

JFBA Report on the Initial Report of the State Party
Submitted by the Japanese Government
under the Convention on the Rights of Persons with Disabilities
~ Matters to be included in the List of Issues
and Background Information ~

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Japan Federation of Bar Associations

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Data (Supplementary Volume)

Introduction

The Japan Federation of Bar Associations (hereinafter referred to as “the JFBA”) which was established in September 1949 includes all lawyers and bar associations of Japan. Bar associations are autonomous and are independent legal persons without being subject to the supervision of administrative organizations and courts.

The JFBA, with the mission of protection of fundamental human rights and realization of social justice, adopted on November 9, 2001 at the Human Rights Protection Conference, the “Declaration to Seek Enactment of the Act prohibiting Discrimination against Persons with Disabilities.” After the adoption of the “Convention on the Rights of Persons with Disabilities” (hereinafter referred to as “CRPD”) at the United Nations in 2006, the JFBA has consistently argued, in conjunction with ratification of CRPD, that the Act prohibiting Discrimination against Persons with Disabilities should be enacted as a domestic law.

Following the request of the JFBA and the organizations of persons with disabilities, Japan ratified CRPD in 2014 after the development of domestic laws, but as the development of domestic laws has not reached the standards required by CRPD, the JFBA adopted on October 3, 2014 at the Human Rights Protection Conference, the “Declaration to Seek Full Implementation of the Convention on the Rights of Persons with Disabilities.”

The JFBA submits this Report in order to point out the problems of the Initial Report of the State Party submitted by the Japanese Government under Article 35 of CRPD in June 2016, and the current status of Japan, and to obtain publication of effective and appropriate List of Issues and Concluding Observations toward full implementation of CRPD in Japan.

* Numbers in parentheses in the text shall indicate the Paragraph No. of the “Initial Report of the Japanese Government on the Rights of Persons with Disabilities.”

Article 1 through Article 4 Purpose, Definitions, General Principles and General Obligations

1. Definitions of Disabilities

(1) Current Status

[1] The State Party Report states that the definition of “persons with disabilities” was changed to include the concept of a so-called “social model” by the amendment of the Basic Act for Persons with Disabilities (6, 17).

[2] However, in the benefit decision under the “Act on Comprehensive Support for Daily and Social Lives of Persons with Disabilities” (hereinafter referred to as “Comprehensive Support Act”), as well as in the practices of disability certificates¹, disability pension², and employment of persons with disabilities under the “Act on Employment Promotion etc., of Persons with Disabilities” (hereinafter referred to as “Employment Promotion Act”), the medical model is still applied.

(2) Proposal for LOIs

Does the Government adopt social model in all acts related to measures for disabilities, including disability certificates, employment of persons with disabilities and disability pension, etc.?

2. Full and effective participation

(1) Current Status

[1] Participation of persons with disabilities at national or local levels of councils, which handle matters related to disabilities, is not ensured, or in many cases limited to person with physical disabilities.

[2] For the Commission on Policy for Persons with Disabilities, established in the Cabinet Office under the Basic Act for Persons with Disabilities, there is no provision that more than certain number of members shall be appointed from among persons with disabilities.³ The State Party Report states that at present, a majority of the members of the Commission are appointed from among persons with disabilities or representatives of their families (221), but persons with intellectual and mental disabilities are not appointed as members, which is an extremely unfair composition.

(2) Proposals for LOIs

[1] Does the Government have any plans to actively enable persons with disabilities to participate in councils, etc., related to disabilities regardless of national or local level?

¹ Definitions of disabilities used for collection of the statistical data of persons with disabilities necessary for development and implementation of policies are not stated and the statistics in the White Paper on Persons with Disabilities are based on the presence or absence of a disability certificate, that is, based on the medical model.

² Regarding disability pensions, there is also the issue of the large regional disparities.

³ In the Regional Support Councils for Eliminating Discrimination against Persons with Disabilities established under the Discrimination Elimination Act, Article 17, participation of persons with disabilities is not ensured.

[2] Does the Government have any plans to specify that persons with disabilities shall be appointed as a certain number of members to the Commission on Policy for Persons with Disabilities and Regional Support Councils for Eliminating Discrimination against Persons with Disabilities? Does the Government intend to appoint persons with intellectual and mental disabilities as members, not only persons with physical disabilities?

3. Optional Protocol

(1) Current Status

Japan has not ratified the Optional Protocol providing for individual complaints.^{4, 5}

(2) Proposals for LOIs

[1] Does the Government have any plans to ratify the Optional Protocol? If it is planned, when will this happen?

[2] For what reasons has the Government not ratified it at present.

Article 5 Equality and Non-discrimination

1. Lack of Legal System Prohibiting Discrimination at Judicial and Legislative Organizations

(1) Current Status

Although the “Act for Eliminating Discrimination against Persons with Disabilities” (hereinafter referred to as “Discrimination Elimination Act”) has been enacted as a development of domestic laws for ratification of CRPD, government organizations that are prohibited from discrimination due to disabilities are only administrative organizations and development of domestic laws for judicial and legislative organizations has not been completed.

In the Basic Act for Persons with Disabilities, it is provided for accommodation for communications in judicial procedure,⁶ but the Act only provides the basics of policies

⁴ Individual complaints are provided in various international human rights conventions, but Japan has not ratified the Optional Protocol providing for individual complaints or has not declared acceptance of the text of conventions in relation to international human rights conventions to which Japan is a party. As the reason for this, it was explained that the individual complaints is the fourth instance and infringes on the judicial rights of Japan, but the government itself has made such an admission as the introduction of individual complaints shall not be deemed to conduct review of the fact finding and interpretation and application of domestic laws by domestic courts and there are no grounds for such reason.

⁵ It is a significant effect from ratification of the Optional Protocol that by introduction of individual complaints, the courts were forced to be aware of the application of the international human rights convention as judicial norms of the court.

⁶ “The national government and local public entities must provide accommodation to securing a means of communication in accordance with the characteristics of individual persons with disabilities, so that persons with disabilities are able to smoothly exercise their rights in cases where a person with a disability has become subject to procedures relating to a criminal case or a protection case for a juvenile or has become subject to equivalent procedures, or in cases where he or she has become a party or some other relevant person in the proceedings of a civil case, domestic relations case, or administrative case at a court.” (Article 29)

for persons with disabilities and cannot be regarded as establishing specific rights and obligations. The Supreme Court, the House of Representatives and the House of Councilors determined handling directions as internal guidelines, but these only apply to administrative personnel and prohibition of discrimination, including reasonable accommodation obligation in judicial procedures and deliberation in the Diet are not in place.

Unless the obligation of reasonable accommodation and procedural accommodation is provided for in the specific text in judicial procedures as well, it will not be made clear that non-provision of accommodation in accordance with the characteristics of disabilities is an illegal procedure. In the deliberation in the Diet, there was a case where invitation of a person with a disability as an unsworn witness was revoked.⁷

(2) Proposal for LOIs

Does the Government have any plans to take legal measures to prohibit discrimination against persons with disabilities, including non-provision of reasonable accommodation for judicial and legislative organizations?

2. Reasonable Accommodation Obligation of Private Sector Businesses

(1) Current Status

The Discrimination Elimination Act only imposes an effort obligation of reasonable accommodation on private sector businesses but not a legal obligation. Contact with private sector businesses is extensive in daily life and social life such as purchase of goods and use of transportation and buildings, and if it only remains as an effort obligation in such fields, the purpose of eliminating discrimination shall not be achieved.

(2) Proposals for LOIs

[1] Show the statistical or actual circumstances survey of the cases of non-provision of reasonable accommodation by private sector businesses.

[2] Does the Government have any plans to legislate legal obligation of provision of reasonable accommodation by private sector businesses?

3. Inadequate Dispute Resolution System

(1) Current Status

[1] Under the Discrimination Elimination Act, in order to eliminate discrimination by private sector businesses, the competent Minister shall establish the Handling Guidelines by business field and has the authority of administrative guidance.⁸ In the Handling Guidelines, consultation contact is designated and acceptance of consultations will trigger administrative guidance. However, due to the negative

⁷ On May 10, 2016, at the House of Representatives, Committee on Health, Labour and Welfare, attendance of person with ALS (amyotrophic lateral sclerosis), who would deliver opinions as an unsworn witness, was revoked.

⁸ Seeking reports, providing advice, guidance and recommendation (Discrimination Elimination Act, Article 12).

effects of vertical administrative authorities, in other words, due to lack of coordination among government bodies, consultation contact is separated by business field and it is extremely difficult for persons with disabilities to understand.⁹

- [2] In the Discrimination Elimination Act, “the development of systems for consultations and the prevention of disputes”¹⁰ are established.

However, no new organization was established for the system of dispute resolution including consultations and in reality, all disputes are supposed to be resolved in each system designated by each local government’s own discretion.¹¹ Some local governments enact ordinances and establish organizations for dispute resolution, including consultations, but its number is quite small.¹² It is an urgent task to develop the legal system by the national government, including establishment of national government organizations.

- [3] The Discrimination Elimination Act provides establishment of Regional Support Councils for Eliminating Discrimination against Persons with Disabilities for the purpose of prevention of the negative effects of vertical administration organizations (shift from one section to another). However, establishment is discretionary,¹³ and it is positioned as a “forum” of consultations among related organizations and it is not an organization to resolve disputes or for seeking remedy.¹⁴

(2) Proposals for LOIs

- [1] Indicate the number of cases of seeking reports, providing advice, guidance and recommendations by the competent Minister (including those conducted by local governments under the Enforcement Ordinance, Article 3) and their details.
- [2] Is the Government willing to take any measures to clarify the consultation contact?

⁹ In the “Handling Guidelines for Promotion of Eliminating Discrimination due to Disabilities in the Business Field under Administration of Ministry of Economy, Trade and Industry,” it is specified that the consultation contact of the Ministry related to business field under administration as “Business Administration Division/Office.”

¹⁰ “The national government and local public entities are to respond accurately to consultations from persons with disabilities and their families and other relevant persons concerning discrimination on the basis of disability, and are to work for the development of a necessary system to ensure that they are able to prevent or resolve any disputes relating to discrimination on the basis of disability.” (Article 14)

¹¹ Japan has not indicated any dispute resolution process or has not established an effective consultation handling manual.

¹² Out of about 1,800 local governments in Japan, only several tens of them have enacted charters.

¹³ Ratio of local governments that established Regional Support Councils for Eliminating Discrimination against Persons with Disabilities remains at 41.4% as of April 1, 2017.

¹⁴ According to the Cabinet Office, Director General for Policies on Cohesive Society “Guidelines for Establishment and Operation of Regional Support Councils for Eliminating Discrimination against Persons with Disabilities” 2 (1) (May 2017), policy remains to be only “back-up” such as intermediation to the existing dispute resolution organizations, having functions of mediation and good offices.

- [3] Does the Government have any plans to create new national organizations or a system closely to the region, having a dispute resolution function?

Article 6 Women with Disabilities

1. Lack of Independent Provisions, Policy Specified in this Issue and Inadequate Statistical Data

(1) Current Status (39, 41)

[1] There is no law providing that women with disabilities are placed in more complex and difficult situations due to their disability and gender,¹⁵ and no measures have been taken, specifically for women with disabilities to resolve complex difficulties.

[2] Extreme poverty of women with disabilities prevents economic independence and is a barrier to social participation.¹⁶ Such policy of supporting employment, etc., is required to resolve complex difficulties and remove barriers to independence and social participation.

[3] According to statistics from the government, while there is cross-tabulation by gender in the field of disability pension,¹⁷ there are many descriptions which do not have data on men and women or only state ratios of men and women.¹⁸

(2) Proposals for LOIs

[1] In the laws and policies related to women, is there any provision provided or any measure taken which specifies women with disabilities? In the laws and policies related to persons with disabilities, is there any provision provided or any measure

¹⁵ In laws, only the Basic Act for Persons with Disabilities (three provisions of Article 10, paragraph 1, Article 26 and Article 14, paragraph 3) and the Discrimination Elimination Act (two provisions of Article 7, paragraph 2 and Article 8, paragraph 2) provide “in accordance with gender” and there is no law that has clearly positioned complex discrimination by independent provisions.

¹⁶ Refer to “Complex Discrimination of Women with Disabilities: Common Text Data” on p. 5, Graph 2, Annual Income of Single Household Edited by DPI Women’s Network, published on January 31, 2019- Data (Article 6) a. If annual income of men in a single household is set at 100, women as a whole is 66, men with disabilities is 44 and women with disabilities is as low as 22 (¥920,000).

¹⁷ Refer to Yoshida, Hitomi. “Gender Statistics of Persons with Disabilities: Japanese Current State and Problem.” Review of Gender and Law No.3. Ed. Asakura, Mutsuko, Tokyo: Shinzansha Publisher, 2016. Pp.185-187. - Refer to the Data (Article 6) b.

¹⁸ In the 23rd Policy Commission (held on July 10, 2015), Unsworn Witness, Yukiko Katsumata (National Institute of Population and Social Security Research, Department of Information Collection and Analysis, Director) indicated as the task of disabilities statistics in Japan, “thorough survey by gender is necessary.” The Unsworn Witness, says, “as it is to resolve the disadvantages of not knowing the reality of complex discrimination because we don’t have statistics by gender, we can regard it as having great merit. Next, with respect to the obligation under the Convention, as in Article 6 of the Convention it is purposely provided for women with disabilities, I consider it is the obligation of the ratified countries to address to resolve complex discrimination.” “Under the Basic Act for Gender-Equal Society, (snip) the policy for improving statistics by gender (basic plan) was determined at the Cabinet Meeting and the government says it will.” “The positive reasons for not doing so cannot be explained although it is provided here, I would rather like the government to explain the reason.” “Minutes of the Commission on Policy for Persons with Disabilities” (23rd)

taken which specifies women with disabilities?

[2] In the laws and policies related to income, housing and labor, etc., have measures been taken to support independence and social participation of women with disabilities?

[3] For statistics in general, does the Government have any plans to collect statistical data on women with disabilities and provide analytical information? In the statistics on measures for women, does the Government have any plans to compile statistics on the existence of disabilities and conduct cross-tabulation by gender as statistics on disabilities measures?

2. Sexual Victimization and Sexual Violence

(1) Current Status (40)

[1] There are no official statistics on sexual victimization and sexual violence against women with disabilities.

