

JFBA Report under the Convention
on the Rights of Persons with Disabilities (2)
~ Recommendations to be included in the Concluding
Observations and Background Information ~

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Japan Federation of Bar Associations

(Table of Contents)

- Introduction 4
- A Purpose and General Obligations (Article 1-4) 6
 - 1(a) Discriminatory Terms, including “Insanity” 6
 - 1(b) Human Rights Model of Disability 6
 - 1(d) Participation of Persons with Disabilities 7
 - 1(e) Systematic Training for Professionals 7
 - 2 Optional Protocol 8
- B Specific Rights (Article 5 – 30) 8
 - 3 Legal System on Prohibition of Discrimination (Article 5) 8
 - 4 Remedies Available in cases of Discrimination (Article 5) 10
 - 5(a) Mainstreaming of the Rights of Women and Girls with Disabilities (Article 6) 11
 - 5(b) Measures for Ensuring Capability Development, Advancement and Empowerment of Autonomous (Article 6) 13
 - 6(a) Mainstreaming of the Rights of Children with Disabilities (Article 7) 13
 - 6(b) Right to Express their Views (Article 7) 14
 - 7(a) Measures to Combat Negative Stereotypes and Prejudices (Article 8) 15
 - 8(a) Measures to Ensure Accessibility (Article 9) 16
 - 9(a) Measures to Ensure Compliance with the CRPD on Laws for Assisted Death (Article 10) 17
 - 9(b) Cases of Death due to Forced Hospitalization or Physical or Chemical Restraint of Persons with Psychosocial Disabilities (Article 10) 18
 - 10(a) Implementation, Monitoring and Evaluation of the Normative Framework for Disasters (Article 11) 19
 - 10(b) Provision of Accessible Information in Case of Disaster (Article 11) 21
 - 10(c) Accessibility to Evacuation Shelters, etc. (Article 11) 21
 - 10(d) Sendai Framework for Disaster Risk Reduction (Article 11) 22
 - 10(e) Securement of Residence (Article 11) 22
 - 11(a) Repeal of the Laws restricting Rights to Equal Recognition before the Law and Transition to Supported Decision-Making (Article 12) 24
 - 11(b) Support for Exercising Legal Capacity (Article 12) 24
 - 11(c) Awareness-raising (Article 12) 25
 - 12(a) Provision of Individualized Support and Procedural Accommodation in

	Judicial Proceedings (Article 13)	26
12(b)	Awareness-raising Activities for those who are involved in the Judicial System (Article 13)	28
12(c)	Ensuring Access to Justice by Persons with Psychosocial or Intellectual Disabilities who are suspected of Criminal Acts (Article 13)	28
13(a)	Repealing of laws permitting forced hospitalization (Article 14).....	29
13(b)	Increase in the Number of Hospitalizations of Persons with Intellectual or Psychosocial Disabilities and Indefinite Hospitalization (Article 14).....	29
14(a)	Measures to abolish Forced Medical Treatment (Article 15).....	30
14(b)	Independent Monitoring System to investigate Violations of Rights (Article 15).....	31
15	Measures for Investigation of Forced Sterilization Cases, Limitation of Institution of Litigation and the Content of Compensation by the Lump-sum Money Payment Act (Article 15)	31
16(a)	Protection from Exploitation, Violence and Abuse (Article 16)	33
16(b)	Violence against Women and Girls with Disabilities (Article 16)	33
17	Legal and Practical Measures to Abolish Forced Sterilization (Article 17) ·	34
18	Refusal of Entry into the Country Based on Disability (Article 18).....	35
19(a)	Current Status of Deinstitutionalization (Article 19)	36
19(b)	Strategies for Deinstitutionalization and Allocation of Resources (Article 19)	38
20	Personal Mobility Support (Article 20)	38
21(a)	Promotion of Use of Sign Language (Article 21).....	39
21(b)	Provision of Braille and Other Communication Means (Article 21)	40
21(c)	TV Broadcasting (Article 21).....	41
21(d)	Information Provision via the Internet (Article 21).....	41
23(a)	Elimination of Discriminatory Provisions against Persons with Disabilities in Legislation, such as the Civil Code on all Matters related to Family Life, Marriage and Divorce (Article 23).....	42
23(b)	Family Separation due to Disability (Article 23)	42
24(a)	Inclusive Education (Article 24)	43
24(b)	Individualized Support, Reasonable Accommodation, Systematic Training of Teaching and Non-teaching Personnel (Article 24).....	44
24(c)	School Dropout Rates of Students with Disabilities (Article 24)	45

25(a)	Compliance with the CRPD on Laws and Regulations (in particular, Intractable/Rare Disease Act) concerning Medical Care and Health Services for Persons with Disabilities (Article 25)	45
25(b)	Scope of Health Services and Accessibility, etc. (Article 25)	47
27(a)	Transition to Open Labor Market (Article 27)	48
27(b)	Provision of Reasonable Accommodation and Support, Discrimination on the Basis of Disabilities in Employment (Article 27)	49
27(c)	Awareness-raising of Employers (Article 27)	50
28(a)	Housing Issues (Article 28)	51
28(b)	Guaranteed Income (Article 28)	51
28(c)	Social Protection and Support for Persons with Intellectual or Psychosocial Disabilities after their Deinstitutionalization (Article 28)	52
29	Guarantee of Opportunities to Vote and Accessibility to Information (Article 29)	52
C	Specific Obligations (Article 31 – 33)	53
33	Commission on Policy for Persons with Disabilities (Article 33)	54
34	Human Rights Monitoring Mechanism in Accordance with the Paris Principles (Article 33)	54

Introduction

JFBA submitted on June 19, 2019 to the Committee on the Rights of Persons with Disabilities “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~” (hereinafter referred to as “Report 1”) and on September 23, 2019, JFBA participated in the briefing of Preliminary Review by the Committee conducted in Geneva.

The Committee adopted on October 29, 2019 the “List of Issues in relation to the Initial Report of Japan” (hereinafter referred to as “LOIs”).

This Parallel Report states the current status regarding the list of issues indicated in LOIs and provides recommendations to be included in the Concluding Observations. (Statements in this Parallel Report correspond to the alphabetic lettering and numbers used to identify the list of issues in relation to the Initial Report of Japan. Details of the list of issues are omitted and a summary of the text is stated as a headline in place thereof.) Parallel Reports should be prepared based on Japanese Government replies to LOIs, but due to time constraints, this Parallel Report was prepared without waiting for any formal response from the Japanese Government.

For further details on the background information of this Parallel Report, please refer to the Report 1 and Data attached to the Report 1.

In this Parallel Report, the following abbreviations are used for names of conventions and laws.

CRPD: Convention on the Rights of Persons with Disabilities

Discrimination Elimination Act: Act for Eliminating Discrimination against Persons with Disabilities

Employment Promotion Act: Act for Employment Promotion etc., of Persons with Disabilities

Comprehensive Support Act: Act on Comprehensive Support for Daily and Social Lives of Persons with Disabilities

Mental Health and Welfare Act: Act on Mental Health and Welfare for the Mentally Disabled

Medical Treatment and Supervision Act: Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity

Abuse Prevention Act: Act on Prevention of Maltreatment of Persons with Disabilities and Support for Attendants of Persons with Disabilities

Barrier-free Law: Act on Promotion of Smooth Transportation, etc., of Elderly Persons, Disabled Persons, etc.

Intractable/Rare Disease Act: Act on Medical Care and Social Supports for Patients with Intractable/Rare Diseases

A Purpose and General Obligations (Article 1-4)

1(a) Discriminatory Terms, including “Insanity” (Article 1 – 4)

(1) Current Status

The term “insanity” is used in the Penal Code Article 39, paragraph 1 and “diminished capacity” is used under the same Article, paragraph 2 and based on this Article, the “Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity” was enacted. In addition, in the Police Duties Execution Act¹, the disparaging term “mental derangement” is still in existence².

(2) Proposals

Take measures that harmonize with the CRPD including measures to withdraw terms such as “insanity,” “diminished capacity” and “mental derangement.”

1(b) Human Rights Model of Disability (Article 1 – Article 4)

(1) Current Status

In various disability-related measures, including decision for grant necessity under the Comprehensive Support Act, disability certificates, disability pensions and employment of persons with disabilities under the Employment Promotion Act, a medical model has been applied and a human rights model has not been adopted³.

(2) Proposals

[1] For all laws, regulations and guidelines concerning disability-related

¹ The Police Duties Execution Act was enforced as of July 12, 1948 and has not been amended since the last amendment in June 1954.

² “In the event that a police official identifies a person who clearly falls under any of the following items, judging reasonably on the basis of unusual behavior and other surrounding circumstance, and moreover has reasonable grounds to believe that such person needs emergency aid and protection, the police official shall provide such person with immediate protection at any appropriate place such as a police station, hospital, facilities for housing persons with mental disease, shelters, etc.

1. A person who is likely to inflict injury on his or her own or others’ lives, bodies or property due to mental derangement or drunkenness.

2. A lost child, a sick person, an injured person or the like who is not attended by any proper custodian and is considered to require emergency aid and protection (except in any case where such person refuses to accept the same).” (Police Duties Execution Act, Article 3, paragraph 1)

³ Refer to Report 1, Article 1 to Article 4-1.

measures including decision for grant necessity under the Comprehensive Support Act, disability certificates, disability pensions and employment of persons with disabilities, a human rights model of disability should be adopted.

[2] Indicate a schedule of amendment of laws in order to thoroughly incorporate a human rights model.

1(d) Participation of Persons with Disabilities (Article 1 – Article 4)

(1) Current Status

[1] Participation of persons with disabilities at various levels of council, which handle matters related to disabilities, is insufficient and in many cases, participation is limited to persons with physical disabilities⁴.

[2] For the Commission on Policy for Persons with Disabilities⁵, there is no provision to appoint a certain number or more of members from among persons with disabilities. Persons with intellectual and psychosocial disabilities have not been appointed as members, making this an extremely unfair composition.

(2) Proposals

[1] Take measures that ensure that persons with disabilities are able to participate in councils, etc., related to disabilities both at the national and local level.

[2] Amend the Basic Act for Persons with Disabilities to specify that a certain number of persons with disabilities shall be appointed as members of the Commission on Policy for Persons with Disabilities. Take measures that ensure that not only persons with physical disabilities but also persons with intellectual and psychosocial disabilities shall be appointed as members.

1(e) Systematic Training for Professionals (Article 1 – Article 4)

(1) Current Status

⁴ Refer to Report 1, Article 1 to Article 4-2.

⁵ It is established in the Cabinet Office under the Basic Act for Persons with Disabilities, Article 32.

Among professionals who work with persons with disabilities, for social workers, systematic training for the CRPD is conducted in training organized by the Ministry of Health, Labour and Welfare, however, training for members of the judiciary and police and prison officials⁶, it is seldom or never conducted.

