this system.

(2) Provision of information relating to elections

(i) Election broadcasts:

The State Party Report states that sign language interpreters and closed captions “can be used” for election broadcasts for national elections and prefectural governor elections (Paragraph 187). However, the current situation is one where there also cases where these “cannot be used” as shown in the table below. In addition, sign language interpreters and closed captions are not provided for the broadcasting of political profiles. Despite repeated demands from organizations of persons with disabilities, because the provision of sign language interpreters and closed captions is not a legal obligation, access to information regarding elections is insufficient for persons with disabilities.

Type of election	House of Representatives Single-member district election	House of Representatives Proportional representation seat election	House of Councillors District election	Prefectural governor election	House of Councillors Proportional representation seat election
Sign language Interpreter	Carry-in video camera: Insertion permitted	Permitted	Carry-in video camera: Insertion permitted	Permitted	Permitted
	Recording in a broadcast studio: Not permitted		Recording in a broadcast studio: Insertion permitted		
Closed captions	Carry-in video camera: Insertion permitted	Not permitted	Carry-in video camera: Insertion permitted	Not permitted	Permitted
	Recording in a broadcast studio: Not permitted		Recording in a broadcast studio: Not permitted		

Furthermore, there is not even an obligation to make efforts for the provision of information in municipal government elections. For the elections of municipal government heads, the provision of sign language interpreters, note-takers and captioners, etc. for candidate speeches varies depending on the decision of municipal election administration committees.

In addition, persons with deafblindness are not able to obtain sufficient information due to a lack of the following services. For example it is necessary to create data broadcasts for election broadcasts and be able to obtain this information using Braille displays, make sign language interpretations and closed captions easier to view, and dispatch interpreter-guides at public expense to visit the homes of persons with deafblindness to provide information on the content of election broadcasts when requested.

(ii) Election bulletins/election notices:

These should be provided according to various needs, such as the dispatch of interpreters and assistances for persons with disabilities for whom the use of media such as Braille, large print, audio, electronic data, and ruby readings. Despite this, provision of information is insufficient due to the existence of regional gaps and other reasons.

Screen readers used by persons with visual disabilities are unable to read election bulletins published online because they are posted as image-based PDFs. A system to enable access to election bulletins by

persons with visual disabilities, such as requesting candidates to submit text-based PDF files when making submissions to election bulletins, has not been developed. Such a system is essential to substantively achieve the right to vote (Article 15 of the Constitution of Japan) and the right to know as part of the freedom of expression (Article 21 of the Constitution of Japan) guaranteed in the Constitution of Japan.

In addition, persons with psychosocial disabilities who are hospitalized are unable to obtain any election information such as election bulletins. An environment in which the right to vote can be exercised is not guaranteed.

(iii) Speeches/street speeches

The Public Offices Election Act prohibits the provision of text information at outdoor speeches/street speech in a way that can be seen by deaf, hard of hearing and late-deafened persons. This inhibits the participation of deaf and hard of hearing persons in elections.

(iv) Live Diet session broadcasts:

Deaf, hard of hearing and late-deafened persons are unable to obtain information as sign language interpreters and closed captions are not provided.

(3) Guarantee of the right to hold office

(i) Problems during election campaigns

Persons with disabilities who need assistance in all aspects of daily life face various difficulties in standing for elections in order to become assembly members of the national or local government and conducting election campaigns. Resources and public services that can eliminate these barriers are not available or extremely insufficient.

[Example] When a woman using a wheelchair and requiring assistance stood for election, she faced various problems such as difficulties in finding wheelchair-accessible buildings for supporter groups and election campaign offices as well as in finding wheelchair-accessible toilets at street speech and meetings. In addition, the use of home-visit care for persons with severe disabilities was prohibited during election campaigns (*1) and so she had to ask volunteers to serve as personal assistants and coordinators who arrange the schedules of the assistants. Furthermore, there is still social prejudice against persons with disabilities being persons eligible for elective office. It was difficult for her to be considered a candidate and her staff and election office were criticized through comments such as “are you trying to gain votes by using person with disabilities?”

The Public Offices Election Act states that “compensation can be paid” for “persons engaged in election campaigns who are used solely as sign language interpreters or note-takers.” Fairness and neutrality are critical ethics issues for sign language interpreters and note-takers. Regarding them as campaign staff is problem that involves the social credibility of sign language interpreters and note-takers. In addition, there are provisions that allow voting requests by telephone but not by emails and facsimiles, which limits the participation of deaf, hard of hearing and late-deafened persons in election campaigns. However, voting requests via SNS are allowed, making it difficult to understand the difference between the use of SNS and the use of emails and facsimiles. If a deaf or hard of hearing person who has difficulty vocalizing stands for election, they cannot express their political opinion through text. In this way, there is concern that measures by deaf, hard of hearing and late-deafened persons who seek suffrage as a basic human rights will be regarded as election campaigns.

*1 The restriction on the use of home-visit care for persons with severe disabilities specified by the Ministry of Health, Labour and Welfare is only for “outings for economic activities such as commuting and business operations” (Notification No. 523 of the Ministry of Health, Labour and Welfare in 2016). In the case of the above example, the local government added further restrictions.

(ii) Percentage of assembly members with disabilities

According to a survey by the Mainichi Shimbun, as of December 1, 2017, among 47 prefectural assemblies and 20 municipal assemblies of ordinance-designated cities (total of 67 assemblies), there are of seven members using a wheelchair and one member with a visual disability, accounting for only 0.2% of the total number of assembly members. There is only one assembly member of the Yokosuka Municipal Assembly who announced that they have a psychosocial disability, and there are three assembly members in Japan who are deaf and hard of hearing persons. There are no official data on the number of assembly members with disabilities. However, considering the abovementioned situation, it can be said that the participation of persons with disabilities as assembly members is extremely limited.