[2] According to an actual circumstances survey conducted by a private organization, 35% of the respondents experienced sexual victimization,¹⁹ and the aspects of victimization show characteristics specific to disabilities.²⁰

[3] Women with intellectual disabilities tend to be subject to victimization. They cannot properly convey the fact even if it can be recognized as sexual victimization, they are not trusted even the truth is told or they are deceived by the offenders.

[4] Information provision and publication of consultation contacts, etc., necessary for responding to sexual victimization and sexual violence are inadequate. A “needs” survey has not been conducted to promote appropriate support.

[5] In the case of judicial remedy, characteristics of disabilities such as not being able to convey victimization immediately make the remedy insufficient.²¹ If the victims have intellectual disabilities, credibility of statements²² is deemed to be low and it is difficult to resist breaking down and misleading in cross-examinations in the courts.

In criminal cases in Japan, the conviction rate is extremely high, which is called,

¹⁹ The DPI (Disabled Peoples' International) Women's Network, “Survey of Difficulties in Living for Women with Disabilities” - Refer to the Data (Article 6) c.

²⁰ The DPI Women's Network “Difficulties in Living of Women with Disabilities - What are the complex difficulties in living being faced in life- Complex Discrimination Actual Circumstances Report” March 2012
As for the features of victimization, the sites of victimization are the places of daily living of persons with disabilities and it is difficult for them to escape, and it is difficult to protest as the relationship will continue at the site of care and treatment, as such offenders commit offenses taking advantage of weakness due to disabilities, and persons with disabilities tend to be victimized.

²¹ Judgment of the Mito District Court as of March 31, 2004, Judgment of the Chiba District Court as of April 28, 2005 - Refer to the Data (Article 6) d.

²² They are deemed to have low credibility in all cases of perception, memory and description.

precision judicial review,²³ where public prosecutors having the right of prosecution institute prosecution only when public prosecutors determine there is enough evidence for the judge to declare a verdict of guilty,²⁴ and in particular, in the case of victimization of persons with intellectual disabilities, as it is highly likely that the testimony will break down, this leads to self-restraint on the part of the prosecution. Therefore, offenders are not called before the court as defendants and released without punishment. And therefore, it is necessary to construct a system in which persons with intellectual disabilities can receive appropriate judicial remedy.

(2) Proposals for LOIs

- [1] Does the Government have any plans to conduct surveys on actual circumstances of sexual victimization and sexual violence against women with disabilities and provide official data?
- [2] If any effective measures have already been taken to prevent sexual victimization and sexual violence (including sex education), provide such information.
- [3] If any measures have already been taken to remedy victimization, provide such information.

Article 7 Children with Disabilities

1. Current Status

The “Act on the Prevention of Abuse of Persons with Disabilities and Support for Caregivers” (hereinafter referred to as “Abuse Prevention Act”) only requires heads of schools, nursery centers and medical institutions to take measures related to abuse prevention and does not impose them reporting obligations or require administrative organizations to take necessary measures for protection, etc.

While corporal punishment is prohibited under the School Education Act, no effective provision, including reporting obligations, etc., is provided, and provisions on the Child Abuse Prevention provided for in the Act on the Prevention, etc., of Child Abuse and Child

²³ In 2015, out of the total number of finalized cases before the district courts of 54,297 persons, those who were found not guilty were 71 persons and out of the total number of finalized cases before the summary courts of 6,590 persons, those who were found not guilty were 12 persons (“2015 Judicial Statistics (Criminal Cases)” III-V Number of persons (actual number) by finalized case in the first instance of ordinary criminal cases [District Courts] and III-VI Number of persons (actual number) by finalized case in the first instance of ordinary criminal cases [Summary Courts] (Supreme Court, General Secretariat edition)

²⁴ In the statement of the Member, Mr. Inoue at the 2nd Meeting of “Meeting on How Public Prosecutors should be” of the Council in the Ministry of Justice (held on November 25, 2010), “as compared with public prosecutors in other countries, Japanese prosecutors not only check the investigation results by investigation organizations, including the police, etc., but in many cases, prosecutors also conduct interrogations of suspects and major witnesses, etc., and indict only if prosecutors are convinced of a guilty verdict supported by sufficient evidence. Such a way of prosecution is referred to as ‘close investigations and careful indictment,’ which I recognize as the major cause for a much higher conviction rate than other countries.” Minutes of the 2nd Meeting, p. 21

Welfare Act exclude school cases.

Every year, however, there are many teachers who are disciplined due to corporal punishments and obscene acts at schools throughout Japan.²⁵

2. Proposal for LOIs

Indicate the existence of disabilities of the victimized children and students and their gender in the statistics on corporal punishment and acts of obscenities at schools. If such statistics have not been collected, does the Government have any plans to collect such statistics in the future?

Article 9 Accessibility

1. The obligation to conform to the Accessibility Standards

(1) Current Status

While the “Act on Promotion of Smooth Transportation, etc., of Elderly Persons, Persons with Disability, etc.,” (hereinafter referred to as “Barrier-Free Law”) imposes the obligation to conform to the barrier-free standards (Accessibility Standards) when public transportation facilities and buildings are newly constructed or improved, only the obligation to endeavor to conform to the Standards is imposed on the existing facilities (57).²⁶

In addition, in the Barrier-Free Law and Discrimination Elimination Act, there is no provision of obligation to achieve access through gradual implementation, which is inconsistent with the Official Observations (General Comments, No. 2, paragraph 27) of the Committee on the Rights of Persons with Disabilities that provide it as an obligation even though it is achieved through gradual implementation.²⁷

(2) Proposal for LOIs

In the Barrier-Free Law, does the Government have any plan to enact provisions that provide a schedule for making it an obligatory for public transportation facilities and buildings which are currently only under obligation to endeavor to conform to the Accessibility Standards?

²⁵ Ministry of Education, Culture, Sports, Science and Technology: Status of Disciplinary Actions, etc., related to Corporal Punishment (Educational Personnel) (2016) - Refer to the Data (Article 7) a.

The same: Status of Disciplinary Actions, etc., related to Obscene Acts, etc. (Educational Personnel) (2016) - Refer to the Data (Article 7) b.

²⁶ There remain many facilities which are not barrier-free in existing facilities and a large number of litigations cases were previously instituted, but judicial remedy was inadequate. For precedents, refer to the Data (Article 9) a.

²⁷ In addition, there are various problems with domestic laws. In the Discrimination Elimination Act, Article 5, although environment improvement for an unspecified number of persons with disabilities is provided, it remains an effort obligation. In the specific measures to achieve sustainable development goals (SDGs) promoted by the Japanese government, it is provided “under the ‘Act on Promotion of Smooth Transportation etc., of Elderly Persons, Disabled Persons, etc. (Barrier-Free Law),’ barrier-free shall be promoted,” but specific goals of legislation have not yet been indicated at present.

2. Making Barrier-Free Buildings and Public Transportations in Rural Areas

(1) Current Status

Buildings and passenger facilities, on which an obligation to conform to barrier-free standards are imposed when such facilities are newly constructed or improved, are only limited to large-scale facilities and those which are used by many people.²⁸

Therefore, in rural areas where only buildings and passenger facilities used by few people are located, conformance to the barrier-free standards is not required even when they are newly constructed or improved, which is a system design preventing barrier-free in rural areas.^{29, 30}

(2) Proposals for LOIs

[1] Does the Government have any plans to expand the subjects of the obligation to conform to standards when they are newly constructed or improved under the Barrier-Free Law, instead of limiting the subjects by the size and etc.?

[2] In the basic policy under the Barrier-Free Law, Article 3, paragraph 1, does the Government have any plans for smooth transportation without limiting the scale and number of users?

Article 10 Right to Life

1. Current Status

On July 26, 2016, at a support facility for people with disabilities, many with disabilities, etc., staying in the facilities were killed or injured,³¹ and a former staff member of the facility was arrested as the suspect.

One outcome of the examination indicated that the former staff professed that “persons with disabilities should die” and committed the criminal acts.³² The Government

²⁸ For example, regarding outdoor parking, it is provided a space offered for parking shall be 500m² or more and the parking fee shall be collected for use. Buildings used by an unspecified number of people or mainly by the elderly and persons with disabilities, etc., such as hospitals, department stores, public offices, welfare facilities, restaurants and bars are only limited to construction cases of those which have a total floor space of 2,000m² or more. In the basic policy provided under the Barrier-Free Law, Article 3, paragraph 1, the targets to be achieved by 2020 are established for existing facilities covered thereby. The passenger facilities for which the targets are established are limited to those which the number of average users is 3,000 or more persons a day. Refer to Other Data (Article 9) b.

²⁹ In particular, regarding railway stations, there is a significant difference in the number of users between urban areas and local areas, and the barrier-free gap continues to widen.

³⁰ For installation of barrier-free traffic signals, Braille blocks, platform doors and movable platform gates, there are no standards for installation in the Barrier-Free Law and the installation number remains small. Therefore, accidents of persons with impaired sight falling on rails from platforms have not declined and the lives of the visually impaired are at a high risk. This is particularly serious in local regions. For details, refer to the Data (Article 9), b.

³¹ 19 persons died and 27 persons were injured.

³² In the “Interim Summary ~ Mainly on Examination of the Case ~” by the Examination and Recurrence Prevention Measures Review Team on the Case at the Support Facility for Disabled Persons in Sagami-hara City, established by the national government (September 14, 2016), it is presumed based on fact that “the suspect had the socially maladaptive belief, ‘disabled people should die.’”

established a review team and published a report³³ but the discriminatory thought held by the society- biological eugenic thought³⁴ and attack on the financial burden of social welfare -, which were pointed out as underlying the words and deeds of the former staff member, was not at all analyzed.

2. Proposal for LOIs

Does the Government have any plans to take specific measures to eliminate eugenic thought?

Article 11 Situations of Risk and Humanitarian Emergencies

1. Current Status

The Disaster Countermeasures Basic Act amended after the Great East Japan Earthquake demonstrated some progress as newly requiring municipal heads to prepare a list of residents who need assistance to evacuate during a disaster.³⁵

However, during the Kumamoto Earthquake struck with a seismic intensity greater than 7 in April 2016, measures under the above Act, etc., did not have any effect for persons with disabilities as stated below.

- (1) Evacuation guidance has not worked sufficiently because most individual evacuation plans based on the list of residents who need assistance to evacuate during a disaster were mere formalities.³⁶
- (2) At general evacuation shelters, there were social barriers such as physical barriers, information and communication barriers, ignorance, misunderstanding on the administrative side of the evacuation shelters. So persons with disabilities were actually excluded and consequently pushed out of the evacuation shelters without receiving reasonable accommodations.
- (3) Welfare evacuation shelter as a secondary evacuation shelter lacked the preconditions of secondary evacuation shelter³⁷ and the capacity of welfare evacuation shelter was limited.

³³ “Report ~Proposals for Prevention of Recurrence~” by the Examination and Recurrence Prevention Measures Review Team on the Case at the Support Facility for Disabled Persons in Sagamiara City (December 8, 2016). In the Report, it is concluded, “it seems that the case occurred against the backdrop of unilateral and arbitrary prejudice and discriminatory consciousness about disabled persons,” “it is necessary to clearly indicate the posture to aim at construction of the society of coexistence.”

³⁴ There are many articles which squarely argued the relationship between the case and eugenic thought, including “Sagamiara Disabled Persons Homicide Case - Eugenic thought and Hate Crime -,” co-authored by Shinya Tateiwa, Professor of Ritsumeikan University, Graduate School of Core Ethics and Frontier Sciences. Also, how eugenic thought is perceived is even now indicated in the editorial articles of Tokushima Shimbun as of July 27, 2018, “Two years after the Sagamiara Case: How we should face Eugenic Thought?”, editorial articles from the Okinawa Shimbun as of the same date and editorial articles from the Niigata Nippo as of the same date, etc.

³⁵ Refer to the Data (Article 11) a.

³⁶ Refer to the Data (Article 11) b.

³⁷ Since the number of general evacuation shelters where people with disabilities can evacuate is extremely limited, general shelters could not assume a role of transferring those with serious disabilities for which general shelters cannot respond.

- (4) As the emergency temporary housing was built with standard specifications, not assuming the existence of persons with disabilities, and reasonable accommodations enabling use of toilets and bathing facilities were not provided. Upon protests from organizations of persons with disabilities, barrier-free temporary housing was built, but there were only six housing units out of 4,303 housing units.
- (5) In addition, capability of persons with disabilities to deal with restoration and reconstruction of the destroyed housing environments and living environments is much more limited than persons without disabilities. Considering such vulnerability of persons with disabilities, support measures related to the needs specifically for disabilities in the case of a disaster, which cannot be covered by daily welfare services, is necessary, but as there is no public support system, only private organizations provided support.³⁸

2. Proposals for LOIs

- (1) Why evacuation guidance of residents who need assistance to evacuate during a disaster did not work effectively? Does the Government intend to take measures to examine how future operations should be?
- (2) Does the Government have any plans to take such measures as development and thorough publication of guidelines so that reasonable accommodations are provided in support in any types of disaster?
- (3) Does the Government have any plans to obligate elementary and junior high schools which are supposed to be evacuation shelters to be barrier-free?
- (4) Does the Government have any plans to legislate support specific to disasters, considering persons with disabilities vulnerable in restoration and reconstruction of destroyed housing environments and living environments?

Article 12 Equal Recognition before the Law

1. Transition from Substitute Decision-Making to Supported Decision-Making

(1) Current Status (79~82)

According to questionnaires conducted by the JFBA,³⁹ there are cases where adult guardians, etc., determined whether to enter the facility or live in the community without fully respecting the right to live in the community and the will of the person, and conducted substitution in the field where the person can make his or her own decision. It is the situation where share of the philosophy of supported decision-making and respect

³⁸ Refer to the Data (Article 11) c.

³⁹ According to the questionnaires, there are many answers of professional guardians that if the person intends to make a decision different from the expectations of the surrounding persons, they focus on objective interest and sometimes they make substitute decisions even against the will of the person. JFBA 58th Human Rights Protection Conference/Symposium, 2nd Sectional Group Keynote Report "From 'Adult Guardianship System' to 'System of Support for Decision-Making'" (JFBA, October 2015) - Refer to the Data (Article 12), a.

of the will and preferences of the person are not fully realized.