(2) Proposals

Provide systematic training on the CRPD for professionals who work with persons with disabilities (in particular, members of the judiciary and police and prison officials, etc.⁷).

2 Optional Protocol (Article 1 – Article 4)

(1) Current Status

No specific plan for ratification of the Optional Protocol has yet been presented.

(2) Proposals

Ratify the Optional Protocol immediately and introduce individual complaints procedures⁸.

B Specific Rights (Article 5 – 30)

3 Legal System on Prohibition of Discrimination (Article 5)

(1) Current Status

[1] In the Discrimination Elimination Act, definition of “Discrimination” is not provided in Article 2 (Definitions) and there are no provisions that include definitions of “disparate and unfair discriminatory treatment” and “non-provision of reasonable accommodation.” (Article 7, Article 8).

Under the current Act, although “disparate and unfair discriminatory treatment” and “non-provision of reasonable accommodation” are prohibited

⁶ In addition to prison officers, including legal instructors and classification technical officials.

⁷ In addition to prison officers, including legal instructors and classification technical officials.

⁸ JFBA adopted a “Resolution Requesting the Implementation of an Individual Complaints Procedure and the Establishment of a National Human Rights Institution” at the Human Rights Protection Conference as of October 4, 2019.

(Japanese)

https://www.nichibenren.or.jp/document/civil_liberties/year/2019/2019_2.html

(English)

https://www.nichibenren.or.jp/en/document/statements/2019_2.html

as discrimination, it is not clear whether only direct discrimination but also indirect discrimination and related discrimination are included in “disparate and unfair discriminatory treatment.” Therefore, it can be interpreted in the Act that indirect discrimination and related discrimination are not included.

[2] Women with disabilities face, in particular, multiple discrimination and intersectional discrimination, but no provision prohibiting these forms of discrimination exists, including in the Discrimination Elimination Act⁹.

[3] Among state organs, only administrative organs are subject to prohibit discrimination and the legal system on prohibition of discrimination is not applicable to judicial and legislative organs.

[4] Under the Discrimination Elimination Act, as a provision of reasonable accommodation by private sector businesses, there is only an obligation to make an effort^{10 11}.

(2) Proposals

[1] Establish a provision that includes a definition of discrimination in the Discrimination Elimination Act and the content should clarify prohibition of indirect discrimination, related discrimination, multiple discrimination and intersectional discrimination.

[2] Conduct investigations and review measures for elimination of multiple and intersectional discrimination against women with disabilities.

[3] Expressly provide in laws, including the Court Act, Code of Procedure and the Diet Act, that judicial and legislative organs shall be prohibited from all forms of discrimination based on disabilities.

[4] Amend the Discrimination Elimination Act to immediately establish a provision with a legal obligation of reasonable accommodation by private

⁹ Committee on the Elimination of Discrimination against Women: Concluding observations on the combined seventh and eighth periodic reports of Japan (Provisional Translation) March 2016/Recommendations: “13 (c) Enact comprehensive anti-discrimination legislation that prohibits multiple/intersectional forms of discrimination against women belonging to various minority groups, and protect them from harassment and violence, in line with General Recommendation No. 28 (2010) on core obligations of States parties.”

¹⁰ In the area of employment, reasonable accommodation by private sector businesses is a legal obligation under the Employment Promotion Act.

¹¹ As of February 2020, in the “Opinions on Review after Three Years from Enforcement of the Discrimination Elimination Act (Draft)” prepared by the Commission on Policy for Persons with Disabilities, the direction to establish a certain “period of notification” until enforcement is recommended although reasonable accommodation shall be the legal obligation of private sector businesses.

sector businesses.

4 Remedies Available in cases of Discrimination (Article 5)

(1) Current Status

[1] In judicial procedures, it is interpreted that the Discrimination Elimination Act and the Employment Promotion Act do not have any effect under private law, however, where the fact of disparate and unfair discriminatory treatment (in areas of employment and labor, denial of reasonable accommodation in addition to disparate and unfair discriminatory treatment,) was recognized, such act could be invalidated via the abuse of rights doctrine, etc., or become an issue of a claim for damages under tort. At the present time, however, there are few precedents that utilize the Discrimination Elimination Act and the Employment Promotion Act¹².

[2] As administrative remedial procedures, there is an expectation that the Discrimination Elimination Act will provide administrative guidance by the competent minister (requirement of reports, advice, guidance and recommendations) (Article 12).

We have not obtained all information concerning the fact that the above administrative guidance was conducted, but it is difficult to say it is working sufficiently¹³.

[3] While Article 14 of the Discrimination Elimination Act requires the central and local governments to “establish a system” for dispute resolution related to discrimination, because it does not vest specific authority of mediation and recommendation, etc., it is difficult to resolve individual

¹² Judgment of the Kochi District Court as of April 10, 2018 ordered payment of consolation money, etc., because the disposition of failure in the entrance examination for public occupation training, conducted before the enforcement of the Discrimination Elimination Act, was direct discrimination due to developmental disability and illegal under the State Compensation Liability Act and also indicated if it was the selection after the enforcement of the Discrimination Elimination Act, “we cannot deny possibilities that the framework of judgment of direct discrimination will be required, because it is probable that qualification requirements would be determined on presumption of provision of reasonable accommodation in the course of occupational training.”

¹³ In the Discrimination Elimination Act, consultation contact is designated by field of business under the response guidelines determined by the competent minister in order to eliminate discrimination by private sector businesses, but due to the negative effect of vertical administration organizations, consultation contact varies by field of business and it is extremely difficult for persons with disabilities to understand. Therefore, as it is difficult to mark the beginning of administrative guidance, it seems that administrative guidance would hardly be invoked.

disputes effectively only under the current Act.

There is no new institution that has been established related to the dispute resolution mechanism, including consultation, and it can be considered that all dispute resolutions are left to local governments¹⁴.

- [4] According to Government statistics, while there is cross-tabulation by gender in the area of disability pensions, there are many cases where only gender percentages are mentioned, because there are no actual gender statistics. As very little data and information has been collected in terms of multiple and intersectional discrimination, formulation and implementation of policies based on the current status have not been conducted.

(2) Proposals

- [1] Publish the results (number of cases) of requirement of reports, advice, guidance and recommendations by the competent minister (including those which were conducted by heads of local governments, etc., under the Enforcement Order, Article 3) and the details on each fiscal year.
- [2] As a nation, clarify the consultation contact and enhance the dispute resolution mechanism, including establishment of a new institution so that persons with disabilities can seek remedies easily and promptly.
- [3] Investigate the matters concerning multiple and intersectional discrimination, collect and organize public statistical materials that take into consideration multiple and intersectional discrimination, including remedial measures and sanctions, and publish the statistical data. Analyze the statistical data and use the data as a guide for formulating policy, including remedial measures and sanctions, toward elimination of multiple and intersectional discrimination.

5(a) Mainstreaming of the Rights of Women and girls with Disabilities (Article 6)

(1) Current Status

- [1] Under general gender equality policies, viewpoints of the rights of women and girls with disabilities are not introduced. The Basic Act for Gender

¹⁴ Some local governments have provided charters and established dispute resolution institutions, including consultation, however, there is a large disparity among regions.

Equal Society that promotes gender equality has no provision of the rights of women and girls with disabilities¹⁵.

In gender equality policies, issues of women and girls with disabilities have not considered and the rights of women and girls with disabilities have not been treated as a policy issue.

- [2] No special legislations, policies and administrative measures to realize the rights of women and girls with disabilities have implemented and measures to issues of multiple discrimination against women and girls with disabilities have not progressed.

There is no clearly stated laws specifying the rights of women and girls with disabilities.

As for the policy, the Basic Programme for Persons with Disabilities and the Basic Plan for Gender Equality refer that women with disabilities are in complicated and difficult situations, nevertheless no concrete measures, specifically for women and girls with disabilities to promote human rights and freedom equality, with resolving the complicated and difficult situations, have been taken.

- [3] Under the complicated and difficult situations, the disparities in economic income of women with disabilities are significant, as the research results data by private organizations show.¹⁶ Extreme poverty prevents financial independence and impedes social participation.

(2) Proposals

- [1] In general gender equality policies, the rights of women and girls with disabilities should be mainstreamed.
- [2] In order to realize the rights of women and girls with disabilities, establish domestic laws, formulate policies, upon clearly stating that women and girls with disabilities are placed in complicated and difficult situations, and take measures for realizing the rights (including judicial

¹⁵ The Basic Plan for Gender Equality, which provides for the measures under the Act, only states that various measures will be promoted to improve the environment in which women with disabilities can live securely, taking into consideration that they are likely to be in complicated and difficult situations (Fourth Basic Plan for Gender Equality, Field Eight, 2: b [7] of Specific efforts to improve the environment in which elderly persons, persons with disabilities and foreign nationals, etc., can live securely).

¹⁶ Refer to Report 1, Article 6-1, footnote 16 and Data, Article 6-a.

remedy of rights).

[3] Take measures such as employment support, etc., to resolve the income disparities of women with disabilities and achieve financial independence.

5(b) Measures for Ensuring Capability Development, Advancement and Empowerment of Autonomous (Article 6)

(1) Current Status

Although the Basic Act for Persons with Disabilities requires that measures for independence and social participation of persons with disabilities must be established and implemented according to gender, etc., no measures considering women and girls with disabilities have been introduced.

(2) Proposals

In order to ensure that women and girls with disabilities enjoy human rights and fundamental freedoms, introduce measures for the purpose of developing its capabilities, advance its knowledge and empower its autonomous of women and girls with disabilities.

6(a) Mainstreaming of the Rights of Children with Disabilities (Article 7)

(1) Current Status

As a result that early detection and early rehabilitation of disabilities have been promoted through medical checkups of infants under the Maternal and Child Health Act, children with disabilities are under measures exclusively for children with disabilities, segregated from general measures to support child raising as children in the local community¹⁷.

Segregation from other children in the local community through such early rehabilitation has resulted in a situation where children with disabilities are pushed to enroll in special needs education schools and are segregated from other children

¹⁷ There are real situations where, while at preschool and after-school facilities for children, children with disabilities have opportunities to be raised with children without disabilities, as a result that early detection and early rehabilitation of disabilities have been promoted, in most cases, children with disabilities are under measures exclusively for children with disabilities, such as commuting to child development support and after-school day service, admission to facilities for children with disabilities, etc., and children with disabilities are segregated from the local community.

in the local community in place of regular elementary schools at the time of enrollment in elementary education.

Under such circumstances, in order for children with disabilities to be raised in the local community, it is required that they must be able to use such general childcare measures as preschools and after-school facilities for children. For that purpose, in addition to a provision of reasonable accommodation, support according to the characteristics of disabilities is essential and it is also necessary to transition children from facilities to the local community.