(4) Participation in governmental councils, etc.

(i) Participation as observers in Diet and assembly proceedings

In November and December 2016, there were cases where persons with visual disabilities were not allowed to bring their white canes into the observer seats in the Aichi and Kagoshima Prefectural Assemblies as the canes were deemed dangerous items. Although there have been improvements regarding the carrying of white canes through revisions of operational procedures, there are still many issues that remain when it comes to persons with disabilities observing Diet proceedings. These include confiscation of assistive technologies for seeing or hearing and recording, being unable to use sign language to register to observe proceedings, no hearing groups being established and restrictions on entering and leaving the room while deliberations are in progress despite the particular characteristics of psychosocial disabilities.

There are cases where persons have been discriminating against during questioning of an unsworn witness, etc. on the basis of their disability.

[Example] In May 2016, attendance of an ALS patient, whose option was sought as a related party, was denied in the questioning of an unsworn witness regarding amendment of the Comprehensive Support Law for Persons with Disabilities in the House of Representatives Committee on Health, Welfare and Labour. The man had a respirator attached and could not vocalize. He communicates through a personal assistant who reads his lips. During the preparatory conference, the ruling party requested a change in unsworn witness because “it would take time to communicate with him” and his attendance as an unsworn witness was cancelled.

2. Suggested Questions

(1) Accessibility regarding voting methods, voting environment, paper ballots, etc.

What kinds of voting methods are being considered for implementation, taking into consideration the fact that there are persons with disabilities for whom writing by themselves and ballot by proxy through officials is difficult as methods of voting? With respect to absentee balloting by mail or by other means, what kinds of accommodations are being provided for persons with disabilities who are unable to go to a polling station for some reason even if they are not in a disability grade that is eligible to receive a disability certificate? What kinds of accommodations are being provided for persons with disabilities who are unable to go to an early voting location?

(2) Provision of information relating to elections

Indicate the reasons why specific measures were not taken to make sign language and closed caption broadcasts of election broadcasts and live Diet session broadcasts an obligation despite repeated demands from organizations of persons with disabilities. In addition, what kinds of specific improvement measures are planned to be established in order to improve the level of information accessibility and reasonable accommodation required by the CRPD? Indicate specific measures for the official implementation of the dispatch of interpreters to the homes of persons with deafblindness, etc. as

necessary, as reasonable accommodation to guarantee their access to election broadcasts and election bulletins. Indicate the status of the development of policies on media that enable all persons with disabilities to access election bulletins and election notices as well as the distribution status of these to persons with disabilities admitted to hospitals and institutions.

(3) Guarantee of the right to hold office

What kinds of specific measures have been taken to guarantee the right to hold office of persons with disabilities and their substantive participation as assembly members?

(4) Participation in councils, etc.

Indicate specific mechanisms to investigate, monitor and publish whether persons with disabilities are able to substantively participate in councils and as assembly observers., etc. In what way are subsidies being provided at the national and local government level for activities of organizations of persons with disabilities to provide policy recommendations, or, is there an intent to provide subsidies?

3. Suggested Recommendations

(1) Accessibility regarding voting methods, voting environment, paper ballots, etc.

Consider and introduce various voting formats such as circling the names of candidates, optical answer sheets, and electronic voting. With respect to ballots by proxy, allow optimal methods that accommodate each disability, such as persons with disabilities who require assistance in decision-making and persons with deafblindness, and not just a uniform proxy by an official. With respect to whether absentee ballots can be used or not, this should not be determined only by the grade of physical disability certificate based on the medical model. They should be allowed for persons with disabilities who have difficulty in accessing polling stations due to social barriers. With respect to early voting, allow for persons with disability to vote early at locations closer to them and work to improve the situation through steps such as adding voting locations in institutions and hospitals.

(2) Provision of information relating to elections

With respect to election broadcasts, make sign language and closed caption broadcasts mandatory for all election broadcasts so that persons with disabilities are also able to obtain all information regarding elections. In addition, as information accessibility and reasonable accommodation for persons with deafblindness, etc. implement data broadcasts and if requested, dispatch interpreters to their homes. Provide election bulletins and notices according to various needs, such as the dispatch of interpreters and assistances for persons with disabilities for whom the use of media such as Braille, large print, audio, electronic data, and ruby readings is difficult. Also ensure that election bulletins and notices are provided for persons with disabilities admitted to hospitals and institutions. Make the addition of sign language and closed captions mandatory for live broadcasts of Diet sessions.

(3) Guarantee of the right to hold office

Take advance improvement measures that assume candidates and assembly members with disabilities as well as formulate specific measures to actively provide reasonable accommodation in order to guarantee the right of persons with disabilities to hold office and substantive participation as assembly members.

(4) Participation in councils, etc.

Enhance monitoring functions through such things as the guarantee of investigation authority and expenses, as well as establish mechanisms to monitor and publish the actual conditions of participation by persons with disabilities in order to enable their substantive participation in various councils and assemblies, etc. as observers. Establish a subsidy system for the activity expenses of organizations of

persons with disabilities at the national and local government levels (activity expenses to investigate the needs of persons with disabilities and the barriers they face, and reflect the results in policy and planning recommendations).

Article 30 Participation in cultural life, recreation, leisure and sport

1. Issues

(1) Information accessibility to enjoy culture

(i) Absence of legislation to develop a reading environment (Barrier-Free Reading Act)

Japan ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled and amended the Copyright Act. With regard to legislation for the provision of accessibility for reading, a barrier-free reading act has enacted. However, a reading environments for persons with difficulty reading is extremely insufficient. There are problems such as electronic books that are sold not being compatible with being read aloud through speech synthesis, not being available as text data, not being able to adjust screen size and color, as well as services for persons with disabilities in public and school libraries not able to be utilized because they are insufficient.