(2) Proposals for LOIs

- [1] Is there any system in which the person can be provided advocacy, etc., if the person requested less interventionist support of the supporter chosen by the person in place of a substitute decision maker such as an adult guardian, etc.
- [2] If the substitute decision of the adult guardian and the supported decision-making of the person contradict, is there any system or review board to coordinate and resolve it?
- [3] In view of transformation from substitution decision system, including adult guardianship system to the supported decision-making, does the Government have any plans to adopt specific amendments to laws, etc.?

2. Restrictions on Legal Ability

(1) Current Status (73~75)

As of June 2019, in the adult guardianship system of Japan (in particular, guardianship, curatorship), there are provisions in the related laws which restrict the ability of persons with disabilities to act who became wards and persons under curatorship regardless of the will of the persons and do not permit granting or maintaining public status and qualifications, etc., to wards and persons under curatorship (so-called “Disqualification Clause”).⁴⁰ In addition, most of the current adjudications of commencement of adult guardianship are guardianship and curatorship which accompany uniform restrictions on the ability to act not based on the will of the person,⁴¹ and the Disqualification Clause gives significant disadvantages to the user of the system.

(2) Proposal for LOIs

With respect to the laws in which Disqualification Clauses were repealed, explain about the purpose that the reformed laws which added the provisions of examining their performance ability individually which restrict their rights in cases, such as “in the event that he/she is unable to perform his/her duties due to mental or physical disorder,” account for 2/3 of the total.⁴²

⁴⁰ There are at least approximately 180 laws and regulations with Disqualification Clauses as of June 2019. The Disqualification Clauses in approximately 180 laws were repealed by recent law amendment, however, two thirds of the reformed laws added the provisions of examining their performance ability individually which restrict their rights in cases, such as “in the event that he/she is unable to perform his/her duties due to mental or physical disorder.” It could still be a risk of undue restriction against rights for persons with disabilities.

“Draft Act for Improvement of Related Laws to Optimize the Measures for Restrictions on Rights of Adult Wards, etc.,” (Cabinet Office Website) - Refer to the Data (Article 12) b.

⁴¹ Types in 2017: Approved number of guardianship and curatorship: 32,000/total number of applications: 35,000
Overview of Adult Guardianship Cases- January ~ December 2016 (Supreme Court Website) - Refer to the Data (Article 12) c.

⁴² They account for 124 laws out of 184 laws to be repealed.

3. Safeguard (Existence of Protective Measures related to Abuse)

(1) Current Status (76 ~ 78, 80)

- [1] Embezzlement cases by adult guardians are currently an issue.⁴³ As a countermeasure, family courts require guardians, etc., to deposit with trust banks by realizing all financial assets if the person has financial assets greater than a certain amount (about ¥10 million) regardless of the will, preferences or consent of such persons as wards.⁴⁴ Such handling is a discriminatory treatment between persons with disabilities and without disabilities.
- [2] In the adjudication procedure, interviews of the person by judges are not required, and for 90% of the cases in practice, appraisals strictly examining the ability to judge the person are omitted, and which type of adult guardianship system is applied is determined by the simplified diagnosis about the property management ability by doctors.
- [3] Once an adult guardian, a curator or an assistant is appointed, in most cases, the same type of the adult guardianship continues until the death of the person even if the situations of the person and the surroundings have changed.⁴⁵

(2) Proposals for LOIs

- [1] Provide the data showing the number of embezzlements by adult guardians, etc., and the amount and attributions of guardians, etc.
- [2] Provide the data showing the number of adjudications which changed or repealed the restrictions on the ability to act of users, out of the number of approvals of adult guardianship adjudication and the specific reasons for changes from the time of commencement of adult guardianship system (2000) up to the present time.
- [3] After the adjudication of adult guardianship, regardless of the existence of petition by the party and adult guardians, does the Government have any plans to establish opportunities and a legal system for courts to review regularly and necessarily the continuity itself of adult guardianship, etc., or toward granting minimum authority?

Article 13 Access to Justice

⁴³ Aggregate in 2015: 521 cases, about ¥2,970 million. Number of embezzlements by relative-guardians accounts for over 90% (484 cases, ¥2,860 million). Embezzlements by third party guardians account for slightly less than 10% (37 cases, about ¥110 million) (Nikkei Online Edition as of April 14, 2016, distributed by Kyodo Tsushin). - Refer to the Data (Article 12) d.

⁴⁴ Refers to the “guardianship support trust.”

⁴⁵ Although there is a system of change of guardianship type and the right to request for commencement of guardianship and etc., to petition for revocation and to request for another commencement of guardianship and etc. in order to change to less restrictive type by the person, relatives and adult guardians etc., in only a few cases they utilize the system.

1. Ensuring Effective Access to Justice and Provision of Procedural Accommodations

(1) Current Status

[1] The law systems for access to justice is insufficient.⁴⁶ It is up to the discretion of individual judges or those working in the field of administration of justice whether to provide access to information and procedural accommodation in the judicial proceedings. Therefore, in fact, persons with disabilities suffer from various disadvantages⁴⁷ (84~86, 88).

[2] In particular, as “provision of access to information or reasonable accommodation was not made to the litigant with disability” is not included in the grounds for retrial, even if persons with disabilities were prevented from use of judicial proceedings due to non-provision of access to information or reasonable accommodation,⁴⁸ they cannot challenge them.

In criminal cases among others, it was proved that many false charges took place in which the suspects with intellectual disabilities were convicted based on the incorrect records of statements because provision of access to information or reasonable accommodation was not made⁴⁹ (88, 90, 91).

[3] The current legal aid service system by the Japan Legal Support Center is insufficient as the system to ensure effective access to justice by persons with disabilities⁵⁰ (98).

[4] In the Code of Civil Procedure, there is a provision which might restrict persons

⁴⁶ The provision of judicial procedure, newly enacted in the Basic Act for Persons with Disabilities (Article 29) does not directly impose prohibition of discrimination and provision of reasonable accommodation on courts and the subjects of discrimination elimination measures are limited to administrative organizations and private sector businesses excluding judicial organizations. There is no provision of reasonable accommodation in the general provisions of such procedural laws as the Code of Civil Procedure and Code of Criminal Procedure. It is only provided in the Code of Civil Procedure, Article 154, paragraph 1, “make for an interpreter to be present” but it is not provided that procedural accommodation should be provided. In the Code of Criminal Procedure, Article 176, it is provided, “when the court has a person who is unable to hear or speak make a statement, it may have an interpreter interpret it,” which does not necessarily require interpretation.

⁴⁷ Examples of disadvantages due to non-provision of information guarantees and reasonable accommodation - Refer to the Data (Article 13) a.

⁴⁸ For example, while the person with a disability has not recognized the fact of service of written complaint, the service of written complaint becomes effective, judgment was rendered without attendance of the person, and furthermore, the judgment becomes effective without recognizing the served judgment and appeal period expires and the judgment became final, etc.

⁴⁹ False Charge Case - Refer to the Data (Article 13) b.

⁵⁰ If a person with a disability intends to use civil legal aid services in order to file a petition for commencement of adult guardianship, application is refused as the person does not have the ability to enter into agreements. For legal counseling, counseling on criminal cases is not covered by aid. It is essential for suspects and defendants with disabilities to improve the environment of preparation of rehabilitation support plans in consideration of the characteristics of disabilities, however, the Japan Legal Support Center does not reimburse the expenses for collaboration with welfare personnel which were paid by the court-appointed attorney during the activities by court-appointed attorney.

with disabilities from instituting litigation.⁵¹ The similar provision exists in the Code of Criminal Procedure.⁵²

(2) Proposals for LOIs

- [1] Does the Government have any plans to provide a specific provision under which persons with disabilities can ensure effective access to justice and seek procedural accommodation by amending the Code of Civil Procedure and the Code of Criminal Procedure?
- [2] In particular, during interrogations, we request for the report of specific measures to be taken to ensure communications with persons with communication disabilities.
- [3] Does the Government have any plans to provide for in the Code of Civil Procedure and Code of Criminal Procedure the provision to make it illegal if any accommodation has not been taken according to the characteristics of disabilities during litigation procedure?
- [4] Does the Government have any plans for the Government to bear expenses for procedural accommodation for persons with disabilities in judicial proceeding?
- [5] If a person with a severe intellectual disability institutes litigation as a plaintiff, can the person be ensured procedural guarantee without an adult guardian?
- [6] Does the Government have any plans to take measures such as amendment of the Code of Criminal Procedure so that the person shall not continue to suffer from a disadvantage including physical restraint while a public trial has been suspended for a considerable amount of time because the person lacks litigation capacity due to disabilities in criminal cases?

⁵¹ Litigation capacity -Civil Case- Refer to the Data (Article 13) c. It is provided, “a minor and an adult wards may not perform any procedural acts unless by a statutory agent.” (Code of Civil Procedure, Article 31, text). Ability to act by adult wards is restricted under the Civil Code, but for litigation procedure, it seems that they are generally treated as lacking litigation capacity. Where a person who is deemed to lack litigation capacity due to intellectual or mental disability is a defendant, a court may appoint special agents even where an adult guardian does not exist (Code of Civil Procedure, Article 35), but no provision of special agents exists for plaintiff. Therefore, when a person who is deemed not to have litigation capacity due to intellectual or mental disability and does not have an adult guardian institute litigation, operational device such as application by analogy of the same Article is required.

⁵² Litigation capacity- Criminal Cases- Refer to the Data (Article 13) d. It is provided, “when the accused is in a state of insanity, the proceedings shall be suspended while the accused is in such state, after hearing the opinions of the public prosecutor and the counsel.” (Code of Criminal Procedure, Article 314, paragraph 1). Therefore, if a defendant is in a state of mental derangement during trial, the trial shall be suspended. If a defendant became deranged after prosecution and the trial was suspended and the defendant is not expected to recover, the public prosecutor has the authority to cancel the prosecution (Code of Criminal Procedure, Article 257). If the public prosecutor has not cancelled prosecution, there is no specific provision that the court may dismiss the prosecution. Therefore, if the public prosecutor has not cancelled prosecution, there are many situations where the defendant continues to be in a position of criminal defendant until the recovery from derangement or death while the trial is suspended for a considerable amount of time. In this regard, the judgment of the Supreme Court as of December 19, 2016 seems to become a precedent, on the other hand, there is no move to provide a specific provision that courts may dismiss prosecution if the defendant is in a state of derangement and not expected to recover by amendment of the Code of Criminal Procedure. Therefore, it is necessary to arrange the provision in the case of lacking litigation capacity.

[7] Is the Government willing to enhance the system to ensure effective access to justice by persons with disabilities by amending the legal aid service system?

2. Training

(1) Current Status

Training provided for judges, public prosecutors and staff of judicial and law enforcement departments⁵³ cannot be regarded as sufficient. Accordingly, there are various problems which appear to be caused by inadequate understanding of the characteristics in the statements of persons with disabilities, non-understanding of characteristics of disabilities and insufficient provision of reasonable accommodation.^{54, 55, 56, 57}

(2) Proposal for LOIs

What kinds of training are provided for judges, public prosecutors and staff of judicial and law enforcement departments so that inadequate understanding of the characteristics in the statements of persons with disabilities, non-understanding of characteristics of disabilities and insufficient provision of reasonable accommodation shall not occur?

Article 14 Liberty and Security of Person

1. Forced Hospitalization in Psychiatric Department

(1) Current Status

[1] In Japan, the number of psychiatric beds is significantly large around the world⁵⁸, and hospitalization period is significantly long around the world.⁵⁹ The background of such facts is that public control cannot be extended as a result of a policy to promote construction of private psychiatric hospitals by recognizing exemption of psychiatry⁶⁰ and providing subsidies to build hospitals from the 1950's to 1990, at

⁵³ Staff of courts, prosecutors' office, police officers, and staff of the Japan Legal Support Center, etc.

⁵⁴ In calculation of lost profit of minor children with disabilities in civil cases, lower standards are applied than minors without disabilities - Refer to the Data (Article 13) e.

⁵⁵ In criminal cases, many false charges were made, and a more severe punishment and repeated convictions occur- Refer to the Data (Article 13) f.

⁵⁶ In corrective facilities, ratio of persons with disabilities account for a very high ratio - Refer to the Data (Article 13) g.

⁵⁷ Because police officers and correction officers, etc., do not have sufficient understanding of disabilities, persons with disabilities suffer from damages and disadvantages unnecessarily - Refer to the Data (Article 13) h.

⁵⁸ According to OECD Making Mental Health Count in 2014, while the average number of all psychiatric beds per 100,000 in OECD, including voluntary hospitalization, is 68, the number of psychiatric beds per 100,000 is 269 in Japan, which is about 4 times the OECD average.

⁵⁹ According to OECD Health Data 2013, while the average hospitalization days of OECD countries are 36 days, and the average hospitalization days are 377.2 days according to the overview of patient surveys in 2014 by the Ministry of Health, Labour and Welfare. In Japan, there are as many as 28,087 persons who have been hospitalized for over 20 years (Mental Health and Welfare Data in 2015).

⁶⁰ Refer to Article 25-1, "Equal Allocation of Medical Workers."

the peak.⁶¹

[2] In the “Act on Mental Health and Welfare for the Mentally Disabled” (hereinafter referred to as “Mental Health and Welfare Act”), there are forced hospitalization systems as involuntary hospitalization ordered by prefectural governors and involuntary hospitalization for medical care and protection which can be conducted by managers of psychiatric hospitals, private persons and the requirements of both cases are that “patients are persons with mental disabilities.”

For involuntary hospitalization, “possibility” of self-harm and harming others is the requirement and personal liberty can be restricted more easily than that of persons without mental disabilities.⁶²

As involuntary hospitalization for medical care and protection provides for such ambiguous requirements as “if medical treatment and protection are necessary,” while persons without mental illness are not forcibly hospitalized even if medical treatment and protection are necessary, persons with mental disabilities are easily forced to be hospitalized and as a result, the patients hospitalized as involuntary hospitalization for medical care and protection account for about 46% of all hospitalized person.⁶³

(2) Proposal for LOIs

Although the forced hospitalization system of Japan permits forced hospitalization based on the requirement that the person has a mental disability, how will the Japanese Government change this system and how will the schedule of change work?