(2) Proposals

[1] In order for children with disabilities to be able to use general childcare measures, such as preschools and after-school facilities for children, in addition to a provision of reasonable accommodation, measures must be taken accompanied by budgetary measures to provide support according to the characteristics of disabilities (for after-school facilities for children, for example, modification of staffing standard of child support staffs at after-school facilities and development of training programs for staffs to learn to support children with disabilities).

[2] Do not require children with disabilities to enter facilities by reason of their having disabilities and if it becomes unavoidable to have children with disabilities enter facilities, require establishment of an “independence support plan” and adopt effective measures enabling transition to life in the local community.

6(b) Right to Express their Views (Article 7)

(1) Current Status

On February 1, 2019, the UN Committee on the Rights of the Child adopted Concluding observations on the combined fourth and fifth periodic reports of Japan and indicated that it was an urgent and important issue that the right of children to express their views was not respected in Japan¹⁸.

¹⁸ The Committee on the Rights of the Child indicated in Concluding observations on the combined fourth and fifth periodic reports of Japan, “III. Main areas of concern and recommendations,” that respect for the views of the child is one of the areas with respect to which urgent measures must be implemented and indicated “the Committee remains seriously concerned that the right of children to express their views freely in all matters

In the Child Welfare Act that provides for welfare services of admission or commutation of children with disabilities younger than 18 years of age¹⁹, it is provided that providers of commutation or admission services shall respect the views of children with disabilities and their guardians as much as possible, but there is no provision to ensure right of children to express their views or measures for supporting expression of their views²⁰.

In the field of education, the School Education Act, Enforcement Order only provides that the views of parents/guardians shall be heard when children are to be enrolled in special-needs support schools when determining enrollment in schools in elementary and secondary education, but with respect to the views of children, opportunities and the right to express their views are not guaranteed. In the field of medical care, there is no provision to ensure the right of children with disabilities to express their views²¹.

(2) Proposals

Include in the related laws the right of children with disabilities to express their views in each field of welfare, education and medical care and adopt measures for supporting expression of their views.

7(a) Measures to Combat Negative Stereotypes and Prejudices (Article 8)

(1) Current Status

From 1949 to 1996, under the former Eugenic Protection Law, roughly 16,500

affecting them is not respected (Paragraph 21)” and “recommends that the State party provide an environment that enables the child to exercise her or his right to be heard and actively promote meaningful and empowered participation of all children in the family, schools, alternative care and health and medical settings, judicial and administrative proceedings concerning them and the local community, and on all relevant issues, including environmental matters (Paragraph 22).”

¹⁹ The Comprehensive Support Act that provides welfare services for children with disabilities, in principal, of 18 years or older, requires providers of welfare services to provide “accommodation to assisting Persons with Disabilities, etc., to express their wishes” and in 2017, the Government indicated the “Guidelines for Support for Decision Making in Use of Disability Welfare Services, etc.” However, support in decision-making of children with disabilities younger than 18 years of age is limited to cases where services under the Act are exceptionally allowed.

²⁰ In most cases of children with disabilities who have difficulty in expressing their views, the views of parents/guardians are regarded as the views of children.

²¹ In the area of medical care, the Medical Care Act provides that, in the delivery of medical care, a physician, dentist, pharmacist, nurse or other medical care professional shall give appropriate explanations and endeavor to foster understanding in the recipients of medical care, but in case of children who are determined not to have the ability to provide consent, no provision exists for not only informed consent but also rights to express their views.

forced sterilizations of persons with disabilities were performed without the consent of those undergoing the surgeries, causing serious human rights violations. It is reported that a former staff member of a support facility for persons with disabilities, who was arrested as a suspect in the murder and injury of many persons with disabilities on July 26, 2016, professed, “persons with disabilities must die” and carried out his heinous act. Discriminatory thoughts and behavior toward persons with disabilities existed in the past and persist today as demonstrated by eugenic thoughts and attacks and the financial burden on social welfare costs derived from such thoughts. Dispelling and overcoming these situations are one of the most compelling issues today.

Nevertheless, the report of a review team²² established by the Government upon occurrence of the above-mentioned murder and injury case did not lead to a specific analysis or review, although it listed the above issue as one of the items. Human rights education and human rights awareness-raising measures against eugenic thoughts and prejudice against persons with disabilities have not sufficiently been developed²³.

(2) Proposals

In order to dispel eugenic thoughts and prejudice against persons with disabilities, formulate plans for human rights education and human rights awareness-raising and take measures on a continuous basis.

8(a) Measures to Ensure Accessibility (Article 9)

(1) Current Status

[1] The Barrier-free Law provides only the obligation to endeavor to comply with Barrier-free Standards (Accessibility Standards) imposed on existing

²² “Report ~ Recommendations of Recurrence Prevention Measures” by the Examination and Recurrence Prevention Measures Review Team on the Case at the Support Facility for Disabled Persons in Sagami-hara City (December 8, 2016)

²³ In the “Annual Report of 2016 on Policies concerning Human Rights Education and Human Rights Awareness-Raising” provided for in the Act on the Promotion of Human Rights Education and Human Rights Awareness-Raising, Article 8, only reported that based on the above case, “a commemorative symposium was held under the theme of ‘Reconsider what is a truly cohabitation society’ to deepen discussions on the importance of respect for all lives and dignity and prepared a video program using Government public information,” however, the above case was never mentioned in the Annual Report of 2017 and 2018 thereafter, which demonstrates that specific human rights education and human rights awareness-raising measures to dispel eugenic thoughts and prejudice toward persons with disabilities have not progressed.

public facilities and buildings.

[2] In the Barrier-free Law and the Discrimination Elimination Act, there is no provision for progressive obligation with respect to accessibility.

[3] Buildings and public transportation facilities, on which the obligation to comply with Barrier-free Standards is imposed at the time of new construction or improvement, are limited to large-scale facilities or those which are used by many people.

(2) Proposals

[1] Impose obligation to comply with Barrier-free Standards on existing public facilities upon establishment of a legislative deadline.

[2] Establish a provision for progressive obligation with respect to accessibility in the Barrier-free Law and the Discrimination Elimination Act.

[3] On buildings used by an unspecified number of people or mainly by elderly persons or persons with disabilities, etc., impose an obligation to comply with Barrier-free Standards regardless of floor space and the number of users.

9(a) Measures to Ensure Compliance with the CRPD on Laws for Assisted Death (Article 10)

(1) Current Status

[1] Under Article 202 of the Penal Code, aid to commit suicide and kill at other's request are severely punished. Accordingly, in Japan, euthanasia and assisting death are not permitted.

[2] Regarding discontinuation of "terminal phase" of treatment, etc., the Government established "Guidelines" in 2007 and amended them in March 2018 to emphasize the importance of the "possibility that the wishes of a person may change and the person's desired way of life should be discussed on a daily basis."

[3] On the other hand, movement for legislation of "Death with Dignity Act" to relieve liability of doctors who discontinued treatment by bipartisan

members of the Diet has been ongoing since around 2005²⁴.

[4] In October 2019, litigation was brought by a bereaved family against a public hospital in Fussa City, Tokyo, claiming that “the patient died due to discontinuation of treatment against the wishes of the patient requesting withdrawal of discontinuation of treatment by artificial dialysis” in August 2018.

[5] Compared with the choice to discontinue treatment, the patient’s willingness to continue treatment is not respected in the medical field, and it can be said that the person with a disability cannot be substantially guaranteed the right to continue living while receiving medical support²⁵.

(2) Proposals

In light of the fact that Article 10 of the CRPD reaffirms the inherent right of every human being, it is essential to implement discussions among the public in order to consider the appropriateness of legislation of euthanasia and death with dignity and the Government should prepare a legal system ensuring that rights and rights to life of persons with disabilities and patients are guaranteed.

That is, (i) enact legislation guaranteeing the rights of patients, including the right to receive proper medical treatment and the principle of informed consent to ensure the system and environment that truly realize medical care for patients; and (ii) in the welfare legal system, etc., for persons with disabilities, take measures for enhancing public care and support system that enables people to live a secure home life while receiving public support, including medical care, etc.

9(b) Cases of Death due to Forced Hospitalization or Physical or Chemical Restraint of Persons with Psychosocial Disabilities (Article 10)

²⁴ The JFBA published on August 23, 2007, “Opinions on the Summary of the Bill for Discontinuation, etc., of Life Extension Measures in the Near-death Condition (Draft)” and on April 4, 2012, “Statement on the Bill for the Respect of the Wishes of Patients in Medical Treatment at the Terminal Phase (Provisional)” to oppose the legislation.

²⁵ The majority of ALS patients who were forced to choose not to use an artificial respirator because they are concerned about their family, etc., died within several years (choice of self-death forced by society), which indicates the reality of not guaranteeing the right to life of persons with disabilities and with intractable diseases due to an inadequate welfare system for persons with disabilities, including public long-term care system, etc.

(1) Current Status

Only the number of people who died during hospitalization, including voluntary hospitalization, is published as official statistics²⁶, but over the last 5 years alone, more than 1,800 persons have died each year in psychiatric hospitals.

The Government has not maintained statistics on the number of deaths during or immediately after physical or chemical restraint and even when the Government tried to investigate the current status of physical or chemical restraint, cooperation from hospitals could not be obtained. This is due to a system in Japan in which the authority to restrain a person is given to private individuals without control and supervision, which itself is a problem. According to reports, out of the cases where the persons were restrained before death, there have been at least 47 cases which were determined to have “causal relationships” or “being unable to deny causal relationships” with restraint as a result of judicial autopsy, which is just the tip of the iceberg²⁷.

(2) Proposals

For persons with psychosocial disabilities who died in a hospital and during or after physical or chemical restraint, investigate each situation at the time of death (hospitalization form, mental and physical health condition, behavior and events immediately before death, etc.) and the cause of death in addition to the number of cases and publish all results.

10(a) Implementation, Monitoring and Evaluation of the Normative Framework for Disasters (Article 11)

(1) Current Status

As the normative framework for disaster countermeasures for persons with disabilities, the Basic Act for Persons with Disabilities requires that disaster countermeasures shall correspond to gender, age and condition of disability and living condition of persons with disabilities and provides for a mechanism in which the Commission on Policy for Persons with Disabilities shall monitor disaster countermeasures included in the Basic Programme for Persons with Disabilities.

²⁶ The nation should be aware of the number of deaths during forced hospitalization by use of cross-statistics.

²⁷ In addition to the footnote 73, indicated in Report 1, Article 15-1 (1)[3], article from the Yomiuri Shimbun September 1, 2019.

However, the Basic Act on Disaster Management which is the most basic act on disaster countermeasures in Japan, does not require close consultations with organizations of persons with disabilities or active involvement of organizations of persons with disabilities in any of establishment, implementation, monitoring and evaluation of disaster countermeasures and opportunities for direct participation in disaster countermeasures by organizations of persons with disabilities are not guaranteed²⁸.