(ii) TV programs

a. The Ministry of Internal Affairs and Communications formulated the “Guidelines on Information Accessibility in the Field of Broadcasting (February 2018).” While its target is the prevalence of closed caption broadcasts for all programs in principle, the target for sign language broadcasts is low, at “an average of 15 minutes per week or more.” In addition, there is the issue of these targets not being legal obligations.

b. In fact, although the prevalence rate of closed captions in TV programs is improving, closed captions are not provided for morning news programs or afternoon information programs. For sign language broadcasts they are only provided for a total of 20 minutes per day on public broadcasting and a few minutes per week on commercial broadcasting, even on news programs.

(iii) Barrier-free movie screenings at movie theaters

a. The percentage of “Japanese movies and animated movies” with closed captions for deaf and hard of hearing persons at movie theaters is very low, at about 10%. In addition, the number of movie theaters that offers screenings with closed captions is limited (e.g., only 1 or 2 theaters out of 11 theaters in Tokyo operated by TOHO Cinemas) and the duration for which they are screened is limited (only two to three weekdays per film). Thus, access is not guaranteed. Furthermore, the percentage of “Japanese movies and animated movies” with audio guidance for persons with visual disabilities at movie theaters is currently less than 1%.

b. There are more movies that use an application known as “UD Cast” that displays closed captions/sign language through eyeglass-type devices and mobile terminals. There are also more movies that are compatible with audio guidance through mobile terminals. However, there are issues where the current situation is on where there are only four theaters in Japan that lend eyeglass-type devices (advance reservations are also required), and these devices not being practical as purchasing them on your own would cost about 80,000 yen. In addition, audio guidance is limited to Japanese movies.

(iv) Exhibit descriptions at museums and art museums

The current situation is one where there are only text and audio guides for visitors. Sign language is not available. In addition, the majority of museums and art museums do not provide hearing loops.

(v) Other

a. There are few internet videos with closed captions and there are no national guidelines.

b. Many in-flight entertainment programs offered by airlines such as JAL and ANA are videos offered only with audio and without closed captions. Deaf and hard of hearing persons cannot enjoy these programs.

(2) Access to recreation, tourism, and leisure activities

(i) Information access at tourist locations, entertainment facilities, etc.

a. Deaf and hard of hearing persons cannot enjoy on-board audio guidance explaining the history and background behind tourist locations and famous locations when trains pass through them.

b. Most amusement parks, aquariums and resource centers only provide audio information. The provision

of information is insufficient at interactive attractions, etc. even at amusement parks.

c. A child who was deaf tried to go to KidZania but was unable to enter because the child's sign language interpreter as an adult and "only children are allowed to enter" KidZania.

d. Although there is wheelchair seating at entertainment facilities, there are restrictions such as sightlines not being guaranteed and the inability to choose prices and time slots. Persons accompanied by a guide dog are often shown to wheelchair seating and face the same problems as those mentioned above. The majority of shrines, temples and historic buildings do not provide barrier-free facilities and so access is not guaranteed.

e. [Example] When tearing down Nagoya Castle, which had elevators, Nagoya City set a policy of not installing elevators when restoring the castle using wood construction. The reason was "in order for restoration to be true to historical facts." Thus, appropriate accessibility for persons with disabilities will not be ensured.

(ii) Leisure activities

a. The Ministry of Education, Culture, Sports, Science and Technology announced the "transition from a school education policy to a 'lifelong learning' policy" (2016). The plan is to promote the creation of meaning in life for children with disabilities through lifelong learning (education, culture and sports).

b. However, the actual conditions of use of various facilities have not been surveyed and the actual conditions of leisure activities after graduating from school have not been understood. With respect to the leisure activities of persons with intellectual disabilities, there are survey reports that for both students and working adults, the majority most frequently watch TV on weekends and holidays, that 23.2% "sometimes participate" in community clubs and events while 72.0% "do not participate at all." It is assumed that access to leisure activities is not guaranteed.

(Source: Suzuki and Hosoya "The Current Situation and Problem for Leisure Activities of Intellectually Disabled Adults" 2016

<http://s-ir.sap.hokkyodai.ac.jp/dspace/bitstream/123456789/7998/1/67-1-kyoiku-17.pdf>)

(3) Access to sports

(i) Substantive participation in competition

a. For various competitions, in many cases, there is no category for the participation of "persons with deafblindness." Therefore, persons with deafblindness have no choice but to participate in the "visual disabilities" or similar category and in many cases are unable to substantively participate.

b. Provision of reasonable accommodation such as the provision of information during competitions and practice is particularly insufficient for deaf, hard of hearing, late-deafened and deafblind persons. There are many cases where they are essentially subject to restrictions on participation in general sporting events.

(ii) Information access, etc. at sports facilities in Japan

There are no guidelines for the provision of barrier-free accessibility at sports facilities. The display of pictograms and marks that indicate support for persons with disabilities is available is insufficient for the smooth conveying of information and communication in competitive situations and in emergencies.

(iii) Accessibility of sports facilities overall and initiatives for the 2020 Tokyo Olympic and Paralympic Games

a. The statement of telephone facilities (TTY/TDD) for deaf and hard of hearing persons specified in the "IPC Accessibility Guidelines" prepared by the International Paralympic Committee (IPC) is not included in the accessibility guidelines of the Tokyo Organizing Committee of the Olympic and Paralympic Games.

b. The provision of physical accessibility to spectator seats and stands at sports facilities overall is insufficient. The freedom of wheelchair users to choose seats (including the use of seats next to wheelchair users for persons accompanying them who do not use wheelchairs) is restricted. The "architectural design standards for smooth transportation, etc. of elderly persons, disabled persons, etc. (supplement for facilities with audience seating such as theaters and stadiums)" including the ensuring of

sightlines are merely guidelines and not legal standards and have no legal force.