2. Medical Treatment and Supervision Act for Persons with Insanity

(1) Current Status

[1] The “Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity” (hereinafter referred to as “Medical Treatment and Supervision Act”) provides for that out of the persons who committed a serious criminal act and are insane or have diminished capacity, only those who have mental disabilities must receive treatment by hospitalization or without hospitalization,⁶⁴ which permits forced hospitalization due to mental disabilities.

[2] The hospitalization period under the Act has no upper limit and it is possible to

⁶¹ 92% of psychiatric beds are operated by private psychiatric hospitals in Japan (Mental Health and Welfare Data in 2015).

⁶² Under Japanese law, the liberties of a person other than the persons with mental disabilities shall not be restricted only by “possibility” unless the person falls under structural elements of crimes.

⁶³ In Japan, there are about 130,000 persons only for involuntary hospitalization for medical care and protection which account for about 103 beds per 100,000 persons (Mental Health and Welfare Data in 2015).

⁶⁴ 253 persons were determined to be hospitalized and 33 persons were determined to be required to visit a hospital under the Act in 2015. There were 716 persons who have been hospitalized under the Act as of June 30, 2014.

impose a longer period of hospitalization than the period of criminal punishment (imprisonment) under ordinary criminal procedures expected for the same crime. Just after the enactment of the Act, the target hospitalization period was 18 months, but in actual hospitalization tends to get lengthened.⁶⁵

(2) Proposals for LOIs

- [1] Demonstrate the factors for prolonged hospitalization although the Medical Treatment and Supervision Act has the purpose of promoting social rehabilitation of persons with psychiatric disorders. Also indicate the number of persons who committed suicide during the procedure under the Medical Treatment and Supervision Act and if it is higher than the general suicide rate, indicate the countermeasures currently being taken.
- [2] Although the Medical Treatment and Supervision Act, Supplementary Provisions, Article 3, paragraph 2 and paragraph 3 impose on the Government the obligation to improve the standards for general mental care and overall mental health and welfare, how in detail and to what extent did they improve?
- [3] Based on the current conditions, does the Government have any plans to review (including repeal) the Medical Treatment and Supervision Act?

Article 15 Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

1. Frequent Use of Closed Door Treatment, Isolation and Physical Restraints

(1) Current Status

- [1] In Japan, more than half of patients, including voluntary hospitalization, are treated in closed custody whole day.⁶⁶
- [2] For external communications, there are hospital wards where no telephone is installed although they are closed door for the whole day,⁶⁷ and meeting with persons other than the family members is restricted in many cases.⁶⁸
- [3] Isolation and physical restraints are frequently used⁶⁹ and in particular, they

⁶⁵ The average number of days of the estimated hospitalization is 938 days as of 2015 and according to Mental Health and Welfare Data in 2017, there are 44 patients who have been hospitalized for more than five years.

⁶⁶ Out of 330,694 psychiatric beds, over 217,528 beds apply closed door treatment for the whole day. Out of 12,442 beds in protective rooms, all-day closed door treatment exceeds 10,000 beds. In addition, out of private rooms which can be locked (18,489 beds), 14,303 beds are in a condition of closed door treatment for the whole day (Mental Health and Welfare Data in 2014). For voluntary hospitalization, which should be based on the will of the person, out of 157,178 persons of voluntary hospitalization, 82,313 persons are in the condition of closed door treatment for the whole day (Mental Health and Welfare Data in 2014).

⁶⁷ According to Mental Health and Welfare Data in 2014, there is no telephone in about 3% of hospital wards and there are 74 hospital wards where no telephone is installed although they are closed door for the whole day.

⁶⁸ There are many hospitals where supporters and peer support staff cannot enter freely.

⁶⁹ On a certain day, 10,094 persons are isolated and 10,682 persons are subject physical restraints (Mental Health and Welfare Data in 2014).

have significantly increased in recent years⁷⁰ and we cannot say that the evaluation by the committee to minimize restrictions on actions and arrangement of a list of record, which became a requirement in 2006, are functioning. In Japan, as there is no limitation to the time of isolation and physical restraints for psychiatric care, it is reported that the time of isolation and physical restraints is very long,⁷¹ but we cannot find any official investigation results.⁷² Regarding the method and manner of isolation and physical restraints, several cases of human rights violation were reported, which includes the death of a patient during physical restraint.⁷³

(2) Proposals for LOIs

- [1] How freely can patients in the hospital wards where no public telephone is installed or who are isolated or subject to physical restraints communicate to external organizations for protection of rights? Provide specific information.
- [2] Indicate the number of isolation cases and physical restraints by reason, number of investigations by entry, the factors for rapid increase in isolation and physical restraint and the number of previous cases of death during physical restraint.
- [3] Indicate the specific plan to reduce closed door treatment, isolation and physical restraint.

2. Insufficient Right Protection System

(1) Current Status

- [1] Psychiatric Review Board under the Mental Health and Welfare Act

The Psychiatric Review Board is supposed to review the reports of hospitalization by forced hospitalization and regular symptom reports, but it became a dead letter.⁷⁴

⁷⁰ According to Mental Health and Welfare Data in 2004, the number of isolated patients in protective rooms is 7,673 persons and the number of patients who were subject to physical restraints was 5,242 persons, and physical restraints nearly doubled. In this regard, in Japan, restrictions on actions within a 12 hour period are not regarded as isolation, which are not included in statistics.

⁷¹ Investigations by Toshio Hasegawa (2016) "Investigation of the Realities of Isolation and Physical Restraints in Psychiatric Care" *The Japanese Journal of Hospital and Community Psychiatry*, Vol. 59 No. 1, Toshie Noda, et al. (2014) "Characteristics of Patients affecting the Time of Isolation and Physical Restraint: In the Acute Period of Psychiatric in Japan" *Psychiatria et neurologia Japonica*, 116 (10), 805-812, etc.

⁷² In addition, although there are standards (requirements) for isolation and physical restraint, we have no means to check whether they are complied with, and considering that the number has increased significantly in recent years, it is highly likely that they are applied easily.

⁷³ For example, we can refer to the judgment in the death of an alcohol dependent patient during physical restraint, which recognized negligence of the doctor (Judgment of the Kobe District Court of May 28, 2002) and the judgment which found a former nurse guilty in the case where a male patient died in 2011 at Kaizuka Chuo Hospital in Osaka after being forcibly pressed on the stomach by a restraining belt (Judgment of the Osaka District Court as of April 15, 2011). In addition, such cases have been reported such as physical restraint of a female patient by male staff (pinning down arms and legs), exchange of catheter and diapers during physical restraint, meals being left on the floor during isolation and toilet being fully exposed to a camera.

⁷⁴ Out of the review results of reporting of involuntary hospitalization for medical care and protection and regular reports in 2015, the cases where current hospitalization was determined to be appropriate were 183,161 cases and 273,527 cases respectively and only 7 and 19 cases were determined to be appropriate to transfer to another hospitalization form or

The Review Board is also supposed to review the procedure for leaving hospitals and claim for improvement of treatment, but only less than 1.5% of patients use the procedure⁷⁵, and no system is established in which agents are appointed for patients requesting leaving a hospitals by way of expenses of the national government. In addition, the Review Board has its secretariat in the administration (Prefecture) whose independence is not ensured and no appeal system is established against the decision of the Review Board. Therefore, we cannot say that the Review Board is playing a role of judicial control as a court under the International Covenant on Civil and Political Rights (ICCPR), Article 9, paragraph 4.⁷⁶ Patients are placed in such a bad environment as stated above while means to protect their rights are not fully ensured.

[2] Adjudication Procedure under the Medical Treatment and Supervision Act

While this procedure is applied to persons who committed crimes, in the initial procedures for determining hospitalization or a hospital visit, etc., presumption of innocence and evidence law, which are the principles in criminal procedure, are not applied.

After determination of hospitalization or a hospital visit, in the procedure for continuation of hospitalization and request for leaving a hospital and/or termination of medical treatment, appraisal or diagnosis by external doctors is hardly made and attendants (attorneys) are only appointed by 3% and a hearing, in which the subject have opportunity to express his/her opinion, is only held by 8%.⁷⁷ In most cases, only a formalistic document review is conducted and forced hospitalization continues.

(2) Proposals for LOIs

- [1] Indicate the specific measures for the Psychiatric Review Board to actively function as an organization of protection of rights by classifying into (a) ensuring independence of the Review Board, (b) ensuring fairness of review by the change of composition of members of the Review Board, (c) guarantee of basic rights of the party of petitioner and attorney, counsellor in the review procedure, (d) ensuring actual review of the report immediately after forced hospitalization and (e) establishment of appeal system, etc.

unnecessary to continue hospitalization. Accordingly, the cases where the current conditions were changed by review were only 0.6% (Report on Public Health Administration and Services of the same year).

⁷⁵ While the total number of patients hospitalized in psychiatric hospitals was 284,806 persons in 2015, total number of requests for leaving a hospital was 3,640 cases and the total number of claims for improvement of treatment was 569 cases (Report on Public Health Administration and Services of 2015).

⁷⁶ Most members of the Review Board are comprised of 3 doctors out of 5 persons and of only 1 lawyer and the chairperson is generally assumed by a medical member. Therefore, only 3% of hospitalization was determined as inappropriate to the requests for leaving a hospital, the ratio of only less than 0.04% to the total number of hospitalized patients, and in only 110 cases, current hospitalizations were determined to be inappropriate to the total number of 3,640 requests for leaving a hospital in 2015 (Report on Public Health Administration and Services of the same year).

⁷⁷ "Report on the Status of Enforcement of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity" from July 15, 2005 to July 31, 2010

[2] Indicate the specific schedule of legislation for the system of appointment of attorneys where patients who are forcibly hospitalized under the Mental Health and Welfare Act request leaving a hospital and measures for budgeting patients without means.

[3] In order to make effective the protection of rights of patients who are hospitalized under the Medical Treatment and Supervision Act, indicate what specific measures will be taken.

3. Medical Care in Criminal Facilities

(1) Current Status

Although there are a certain number of persons with mental disabilities in prisons in Japan,⁷⁸ there are such various problems as proper medical care not being provided soon enough,⁷⁹ few medical care prisons,⁸⁰ and prisons not being able to fully respond to mental disabilities.⁸¹ In particular, countermeasures for those who commit suicide in correction facilities under a sentence are insufficient and no statistics on suicide are available.⁸²

On the other hand, the number of reports⁸³ to prefectural governments by the head of correction facilities of those who have mental disabilities (including those who are suspected) has been increasing.⁸⁴

⁷⁸ Correction Statistics Survey in 2017

The total number of new inmates is 19,336 persons, out of which 2,638 persons (13.6% of total number) were diagnosed with mental disabilities.

⁷⁹ Judgment of the Fukuoka District Court as of March 23, 2016

Ordered the national government to pay compensation of ¥34 million, recognizing the death of a male inmate (then 38 years old) was “due to a failure to monitor the man although there was the risk of suicide.”

The man who was in custody since January 2013 committed suicide appearing to suffer from depression, the man was transferred on May 21 to a solitary-confinement cell equipped with a monitoring camera, but killed himself on the same day. (The facility only transferred to a solitary-confinement cell after the initial attempt at suicide.)

⁸⁰ Correction Statistics Survey in 2017

Number of persons in custody in the correction facilities at the end of year was 53,233 persons, out of which 552 persons were in custody at medical prison (1% of the total prisoners).

⁸¹ The government states that in addition to 4 specialized medical facilities, it designates 9 focused medical care facilities and to the above 13 facilities, medical devices and medical professionals are intensively assigned, but they cannot sufficiently respond to mental disabilities. To other ordinary criminal facilities, full-time psychiatrists are rarely assigned. In addition, in the Crimes White Paper, it is pointed out that the number of correctional facility is less than 80% of the fixed number. There were only 26 full-time psychiatrists for all the criminal facilities throughout Japan as of April 2007.

⁸² In addition to the example cited in the footnote 79, although it is a case during the detention, there was a case where a public trial was suspended for a man with Schizophrenia because the man was considered insane during trial, but detention was not suspended and the man killed himself after being detained for more than 16 years in the detention center (Asahi Shimbun as of August 10, 2010).

⁸³ The Mental Health and Welfare Act, Article 26 provides that, “When the head of a correctional institution intends to free, release, or discharge an institutionalized person who is mentally disordered or is suspected of mental disorder,” he/she shall report to the prefectural governor having jurisdiction over the place to which the person in question returns.

⁸⁴ Correction Statistics Survey 2015 ~ 2017

Persons released from prison	New inmates
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(2) Proposals for LOIs

- [1] Is it required for psychiatrists to be assigned to all criminal facilities or external psychiatric medical institutions to diagnose when a prisoner is suspected of having a mental disability? If it is not required, indicate the plan to ensure proper opportunities for medical care of inmates who have (or are suspected of having) a mental disability.
- [2] Indicate the factors and measures for resolution for the situations where the total number of reports has been increasing when they are released while the ratio of those who are diagnosed as having mental disabilities when they are imprisoned has not significantly changed. In particular, indicate measures for prevention of deterioration of symptoms which would require involuntary hospitalization after release as well as the statistics and causes for suicides in criminal facilities. If the Government does not have the above data, indicate the plan on how to conduct surveys and reviews in the future.

Article 16 Freedom from Exploitation, Violence and Abuse

1. Scope of the Abuse Prevention Act

(1) Current Status (110, 115 ~ 118)

- [1] The Abuse Prevention Act limits abuse covered by reporting obligations to abuse by caregivers, employees of care facilities and employers and it is quite insufficient not to include abuse at schools, nursery schools, medical institutions and criminal detention facilities.
- [2] Many serious cases of abuse occur at schools, nursery schools, and medical institutions at present⁸⁵ and also at criminal detention facilities, a large number of cases have occurred, where abuses is suspected, in particular medical neglect is suspected.⁸⁶

Year	Total number	Number of reports	Ratio	Total number	Without psychiatric disorder	With psychiatric disorder	Ratio
2015	23,566 persons	3,240 persons	13.7%	21,539 persons	18,711 persons	2,828 persons	13.1%
2016	22,947	3,675	16.0	20,467	17,536	2,931	14.3
2017	22,025	3,903	17.7	19,336	16,698	2,638	13.6

Among the total number of prisoners of 22,025 who were released in 2017, the total number of reports was 3,903 cases (17.7%), out of which involuntary hospitalization was 80 cases. While the ratio of new inmates who were diagnosed as having mental disabilities has not significantly changed over the past three years, the total number of reports has been increasing on a yearly basis. The ratio of persons with mental disabilities tends to be higher when they are released from prisons than when they are put in prison.