In addition, the Act does not include any provision of reasonable accommodation required to equally provide persons with disabilities with public disaster support, including a provision of evacuation shelters and temporary housing offered for the general public, and in fact, because reasonable accommodation was not provided, such unreasonable results occurred as persons with disabilities were excluded from the use of evacuation shelters and emergency temporary housing.

As for evacuation shelters, although there are welfare evacuation shelters, they do not function effectively²⁹.

As a measure exclusively for disabilities, the Act obligates municipalities to prepare a list of persons with disabilities and elderly persons who need support for evacuation, but establishment of an individual evacuation guide plan (Individual Plan) for individuals with use of this list, is not required. Therefore, although lists are prepared by 97% of municipalities, only 14% of these completed establishment of an Individual Plan.

(2) Proposals

[1] At all levels of national and local government, legally guarantee opportunities for direct participation by organizations of persons with disabilities in each area of establishment, implementation, monitoring and evaluation of disaster countermeasures.

[2] As for public support offered for general residents, obligate to provide reasonable accommodation necessary for persons with disabilities in the

²⁸ Participation is at the discretion of national and local government.

²⁹ Although welfare evacuation shelters exclusively for persons with disabilities and elderly persons are to be established, as the mechanism of selecting only persons with severe disabilities and elderly persons who cannot live at general evacuation shelters does not function and also the capacity to accept them is limited, the welfare evacuation shelters have not functioned effectively.

Basic Act on Disaster Management.

- [3] Include provisions requiring municipalities to improve regional disaster prevention support system for disaster support, including establishment of an individual evacuation guide plan (Individual Plan) in the Basic Act on Disaster Management.

10(b) Provision of Accessible Information in Case of Disaster (Article 11)

(1) Current Status

Systematic mechanism is not prepared to provide all persons with disabilities with (i) advance information related to disaster, (ii) emergency evacuation information in case of disaster, (iii) damage information due to disaster and (iv) information related to disaster support.

(2) Proposals

Ensure the effective mechanism to provide all persons with disabilities with (i) advance information related to disaster, (ii) emergency evacuation information in case of disaster, (iii) damage information due to disaster and (iv) information related to disaster support.

10(c) Accessibility to Evacuation Shelters, etc. (Article 11)

(1) Current Status

At many elementary and junior high schools, which serve as evacuation shelters, physical barriers still exist such as steps and non-installation of wheelchair-accessible toilets and no reasonable accommodation is provided to remove such barriers in case of disaster. Newly built emergency temporary housing, in which toilets and baths are not wheelchair-accessible is far from inclusive support.

(2) Proposals

- [1] Take such effective measures as establishing guidelines and providing training and field training in order to provide reasonable accommodation, taking into consideration the characteristics of each disability, age, and gender so that persons with disabilities can also use evacuation shelters,

temporary housing and any other disaster support services.

[2] Take effective measures with targets and deadlines for achievement in order to make schools and other public facilities which serve as evacuation shelters accessible.

[3] Establish minimum design standards so that emergency temporary housing provided after the occurrence of a disaster is built according to a universal design and meets individual needs of persons with disabilities and elderly persons as necessary.

10(d) Sendai Framework for Disaster Risk Reduction (Article 11)

(1) Current Status

“Sendai Framework for Disaster Risk Reduction,” adopted after the Great East Japan Earthquake as a lesson from that experience, requires inclusive disaster risk reduction prevention measures that did not exclude persons with disabilities, but it was not utilized in the disaster support in the Kumamoto Earthquake, Northern Kyushu Heavy Rain Disasters, West Japan Heavy Rain Disasters and Hokkaido Eastern Iburi Earthquake, which occurred thereafter.

In particular, efforts for disaster risk reduction and prevention measures must be inclusive and accessible, but as stated above, they are exclusive and difficult to access.

Participation of organizations of persons with disabilities in disaster countermeasures have not been promoted, except for a few cases.

(2) Proposals

[1] Establish and take measures to make inclusive and accessible efforts for disaster risk reduction and prevention measures indicated in the “Sendai Framework for Disaster Risk Reduction.”

[2] The Government should involve organizations of persons with disabilities as stakeholders in establishment and planning and implementation of policies, plans and standards for disasters at all levels of national and local government.

10(e) Securement of Residence (Article 11)

(1) Current Status

When a residence is destroyed by a disaster, various support is required until reconstruction of life, together with securement of a new residence.

In particular, as persons with disabilities are more vulnerable to disaster than general residents and less resilient, evacuation shelters and temporary housing after a disaster should be accessible, and in addition, welfare services before a disaster should be continuously provided after a disaster or should meet new needs due to a disaster. In fact, there are problems in operation, such as existing services being interrupted and new services being refused.

Placement of volunteers has not been sufficiently provided for persons with disabilities³⁰.

As for securement of a new residence, many persons with disabilities who lack economic resources have no choice but to look for rented housing, however, there are many difficulties they face in doing so³¹.

(2) Proposals

[1] The Government should thoroughly inform local governments and private sector businesses so that welfare services will be provided seamlessly in disaster situations and be able to meet new needs flexibly.

[2] In the placement of disaster volunteers conducted by Councils of Social Welfare, take effective measures to deliver support to persons with disabilities at home.

[3] Take measures to support financially the efforts of organizations of persons with disabilities providing disaster support to the affected persons with disabilities at home.

[4] Take measures to effectively prohibit discrimination due to disabilities that occurs in securement of residence.

[5] Take measures of financial support for facilities, equipment and

³⁰ For various support needs arising from destruction of housing, Councils of Social Welfare places general volunteers for general resident victims, but for victims with disabilities, in particular, persons with psychosocial, intellectual and developmental disabilities, Councils of Social Welfare rarely places general volunteers and in many cases, persons with disabilities have been isolated in the region and could not dispose of debris and the destroyed housing was left untouched. Therefore, organizations of persons with disabilities, etc., at the local or national level had no choice but to address activities to support persons with disabilities at home without funding.

³¹ In particular, persons with psychosocial disabilities were refused renting a room due to their psychosocial disability and it was extremely difficult for them to find a new residence. There were few rooms for rent accessible by persons with a physical disability and it was also very hard for them to pay remodeling costs.

repair, etc., required to make easier the use of residence by persons with disabilities.

11(a) Repeal of the Laws restricting Rights to Equal Recognition before the Law and Transition to Supported Decision-Making (Article 12)

(1) Current Status

[1] On June 7, 2019, the “Act on Improvement of Related Laws to Optimize the Measures for Restrictions on Rights of Adult Wards, etc.,” was enacted. Under the Act, mechanisms establishing provisions, etc., which uniformly exclude adult wards, etc., from qualifications, occupations and duties, etc., (Disqualification Clause) were removed from about 180 laws. However, even after the enactment of the Act, as two-thirds of these laws establish an individual examination provision that rights shall be restricted “where the person is unable to perform duties properly due to mental and physical disorder,” there remains a risk of unduly restricting rights of persons with disabilities.

[2] Based on the Act to Optimize the Use of the Adult Guardianship System and the Basic Plan, for adult guardianship system, construction of a support system to convert to a system focusing on supported decision-making has been promoted. However, it remains only as an improvement in operation based on the existing legal system, and the possibility of a fundamental amendment of the law to shift to a system of substituted decision-making to a system of supported decision-making was not mentioned.

11(b) Support for Exercising Legal Capacity (Article 12)

(1) Current Status

As many responses were given by professional guardians³² that they focus on objective interest or make substitute decisions against the wishes of the person when the person intends to make a decision different from the wishes of their surrounding people, supported decision-making by the person is insufficient. In

³² Responses to questionnaire surveys conducted by the JFBA. Refer to Report 1, Article 12-1 (1), footnote 39 and Data, Article 12-a. JFBA 58th Human Rights Protection Conference/Symposium, 2nd Sectional Group Keynote Report “From ‘Adult Guardianship System’ to ‘Supported Decision-Making System’” (Japan Federation of Bar Associations, October 2015).

reality, activities of adult guardians are exclusively carried out in the direction of maintaining and managing the properties of the person³³ and it is up to professional ethics and individual values of each adult guardian whether or not the guardian acts focusing on supported decision-making.

(2) Proposals

Establish a series of frameworks in which persons with disabilities are able to exercise their legal capacity equally, including amendment of laws so that persons with disabilities can obtain support necessary to exercise their legal capacity.

11(c) Awareness-raising (Article 12)

(1) Current Status

The Ministry of Health, Labour and Welfare issued guidelines for supporters to support decision-making by persons with dementia, providers of disability welfare services, etc., and medical workers, etc., however, they have not been fully disseminated.

(2) Proposals

[1] Establish a supported decision-making system and conduct training by prefecture and municipality throughout Japan promptly and continuously based on each of the decision-making support guidelines so that the system can be developed.

[2] In order to correct regional disparities, make a gradual effort to promote practices of decision-making support throughout Japan by establishing a national scale organization to promote the supported decision-making system in all locations throughout Japan, collecting and publishing cases in which supported decision-making has been deployed based on each of the decision-making support guidelines, developing effective decision-making support tools, expanding subsidies to advanced

³³ Some family courts in Japan prescribe the form of reporting activities of adult guardians or publish the standards for calculation of compensation. However, the content of meetings with a ward by adult guardians or the content or respect of the wishes expressed by a ward are not mentioned and there is a background situation that they are not fully considered as the subject of evaluation of activities of guardians.

organization and research institutions, adding compensation to service providers, etc., practicing decision-making support, etc.

12(a) Provision of Individualized Support and Procedural Accommodation in Judicial Proceedings (Article 13)

(1) Current Status

[1] In current procedural laws such as the Code of Civil Procedure and Code of Criminal Procedure, there is no provision which imposes legal obligation to provide individualized support and procedural accommodation in civil, criminal and administrative proceedings, upon determination of necessary matters by individual for persons with disabilities³⁴.

Therefore, when interrogation of witnesses is conducted via a sign language interpreter in actual civil litigation, expenses for sign language interpretation will be borne by the party as litigation expenses, which constitutes a barrier for persons with hearing disabilities to institute litigation³⁵.

[2] Even where a person abandoned judicial proceedings or due process was not guaranteed because physical accessibility of court buildings and judicial and administrative facilities is inhibited, there is no provision specifically securing provision of procedural accommodation. Therefore, access for persons with disabilities to use judicial proceedings is significantly restricted³⁶.

[3] There is a provision in the current Code of Civil Procedure that may restrict institution of litigation by reason of disabilities³⁷, and also in the Code

³⁴ It is only provided in the Code of Civil Procedure, Article 154, paragraph 1, "arrangements are made for an interpreter to be present," which does not require provision of procedural accommodation. In the Code of Criminal Procedure, Article 176, it is provided, "If the court has a person who is unable to hear or speak make a statement, it may have an interpreter interpret said statement," which does not require provision of interpretation.

While amendment of the Code of Civil Procedure has been currently promoted toward computerization of civil litigation proceedings, etc., computerization should be implemented by universal design, and at the same time, individualized procedural accommodation should be guaranteed.