(iv) **Participation of women with disabilities**

The percentage of female coaches and leaders in recreation and sports is low, and among these, the percentage of women with disabilities is extremely low. The percentage of female athletes in the Rio Paralympic Games was 34%, lower than the percentage of female athletes in the Rio Olympic Games (48.5%) (both in terms of the Japanese national team). This is believed to be because the fact that there are few role models, few environments near them where they can participate and information not reaching them are acting as barriers.

(4) Various artistic activities of persons with disabilities

(i) Works by persons with disabilities are evaluated from the social welfare perspective of “because it was created by a person with disability,” rather than evaluating the work itself. Opportunities for participation and presentation are also limited.

(ii) When a person with a psychosocial disability who was a self-proclaimed outside artist published their work on the Internet, the works were criticized as “not being art by a person with disabilities” and “taking advantage of their disability.”

(iii) With respect to the “Act on Promoting Cultural and Artistic Activities for People with Disabilities” promulgated and enacted in June 2018, it is necessary to monitor the implementation status of the Act to determine whether it is effective in promoting the participation of persons with disabilities in various artistic activities as well as the appropriate evaluation of their works.

2. Suggested Questions

(1) Information accessibility to enjoy cultural works

Has the government established any specific effective measures for persons with disabilities to access TV programs as well as cultural activities offered by museums, art museums, movie theaters, etc. through “an easy to use form” based on the “Act on Promoting Cultural and Artistic Activities for People with Disabilities” (enacted in June 2018)?

(2) Access to recreation, tourism, and leisure activities

(i) What kinds of measures is the government planning to establish in the future to guarantee accessibility at tourism locations and entertainment facilities, etc.?

(ii) How does the government perceive the actual status and issues of the recreation and leisure activities persons with disabilities as a whole according to the type of disability, gender, region, age, etc.? What kinds of specific measures have been established?

(3) Access to sports

(i) What kinds of measures are being established to enable the participation of persons with disabilities who have difficulty in substantively participating in sports, such as deaf, hard of hearing, late-deafened and deafblind persons?

(ii) What kinds of measures are being established to guarantee the freedom of wheelchair users to choose seats (including the types of seats and seats next to each other for accompanying persons who are not wheelchair users) and promote the provision of physical accessibility to audience and spectator seats at sports facilities overall, including the ensuring of sightlines? When will the government make the “architectural design standards for smooth transportation, etc. of elderly persons, disabled persons, etc. (supplement for facilities with audience seating such as theaters and stadiums)” mandatory?

(iii) Why did the government omit the statement specified in the “IPC Accessibility Guidelines” prepared by the International Paralympic Committee from the “Tokyo 2020 Accessibility Guidelines” regarding standards for information accessibility and sightlines, etc. at sports facilities? How will the government achieve the standards in the future?

(4) Various artistic activities of persons with disabilities

What kinds of specific measures are being established by the government so that citizens can

appreciate the value of various works with respect to the evaluation of works by persons with disabilities? Is the Act on Promoting Cultural and Artistic Activities for People with Disabilities also effective in promoting not only the participation of persons with disabilities in various artistic activities but also the appropriate evaluation of their works?

3. Suggested Recommendations

(1) Information accessibility to enjoy cultural works

Establish specific effective measures for persons with disabilities to access TV programs as well as cultural activities offered by museums, art museums, movie theaters, etc. through “an easy to use form”

(2) Access to recreation, tourism, and leisure activities

(i) Establish measures to establish in the future to guarantee accessibility at tourism locations and entertainment facilities, etc.

(ii) Understand the actual status and issues as well as establish specific measures regarding the recreation and leisure activities persons with disabilities as a whole according to the type of disability, gender, region, age, etc.

(3) Access to sports

(i) Establish measures to enable the participation of persons with disabilities who have difficulty in substantively participating in sports, such as deaf, hard of hearing, late-deafened and deafblind persons.

(ii) Establish measures to apply standards for information accessibility and sightlines at sports facilities in compliance with the IPC Guidelines.

(iii) Guarantee the freedom of wheelchair users to choose seats (including the types of seats and seats next to each other for accompanying persons who are not wheelchair users) and promote the provision of physical accessibility to audience and spectator seats at sports facilities overall, including the ensuring of sightlines. Make the “architectural design standards for smooth transportation, etc. of elderly persons, disabled persons, etc. (supplement for facilities with audience seating such as theaters and stadiums)” mandatory.

(4) Various artistic activities of persons with disabilities

Establish measures so that when works, etc. of persons with disabilities are evaluated, these evaluations are not bound by existing values and that the value of various works, etc. are appreciated as well as to ensure that division and discrimination do not occur due to such evaluation. Further accelerate the implementation of the Act on Promoting Cultural and Artistic Activities for People with Disabilities to promote the participation of persons with disabilities in various arts as well as the appropriate evaluation of their works.

Article 31 Statistics and data collection

1. Issues

(1) It is necessary to position surveys on persons with disabilities as the Fundamental Statistics based on the Statistics Act.

The State Party Report states the government statistically understands the implementation status and effects of the measures for persons with disabilities (paragraph 208). However, what is understood is mainly the implementation status of measures and not their effects (actual living conditions). With respect to the effects of measures (actual living conditions), for most cases (a) only limited to basic points (for example, with respect to housing, only the categories of owned house, rented house, group home, etc.), (b) unable to compare with persons without disabilities, and (c) no classified by gender, age, etc.