⁸⁵ Appendix to the JFBA Opinion as of August 20, 2008, "Cases and Analysis of Abuses in each Field" - Refer to the Data (Article 16) a and b.

⁸⁶ Case Examples of abuse of inmates at Tokushima Prison, which occurred from 2004 through 2007 - Refer to the Data

(2) Proposals for LOIs

- [1] Indicate the survey results or statistics on the actual circumstances of abuse of persons with disabilities at schools, nursery schools, medical institutions and criminal detention facilities.
- [2] Cases of abuse continue in psychiatric hospitals, and what is the reason for not including medical institutions into the scope of obligation to report under the Abuse Prevention Act? What measures does the Government consider to take as a State Party to prevent abuse in psychiatric hospitals?
- [3] Cases of abuse continue at schools and nursery schools, and what is the reason for not including schools and nursery schools in the scope of obligations to report under the Abuse Prevention Act? What measures does the Government consider to take as a State Party to prevent abuse at schools and nursery schools?

2. Monitoring Organization by Independent Authority

(1) Current Status (113)

- [1] According to the Abuse Prevention Act, municipal governments are required to recognize the existence and details of abuse by exercising their authority properly when abuse of persons with disabilities by employees of care facilities has been reported or filed and prefectural governments are required to take necessary actions such as recommendation.

Many cases of abuse of persons with disabilities have been reported, in which the negative response of municipal or prefectural governments were regarded as problematic.⁸⁷ Municipal governments tend to take a negative attitude from the investigation stage in cases related to abuse of persons with disabilities by employees of care facilities, etc.⁸⁸

This tendency is likely to be caused by the fact that municipal and prefectural governments have daily close relationships with welfare service providers through authorization and permission, grant of subsidies and audits, etc., and the government is in a position that is difficult to exercise monitoring of welfare service providers.

(Article 13) h 2. Case Examples in the Appendix to the State of Opinions as of August 20, 2008 - Refer to the Data (Article 16) c.

⁸⁷ Refer to the Data (Article 16) d.

⁸⁸ According to the “Survey Results of the Status of Response under the Act on the Prevention of Elder Abuse, Support for Caregivers of Elderly Persons and Other Related Matters in 2015” (Ministry of Health, Labour and Welfare) and “Report of Survey Results of the Status of Response under the ‘Act on the Prevention of Elder Abuse, Support for Caregivers of Elderly Persons and Other Related Matters’ in 2015” (Ministry of Health, Labour and Welfare), in 2015, as to the consultations and reports, the ratio of the cases where factfinding investigations were not conducted as they determined investigations were unnecessary because the cases which were not abuse were only 2.7% in cases related to abuse of elderly persons by workers at nursing and care facilities (2015), but the ratio was as large as 52.1% in cases related to abuse of persons with disabilities by workers at welfare facilities for persons with disabilities.

Therefore, monitoring by an independent authority is required.

[2] The number of cases which are investigated by human rights protection bodies of the Ministry of Justice is extremely small⁸⁹ and a dispute resolution function cannot be exerted.

(2) Proposal for LOIs

Does the Government have any plans to establish an independent monitoring organization related to the abuse of persons with disabilities?

Article 17 Protecting the Integrity of the Person

1. Medical Care during Forced Hospitalization

(1) Current Status

It is reported that there were cases where treatment with high risk was applied during forced hospitalization such as administration of clozapine,⁹⁰ electric convulsion treatment (ECT) without the consent of the person. Even where it presumes that consent was obtained, it is likely to have been obtained by a certain threat such as “hospitalization will be longer unless you consent,” but there is no system of confirming the true intent and there is no forum for reviewing the investigation results of the ethics committee.

(2) Proposals for LOIs

[1] Indicate the number of medical treatments which are conducted without the consent of the person for the use of clozapine and ECT during forced hospitalization by kind of medical treatment and form of hospitalization. Out of which, if the person was determined not to have the ability to consent, indicate the determination method and standards.

[2] As to the use of clozapine and ECT during forced hospitalization, is there any system to secure appropriateness of use such as witnessing of rights protectors at the time of obtaining consent, attendance of attorneys at the ethics committee and publication of the minutes of the ethics committee, etc.? If not, indicate the schedule of construction.

[3] Where the consent of the person is obtained during forced hospitalization and hospital visit, indicate the number of cases of use, the method of obtaining the consent of the person and existence of examination to understand whether the consent was based on true intent and if examination was made, the results of the

⁸⁹ According to the status (overview) of “Human Rights Violation Cases” in 2015, out of 20,999 cases of newly commencing remedial procedures, the cases of discriminatory treatment of persons with disabilities were 265 cases. As can be seen from the above, the number of cases which are recognized as cases suspected of human rights violation and are investigated as human rights violation cases by human rights protection organizations of the Ministry of Justice are very few.

⁹⁰ Medicine prescribed for treatment-resistant Schizophrenia and which has serious side effects such as agranulocytosis, myocarditis, diabetic ketoacidosis, diabetic coma and requires to conduct regular blood monitoring.

examination.

2. Eugenic Operations

(1) Current Status

[1] Under the old Eugenic Protection Act⁹¹, Eugenic operations were conducted.⁹² Number of operations conducted without consent of the person⁹³ was about 16,500 cases^{94,95} from 1949 through 1996. Victimization by a hysterectomy was also reported.⁹⁶

To the above, the ICCPR Committee made recommendations three times⁹⁷ and the UN Committee on the Elimination of Discrimination against Women made a recommendation on 2016⁹⁸ to adopt specific measures for the victims of forced sterilizations.

[2] The victims of forced sterilizations have instituted litigation claim for state compensation.⁹⁹

[3] The Diet enacted legislation to pay 3.2 million yen to each victim on April 24, 2019. The legislation is not adequate due to lack of indication of unconstitutionality

⁹¹ The Act enacted in 1948 for the purpose of “preventing birth of bad descendants in terms of eugenics and protecting the lives and health of people during maternity.” In 1996, the Act was partially amended and the name was changed to “Maternal Health Act.”

⁹² In the old Eugenic Protection Act, Article 2, paragraph 1, it was defined, “eugenic operations means a surgical procedure to remove the ability to breed without removing gonads provided for in Ordinance.” In the Act, Article 3, it was stated that “A doctor may voluntarily perform eugenic operations on a person who falls under any of the items in the left after obtaining consent from said person and said person's spouse if one exists.”

⁹³ Sterile operation of genetic diseases without consent was based on the old Eugenic Protection Act, Article 4. In the Act, Article 4, “A doctor may apply to the Prefectural Eugenic Protection Committee for examination of the appropriateness of eugenic operations without the consent under the preceding Article where the doctor confirmed that the patient was suffering from diseases set forth in the Appended Table as a result of diagnosis and if it is deemed to be necessary for the public interest to apply eugenic operation to prevent the heredity of the disease.” By the partial amendment of the old Eugenic Protection Act in 1952, with respect to eugenic operations of non-genetic diseases (persons with mental diseases, etc.) which require the consent of guardians, Article 12 was added as “with respect to mental disease or mental weakness other than genetic diseases set forth in the Appended Table, Item 1 or Item 2, a doctor may apply to the Prefectural Eugenic Protection Committee for examination of the appropriateness of eugenic operations if the consent of the guardian was obtained, provided for in the Mental Health Act (Act No. 123 of 1950), Article 20 (where guardian, spouse, a person exercising parental power or person responsible for support shall become the person responsible for protection) or the Act, Article 21 (where the mayor of a municipality shall become the person responsible for protection).”

⁹⁴ Out of which nearly 70% were female. “Maternal Body Protection Statistics Report (Eugenic Protection Statistics Report) (Statistics from the Ministry of Health, Labour and Welfare)

⁹⁵ Total number of eugenic operations reached to 25,000, including ones without their consent (approximately 16,500) and ones due to the reasons of genetic diseases which were operated with their consent, - Refer to the Data (Article 17) a.

⁹⁶ According to the report of Takumi Muranaka (alias) in “Forced Sterile Operations of Women with Disabilities in the Postwar Japan” (the Research Center for Ars Vivendi of Ritsumeikan University, March 2016) by Keiko Toshimitsu, supervised by Yoko Matsubara.

⁹⁷ ICCPR Committee Recommendations on November 19, 1998, October 30, 2008 and August 20, 2014 - Refer to the Data (Article 17) b.

⁹⁸ The Committee on the Elimination of Discrimination against Women “Concluding observations on the combined seventh and eighth periodic reports of Japan” (March 7, 2016), paragraph 25 - Refer to the Data (Article 17) b.

⁹⁹ Asahi Shimbun as of January 31, 2018 and Tokyo Shimbun et al. Refer to the Data (Article 17)c.

of the old Eugenic Protection Act or lack of system of notification to individual victims, even though it grants to pay the compensation even if the victim has no record of eugenic operation and etc.

(2) Proposal for LOIs

Does the Government have any plans to amend the legislation which clearly indicates the unconstitutionality of the old Eugenic Protection Act and the responsibility of the Government and further compensation?

Article 19 Living Independently and Being Included in the Community

1. Hospital-to-Community Transition

(1) Current Status

[1] The State Party Report indicates the policy in support of leaving a hospital of patients hospitalized in psychiatric hospitals, but no specific measures are shown (128).¹⁰⁰

[2] Ratio of leaving hospitals is extremely small.¹⁰¹ In addition, leaving hospital by “death” accounts for considerable numbers,¹⁰² which shows the current condition in which transition to community of patients with long-term hospitalization has not been promoted.¹⁰³

The Japanese Government published in September 2004 the basic policy, “persons who can leave hospitals if acceptance conditions are satisfied (about 70,000 persons) ... will be resolved in ten years,”¹⁰⁴ but now there are about 50,000 persons “who can leave hospitals if acceptance conditions are satisfied” and this problem has not been resolved.

[3] Out of the budget for persons with mental disabilities, medical expenses account for approximately 97% and expenses for community living support are only 3%.¹⁰⁵

¹⁰⁰ In the 7th Medical Care Plan and the 5th Welfare Plan for Persons with Disabilities, demand for hospitalization was expected to be 205,000 ~ 224,000 persons and beds corresponding thereto were permitted.

¹⁰¹ Only 32.5% for those who are hospitalized for one year to five years and 17.5% for those who are hospitalized for more than five years.

Ministry of Health, Labour and Welfare, “8th Review Meeting of the Guidelines for Ensuring Provision of Medical Care for Persons with Mental Disabilities” (March 28, 2014), Data 4 “Current Status of Persons with Mental Disabilities who are hospitalized for a long time,” on p. 2~3.

¹⁰² Leaving hospitals by death accounts for approximately 20% of the patients who were hospitalized for one year to five years and 27.6% of the patients who were hospitalized for more than 5 years.

¹⁰³ It is reported that the number of patients who are hospitalized for more than 50 years totals at least 1,773 persons as of the end of June 2017.

¹⁰⁴ In the “Reform Vision of Mental Health Medical Care and Welfare” in September 2004, it is stated “for ‘persons who can leave hospitals if acceptance conditions are satisfied (about 70,000 persons),’ they shall be resolved in 10 years in total by promoting reorganization and foundation reinforcement of poor mental health medical care welfare system, including functional division of psychiatric beds and strengthening the community living support system.”

¹⁰⁵ Out of the budget of ¥2 trillion, while medical expenses are ¥1.9 trillion, expenses for support for community life are only

(2) Proposals for LOIs

- [1] Based on the current conditions that patients with long-term hospitalization in psychiatric hospitals for more than a year exceed 200,000 persons, how does the Government plan to reduce hospitalized patients and realize transition to communities?
- [2] Indicate the specific measures and realistic supports to reduce the current number of beds of psychiatric hospitals in Japan.
- [3] What does the Government consider the cause that “persons who can leave hospitals if acceptance conditions are satisfied” stated in 2004 has not been resolved? What are the details of a specific plan toward resolution?
- [4] In order to promote transition to communities of persons with mental disabilities, how does the Government plan to change the ratio between medical expenses for persons with mental disabilities and expenses for community living support in the future?

2. Facility-to-Community Transition

(1) Current Status

- [1] The State Party Report states, the budget for disabilities increased 27% for four years from 2011 to 2015 (14).

However, the budget allocation for disabilities is lower than other countries as it is only 1% of GDP.¹⁰⁶

For the breakdown of the budget for disabilities, transformation from budget allocation to facility treatment to budget allocation to support community life has not been made.

As the unit price of the welfare business for disabilities is too low, financial resources cannot be secured.

- [2] Cases where local governments unjustly restrict public care benefits necessary for persons with disabilities to live in communities occur one after another and some of them were brought before the court.¹⁰⁷ The situation shows that the laws of Japan, policies and budget of the Government are inadequate.

(2) Proposals for LOIs

- [1] To the current status in which as many as 177,000 persons are in custody of facilities for persons with disabilities, does the Government prepare the effective measures for transition to communities? Does the Government prepare the measures

¥50 billion (Ministry of Health, Labour and Welfare, the 1st “Review Meeting on How Mental Health Medical Care and Welfare should be, etc.” (April 11, 2008) Refer to the Data 3 “Current Status of Mental Health Medical Care and Welfare,” p. 24, “Related Expenses for Mental Health Medical Care and Welfare.”)

¹⁰⁶ Refer to the Data (Article 19) a.

¹⁰⁷ Refer to the Data (Article 19) b.

for transformation of facilities into community living support centers or measures for paying compensation for offices which were transformed into at-home support business by reducing the fixed number of persons in custody?

[2] Does the Government have any plans to increase the ratio of expenses for disabilities to 4% of GDP of Japan?

[3] Does the Government have any plans to implement human support measures, including 24 hour personal assistant system to realize deinstitutionalization measures and welcome persons with disabilities into the community? Is there any specific strategy for this?

3. Tasks of Disability Welfare Legal System to Support at-Home Life in the Community

(1) Current Status

[1] Due to the principle of priority of long-term care insurance,¹⁰⁸ use of long-term care insurance system is imposed on those who are 65 years and older¹⁰⁹ and persons with disabilities cannot receive necessary support for disability welfare system, which makes it difficult for them to live independently.¹¹⁰ Because in the Long-term Care Insurance Act, support for “social participation” is not offered.