³⁵ When sign language interpretation is requested in application for interrogation of witnesses, advance payment of interpretation expenses is required by courts.

³⁶ At a prosecutors' office, a wheelchair user was refused an interview with a lawyer due to a physical access problem. In such an event, there is no provision making such an act a reason for non-indictment or denying the admissibility of evidence of the record of oral statements prepared thereafter.

³⁷ It is provided in the Code of Civil Procedure, "a minor or an adult ward may not perform any procedural act

of Criminal Procedure³⁸, a person with a disability will continuously suffer from a disadvantage, including detention while a public trial has been suspended for a long time because the person lacks litigation capacity due to a disability.

(2) Proposals

- [1] Provide a specific clause, in procedural laws such as the Code of Civil Procedure and the Code of Criminal Procedure, to provide complete procedural accommodation without the burden of a party with a disability, including professional sign language interpretation, easy to read forms and Braille, etc. In particular, in computerization of judicial proceedings, etc., computerization should be implemented by universal design, and at the same time, individualized procedural accommodation should be guaranteed.
- [2] Take measures to ensure provision of procedural accommodation, such as by providing provisions regarding exclusion from evidence when procedural accommodation was not provided in litigation procedure.
- [3] Take such measures as amending the Code of Civil Procedure so that persons with severe intellectual or psychosocial disabilities are able to institute litigation as plaintiff without adult guardians.
- [4] Take such measures as amending the Code of Criminal Procedure so

except through a statutory agent” (Article 31). When a person, who is suspected of litigation capacity due to intellectual or psychosocial disabilities, is the accused, a special agent may be appointed by the court even when there is no adult guardian (Article 35), however, there is no provision of special agents for a plaintiff. Therefore, when there is no adult guardian for a person who is suspected of litigation capacity, a doubt is likely to arise that such person may not institute litigation and accordingly, there are not a few cases where a person with intellectual or psychosocial disabilities is reluctant to institute litigation. Due to the impact of the provision of Article 35, a chilling effect arises, and this prevents persons with disabilities from instituting litigation.

³⁸ The Code of Criminal Procedure provides that, “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” (Article 314, paragraph 1). Therefore, when the accused is in a state of insanity, a public trial is suspended. When the accused is not expected to recover after the accused was in a state of insanity and a public trial was suspended, a public prosecutor has the authority to withdraw prosecution (Article 257), however, there is no express provision for the court to dismiss prosecution when a public prosecutor does not withdraw prosecution. Therefore, when a public prosecutor does not withdraw prosecution, there are many cases where the accused remains the criminal accused until recovery from the state of insanity or death, while public trial has been suspended for a long time, during which the person remains the criminal accused. We expect the decision of the Supreme Court of December 19, 2016, which dismissed prosecution by applying Article 338 by analogy will be established as a precedent, but on the other hand, there is no movement toward amendment of the Code of Criminal Procedure to specify that prosecution may be dismissed by a judgment when the accused is not expected to recover from the state of insanity.

that persons with disabilities shall not continuously, in criminal proceedings, suffer from a disadvantage, including detention while a public trial has been suspended for a long time because the person lacks litigation capacity due to a disability.

12(b) Awareness-raising Activities for those who are involved in the Judicial System
(Article 13)

(1) Current Status

Training provided for judges, public prosecutors, staff of judicial and law enforcement departments cannot be regarded as sufficient. In particular, training is rarely provided for legal apprentices on characteristics of disabilities and awareness-raising. It can be provided as optional training, but now only a few apprentices attend.

(2) Proposals

Implement awareness-raising activities on a regular basis, including training programs for understanding of disabilities, for lawyers, court staff, judges, public prosecutors and law enforcement officials, including police and prison officers, etc.³⁹

12(c) Ensuring Access to Justice by Persons with Psychosocial or Intellectual Disabilities who are suspected of Criminal Acts (Article 13)

(1) Current Status

The current Code of Criminal Procedure does not provide that persons with disabilities are able to obtain access to justice without discrimination on an equal basis with others, and judicial organizations are not included even in the Discrimination Elimination Act⁴⁰.

³⁹ In addition to prison officers, including legal instructors and classification technical officials.

⁴⁰ In the Discrimination Elimination Act, as definitions of “administrative organ, etc.,” under Article 2 (Definitions), item (iii), it is provided, “a state administrative organ, an incorporated administrative agency, etc., a local public entity (excluding enterprises managing a local public entity subject to the application of the provisions of Chapter III of the Local Public Enterprise Act (Act No. 292 of 1952); hereinafter the same applies in paragraph (7), Article 10, and Article 4, paragraph (1) of the Supplementary Provisions) and a local incorporated administrative agency,” but courts are not included therein. Therefore, the provisions of prohibition of disparate and unfair discriminatory treatment against persons with disabilities and obligation to provide reasonable accommodation under the Discrimination Elimination Act, Article 7 shall not directly be

There is the provision of access to justice in the Basic Act for Persons with Disabilities⁴¹, however, the Article only provides for the means of communication, out of procedural accommodation, and there is no law concretizing the Article.

(2) Proposals

In criminal cases, take specific measures, including amendment of the laws in order to ensure opportunities for persons with disabilities, who have difficulty in communication due to psychosocial or intellectual disabilities, to access justice on an equal basis with others.

13(a) Repealing of laws permitting forced hospitalization (Article 14)

(1) Current Status

Involuntary hospitalization under the Mental Health and Welfare Act, Article 29, hospitalization for medical care and protection under the Act, Article 33 and hospitalization under the Medical Treatment and Supervision Act are systems allowing forced hospitalization of persons in condition of psychosocial disabilities⁴², but no measures have been taken to repeal them.

Also, the Mental Health and Welfare Act, Article 37 is a law that allows restrictions on activities of hospitalized persons, but no measures have been taken to repeal it.

13(b) Increase in the Number of Hospitalizations of Persons with Intellectual or Psychosocial Disabilities and Indefinite Hospitalization (Article 14)

(1) Current Status

As for the forced hospitalization system named “medical care and protection”, which account for more than 40% of patients hospitalized in psychiatric hospitals, the amendment of 2013 of the Act resulted in easing the requirements for forced

applied to courts.

⁴¹ “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, provide training for relevant officers, and take other necessary measures 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.” (Basic Act for Persons with Disabilities, Article 29)

⁴² Refer to Report 1, Article 14, 1 (1).

hospitalization⁴³. After the amendment, the number of hospitalization for “medical care and protection” temporarily decreased, but in recent years it is getting increased again. Although there is a public service aimed for discharge from a hospital, the budget is inadequate and it has been utilized in few cases. It cannot be said that effective measures for reducing the number of hospitalizations have been taken at all.

After the reduction policy of medical treatment fee for hospitalization of more than 3 months was introduced to constrain the hospitalization period, 64% of patients were discharged from a hospital in 3 months from hospitalization. However, 20% of them returned to a hospital within 3 months from discharge and 36% returned to a hospital within 1 year, which demonstrates that the mechanism is not a fundamental solution⁴⁴. In addition, there are a considerable number of hospital discharges due to death on a yearly basis⁴⁵.

Measures to end indefinite hospitalization have not functioned and no measures have been taken for abolition of hospitalization for medical care and protection in line with the purpose of the CRPD.

(2) Proposals

Reduce the number of hospitalizations of persons with intellectual or psychosocial disabilities and enhance medical and welfare services in the community to end indefinite hospitalization.

14(a) Measures to abolish Forced Medical Treatment (Article 15)

(1) Current Status

There are some cases in which forced electroconvulsive therapy and forced medication are provided for persons with intellectual or psychosocial disabilities, not in compliance with laws⁴⁶. Also, physical and chemical restraints, including isolation and other non-consensual, humiliating and degrading practices, are often

⁴³ For involuntary hospitalization for medical care and protection, “consent of the family, etc.,” is required, which means the scope of persons who may give consent has basically expanded to family members from guardians, although the requirements for consent by heads of municipalities have become stricter.

⁴⁴ Mental Health and Welfare Data 2017

⁴⁵ According to Mental Health and Welfare Data 2012 and 2013, among the group of persons who are over 65 years old and hospitalized for more than 5 years, about one-third of them die in hospitals on a yearly basis.

⁴⁶ Refer to Report 1, Article 17-1 (1) [2].

used and there is no reliable means of examination by a third-party institution⁴⁷.

No measures have been taken to abolish these practices.

14(b) Independent Monitoring System to Investigate Violations of Rights (Article 15)

(1) Current Status

The Psychiatric Review Board, which is supposed to review procedures for request for hospital discharge and for improvement of treatment under the Mental Health and Welfare Act, has its secretariat positioned in the administrative entity (Prefecture), whose independence is not ensured. As for discharge and improvement of treatment, the main mechanism of review is triggered if it is requested by patients, and investigation authority for violation of rights cannot be exercised ex officio and no appeal system is established against the decision of the Board⁴⁸. The Board is also supposed to review reports of hospitalization for “medical care and protection” and periodic disease condition reports, but more than 99% of these are approved as they are⁴⁹, which cannot be considered to be performing the function of a Review Board.

(2) Proposals

Make the Psychiatric Review Board a third-party institution independent from national and local government, reconsider the composition of the members, place members on duty at all times, establish an appeal system, reliably appoint a representative for a patient claiming violation of rights, and formulate a state budget for that purpose.

15 Measures for Investigation of Forced Sterilization Cases, Statute of Limitation and the Content of Compensation by the Lump-sum Money Payment Act (Article 15)

⁴⁷ Refer to Report 1, Article 15-1 (1) [3].

⁴⁸ As stated in Report 1, Article 15-2 (1), we cannot say that the Psychiatric Review Board has been fully functioning, and in addition, there are only 3,706 cases of request for hospital discharge in a year throughout Japan, including multiple requests for one person, and only 1.9% of all patients who are newly subject to forced hospitalization and only 2.8% of patients subject to forced hospitalization as of June 30 used the review system (Report on Public Health Administration and Services in 2018 and Mental Health and Welfare Reference Data 2018). There is concern about whether the existence of the system is properly informed to patients and whether all requests from patients are accepted. The monitoring system to investigate violations of rights without waiting for requests by patients is required, however, the current Psychiatric Review Board has no such authority.

⁴⁹ Report on Public Health Administration and Services

(1) Current Status

- [1] In order to investigate forced sterilization cases carried out under the former Eugenic Protection Law, investigation of the status of retention of related materials was conducted⁵⁰. However, a fact-finding investigation of the actual situations of individual victims was not conducted based on the above investigation results⁵¹.
- [2] The Sendai District Court dismissed the claims of women who brought litigation seeking compensation from the national government by reason of elapse of the statute of limitation⁵² although the court admitted that the former Eugenic Protection Law was unconstitutional.
- [3] Amount to be paid under the “Act on the Provision of Lump-sum Compensation to Persons Who Received Eugenic Surgery, under the Former Eugenic Protection Law” (hereinafter referred to as “Lump-sum Money Payment Act”) is uniformly ¥3,200,000⁵³.