It should be noted that the government is aware of the issue of Japan's disability statistics to some extent, and noted that "the collection of data on the realization of each Convention right disaggregated by sex, age, type of disability, etc. in consideration of the needs of persons with disabilities and other relevant persons is required" and it intends to improve such statistical data by the time the Second State Party Report is submitted (paragraph 3). This is a statement we have high expectations for. According to the media, the government plans to introduce questions relating to the existence of disabilities in the 2022 Comprehensive Survey of Living Conditions to compare income, etc. with the general public, and implement a trial project in 2019. The focus will be on whether the statistics on persons with disabilities are helpful for monitoring the Convention.

The reasons why these statistics have not existed to date is because surveys on persons with disabilities are not the Fundamental Statistics under the Statistics Act, and government ministries and agencies in charge of measures for persons with disabilities are responsible for the collection of data.

After the enactment of the Convention on the Rights of Persons with Disabilities, criticism over inconsistent surveys on persons with disabilities by policy field and by type of impairment intensified. A new, "Survey on Difficulty in Living (National Survey on Persons and Children with Disabilities at Home)" was started in 2011, with the second survey conducted in 2016. This survey targets all persons who have difficulty in living due to their disability or disease, including persons with psychosocial disabilities and chronic disease patients. Although it is an improvement on previous surveys, it is not an important statistical survey for the government and has limitations as a survey on needs conducted by sections in charge of welfare services. These limitations include the following:

(a) The survey items are mainly those concerning welfare service needs and do not include many fields of rights advocated in the CRPD, such as the fields of employment, education, participation in cultural activities, sports and elections, as well as experiences of discrimination. (b) About 1.85 million people (these are persons who also have difficulties in living associated with disabilities) who do not have a physical disability certificate and do not use welfare services are not counted as persons with disabilities. (c) This survey did not draw much attention from persons with disabilities or from society. As a result, it was estimated that the number of persons with disabilities in Japan was about 9.37 million (approximately 7.4% of the total population) in the 2016 Survey Report (Ministry of Health, Labour and Welfare, April 2018), and is only half of the international estimate (about 15%, WHO World Report on Disability, 2011). (d) Based on the reason that this was not the Fundamental Statistical Survey, the government did not publish the results in an easy to understand manner and the secondary use (such as by borrowing basic data and recounting them) by organizations of persons with disabilities and other organizations is not possible. (e) The data cannot be used for comparisons with persons without disabilities and cannot be used to evaluate the implementation status of the Convention.

Despite these limitations, the current situation is one where there is no choice but to use the survey data as the central source for data introduced as the number of persons with disabilities in Japan.

Therefore, it is necessary to position surveys on persons with disabilities as the Fundamental Statistics based on the Statistics Act.

(2) Classification of data by gender, age, impairment, region, etc.

Data on persons facing multiple difficulties, such as women with disabilities, are particularly scarce. It is necessary to create a report that compares the status of human rights of women and men with disabilities with that of women and men without disabilities. According to a survey on the income gap between unmarried persons in a certain region, when the income for men without disabilities was 100, women without disabilities was 66, men with disabilities was 44 and women with disabilities was 22. (Source: Katsumata 2008)

In addition, data by type of disability is required and they should be able to be classified by physical disability such as visual and hearing disabilities, and further classified by hearing impairments such as deafness and hard of hearing. Furthermore, data classified by region, such as by prefecture, are necessary as regional gaps are also expanding.

(3) The necessity of data that can be compared with those of persons without disabilities

There is a need for survey data that can be used to compare the actual living conditions of persons with disabilities to those without. In order to collect such data, questions regarding whether a person has a disability should be incorporated into the Population Census, the Comprehensive Survey of Living Conditions, the Survey on Time Use and Leisure Activities and other existing Fundamental Statistical Surveys targeting the general public, so that they can also be used as surveys on persons with disabilities. By doing so, not only will it be possible to understand the actual conditions of persons with disabilities across the nation without increasing budgets, but also possible conduct comparisons with citizens without disabilities. Ultimately making it possible to evaluate the degree of implementation of the Convention.

Meanwhile, there are problems such as information necessary for measures for persons with disabilities (for example, whether assistive devices are used or necessary) not being obtained because the number of questions on the Population Census and Comprehensive Survey of Living Conditions is limited. Therefore, it would be effective to conduct an additional, detailed fact-finding survey on persons with disabilities that targets some of the people who responded that they have disabilities in these surveys.

(4) Other matters

(i) Surveys of persons admitted to facilities and long-term hospitalization patients in psychiatric hospitals

These data on persons with disabilities are obtained through surveys via administrators, surveys must be started that seek the opinions and wishes of the persons with disabilities themselves to the greatest extent possible.

(ii) Secondary use of data

It is necessary to establish a mechanism to spread the survey data so that they can be used not just by administrative organs but also by organizations of persons with disabilities and society in general. It is also necessary to establish a secondary use mechanism to enable organizations of persons with disabilities and other organizations to borrow basic data and conduct more detailed analysis and use.

(iii) Privacy protection and the right to refuse

Thorough accommodations are necessary for fact-finding surveys on persons with disabilities conducted by visiting their homes as there are persons with psychosocial disabilities, etc. who are hiding their disability from their neighbors and administrative organs. For example, letting them know that they have the right to refuse the survey and using response methods other than interviews through visits.

(iv) Disclosure of administrative data

It is necessary to classify administrative data related to persons with disabilities in fields such as employment, education, income security, social welfare, healthcare and advocacy, by gender and region, and release the data.