[2] As certification for “Classification of Degree of Disability” based on a medical model is required for use of the disability welfare system, there are some cases which cannot receive support corresponding to individual needs.¹¹¹

[3] If local governments paid at-home welfare expenses necessary for persons with disabilities, the Government only pays to local governments within the scope of “standards for burden of the national treasury.”¹¹² Therefore, many local governments establish the “standards for determination of payment” which limit financial burden within the scope of standards for burden of the national treasury.

[4] As public support for those who need medical care, including artificial respirator, sputum suction and tubal feeding, etc., is poor, in not a few cases, burden of the

¹⁰⁸ Comprehensive Support Act, Article 7

¹⁰⁹ In the case of persons with any of 16 specified diseases provided for in the Enforcement Order of the Long-term Care Insurance Act, it is 40 years old.

¹¹⁰ Despite the strong criticism from the group supporting a lawsuit claiming the unconstitutionality of Services and Supports for Persons with Disabilities Act, the national government amended in April 2017 part of the Comprehensive Support Act and the Long-term Care Insurance Act, but this move might lead to integration of a system for persons with disabilities and long-term care insurance system. Burden of use of disability welfare is based on the principle of burden according to ability presuming free provision for low income persons, but long-term care insurance system presumes “burden according to benefits” and integration of both systems causes a great problem.

¹¹¹ At present, there are not a few cases where necessary public benefits are not provided in determination of grant of benefits of use of welfare measures for persons with disabilities by reason of “let them be taken care of by the family.”

¹¹² Refer to the Data (Article 19) c. The system in which the Government and prefectural governments determine the upper limit of payment to the local governments according to the number of persons by classification of degree of disability of persons who use the at-home measures of the local governments and all the benefits exceeding the limit shall be borne by each local government.

family is too heavy and the person gives up hope to live.

- [5] It is often prohibited to use public care service or mobility support service under the welfare system while commuting to kindergarten, school or work, etc.¹¹³

(2) Proposals for LOIs

- [1] Will the Government continue to comply with and perform the Basic Agreement between the group of litigation under the Services and Supports for Persons with Disabilities Act and the Government as of January 7, 2010 (including judicial settlements at each district court)?¹¹⁴
- [2] Does the Government have a specific plan to institutionalize the framework recommendations¹¹⁵ as of August 30, 2011 in the Act on Welfare for Persons with Disabilities?
- [3] Does the Government have any plans to revise the system so that persons with disabilities can use the disability welfare system as their right regardless of their age and are not imposed with use of long-term care insurance system?
- [4] Does the Government have a plan to abolish the system of classification of degree of disability and change to a welfare benefits system corresponding to individual need?
- [5] Does the Government have a plan to abolish the standards for burden of the national treasury in support for at-home care and change to compulsory burden of the national government?
- [6] Does the Government have a plan to guarantee as rights daily support (including intermittent ones) to persons with severe disabilities, persons with intractable/rare diseases or persons with disabilities who receive medical care at the qualitatively and quantitatively sufficient level?
- [7] Does the Government have any plans to fully recognize use of care measures and moving support measures under the welfare system while attending kindergarten, school or work, etc.?

Article 21 Freedom of Expression and Opinion, and Access to Information

1. Information Accessibility

(1) Current Status

The State Party Report states that the web contents on the Internet were included in the

¹¹³ Refer to the Data (Article 19) d.

¹¹⁴ Refer to the Data (Article 19) e.

¹¹⁵ Cabinet Office, System for Persons with Disabilities Reform Promotion Conference, Comprehensive Welfare Section Meeting, as of August 30, 2011, "Recommendations on General Welfare Committee for the Framework of Comprehensive Welfare Act for Persons with Disabilities - Toward Enactment of a New Law" - Refer to the Data (Article 19) f.

JIS standards (135, 138). However, as the JIS Standards do not have legally binding force, there are no standards with legal force guaranteeing information access under CRPD, Article 9 and Article 21.¹¹⁶

Accordingly, there are the following problems.

- [1] National government and local governments often provide information in PDF format with images only and persons with visual disabilities and deaf-blind persons cannot recognize the content.¹¹⁷
- [2] Assignment of sign language interpreters is not provided at all by national organizations and only less than 40% at of local governments.¹¹⁸
- [3] Accessibility of TV broadcasts are extremely inadequate.¹¹⁹
- [4] Telecommunication operators provide telephone communications only by voice and do not provide telephone relay services in which operators interpret by sign language or characters.¹²⁰

(2) Proposals for LOIs

- [1] Regarding information accessibility, does the Government have any plans to enact a law equivalent to the Barrier-free Law and establish the standards with legal force, equivalent to the barrier-free standards (Accessibility Standards) which is required by the Act?
- [2] Does the Government have any plans to enact a law imposing legal obligation on the standards for accommodation for persons with disabilities with respect to web content in the JIS Standards?
- [3] Does the Government have any plans to enact a law requiring TV broadcast operators to include broadcasted programs closed-captioned, sign language broadcasts, character broadcasts, audio description broadcasts and/or broadcasts by any other information communication means?

2. Communication Support

¹¹⁶ In the specific measures to achieve the sustainable development goals (SDGs) promoted by the Japanese Government, measures for information accessibility are stated but enactment of the standards for information barrier-free which is required to be achieved is not stated.

¹¹⁷ Refer to “Opinions of the Commission on Policy for Persons with Disabilities on new ‘Basic Program for Persons with Disabilities’” on p. 51, by the Commission on Policy for Persons with Disabilities as of July 17, 2012.

¹¹⁸ According to the survey of the Ministry of Health, Labour and Welfare, Department of Health and Welfare for Persons with Disabilities, Independence Support Promotion Office. Refer to the data distributed at the Social Security Council (Persons with Disabilities Section) as of September 8, 2015, “How support should be, including dispatch of persons who provide sign language interpretation and other support for those who have difficulties in communication due to disabilities in hearing, language and voice functions, etc.”- Refer to the Data (Article 21) a.

¹¹⁹ Refer to “Results of Close-captioned Broadcasts in 2015” published by the Ministry of Internal Affairs and Communications on November 25, 2016.- Refer to the Data (Article 21) b.

¹²⁰ Refer to “Realize Society where Persons with Hearing Disabilities can use Telephone!” on p. 6. issued by the Nippon Foundation.

(1) Current Status

The State Party Report states that there is the communication support service, one of the community living support services under the Comprehensive Support Act (136, 139). However, there are the following problems in the communication support service.

[1] Scope of Subjects is limited.

It is limited to those who have disability certificates for visual disability, hearing disability and deaf-blind and those who have disabilities but cannot obtain certificates are not covered.

There is no system which provide communication support ¹²¹ for those who have aphasia, articulation disorder, intellectual disability, development disability, higher brain dysfunction or mental disability.¹²²

[2] Among local governments, there are those which do not have a communication support system and provide for value.¹²³

(2) Proposals for LOIs

[1] Does the Government have a plan to establish a system of communication support for those who have aphasia, articulation disorder, intellectual disability, development disability, higher brain dysfunction or mental disability in the Comprehensive Support Act?

Does the Government have a plan to include those who do not have disability certificates among persons with hearing disability, visual disability and deaf-blind in the scope of the system?

[2] Does the Government have a plan to uniformly require local governments throughout Japan to implement services of communication support and establish a system not requiring a burden on users?

3. Use and Promotion of Sign Language

(1) Current Status

The State Party Report only states that some local governments established a Sign Language Ordinance in addition to the provision of the Basic Act for Persons with Disabilities, Article 3, item 3 (136).

¹²¹ For example, such support to persons with intellectual disability as talking using expressions easy to understand, etc.

¹²² Refer to the data distributed at the Social Security Council (Persons with Disabilities Section) as of September 8, 2015, “Opinions on the group hearing (How support should be, including dispatch of persons who provide sign language interpretation and other support for those who have difficulties in communications due to disabilities of hearing, language and voice functions and any other disabilities)” on p. 2.

¹²³ Survey of the Ministry of Health, Labour and Welfare, Department of Health and Welfare for Persons with Disabilities, Independence Support Promotion Office. Refer to the data distributed at the Social Security Council as of September 8, 2015 (Persons with Disabilities Section) “How support should be, including dispatch of persons who provide sign language interpretation and other support for those who have difficulties in communications due to disabilities of hearing, language and voice functions and any other disabilities.”- Refer to the Data (Article 21) b.

However, there are the following problems.

[1] There are few sign language broadcasts on TV.¹²⁴

[2] Use of sign language is not guaranteed at education for persons with hearing disabilities.¹²⁵

(2) Proposals for LOIs

Does the Government have any plans to enact a sign language act providing for guarantee of specific rights related to sign language?

Article 23 Respect for Home and the Family

1. Forming a Family and Divorce

(1) Current Status

[1] There is no system to provide support necessary for persons with disabilities to form and maintain their home. No data investigating the problems exists and problems in family formation are not recognized.¹²⁶

[2] In divorce, the Civil Code, Article 770-(1), (iv) provides for severe mental illness with no prospect of recovery as the cause for divorce and the text indicates discrimination against persons with mental disabilities in divorce.

In Japan, as divorce through consultations without involvement of courts is granted,¹²⁷ a person in a weak position, including persons with disabilities might be disadvantageously treated in determination of conditions for divorce, including determination of the person with parental authority and custodian, division of property and calculation of consolation money.

(2) Proposals for LOIs

[1] Does the Government have any plans to take measures after conducting investigations on the causes for barriers for persons with disabilities to form a family?

[2] Does the Government have any plans to delete the cause for divorce from the Civil Code, Article 770 considering that defining mental disabilities as the cause for divorce conflicts with CRPD?

¹²⁴ Publication of the Ministry of Internal Affairs and Communications on November 25, 2016, “Results of Closed-captioned Broadcasts in 2015”- Refer to the Data (Article 21) b.

¹²⁵ The Course of Study for elementary and junior-high school division of special needs education schools, Chapter 2, Section 1 “2 (4) effective learning activities must be deployed by taking full advantage of hearing ability held by children through the use of hearing aid, etc. (6) guidance methods must be devised so that children with hearing disabilities can actively communicate with each other by properly utilizing various means of communication, including voice, characters and sign language, depending on the condition of their hearing disabilities, etc.”

¹²⁶ The State Party Report states on marriage as, “Article 24 of the Constitution of Japan guarantees freedom of marriage.” (148)

¹²⁷ Article 763 of the Civil Code provides “a husband and wife may divorce by agreement.” For reference, 90% of divorces are made by agreement between husband and wife through mutual consultations without involvement of courts in Japan.

[3] Does the Government have any plans to conduct surveys of persons with disabilities in order to investigate whether persons with disabilities are in situations in which they have to accept disadvantages in divorce through consultations and determination of the person with parental authority and custodian?

2. Nurture of Children (Childcare Support)

(1) Current Status

[1] Community living support services stated in the State Party Report is the services for overall daily life and social life and not specialized in childcare support for persons with disabilities (151). It does not function sufficiently as improvement of childcare support and environment for persons with disabilities to securely give birth and raise children regardless of the existence of disabilities.^{128, 129}

[2] The Basic Act on Education imposes the primary responsibility for education of children on parents,¹³⁰ on the other hand, childcare support for parents with disabilities required to fulfill such responsibility is not sufficiently provided.

[3] As they are conducted as municipal governments' community living support services, the contents and degree of childcare support provided differ considerably depending on each municipality where persons with disabilities reside.

(2) Proposals for LOIs

[1] Does the Government have any plans to make legislation for childcare support and environmental improvement for persons with disabilities to securely give birth and raise children regardless of the existence of disabilities?

[2] In order to make childcare support for persons with disabilities effective, does the Government have any plans to conduct a survey on what kinds of support are required for childcare subject to persons with disabilities having children?

[3] Has the Government conducted investigations on whether there was any difference in childcare support provided depending on each municipality? Does the Government have any plans to take measures to increase the minimum level of childcare support?

¹²⁸ The State Party Report states with regard to various problems related to the welfare of persons with disabilities, etc. in communities, the municipal governments' community living support services provide "consultation support, necessary information and advice, etc. to persons with disabilities, etc., parents or guardians of children with disabilities or caregivers of persons with disabilities, etc.." (151)

¹²⁹ In June 2011, in connection with enrollment at a vocational school of the child, a person applied for dispatch of a volunteer sign language interpreter to the guardian explanation meeting at open campus outside of Takamatsu City, where the person is residing, dispatch of a volunteer sign language interpreter was refused because it is not in the City and attendance at a guardian explanation meeting at open campus is not really important, and then, the person instituted a litigation.

¹³⁰ The Basic Act on Education, Article 10 (Education in the Family) provides, "mothers, fathers, and other guardians, having the primary responsibility for their children's education, shall endeavor to teach them the habits necessary for life, encourage a spirit of independence, and nurture the balanced development of their bodies and minds."

Article 24 Education

1. Definitions and Rights of Inclusive Education

(1) Current Status

[1] Inclusive education is a fundamental human right for all learners.¹³¹ It also has a significant educational effect for personality forming of children without disabilities. As is apparent from the State Party Report ¹³²(156), special needs education at separate places has been promoted and in fact, the number of children learning under special needs education has been rapidly increasing.¹³³ In Japan, separate education is rather actively promoted.¹³⁴

For exchange education presuming separation, it is not an inclusive education in which study and school life at normal schools are changed or adjusted to learn together as reasonable accommodation for children and students with disabilities.

[2] For school selection, as stated in the State Party Report (158),¹³⁵ nonbinding notification requires respecting the opinions of children with disabilities and their parents/guardians.¹³⁶ Respect of the opinions of children with disabilities and their

¹³¹ In paragraph 10 of General comment No. 4 (2016) on the right to inclusive education, by the Committee on the Rights of Persons with Disabilities, it is specified that inclusive education is a fundamental right of all learners.

¹³² The State Party Report states with respect to inclusive education that special needs education is provided in Japan and that special support service in resource rooms, special needs education classes and special needs education schools will be enriched. It also states that interaction and joint studies are provided for students, etc., who are enrolled in special needs education schools (156).