(2) Proposals

⁵⁰ Results of Investigation of Status of Retention of Materials related to the former Eugenic Protection Law at Prefectures and the Ministry of Health, Labour and Welfare:

https://www.mhlw.go.jp/stf/newpage_01166.html

Results of Investigation of Status of Retention of Personal Records related to Eugenic Surgeries at Medical Institutions, Welfare Facilities and Municipalities other than Municipalities where the Public Health Office is located: https://www.mhlw.go.jp/stf/newpage_02047.html

⁵¹ Although the Government recognizes some of the surviving victims as a result of the above investigation, the Government did not take measures to directly call for application of lump-sum money.

⁵² In the precedents of the Supreme Court, a 20 year limitation period provided in relation to rights to a claim for damages under tort in the latter paragraph of the Civil Code, Article 724 are interpreted as the statute of limitations, and as the provision of statute of limitations is provided for promptly fixing the legal relationship under tort, the period of 20 years has been uniformly determined as the survival period of a right to file a claim in order to fix the legal relationship upon elapse of a certain period of time, regardless of the recognition of victims. Judgment of the Sendai District Court rejected the argument of plaintiff claiming not to apply the provision of the statute of limitations to this case because uniform application of the statute of limitations to this case would completely deny recovery of damages caused by human rights violation by the national government and thus lacks rationality and necessity as the means to achieve the objective of the system of statute of limitations (Judgment of the Sendai District Court as of May 28, 2019, Hanrei Jiho No. 2413-2414, p. 3).

⁵³ The number of applications accepted for the period from April 24, 2019 to November 3, 2019 after enforcement of the Act was 709 cases, out of which, the number of the approved cases at the end of November 2019 was 274 cases (male: 72 persons, female: 202 persons).

In addition, the nature of the payment is not indemnification or compensation but lump-sum money, which means the national government has not formally admit their responsibility causing such violation of human rights. The period for application is as short as 5 years, and persons covered by the Act are limited to living persons. Individual notification is not given and only a summary of the Act is posted on the website, which means information provided under the Act is insufficient to make it easier for persons with disabilities to use. Application for lump-sum money requires submission of medical certificates, which also makes the application process difficult to access.

Reconsider the content and the process of application under the Lump-sum Money Payment Act so that adequate compensation shall be paid to all persons with disabilities who were victims of the former Eugenic Protection Law, and amend the Act to make the application process accessible to persons with disabilities.

16(a) Protection from Exploitation, Violence and Abuse (Article 16)

(1) Current Status

[1] Schools, nursery schools, etc., medical institutions and criminal detention facilities, etc.,⁵⁴ are exempt from reporting obligations under the Abuse Prevention Act⁵⁵.

[2] Under the Abuse Prevention Act, statistical surveys of abuse of persons with disabilities have been conducted and many cases have been reported. The Abuse Prevention Act, however, has not established a specialized investigation and remedial institutions and as the Act delegates investigation of abuse and protective measures to municipalities and prefectures, there are more than just a few cases in which prompt protection and sufficient remedy could not be provided⁵⁶.

(2) Proposals

[1] Amend the Abuse Prevention Act to include schools, nursery schools, etc., medical institutions and criminal detention facilities, etc.,⁵⁷ as the targets of reporting obligations.

[2] Take legal measures to establish an independent third-party monitoring institution of abuse of persons with disabilities.

16(b) Violence against Women and girls with Disabilities (Article 16)

(1) Current Status

⁵⁴ Including juvenile classification homes and juvenile training schools.

⁵⁵ Refer to Report 1, Article 7 and Article 16-1.

According to the Abuse Prevention Act, while the Government is supposed to review the appropriateness, etc., of the system of prevention, etc., of abuse of persons with disabilities at schools, nursery schools, etc. medical institutions and public agencies, etc., and implement necessary actions in 3 years from the enforcement of the Act (enforced as of October 1, 2012) (Supplementary Provision, Article 2), such measures have not been taken at the present time.

⁵⁶ Refer to Report 1, Article 16-2.

⁵⁷ Including juvenile classification homes and juvenile training schools.

There is no official statistical survey of sexual victimization and sexual violence against women and girls with disabilities. According to a fact-finding investigation conducted by a private organization, however, 35% of the respondents experienced sexual victimization and a large number of instances of abuse by guardians have been reported.

In particular, women and girls with intellectual or psychosocial disabilities tend to become targets of sexual victimization, and remedy for whom is insufficient due to characteristics specific to such disabilities as difficult to seek prompt relief⁵⁸.

(2) Proposals

In order to prevent sexual victimization and sexual violence against women and girls with disabilities, clarify the current status by a fact-finding investigation of victimization and take necessary measures. Provide sexual education, including reporting method, etc., in case of sexual victimization. Furthermore, take appropriate measures to remedy victimization, including judicial remedy⁵⁹,

17 Legal and Practical Measures to Abolish Forced Sterilization (Article 17)

(1) Current Status

In 1996, eugenic surgery provisions under the former Eugenic Protection Law were eliminated. By the amendment, forced sterilization of persons with disabilities was legally abolished. As no measures to abolish forced sterilization were, however, taken in practice⁶⁰, even after the former Eugenic Protection Law was changed to the Maternal Health Act, sterilization surgery was in fact conducted

⁵⁸ Refer to Report 1, Article 6-2.

⁵⁹ Under the Supplementary Provisions, Article 9 of the Act Partially Amending the Penal Code (Act No.72 of 2017), “Fact-finding Investigation Working Group for Review of Measures related to Sexual Crimes” was established to contribute to review of measures corresponding to the reality, etc., of sexual crime cases, taking into consideration the current situations of sexual crimes, aiming at 3 years after enforcement of the Act.

On September 24, 2019, hearings from the family members of persons with disabilities who suffered from sexual crimes on the matters they experienced in criminal proceedings, etc., and hearings from organizations, etc., involved in awareness-raising activities about sexual violence against persons with disabilities on the necessity of accommodation based on actual circumstances of sexual violence against persons with disabilities and actual circumstances of disabilities were conducted.

⁶⁰ In the litigation over state liability under the former Eugenic Protection Law, the Government admitted that it did not take any measures after abolishment of the former Eugenic Protection Law.

against the wishes of persons with disabilities⁶¹.

On April 24, 2019, the Lump-sum Money Payment Act was enacted, promulgated and enforced, however, the content is insufficient⁶². As the scope of the Act is limited to sterilization surgery, etc., conducted under the former Eugenic Protection Law⁶³, it does not cover sterilization surgery, etc., conducted after enforcement of the Maternal Health Act in 1996.

(2) Proposals

Take appropriate measures to abolish forced sterilization of persons with disabilities in practice, and apologize to persons with disabilities who were forced to undergo sterilization surgery against their wishes regardless of the time of surgery as well as take appropriate measures, including compensation legislation, etc.

18 Refusal of Entry into the Country Based on Disability (Article 18)

(1) Current Status

Regarding entry of foreign nationals to Japan, under the Immigration Control and Refugee Recognition Act, persons with psychosocial disabilities who meet the requirements of the laws may be refused entry⁶⁴.

In addition, there is a dominant Japanese interpretation as well as precedent that it is natural not to guarantee foreign nationals freedom of entry under the current international customs law, and it is assumed under international law that

⁶¹ A man with a psychosocial disability residing in Iwate Prefecture was forced to undergo sterilization surgery due to his disabilities 7 years after the former Eugenic Protection Law was changed to the Maternal Protection Act (Kahoku Shimpo, January 23, 2018).

⁶² Eligibility is limited to persons who underwent eugenic surgery and do not include spouses. Artificial abortion is not covered either. Amount of payment is small. Procedures for filing claims are not easy for persons with disabilities to use.

⁶³ In addition to those who underwent eugenic surgery under the former Eugenic Protection Law, including “those who underwent sterilization surgery or radiation in Japan (except for the cases it is apparent that persons who underwent sterilization surgery or radiation only by any of the reasons set forth below)” during the period between September 11, 1948 to September 25, 1996. “a. Protection of maternity; b. treatment of uterus cancer or any other disease or injury; c. the person does not desire to have a child; d. other than that set forth in c., the person desires to undergo sterilization surgery or radiation” (Lump-sum Money Payment Act, Article 2, paragraph 2, item 5)

⁶⁴ Immigration Control and Refugee Recognition Act, Article 5, paragraph 1, item 2 provides, “a person who, due to a mental disability, is constantly unable to understand right from wrong or whose capacity for such understanding is significantly lacking, and is not accompanied by those persons provided for by Ministry of Justice Order to assist him or her in engaging in activities in Japan” is denied permission to land on Japan.

refusal of entry of foreign nationals who may cause harm to the safety and welfare of the state is vested in the sovereign right of the state and refusal of entry into the country is determined at the discretion of the state.

However, on the other hand, ratification of the CRPD, which prohibits in all areas discrimination on the basis of disability, can be interpreted as acceptance by Japan of not discriminating against persons with disabilities with respect to the policy for entry of foreign nationals into Japan. In addition, the provision limits refusal of entry to cases where a person with a disability is not accompanied by an attendant, but necessity of attendants is not only limited to persons with psychosocial disabilities, and therefore, it seems that such limited refusal lacks reasonability⁶⁵. It seems that fear of psychosocial disabilities with regard to harm to the safety and security of the state or welfare of the people is the underlying provision. However, it is rooted in prejudice against psychosocial disabilities⁶⁶.

(2) Proposals

Repeal Article 5, paragraph 1, item 2 of the Immigration Control and Refugee Recognition Act that authorizes refusal of entry into Japan due to “a mental disability” regarding entry of foreign nationals.

19(a) Current Status of Deinstitutionalization (Article 19)

(1) Current Status

[1] About 152,700 persons with disabilities are living in institutions⁶⁷. More than 278,000 persons with psychosocial disabilities are hospitalized in psychiatric hospitals⁶⁸.

[2] 192,625 persons with disabilities are using personal support (care services) in their homes in the community under the disability welfare system

⁶⁵ Looking at the provision that require the accompaniment of an assistant, it seems that the necessity of care is the basis for the provision. However, accompaniment of an assistant is not a condition for persons with severe disabilities who need care at all times.

⁶⁶ It seems unlikely that there is objective data that persons with disabilities cause greater harm to security and welfare than other foreign nationals without disabilities. Even if a problem arises, it seems that the principle of equality would be met by application of domestic laws to address such a problem, in a similar manner to other foreign nationals without disabilities.

⁶⁷ “Ministry of Health, Labour and Welfare, June 2019, Status of Use of Welfare Service, etc., for Persons with Disabilities”

⁶⁸ Survey of patients by the Ministry of Health, Labour and Welfare (2017)

(as of June 2019).