2. Suggested Questions

- (1) With respect to improving the collection of “data on the realization of each Convention right disaggregated by sex, age, type of disability, etc. in consideration of the needs of persons with disabilities and other relevant persons” noted in paragraph 3 of the State Party Report, what specific subsequent considerations were made?
- (2) What kinds of measures does the government plan to take in order to incorporate questions regarding whether a person has a disability in the Population Census, the Comprehensive Survey of Living Conditions, the Survey on Time Use and Leisure Activities and other existing Fundamental Statistical Surveys targeting the general public, and comprehensively examine the realization status of each right provided for in the Convention?
- (3) What kinds of measures does the government plan to advance with organizations of persons with disabilities in order to enhance statistics on persons with disabilities?
- (4) Which provisions of the CRPD will it be possible to evaluate through reforms of the fact-finding surveys? In addition, are there plans to allow organizations of persons with disabilities and researchers to independently analyze the obtained data?

3. Suggested Recommendations

- (1) Incorporate questions regarding disabilities into the Population Census, the Comprehensive Survey of Living Conditions, the Survey on Time Use and Leisure Activities and other existing Fundamental Statistical Surveys so as to achieve statistics on persons with disabilities that can be compared with persons without disabilities.
- (2) Implement fact-finding surveys on persons with disabilities as the Fundamental Statistics that targets persons who responded that they have disabilities in the abovementioned surveys. Collect data that covers each rights field provided for in the Convention, particularly to improve materials collection systems in order to eliminate all forms of discrimination and especially to eliminate multiple discrimination and intersectional discrimination and conduct appropriate monitoring and evaluation in cooperation with organizations of persons with disabilities, including organizations of women with disabilities. Data that can be disaggregated by gender, age, disability, region and other factors should be collected and used for policy evaluation, and should be made available for secondary use by organizations of persons with disabilities and other organizations.
- (3) Implement surveys targeting users of residential facilities and long-term inpatients at psychiatric hospitals through a method that involves interviews with the persons themselves to the greatest extent possible.

Article 32 International cooperation

1. Issues

(1) Measures for the field of disability in the implementation of Sustainable Development Goals (SDGs)

In December 2016, the Japanese government determined SDGs Implementation Guidelines. In the “Implementation Guiding Principles” under the Guidelines, it specifies that measures are required for persons with disabilities together with the youth, children, women, etc. and that respecting their rights is “indispensable as cross-sectorial values in attaining all goals.”

However, in the attached “Specific Measures to Achieve the Sustainable Development Goals” table in the Guidelines that specifies actual measures, the disabilities field is only mentioned in the “Persons with disabilities” sub-item of “1. Empowerment of All People” (promotion of the Basic Program for Persons with Disabilities, accessibility of the public transport system, and promotion of employment of persons with disabilities) out of eight priority issues. There are no specific measures to address the disabilities in other priority issues.

In addition, in the “Elimination of discrimination” sub-item of priority issue 1 above, it states to promote “Mental Barrier-Free” for foreign nationals and persons with disabilities and conducting activities for human rights awareness-raising. It does not specify specific human rights-based measures in accordance with standards required by the UN Convention on the Rights of Persons with Disabilities.

(2) Participation of persons with disabilities in international cooperation

The State Party Report (paragraph 213) states with respect to persons with disabilities that, “their participation in the development process is also supported, by means such as dispatch of persons with disabilities as experts and JICA volunteers.” We commend the fact that the Japanese government has contributed to the mutual learning and empowerment of persons with disabilities with persons with disabilities in other countries by actively dispatching persons with various types of disabilities, including those with intellectual disabilities and deafblindness in partnership with organizations of persons with disabilities and other organizations.

However, as of May 2018, “Persons who are ineligible” in the “Application Qualifications” for international cooperation personnel include “adult wards, persons under guardianship and persons requiring assistance.” The above disqualifying provision limits the participation of persons with disabilities who use the system.

In addition, there are cases where dispatched persons with disabilities are subject to safety measures and activity restrictions different from those for persons without disabilities due to their disability.

[Example] When Ms. A, who has a visual disability (complete blindness), was dispatched to Country B as JICA personnel, JICA prohibited her from acting alone when she was outside and instructed her to always act with a person accompanying her as the organization could not be responsible for her safety if she acted alone. In addition, Ms. A had to find someone to accompany her by herself.

- Although she filed an objection within the organization, she was notified that she would be prohibited from acting alone outside a specified area (within 800 meters from her residence to the nearest station) and that if she violated this prohibition, this would be regarded as a neglecting of her obligation to consider safety and dealt with as such. Ms. A returned to Japan for treatment because of the stress caused by the activity restrictions.

Measures in partnership with “civil society, in particular organizations of persons with disabilities” specified in the text of the Convention regarding technical cooperation by the Japanese government is insufficient. For example, an organization of persons with psychosocial disabilities in Indonesia is trying to rescue persons with psychosocial disabilities who are bound with chains in a confinement facility.

However, the Japanese government does not provide sufficient funds for such measures by disabled people's organizations and provides funds primarily for medical institutions. This facilitates the issue of long-term hospitalization, which is also an issue in Japan. In addition, when partnering with organizations of persons with disabilities, budget measures for necessary reasonable accommodation are unclear.

(3) Support from the Japanese Government to promote the “Asian and Pacific Decade of Persons with Disabilities”

The Japanese government advocated the “Asian and Pacific Decade of Persons with Disabilities” in 1993 and has been playing a key role to realize the rights of persons with disabilities in the Asia-Pacific region. However, the State Party Report only mentions assistance funds to the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (paragraph 214). There are no statements regarding the “Incheon Strategy,” which is the action plan for the third decade (2013-2022) of the “Asian and Pacific Decade of Persons with Disabilities.” This shows that support in promoting specific measures is insufficient. One of the factors behind this is the decreasing trend of the ODA budget as a whole (decreased by half from 1,014.4 billion yen in 1993 to 553.8 billion yen in 2018).