¹³³ In the State Party Report, it is stated, “as of May 2014, the number of children and students who receive special support service in resource rooms at elementary and junior-high schools totaled 83,750 (as of May 2009: 54,021); the number of children and students enrolled in special needs education classes at elementary and junior-high schools totaled 187,100 (as of May 2009: 135,166); and the number of infants, children and students enrolled in special needs education schools (from kindergarten division to high school division) totaled 135,617 (as of May 2009: 117,035).” (156)

According to the survey of the Ministry of Education, Culture, Sports, Science and Technology in 2016, the number of children and students who receive special support service in resource rooms at elementary and junior-high schools totaled 98,311; the number of children and students enrolled in special needs education classes at elementary and junior-high schools totaled 217,839; the number of infants, children and students enrolled in special needs education schools (from kindergarten division to high school division) totaled 139,821, which were increased.

¹³⁴ For the actual circumstances of active promotion of separate education, Refer to the Data (Article 24) a.

¹³⁵ The State Party Report states, with respect to school selection, by the revision as of August 2013 of the Order for Enforcement of the School Education Act, the conventional framework of school selection in which children with disabilities falling under the school attendance standards must, in principle, be enrolled in special needs education schools was revised, where the opinions of children with disabilities and their parents/guardians would be respected (158). Regarding the respect of the opinions of the children with disabilities and parents/guardians, it is published by the notice of partial revision of the Order for Enforcement of the School Education Act (25 Ministry of Education, Culture, Sports, Science and Technology, Sho No. 655) (September 1, 2013).

¹³⁶ There are cases here and there, however, where enrollment at special needs education schools was determined against the opinions of the parents/guardians and the children with disabilities. The case which was subject to litigation is the Yokohama District Court, (Admin. U) No. 58 of 2018. Kanagawa Prefecture argues that the decision of enrollment at the special needs education school was appropriate although it admitted it went against the opinions of the parents/guardians. - Refer to the Data (Article 24) b.

parents/guardians shall be specified in the School Education Act as the right to freedom of expression under CRPD of the Child, right to select education of parents/guardians under the International Convention on Economic, Social and Cultural Rights on presumption of sufficient information provision, including reasonable accommodation at normal schools.

(2) Proposals for LOIs

- [1] Are there any instruction guidelines, general notices or guidelines to provide reasonable accommodation by change and adjustment for the conventional learning content and evaluation method of normal classes and other overall life at school?
- [2] How does the Government recognize the reasons for an increase in special needs education schools and the number of children and students enrolled at special needs education schools?
- [3] Does the Government provide sufficient information of reasonable accommodation to be provided after enrollment in selecting a school? If it is the duty of each local government, does the Government conduct surveys and give instructions on improvement for this?
- [4] Why is it not specified in the Course of Study for elementary and junior high schools to aim at inclusive education for learning together with students with disabilities?

2. Crucial lack of Reasonable Accommodation

(1) Current Status

- [1] Support for students with disabilities stated in the State Party Report¹³⁷ presumes special needs education under the principle of separation (157, 160, 161). It is illogical to call it reasonable accommodation.¹³⁸
- [2] Out of children falling under the Order for Enforcement of the School Education Act, Article 22-3, more than 2,000 children were enrolled at normal schools (158), but reasonable accommodation for the children and students was not mentioned. As reasonable accommodation is not provided, burden of guardian, including

¹³⁷ The State Party Report states that “Special needs education assistants who provide support, etc., related to daily life and learning are dispatched to kindergartens, elementary and junior-high schools and high schools and the number of assistants is being expanded” (157). The Course of Study for elementary and junior-high schools provides for the necessity to devise content and methods of guidance in a planned manner, depending on the conditions, etc., of the disabilities of individual children and students by preparing individual education support plans, etc., (160). It also states that “the Course of Study for Special Needs Education Schools provides matters to be considered based on the type of disabilities involved” (161).

¹³⁸ Reasonable accommodation for change and adjustment of education content and school life to realize inclusive education is completely different from individual support at special needs education. Special needs education is separation based on disabilities and direct discrimination itself and we would have to say it is illogical that enhancement of special needs education is the provision of reasonable accommodation. Assistants who provide support at normal schools are inadequate and as they are employed by local government financial measure, status of assistants is different depending on each local government.

accompanying to school, is great.¹³⁹ (157)

- [3] Regarding flexible arrangement of curriculum and change of evaluation standards (161) suitable for actual conditions of special needs education schools and special needs education classes/resource rooms, they shall be devised not only at special needs education schools and special needs education classes/resource rooms but also at normal classes at elementary and junior high schools as reasonable accommodation.
- [4] While it is reported that enrollment of children and students who need medical care has been increasing on a yearly basis (157), it does not mention what reasonable accommodation is provided and in fact it is very insufficient.
- [5] The State Party Report does not mention at all support to commute to schools. Currently, national school commuting support system has not been established by schools or local governments,¹⁴⁰ and in many cases, parents/guardians, etc., have to accompany attendance.^{141, 142}

(2) Proposals for LOIs

- [1] Does the Government change and adjust the evaluation standards as reasonable accommodation for tests, promotion and graduation of children and students with intellectual disabilities at normal classes?
- [2] Is the reason for an increase in children and students enrolled at special needs education schools and special needs education classes non-provision of reasonable accommodation at normal classes at elementary and junior high schools?
- [3] What reasonable accommodation is given to prevent guardians from accompanying to schools?
- [4] What reasonable accommodation is provided for children and students who need medical care?

¹³⁹ As a case where reasonable accommodation is not provided, see judgment of the Osaka District Court as of November 4, 2005. - Refer to the Data (Article 24) c.

¹⁴⁰ Support for attending schools by special needs education assistants is not presumed and allocation of school buses is delegated to the discretion of each local government. While school attendance expense is provided under the school attendance incentive system for special needs education, it is limited by many local governments to the transportation expense for the most economical route and expenses for personnel who were employed for attendance are not paid. Accompanying support services and home-visit care for persons with severe disabilities under the Comprehensive Support Act cannot be used for long-term care and a full-year outing, including school attendance and in many cases of transportation services offered by each local government, similar limitation is adopted. Some local governments conduct support services for school attendance besides transportation services, but not all local governments conduct it.

¹⁴¹ As a precedent where the change of operation route of a school bus became an issue, judgment of the Yokohama District Court as of June 23, 1976. Refer to the Data (Article 24) d.

¹⁴² According to the survey of special needs education schools published in 2016 (Yasushi Nakano, "Research on the Actual Circumstances Survey of How Transportation Support to Persons with Disabilities should be: 2015 Summary Research Report"), about 80% of children and students who use school buses require attendance of guardians, etc., due to the non-existence of a support system for transportation between the home and the bus stop.

[5] Does the Government have any plans to implement any measures for school attendance support applied nationwide? If not, by what reason?

3. Entering High School

(1) Current Status

Enrollment at upper secondary education stated in the State Party Report (164)¹⁴³ refers to enrollment at upper secondary education at special needs education schools. Under current conditions in which the ratio of entering high schools is over 97% throughout society, in fact, entering normal high schools with students with disabilities is excluded in the name of proper enrollment.

(2) Proposals for LOIs

[1] What reasonable accommodation is given for the evaluation standards at entrance exams, promotion and graduation when students with intellectual disabilities enter high schools?

[2] In the current conditions in which the ratio of entering high schools is over 97% in society, does the Government recognize that the case where students cannot enter high schools due to disabilities is discrimination based on disabilities?

Article 25 Health

1. Unequal number of staffs

(1) Current Status

At psychiatric hospitals, Japanese government apply the policy that the number of psychiatric doctors can be 1/3 and the number of psychiatric nurses can be 2/3 compared to those of other departments.¹⁴⁴

(2) Proposals for LOIs

Indicate the plan to change the rate of doctors and nurses of private psychiatric hospitals at the same rate as other departments.

2. Informed Consent

(1) Current Status

¹⁴³ The State Party Report states, “considerations to help promote the school attendance in upper secondary education and job support must be enhanced in collaboration with measures related to welfare, labor, etc.,” (164). Statistical data 26 of the Government shows a high education continuance rate, but this is education continuance of students who were enrolled at special needs education schools or special needs education classes.

¹⁴⁴ There are about 300,000 psychiatric bed and 90% of psychiatric beds are privately operated in private psychiatric hospitals in Japan. At psychiatric hospitals, it is provided as sufficient that the number of doctors is 1/3 and the number of nurses is 2/3 compared to those of ordinary departments under the Enforcement Regulations of the Medical Service Act, Article 19 and the notice thereof (it is called, “Psychiatry Exceptions”). By the amendment of the Medical Service Act in 2001, a psychiatric department at university hospitals and general hospitals were recognized as the same as other departments (number of doctors 48:1 → 16:1 and number of nurses 6:1 → 3:1), but at ordinary psychiatric hospitals, it is still sufficient to assign doctors at 48:1 and nurses at 4:1.

In Japan, there are actual circumstances in which a person with a mental disability is forced to be hospitalized if the person refuses hospitalization as a person deemed not to have “ability to consent” without conducting the process of informed consent and informed assent of the person.^{145, 146}

(2) Proposals for LOIs

[1] Has the Government conducted examinations, surveys or compiled statistics on implementation of informed consent at psychiatric hospitals?

[2] In providing medical care, indicate the system (including contents of training of doctors on judgment of ability to consent and forming agreement with patients and the system of right advocators in providing medical care) to obtain the valid consent (including informed assent). If there is no specific system, indicate the plan to build the system.

3. Definitions of Intractable/Rare Diseases, Lack of Support and Procedural Issues

(1) Current Status

[1] Definitions of “intractable/rare disease” are limited under the Intractable/Rare Disease Act to the subject diseases¹⁴⁷ designated by the national government.¹⁴⁸ There are many patients who cannot receive medical treatment due to the burden of a large amount of medical expenses as the disease does not applicable under the definitions.¹⁴⁹

[2] While it is the procedural requirement to receive diagnosis by the designated intractable/rare disease doctor, there are many patients who do not have an opportunity to receive diagnosis as there is no designated intractable/rare disease doctor in the neighboring area.

(2) Proposals for LOIs

[1] Has the Government conducted surveys of the number of patients of diseases which are not covered by subsidies and the status of burden of medical expenses, etc.? What were the results of the surveys? If the Government has not conducted any surveys, indicate specific plans on how the Government will recognize such

¹⁴⁵ There are occurrences that private emergency transport a person with a mental disability who refuses going to psychiatric hospital positively.

¹⁴⁶ There are no clear standards for determination of ability to consent and no appeal system if people deemed not to have “ability to consent”.

¹⁴⁷ National government categorize by name of disease and classifications of disease severity.

¹⁴⁸ Actually, there are about 5,000 to 7,000 symptoms of intractable/rare diseases, but the national government applies the system selecting the subjects by the name of disease and classifications of disease severity. There are 331 diseases for which medical expenses subsidy is applied as of April 2018. There are many patients who have difficulties in living due to the severity of their disease and living environment.

¹⁴⁹ Medical expense subsidies are implemented for the purpose of research medicine, therefore, there is a problem where diseases, for which medical expense subsidies was received as the disease subject to research project while the patient was a child, was outside of the scope of receiving subsidies as soon as the patient becomes 18 years old (or 20 years old), and the patient has to bear large amount of medical expenses (“Transition” problem).

patients and guarantee their medical care and living.

- [2] Is there a system in which a person with an intractable/rare disease can promptly receive certification of a specialized doctor wherever he/she lives?

Article 27 Work and Employment

1. Welfare Employment

(1) Current Status

The State Party Report on CRPD, Article 27 does not mention welfare employment. On the other hand, under CRPD, Article 28, it states implementation of “transition support for employment” and “support for continuous employment” as a form of welfare service for persons with disabilities under the Comprehensive Support Act and an increase in the number of persons with disabilities who utilized the work-related welfare service and transitioned to regular employment (183).

It was only approximately 4%, however, who successfully transitioned to regular employment among users of the above employment support.¹⁵⁰ Wages (labor charge¹⁵¹) of persons with disabilities who work under welfare employment remain at approximately 5~25% of the average monthly wages of all regular workers.¹⁵² In addition, to the users of support for continuous employment B-type, labor protection laws, including the Labor Standards Act shall not apply.¹⁵³ Furthermore, users of support for continuous employment must pay to the facilities the self-burden portion of service use fees.

(2) Proposals for LOIs

- [1] Does the Government have any plans to implement the measures for increasing the wages of persons with disabilities employed under welfare employment?
- [2] Does the Government have any plans to implement the income compensation system for persons with disabilities employed under welfare employment?
- [3] Does the Government have any plans to apply labor related laws and regulations to persons with disabilities employed under welfare employment same as in the open labor market?
- [4] Does the Government consider abolition of burden of users in support to continuous employment?

2. Subject of Employment Quota

(1) Current Status

¹⁵⁰ Survey as of 2015. Ministry of Health, Labour and Welfare website “Status of Employment Support to Persons with Disabilities,” 2. Current Status of Employment of Persons with Disabilities.

¹⁵¹ Refer to the Data (Article 27) a.

¹⁵² Ministry of Internal Affairs and Communications, Monthly Labour Survey in September 2015.

¹⁵³ Judgment of the Nagasaki District Court as of February 21, 2017 - Refer to the Data (Article 27) b.

The State Party Report states that the legal number of persons with disabilities to be employed with disabilities “has hit a record level for 12 successive years” as a result of determination of the legal employment ratio under the Employment Promotion Act applied to regular employment of persons with disabilities (176).

However, the subjects of an employment quota are conditioned by holding disability certificates.¹⁵⁴ Legal employment ratio provided in the Employment Promotion Act remains lower than other countries¹⁵⁵ and the achievement ratio at private companies remained at a low rate of 50.0% according to the survey conducted on June 1, 2017.¹⁵⁶

Furthermore, it has been proved since August 2018 at national and local administrative governments that overstating reports, which counted employees other than the subject as the number of employees with disabilities in the calculation of counting of employment ratios of persons with disabilities, went on for a long time. As a result of recalculation, employment ratios of the national government halved to 1.19% from 2.49%.^{157, 158} The national government established “Examination Committee for Matters related to Employment of Persons with Disabilities at National Administrative Organizations” and the Committee prepared the report on October 22, 2018,¹⁵⁹ but specific measures for prevention of recurrence were not recommended in the report.

(2) Proposals for LOIs

[1] In the quota system employing persons with disabilities, does the Government have any plans to change the system so that persons with disabilities whose employment should be promoted based on a social model will be recognized as being the subject?

[2] Regarding overstatement of employment ratios at public organizations, disclose the correct investigation results, ascertaining the cause and specific measures for prevention of recurrence, including monitoring system of employment ratios at public organizations.