However, as the expense for care services paid by the Government is set at a low level⁶⁹, it is very rare that constant care services are provided for persons with severe disabilities who essentially need daily support and not a few cases have been disputed before the courts.

There are only a limited number of welfare services which can be used by persons with psychosocial disabilities who are hospitalized in psychiatric hospitals.

[3] In addition, the Government prohibits use of care services during work, commutation to workplaces and schools⁷⁰. Therefore, many persons with disabilities have had to abandon employment although they are willing to work.

[4] There is a law requiring a person with a disability to use long-term care insurance when the person reaches 65 years of age⁷¹ and elderly persons with disabilities find it difficult to use the disability welfare system, resulting in many human rights violation cases⁷².

(2) Proposals

[1] Take specific measures to transform institutions into community life support centers, etc.

[2] Increase budget and develop personnel specifically to realize 24-hour personal assistant systems.

[3] Revise the system so that persons with disabilities to enable the use of care-givers (support staffs) under the disability welfare system during work, commutation to workplaces and schools.

[4] Abolish the principle of priority of long-term care insurance to guarantee rights to use the disability welfare system regardless of age of persons with disabilities.

⁶⁹ National Treasury Burden Standards, “Standards for the Amount of Burden of Disability Welfare Service Expenses, etc., specified by the Minister of Health, Labour and Welfare” (Notification No. 530 as of September 29, 2006 of the Ministry of Health, Labour and Welfare).

⁷⁰ Notification No. 523 as of September 29, 2006 of the Ministry of Health, Labour and Welfare

⁷¹ Comprehensive Support Act, Article 7 “Principle of Priority of Long-term Care Insurance”

⁷² Judgment of Hiroshima High Court, Okayama Branch as of December 13, 2018

19(b) Strategies for Deinstitutionalization and Allocation of Resources (Article 19)

(1) Current Status

- [1] Allocation of budgets related to disabilities in Japan is about 1% of GDP, which is low compared to other countries⁷³.
- [2] Out of the budget for persons with psychosocial disabilities, medical costs account for about 97% and expenses for community life support are only 3%.
- [3] Many persons do not have support system involved with supporters outside of hospital including family members due to long-term hospitalizations at psychiatric hospitals. Because if there is no supporters outside of hospital, the person cannot be discharged from a hospital and many are “discharged” only after death. The Government seems not to take any action to improve the support system.

(2) Proposals

- [1] Increase the allocation of budgets related to disabilities to 4% of GDP of Japan.
- [2] Develop a specific plan for reducing beds of psychiatric hospitals.
- [3] Abolish unnecessary long-term hospitalizations in psychiatric hospitals and take specific measures for transition to community lives. Provide persons with psychosocial disabilities who are hospitalized for more than one year (more than 200,000 persons) with individualized support necessary to live in the community.
- [4] As for allocation of budgets for persons with psychosocial disabilities, transfer to those centering on social welfare services from hospitalization and medical costs.

20 Personal Mobility Support (Article 20)

(1) Current Status

- [1] Under the Comprehensive Support Act, accompanying support (Article

⁷³ Refer to Report 1, Article 19-2 (1) [1] and Data, Article 19-a. “Positioning of Japanese Policies for Persons with Disabilities in terms of International Comparison - Considering International Comparative Study and Comparison of Cost Statistics - Yukiko Katsumata,” Ministry of Health, Labour and Welfare, “National Institute of Population and Social Security Research” the Quarterly of Social Security Research 2008, (Autumn 2008), p. 145.

5, paragraph 4) is supposed to be provided for persons with visual disabilities considering each person's needs and situation, however, there are restrictions on the circumstances and the amount of payment. For example, it does not apply to commutation to workplaces and schools and the upper limit is 50 hours per month. Despite the role of the accompanying support of guaranteeing accessibility to information to persons with visual disabilities, the above-mentioned restrictions limit guaranteeing accessibility to information to persons with visual disabilities.

[2] As community life support services under the Comprehensive Support Act, Article 77, paragraph 1, item 8, mobility support services are supposed to be provided on each municipality's responsibility, but some municipalities have not provided such services⁷⁴. As of March 2011, probably about half of the municipalities throughout Japan have not provided such services. In addition, similar to accompanying support, there are restrictions on the circumstances and the amount of payment.

(2) Proposals

[1] Take measures to cause local governments not to restrict circumstances and the amount of payment of the accompanying support.

[2] Take measures to ensure mobility support services in all regions and abolish the restrictions on circumstances and the amount of payment.

21(a) Promotion of Use of Sign Language (Article 21)

(1) Current Status

On March 3, 2016, all assemblies of local governments in Japan adopted statements of opinions requesting to enact Sign Language Law and submitted them to the Diet and the Government. On June 14, 2019, four opposition parties and parliamentary groups submitted to the House of Representatives a sign language bill and an information communication bill, but any decisions still have not been made.

⁷⁴ "Survey of Differences among Communities in Community Life Support Services" (March 2011, NPO Corporation, Kanagawa Welfare Association for Persons with Visual Disabilities)
<http://npo-kanagawa.org/houkoku2011.html>

(2) Proposals

Enact a Sign Language Law that provides for specific guarantee of rights related to sign language.

21(b) Provision of Braille and Other Communication Means (Article 21)

(1) Current Status

[1] Regarding books, etc., on June 21, 2019, the “Act on the Promotion of Improvement of Reading Environment of Persons with Visual Disabilities, etc.” (Reading Barrier-free Act) was enacted. However, the Act has a strong characteristic of philosophical law, and in addition to the fact that specific measures to be taken by the administration were not provided, the obligation of publishers to provide persons with disabilities and support organizations with electronic data, which was requested by organizations of persons with disabilities, was not included. Therefore, there are serious concerns about the effectiveness of the Act.

[2] Under the Comprehensive Support Act, the scope of the communication support services⁷⁵ is limited and there are local public entities which do not provide the services or those which provide fee-based services⁷⁶.

(2) Proposals

[1] Enact a law on information accessibility and establish standards with legal force thereunder.

[2] Expand the scope of communication support services, uniformly impose obligations on all local public entities in Japan and provide support services that do not require users to pay for the services.

⁷⁵ This refers to the “system of dispatching and developing persons who provide communication support.” Under the former Services and Supports for Persons with Disabilities Act (the former act of the Comprehensive Support Act) only stated dispatch or development of persons who provide “sign language interpretation, etc.” Under the Comprehensive Support Act, “refers to support communication between persons with disabilities and persons without disabilities include not only sign language interpretation and summary writing for persons with hearing disabilities but also touching sign language and finger Braille for persons with visual and hearing disabilities, substitute reading and writing for persons with visual difficulties, communication with persons with intellectual and developmental disabilities and communication by communication boards for persons with severe disabilities” and using the expression of “communication support,” the concept was made to be widely interpreted.” (Partial citation from the website of the Ministry of Health, Labour and Welfare)

⁷⁶ Refer to Report 1, Article 21-2.

21(c) TV Broadcasting (Article 21)

(1) Current Status

The Ministry of Internal Affairs and Communications established in February 2018 “Guidelines for Information Accessibility in Broadcasting,” in which the level of numerical targets of closed-captioned and audio description broadcasts was increased and the numerical targets for sign language broadcasting were established, however, these targets merely encourage voluntary efforts of each broadcasting operator and the implementation ratio remains at a low level as of 2018.

(2) Proposals

Enact a law that obligates broadcasting operators to provide sign language broadcasts, teletext broadcasts and audio description.

21(d) Information Provision via the Internet (Article 21)

(1) Current Status

In Japan, in accordance with the standards of W3C Consortium, the Japan Industrial Standards (JIS) provide guidelines for making Web use easier for persons with disabilities including visual disabilities and elderly persons⁷⁷. However, these are merely guidelines and lack any enforcement force. As a result, there are many websites to which persons with visual disabilities cannot access or are extremely difficult to access, because they overemphasize images or incorporate complicated systems to move images on a screen.

(2) Proposals

Enact a law that imposes an obligation of accessibility for persons with disabilities on websites operated by the Government, independent administrative organs, local governments, local independent administrative organs, business operators (all business operators included in “business operators” under the Discrimination Elimination Act whether for profit or nonprofit, or sole proprietors).

⁷⁷ It is JIS X 8341-3:2016 ‘Guidelines for Accommodation Design for Elderly Persons and Persons with Disabilities, etc. - Devices, Software and Services in Information Communication - Part 3: Web Content’

23(a) Elimination of Discriminatory Provisions against Persons with Disabilities in Legislation, such as the Civil Code on all Matters related to Family Life, Marriage and Divorce (Article 23)

(1) Current Status

In the case of divorce, the Civil Code, Article 770, paragraph 1, item 4 provides for severe mental illness with no prospect of recovery as a cause for divorce. The wording; a cause for divorce, demonstrates an aspect of discrimination against persons with psychosocial disabilities.

(2) Proposals

Take measures, for example, to eliminate promptly the above cause for divorce from the Civil Code, Article 770 since defining mental illness as a cause for divorce conflicts with the CRPD.

23(b) Family Separation due to Disability (Article 23)

(1) Current Status

The “Community life support services” stated in the State Party Report are services for overall daily life and social life, which are not specialized for childcare support for persons with disabilities. In addition, this does not function sufficiently to provide childcare support and environment improvement where persons with disabilities can become pregnant and give birth and raise children securely regardless of the existence of disabilities⁷⁸.

(2) Proposals

In order to make childcare support for persons with disabilities effective, conduct a survey on what kinds of support are necessary for childcare for persons with disabilities, and based on the survey results, take measures for legislating childcare support and environmental improvement for persons with disabilities

⁷⁸ In June 2011, in connection with a child continuing education at a technical school, in order to attend an explanation meeting for guardians at an open campus held outside of Takamatsu City, where the guardian was residing, the guardian requested dispatch of a sign language assistant, but dispatch of a sign language assistant was refused by Takamatsu City as attendance at an explanation meeting for guardians which was held outside of the City and at the open campus was not considered important, and litigation was instituted against the decision of the City. Refer to Report 1, Article 24-1.

to allow them to become pregnant, give birth and raise children securely without regional disparities.

24(a) Inclusive Education (Article 24)

(1) Current Status

[1] For school selection, it was decided to respect the opinions of the children and parents/guardians as much as possible, but occasionally, there are cases where a special needs education school is selected against the opinions of the children and parents/guardians⁷⁹.

Segregated education against the opinions of the children and parents/guardians should be limited to unavoidable cases such as life and body of the child would be endangered without segregation.

[2] Human and technical measures for transition to inclusive education have not been taken.

School education expenses per child at a special needs education school are 7.7 times of a regular elementary school and 6.7 times of a regular junior high school⁸⁰.

(2) Proposals

[1] Explicitly provide in relevant laws that inclusive education shall be the principle.

[2] Explicitly provide in relevant laws that opinions of the children and parents/guardians must be respected to the maximum extent in school selection.