In addition, when participating in international conferences such as CSO Working Groups held by ESCAP, the participant is responsible for arranging for sign language interpreters and paying for their travel expenses. Government support to promote the substantive participation of organizations of persons with disabilities in international conferences is insufficient.

2. Suggested Questions

(1) Measures for the field of disabilities in the implementation of Sustainable Development Goals (SDGs)

Indicate specific measures to implement human rights-based “cross-sectorial measures” for persons with disabilities specified in “4. Major Principles for Implementation” of the SDGs Implementation Guidelines.

(2) Participation of persons with disabilities in international cooperation

- (i) Have any guidelines, etc. been established to enable participation by persons with disabilities in activities on an equal basis with persons without disabilities when they participate in international cooperation (such as measures to prevent allocation and activity restrictions on the basis of disabilities, and promote active provision of necessary reasonable accommodation)?
- (ii) What kinds of specific measures does the government plan to take to promote measures through partnership with persons with disabilities and organizations of persons with disabilities, including the expected securing of necessary budgets for reasonable accommodation?

(3) Support from the Japanese government to promote the “Asian and Pacific Decade of Persons with Disabilities”

- (i) Indicate what kinds of support (quantitative and qualitative) the Japanese government has provided in the first to third decades to promote the “Asian and Pacific Decade of Persons with Disabilities.” If the quantity of support is decreasing, indicate the reasons why. In addition, what is the policy of the Japanese government for the kinds of support it will provide for constructive measures in the fourth decade and thereafter?
- (ii) How does/will the Japanese government support budgets for the provision of information, etc., which are currently an excessive burden on persons with disabilities when organizations of persons with disabilities participate in international conferences such as the “Asian and Pacific Decade of Persons with Disabilities”? Please indicate the current situation and future policies.

3. Suggested Recommendations

(1) Measures for the field of disabilities in the implementation of Sustainable Development Goals (SDGs)

Determine and implement specific measures to cross-sectorally realize the human rights of persons with disabilities under all goals and priority issues through close discussions with organizations of persons with disabilities.

(2) Participation of persons with disabilities in international cooperation

- (i) Revise application qualifications that limit the participation of persons with disabilities so as to promote their substantive participation in international cooperation on an equal basis with persons without disabilities. In addition, with respect to participation in projects, formulate specific measures to achieve the provision of necessary reasonable accommodation based on constructive discussions persons with disabilities to realize their substantive participation without forcing allocations and activity restrictions on the basis of their disabilities.
- (ii) Formulate specific guidelines, including budget measures for reasonable accommodation, in order to further promote partnerships with persons with disabilities and organizations of persons with disabilities.

(3) Support from the Japanese government to promote the “Asian and Pacific Decade of Persons with Disabilities”

- (i) Formulate specific support measures to promote the “Asian and Pacific Decade of Persons with Disabilities” and implement action plans such as the Incheon Strategy.
- (ii) Formulate specific measures to secure budgets for reasonable accommodation, including support for ESCAP, to enable the participation of persons with disabilities in international conferences.

Article 33 National implementation and monitoring

1. Issues

(1) Absence of national human rights institution in line with the Paris Principles

There are currently no independent human rights institution in Japan based on the Paris Principles. For example, the Human Rights Committee, which is the monitoring body for the International Covenant on Civil and Political Rights, has repeatedly recommended that the Japanese government establish a national human rights institution since 1998. In a 2014 review, the Committee “recalls its previous recommendation (see CCPR/C/JPN/CO/5, para. 9) and recommends that the State party reconsiders establishing an independent national human rights institution with a broad human rights mandate, and provides it with adequate financial and human resources, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris principles)” (Paragraph 7 of concluding observations). The Commission on Policy for Persons with Disabilities, by law, is not an institution that was established that can independently exercise its authority or establish an independent executive office and finances (Article 3 “Commissions” of the National Government Organization Act). Thus, the current situation is one where it cannot be said that it is an institution independent of the government.

(2) Absence of monitoring systems by legislature or judiciary regarding the implementation status of the Convention

In Japan, the implementation of the CRPD is monitored through the monitoring of the implementation of the Basic Program for Persons with Disabilities, an administrative plan. Therefore, the scope of monitoring is limited to measures by administrative organs. It is impossible to monitor the implementation status of the Convention by legislature (the National Diet) and the judiciary (courts) as required by the Convention.

The legislature and judiciary should each conduct self-evaluations as elements that compose the State Party and work to make necessary improvements. However, no such measures have been taken. A problem in implementing the Convention by the legislature is that since ratification of the Convention, when deliberating laws that are closely associated with persons with disabilities (e.g. the revised Mental Health Law), consistency with the CRPD was something that never came up as a point of deliberation. In addition, with respect to provisions to review laws, the formation of a framework to amend the law to substantively implement the Convention, in terms of inspections and reviews based on the concluding observations, is still insufficient.

(3) The ambiguous position of the Commission on Policy for Persons with Disabilities in domestic monitoring

In the State Party Report, the statement, “the Commission on Policy for Persons with Disabilities has provided the following observation” appears in a total of eight locations. However, there is only one location where the government provides an answer (“to improve relevant statistical data”). In this way, the opinions of the Policy Commission are not positioned as the observations of the State Party. The Commission on Policy for Persons with Disabilities currently has no members with an intellectual disability, psychosocial disability or who are hard of hearing, and it is increasingly lacking in diversity of disabilities with each passing year. Furthermore, there are only two female members with a disability or disease.