[3] Does the Government have any plans to implement the measures for further

¹⁵⁴ 183th Diet, the House of Councilors, Committee on Health, Labour and Welfare, meeting minutes No. 9, p. 27

¹⁵⁵ Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers, Vocational Center for Persons with Disabilities “International Comparison of Employment Ratio of Persons with Disabilities and Levy Systems” NIVR Data Series No. 26, March 2002, p. 82 ~ p. 84

¹⁵⁶ Ministry of Health, Labour and Welfare: Calculation results of status of employment of persons with disabilities in 2017, Summary Table - Refer to the Data (Article 27) c.

¹⁵⁷ Ministry of Health, Labour and Welfare “Results of Re-inspection of Appointment and Dismissal of Persons with Disabilities at National Administrative Organization as of June 1, 2017”- Refer to the Data (Article 27) d.

¹⁵⁸ Furthermore, it was proved by reporting that at least 28 prefectures and several central administrative organizations, including the Ministry of Finance imposed such discriminatory conditions as “being able to commute on his/her own” when recruiting employees with disabilities (reported by Asahi Shimbun Digital as of October 27, 2018.).

¹⁵⁹ Website of the Ministry of Health, Labour and Welfare, <https://www.mhlw.go.jp/content/000369784.pdf>
The amended bill of the Employment Promotion Act is currently under discussion in the Diet.

increasing the ratios in the quota system to employ persons with disabilities?

3. Employment Retention

(1) Current Status

The State Party Report emphasizes the results of job retention of employed persons with disabilities (179, 180).¹⁶⁰

However, an increase in the number of employed persons with disabilities is meaningless in the situations where employed persons with disabilities retire in a short period of time.¹⁶¹ Also, support for job retention is insufficient based on the situation where persons with acquired disabilities have to retire.¹⁶²

(2) Proposals for LOIs

Does the Government have any plans to implement the policy to make service years longer for employed persons with disabilities (including persons with acquired disabilities)?

4. Non-regular Employment

(1) Current Status

The State Party Report emphasizes the continuous increase of the number of employed persons with disabilities (176, 178).¹⁶³

Such increase was resulted from the factors, such as that most of the workers with disabilities are non-regular employment,¹⁶⁴ wages paid to workers with disabilities are low,¹⁶⁵ and special provisions for employment at wages lower than the minimum wage¹⁶⁶ are applied.

(2) Proposals for LOIs

[1] Does the Government collect statistical data indicating the total number of employed persons with disabilities by year and the trend in the number of non-regular employed persons with disabilities to the total number?

[2] Does the Government have any plans to implement the policy to reduce the ratio of non-regular employed persons with disabilities in the total number of employed persons with disabilities?

¹⁶⁰ Number of employed persons with disabilities by “team support project” and the number of employed persons with disabilities by support of the Employment and Vocational Life Support Centers for Persons with Disabilities.

¹⁶¹ Survey on the Employment Situation in 2013 (Ministry of Health, Labour and Welfare)

¹⁶² Judgment of the Tokyo District Court as of July 29, 2015, judgment of the Nagoya District Court as of March 28, 2017 - Refer to the Data (Article 27)e.

¹⁶³ It is stated that the number of employed persons with disabilities at private companies “has hit a record level for 12 successive years” and the number of employed persons with disabilities through job placement by Hello Work offices has hit “a record for the fifth year in a row.”

¹⁶⁴ There is no clear legal definition, if employment form satisfying all of [1] indefinite, [2] full-time and [3] direct employment is defined as regular employment, employment forms other than the regular employment is defined as non-regular employment.

¹⁶⁵ Refer to Survey on the Employment Situation in 2013 (Ministry of Health, Labour and Welfare) cited in Note 162.

¹⁶⁶ Minimum Wage Act, Article 7, Item 1, Special Provision for the Reduction

- [3] Does the Government recognize the total number of employed persons with disabilities by year and the number of employed persons with disabilities to which the amount reduction exceptions are applied?
- [4] Does the Government recognize the number of applications for permission of amount reduction exceptions and permission rate by year and amount reduction rate when they were permitted?
- [5] Does the Government have any plans to make the conditions for amount reduction exceptions stricter by amending the Minimum Wages Act?

5. Commutation Support

(1) Current Status

The State Party Report does not mention commutation support at all.

It is essential to support commutation to move around securely and safely so that persons with disabilities can work and retain employment. However, such commutation support is still inadequate and only small amount of subsidy is provided by the independent administrative agency delegated by national government.¹⁶⁷ Such weak public support significantly prevents employment of persons with disabilities.

(2) Proposals for LOIs

- [1] Does the Government have any plans to implement measures for commutation support to persons with disabilities?
- [2] Does the Government recognize it as discrimination to put the application condition of “those who can commute alone” whether public organizations or private companies?

Article 28 Adequate Standard of Living and Social Protection

1. Housing Problems (Public Housing)

(1) Current Status

For many requirements for move-in public housing, “a person who requires care all the time” is excluded and most requirements include “independence requirements (being able to have meals and use the toilet on his/her own). These requirements have no reasonable causes and this is a form of discriminations. The Government reports that local governments provide preferential treatment to certain households of persons with disabilities (184), but as it presumes the above restrictions on move-in, problems have not been resolved.

(2) Proposals for LOIs

Does the Government have any plans to amend the Act on Public Housing, etc.,

¹⁶⁷ Website of Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers- Refer to the Data (Article 27) f.

establish a sufficient quota for single living persons with disabilities and abolish the restrictions on move-in including “a person who requires care all the time”?

2. Housing Problems (Private Housing)

(1) Current Status

When a person with a disability would like to rent a private housing, lease is often refused as “the person would cause trouble, like a fire break-out.”¹⁶⁸

(2) Proposals for LOIs

[1] Since the national government is in a position of promoting a transition to the communities of persons with disabilities, does the Government have any plans to actively promote the policy to ensure an environment where persons with disabilities can reside in communities?

[2] Does the Government make specific efforts including an effort to analyze the reasons for refusal of lease and establish a system to eliminate refusal of lease?

[3] Does the Government have any plans to impose the owners of the housing the obligations to specify just cause if a lease is refused?

3. Income Guarantee (Disability Pension)

(1) Current Status

[1] The Japanese disability pension system has many serious problems.¹⁶⁹

The amount has been decreasing (182, Exhibit Statistics, p. 27), and the guaranteed amount which had been criticized as too low¹⁷⁰ has continued to be reduced where the function of income guarantee has been lowering.

[2] Over 70% of persons with disabilities do not receive a pension¹⁷¹ and the benefit ratio is apparently low.

[3] The reasons are (a) disability pension system has not been thoroughly published and (b) requirements for receipt depending on a medical model are unjustly too strict, etc.

[4] In the “disability certification standards,” the requirements for receipt are stated as “for living in hospitals, cases where scope of activities is generally limited in a

¹⁶⁸ “Survey of the Cases of Discrimination against Persons with Disabilities by Reason of Disabilities” (Cabinet Office Consigned Survey in March 2009), etc.) distributed at the 14th System of Persons with Disabilities Promotion Meeting as of February 24, 2012, Discrimination Prohibition Sectional Meeting

¹⁶⁹ It was reported in May through July, 2018, as many as 1,000 persons receiving the disability basic pension would uniformly be discontinued. Mainichi Shimbun, May 29, 2018, June 6, 2018 and June 26, 2018, etc. The government, concerned about the impact of reporting, generally withdrew discontinuation, but there are more than 1,000 persons who remain in a state of discontinuation.

¹⁷⁰ Refer to the Data (Article 28) a.

¹⁷¹ According to the “Welfare Pension Insurance and National Pension Business Annual Report” in 2015, the number of persons receiving a disability pension is 2,075,000 persons. To adult persons with disabilities of 8,083,000 persons according to 2017 White Paper on Persons with Disabilities, receiving ratio is 25%.

ward ... and for ... the home, cases where scope of activities is generally limited to the house,” which are the standards for not paying disability pension to persons other than those who lie in bed the entire day.

It also discriminates by the term of a disability as “neurosis and personality disorder are not covered by disability pension.”

- [5] Regular employment ratio of persons with disabilities is extremely low¹⁷² and fundamental reform is required, aiming at more than 80% of disability pension receiving rate.

(2) Proposals for LOIs

- [1] Does the Government have any plans to create a legal obligation of publication of disability pension system to all persons with disabilities?

- [2] Does the Government have any plans to abolish the medical requirements, which are criticized as being medical model biased,¹⁷³ from the requirements for payment of disability pension or mitigate such requirements?

- [3] Does the Government have any plans to remove the unjust statement of certification standards pointed out in (1) [4] above?

- [4] Does the Government have any plans to revise the system so that the persons other than those who earn sufficient in-service income can receive disability basic pension?

4. Income Guarantee (Welfare Benefit System)

(1) Current Status

- [1] The State Party Report does not mention the matter. The welfare benefit system is extremely important for persons with disabilities most of whom are at the poverty level and it is problematic that no statement is made.

Moving by car shall be guaranteed as the right of persons with disabilities, but possession of a private car is not generally permitted for those who receive welfare benefits.^{174, 175}

- [2] The great majority of those who have low income cannot receive welfare benefits because of living together with their parents.

(2) Proposals for LOIs

- [1] Does the Government have any plans to reform the system so that a person with

¹⁷² Refer to the Data (Article 28) b.

¹⁷³ Refer to the Data (Article 28) a.

¹⁷⁴ Possession of a car by persons with disabilities receiving welfare benefits has been permitted by several judgments. [1] Judgment of the Fukuoka District Court, May 29, 2009 (Wages and Social Welfare, No. 1499, p. 29, “Farewell to Discrimination against Persons with Disabilities!” on p. 272), [2] Judgment of the Osaka District Court as of April 19, 2013 (“Farewell to Discrimination against Persons with Disabilities!” on p. 276). However, no improvement was made in the field.

¹⁷⁵ Refer to the Data (Article 28) c.

a disability can receive welfare benefits after reaching the age of 20, based on the characteristics and needs of the individual person with a disability regardless of income and assets of the family even if the person is living together with parents?

- [2] Does the Government have any plans to issue a notice, etc., that use of a private car shall generally be permitted for those who receive welfare benefits and have mobility difficulty?

Article 29 Participation in Political and Public Life

1. Guarantee of Opportunities to Vote

(1) Current Status (186 ~ 189)

- [1] As only persons with serious physical disabilities are permitted to vote by mail or by other means, persons with visual disabilities, intellectual disabilities and mental disabilities and persons with less severe physical disabilities cannot use the voting system by mail or by other means.
- [2] Implementation of electronic voting under the “the Act on Special Provisions concerning the Voting Method by Means of Electromagnetic Recording Voting Devices Used for Election of Council Members and Heads of Local Governments” has barely progressed.
- [3] Persons who cannot write the name of a candidate on his/her own are permitted to vote by proxy, but vote by proxy cannot be realized due to the fact that the method of confirming the will is not unified, etc. There is a problem under the proxy voting system that blank voting cannot be made.
- [4] As an assistant to vote by proxy is designated as the “person engaged in the affairs of the voting place” (the Public Offices Election Act, Article 48, paragraph 2), voters with disabilities cannot select an assistant (Convention on the Rights, Article 29 (a) (iii)).¹⁷⁶

(2) Proposals for LOIs

- [1] Does the Government have any plans to expand the subject of voting by mail or by other means?
- [2] Does the Government have any plans to expand the subject of electronic voting, including national election?
- [3] Does the Government have any plans to make a system so that reasonable accommodation can uniformly be provided throughout Japan in operation of the voting system?
- [4] Explain the reason for not being able to cast a blank vote in a vote by proxy.
- [5] Does the Government have any plans to permit the person selected by the person

¹⁷⁶ Currently on trial at the Osaka District Court - Refer to the Data (Article 29) a.

with a disability to assist voting in a vote by proxy?

2. Accessibility to Information

(1) Current Status (187)

[1] It is possible to add sign language interpreters and/or closed captions to some of the election broadcasts under the provisions of the election broadcast regulations, but sign language interpreters and/or closed captions are not added to all election broadcasts of the Diet elections.

[2] Regarding accessibility to information of election bulletins, at national election, braille, voice or enlarged character versions are distributed, but there are regional differences and at local elections, they are not sufficiently guaranteed.

(2) Proposals for LOIs

[1] Does the Government have any plans to add sign language interpreters and/or closed captions to all election broadcasts of the Diet elections?

[2] Does the Government have any plans to issue braille, voice or enlarged character versions of all the texts in the election bulletins whether national or local elections?

Article 33 National Implementation and Monitoring

1. Current Status

(1) The State Party Report positions the human rights bodies of the Ministry of Justice as the framework for protecting the implementation of CRPD (220). However, Activities of the human rights bodies of the Ministry of Justice are conducted as the internal departments of the Ministry of Justice under the command of the Minister of Justice, which do not have independence required by Paris Principles and do not have professionalism that can protect implementation of CRPD.

(2) The State Party Report also positions the Commission on Policy for Persons with Disabilities as the overall framework for promoting, protecting and monitoring the implementation of CRPD. (221) However, the Commission on Policy for Persons with Disabilities does not have the authority to protect (remedy) and the monitoring authority is limited to only monitoring of the status of implementation of the Basic Program for Persons with Disabilities. In addition, commissioners are appointed by the Prime Minister and there is no independent secretariat, which does not have independence required by Paris Principles.

(3) Furthermore, the State Party Report positions the bodies with a council system established at prefectures and municipalities under the Basic Act for Persons with Disabilities as the framework to study, deliberate and monitor the measures for persons with disabilities (222). However, such bodies are only determined to “be able to be established” and do not have independence in exercising authorities and appointment.

(4) In accordance with CRPD, Article 33, paragraph 2, it is urgently necessary to

establish a body independent of the Government, which promotes, protects and monitor implementation of CRPD.

2. Proposals for LOIs

- (1) At the Universal Periodic Review (UPR) of Japan, which was conducted in November 2017 at the U.N. Human Rights Council, as many as 31 recommendations were made to Japan to establish National Human Rights Institution and to such recommendations, the Japanese Government answered “Accept to follow up” in March 2018. In this regard, as specific measures to “Accept to follow up,” does the Government have any plans to establish the framework in accordance with the Paris Principles to promote, protect and monitor implementation of CRPD?
- (2) If the Government has any plans to establish the framework under paragraph (1) above, when will it be?