(4) Absence of coordination with other human rights instruments

From the viewpoints of inseparability and interdependence of human rights, it is regrettable that the concluding observations regarding the rights of persons with disabilities for other human rights instruments, such as the Convention on the Elimination of all Forms of Discrimination against Women,

which Japan is a party to, are not sufficiently considered in the State Party Report.

(5) Absence of systems to implement and monitor the Convention by local governments that are responsible for many social services

Today, municipal governments are responsible for the implementation of many social services. Nevertheless, implementation and monitoring of the Convention by local governments is rare. The national government has not taken any measures to promote the implementation and monitoring of the Convention by prefectural and municipal governments. Even in the process of preparing the Initial State Party Report, the national government did not collect or analyze data from local governments.

(6) Absence of measures to promote the involvement of organizations of persons with disabilities and civil society regarding the monitoring of the Convention

In preparing the State Party Report, apart from discussions at the Policy Commission, the government only solicited public comments through the Internet, etc. There were no interviews with organizations of persons with disabilities that were not selected as members of the Policy Commission. There were practically no opportunities for organizations of persons with disabilities and civil society to be involved in the monitoring of the Convention.

In addition, organizations of persons with disabilities that have been taking measures to monitor the Convention have taken substantial efforts to prepare the parallel report. They came from around the country and held meetings on a regular basis and held public hearings in various localities to advance their measures. Although the expenses associated with activities are a substantial burden on organizations of persons with disabilities, they only receive financial support from private subsidy foundations with absolutely no support from the government.

2. Suggested Questions

(1) A framework independent of the government in line with the Paris Principles

Indicate the status of consideration and future plans for the establishment of a framework based on the Paris Principles that is independent of the government, which has also been recommended in other human rights instruments.

(2) Monitoring systems in legislature and judiciary regarding the implementation status of the Convention

Are there any institutions in legislature or judiciary that monitors the implementation status of the Convention? If so, which institution? If there are none, how is the implementation status of the Convention monitored?

In what form has consistency with the CRPD been evaluated in the deliberation of bills in legislature? What type of framework will be used to reflect the concluding observations in law amendment procedures in the future?

(3) The positioning of the Commission on Policy for Persons with Disabilities in domestic monitoring as well as personnel, budget and executive office systems

Specifically indicate how the Commission on Policy for Persons with Disabilities is positioned in domestic monitoring and what kinds of authority it has. Is it expected for the Commission on Policy for Persons with Disabilities to directly report to the Committee on the Rights of Persons with Disabilities? In addition, does the government plan to create opportunities for the Commission on Policy for Persons with Disabilities to have direct, constructive dialogues with the Committee on the Rights of Persons with Disabilities?

Specifically describe the systems regarding personnel (who appoints members of the Commission?), budgets and executive offices of the Commission on Policy for Persons with Disabilities.

Specifically indicate how the government utilized the observations of the Commission on Policy for Persons with Disabilities in preparing the State Party Report.

(4) Coordination with other human rights instruments

How did the government give consideration to matters relating to the rights of persons with disabilities, for which observations and recommendations were received from other human rights instruments, such as the Convention on the Elimination of all Forms of Discrimination against Women, in preparing the State Party Report?

(5) Monitoring of the implementation status of the Convention by local governments

Did the government conduct surveys and make inquiries regarding the implementation status of the Convention by local governments in preparing the State Party Report? If so, in what form, specifically, were they implemented?

(6) Establish relationships with organizations of persons with disabilities regarding monitoring of the Convention

What kinds of measures has the government taken to reflect the opinions of persons with disabilities other than the Commission on Policy for Persons with Disabilities in preparing the State Party Report? Were there opportunities for interviews and exchange of opinions with organizations of persons with disabilities? If there were, how were they conducted, specifically? How does the government perceive and evaluate the fact that the JDF and other organizations of persons with disabilities have engaged in activities in order to prepare the parallel report?

3. Suggested Recommendations

(1) Establish a framework in line with the Paris Principles independent of the government to promote, protect and monitor the implementation of the Convention.

(2) Establish a monitoring system in the legislature and judiciary regarding the implementation of the Convention. Enhance the monitoring function of the Commission on Policy for Persons with Disabilities as part of such efforts.

The legislature must check that when laws that are particularly closely related to the lives of persons with disabilities are newly created or amended, they are consistent with the CRPD. Provide for an overall framework based on the concluding observations in the supplemental provisions of laws closely related to the lives of persons with disabilities and prepare for future law amendments.

(3) Establish independent personnel and executive office systems and secure sufficient budgets to enhance the independence of the Commission on Policy for Persons with Disabilities and so that it can be an organ that can act in a functional manner. Enable the Commission on Policy for Persons with Disabilities to report directly to the Committee on the Rights of Persons with Disabilities and ensure. Increase the percentage of members with disabilities on the Commission on Policy for Persons with Disabilities to at least half of all members and ensure the diversity of commission members (in terms of disability, gender, age, region and affiliated organization).

(4) Establish a cross-sectoral consideration system so that matters relating to multiple discrimination/intersectional discrimination and other points relating to the rights of persons with disabilities observed by other human rights instruments are appropriately handled in the monitoring process of the CRPD. Have women with disabilities participate in all departments and organizations related to the domestic monitoring system.

(5) Recognizing that local governments are components of the State Party and the importance of their roles in implementing the Convention, monitor the implementation status of the Convention by local governments and incorporate the details of such monitoring in the next State Party Report.

(6) Create opportunities for interviews and exchange of opinions with organizations of persons with disabilities (other than the Commission on Policy for Persons with Disabilities) to enable the active involvement of organizations of persons with disabilities and civil society in the monitoring of the CRPD. In addition, the government should provide financial support for the activities of organizations of persons with disabilities in monitoring the Convention on the condition that the independence of the activities of such organizations is guaranteed.