[3] Allocate a budget of an equivalent amount as the budget per child enrolled at special needs education schools to children with disabilities enrolled at regular schools.

[4] Allocate a budget to promote inclusive education⁸¹.

⁷⁹ The case which was subject to litigation is the Yokohama District Court (Admin. U) No. 58 of 2018. In this case, Kanagawa Prefecture argues that the decision of enrollment at a special needs education school was appropriate although it admitted it was against the opinions of the parents/guardians.

⁸⁰ Statistics of 2018 by the Ministry of Education, Culture, Sports, Science and Technology http://www.mext.go.jp/component/a_menu/education/micro_detail/_icsFiles/afieldfile/2019/10/28/1406445_000.pdf p. 6 (10)

⁸¹ General Comment No. 4, paragraph 69

24(b) Individualized Support, Reasonable Accommodation, Systematic Training of Teaching and Non-teaching Personnel (Article 24)

(1) Current Status

[1] There are budgetary measures for special needs education assistants and budgetary measures for nursing staff for children and students in need of medical care, however, measures vary depending on each community and budgets are insufficient.

Securement of personnel and budgeting for reasonable accommodation for children and students with disabilities enrolled at regular schools are insufficient⁸².

[2] There are no measures for preventing denial of reasonable accommodation.

[3] While compulsory education is limited to junior high schools in Japan, for entering high schools, as reasonable accommodation for conducting and evaluating entrance examinations are insufficient, entering high schools which is upper secondary education is hindered^{83 84}.

[4] No training on high-quality inclusive education was provided for teaching and non-teaching staff⁸⁵.

(2) Proposals

[1] Explicitly provide in relevant laws that reasonable accommodation means modification and adjustments in learning content, evaluation methods and school life in individual cases on the premise of integration and not “special needs support” under segregated education.

[2] Legislate processes of determining the procedure for requesting

⁸² There are many cases where reasonable accommodation was not provided, such as children must be accompanied by a parent when parents chose to have their children enroll regular schools or students with disabilities were treated uniformly with other students.

⁸³ According to State Party Report, Statistics 26, it seems that nearly 90% of students go to high school, but this is the rate of entering special needs high schools from special needs junior high schools.

⁸⁴ As shown in State Party Report, Statistics 22, “Number of special needs education schools, number of enrolled students and number of teaching and non-teaching staff - Total of national, public and private-,” indicating that the number of students enrolled at junior high schools doubled at high schools, there are circumstances in which students graduated from regular junior high schools abandoned entering high schools and had to select special needs high school because they could not receive reasonable accommodation.

⁸⁵ State Party Report, Paragraph 161 states that sign language and Braille are included in training, but no training is provided on how students and children using sign language and Braille learn with other children and students learning at regular schools.

reasonable accommodation and content of reasonable accommodation in school education.

[3] Provide reasonable accommodation for the method of conducting entrance examinations of regular high schools and evaluations thereof.

Provide statistics on enrollment destinations of students with disabilities enrolled at regular junior high schools.

[4] Ensure opportunities of systematic training and sufficient voluntary training on high-quality inclusive education for teaching and non-teaching staff.

24(c) School Dropout Rates of Students with Disabilities (Article 24)

(1) Current Status

There are no statistics available on the school dropout rates of students with disabilities.

(2) Proposals

Provide statistics (including cross-tabulation by age and gender) of cases where children and students with disabilities dropped out at all levels of education.

25(a) Compliance with the CRPD on Laws and Regulations (in particular, Intractable/Rare Disease Act) concerning Medical Care and Health Services for Persons with Disabilities (Article 25)

(1) Current Status

[1] The Intractable/Rare Disease Act is an act concerning use of medical care and health services essential for life of patients with intractable diseases. In the provisions of purpose and basic philosophy of the Intractable/Rare Disease Act, however, it is not affirmed that patients with intractable diseases have rights to enjoy medical care and health services.

[2] Measures for medical care and health services under the Intractable/Rare Disease Act are generally taken by Prefectures. Therefore, there are many local public entities which provide patients with intractable diseases with such consultation support as information provision and life support only in the capital of a Prefecture and patients with intractable diseases cannot use

services near the community where they live.

- [3] Intractable diseases covered by medical cost subsidies are limited under the Intractable/Rare Disease Act to the eligible diseases designated by the Government and there are many patients who cannot receive medical care as they do not fall under the above requirements and they are required to bear high medical costs.
- [4] Before enforcement of the Intractable/Rare Disease Act, all patients were qualified to medical cost subsidies if they fall under the eligible diseases designated by the Government. Under the Intractable/Rare Disease Act, however, a patient with an eligible disease, who was not recognized as meeting the “criteria of severity classification” determined by the Government by disease, is excluded from public subsidies for medical costs. Therefore, after the complete enforcement of the Intractable/Rare Disease Act, some patients with intractable diseases could not receive subsidies for medical costs⁸⁶, and they had to largely reduce the number of medical consultations⁸⁷.
- [5] Under the “Psychiatry Exception”⁸⁸, at private psychiatric hospitals, the assignment of doctors is one-third of that of ordinary departments, and assignment of nurses is two-thirds of that of ordinary departments⁸⁹. The shortage of personnel is a factor in increasing seclusion and/or restraint and hindering support for hospital discharge.
- [6] At psychiatric hospitals, informed consent is not sufficiently obtained and many patients are not informed of the content of medical treatment. There is no mechanism to obtain valid consent (including informed ascent) of the patient.

⁸⁶ While the number of certified patients for a specific disease system (former system) was 717,000 persons as of December 2017 when transitional measures were terminated, the number of certified patients was 570,000 persons as of January 2018 when the Intractable/Rare Disease Act was fully enforced and transitional measures were terminated, which shows that about 150,000 persons were excluded from coverage due to lack of an application or denial of certification. (Data for National Health Service Central Division Managers Meeting as of February 12, 2019, prepared by the Ministry of Health, Labour and Welfare, Health Service Bureau, Intractable/Rare Disease Control Division)

⁸⁷ Average number of hospital visits for half a year of patients with intractable diseases who were not certified before and after full enforcement of the Intractable/Rare Disease Act significantly decreased to 3.57 times from 5.36 times (Ministry of Health, Labour and Welfare, Study Group on Support System for Patients with Intractable Diseases, “Study on Comprehensive Support System for Patients with Intractable Diseases” Conclusive and Shared Study Report, 13 Fact-finding Investigation of Actual Living Conditions of Patients with Intractable Diseases)

⁸⁸ Medical Care Act, Enforcement Regulations, Article 19 and related notifications are referred to as “Psychiatry Exception.” Refer to Report 1, Article 25, footnote 144.

⁸⁹ Refer to Report 1, Article 25-1.

(2) Proposals

- [1] Explicitly provide in the basic philosophy of the Intractable/Rare Disease Act that patients with intractable diseases have the right to enjoy medical care at the highest level achievable free of charge or at an affordable cost.
- [2] Make available health services under the Intractable/Rare Disease Act for patients with intractable diseases (including consultation support for patients with intractable diseases) in municipalities accessible by patients with intractable diseases.
- [3] Develop a system so that any patient with an intractable and chronic disease in need of medical care to live will not abandon consultations due to the high cost instead of a measure of the Government designating the names of diseases the medical cost burden of which is reduced.
- [4] Abolish the severity classification standards provided for in the Intractable/Rare Disease Act and make health services available for all patients with intractable and chronic diseases in need of medical care free of charge or at affordable expenses.
- [5] Abolish unequal standards for allocation of medical staff applied to private psychiatric hospitals and realize the same allocation level as ordinary departments.
- [6] Develop a system in medical care for persons with psychosocial disabilities to obtain valid consent (including informed assent) of the person (including training of doctors for capacity to consent and making consensus with patients, advocate system for medical practice).

25(b) Scope of Health Services and Accessibility, etc. (Article 25)

(1) Current Status

- [1] For persons who are covered by the Intractable/Rare Disease Act, public subsidies are provided for medical costs to be borne under the National Health Insurance System and the upper limit of monthly self-pay burden of persons according to their income is established. The monthly self-pay burden is established also for persons with almost no income who are exempted from municipal tax, which means the amount is not affordable.

[2] Persons covered by the Intractable/Rare Disease Act must perform renewal procedures on a yearly basis, however, the procedures are very complicated and it is difficult for patients with intractable diseases to use⁹⁰.

(2) Proposals

[1] Restructure the upper limit of monthly self-pay burden under medical cost subsidies for the designated intractable diseases at an affordable amount, based on income and living conditions of patients with intractable diseases and the characteristics of health services directly connected to life support. In particular, reconsider the burden of low-income households which are exempted from municipal and prefectural taxes.

[2] Regarding renewal procedures for the designated intractable disease, fundamental review should be conducted, including frequency of renewal, more efficient procedure documents and consultation support for procedures so that patients with an intractable disease will not refrain from using the system due to complicated procedures.

27(a) Transition to Open Labor Market (Article 27)

(1) Current Status

Only about 4.3% of users successfully transition to regular employment among users of the employment support. Wages (labor charge) of persons with disabilities who work under welfare employment remain at about 5~25% of the average monthly wages of all regular workers. In addition, labor protection laws, including the Labor Standards Act, do not apply to the users of support for continuous employment Type B. Furthermore, these users of support for continuous employment must pay to the facilities the self-burden portion of service use fees.

No clear-cut statistics exist for the status of employment of women with disabilities and the proportion of non-regular employees among workers with disabilities, and actual situation is not recognized.

⁹⁰ Since there are a large number of materials for renewal procedures which are complicated, it is difficult even for ordinary adults with reasonable judgment ability to complete the renewal procedures. In addition, as there is no consultation organization to give advice on renewal procedures, patients with intractable diseases must generally collect documents for renewal on their own and bring them to the office of contact of the prefecture far from the community of patients with intractable diseases.

(2) Proposals

- [1] Implement wage increases, guaranteed income and application of labor related laws for persons with disabilities engaged in welfare employment. For wage increases and guaranteed income, improve the public assistance system, including subsidies.
- [2] Implement policies to promote transition from welfare employment to regular employment, including equal pay for equal value of work and full-time employment.

27(b) Provision of Reasonable Accommodation and Support, Discrimination on the Basis of Disabilities in Employment (Article 27)

(1) Current Status

- [1] In the Employment Promotion Act, Article 36-6, it is provided that the Minister of Health, Labour and Welfare may give advice, guidance or recommendations to business owners if it is deemed necessary in relation to enforcement of provisions prohibiting discrimination and provisions obligating reasonable accommodation. Status of implementation of such recommendations, etc., however, has not been disclosed.

In the Act, procedures for mediation of disputes such as non-discrimination, etc., are provided (Article 74-7), however, the status of use has not been disclosed.

- [2] The low employee retention rate of workers with disabilities indicates that individualized support for employed workers with disabilities, including those who became disabled during employment, is insufficient⁹¹.
- [3] Support for commutation is not sufficiently provided as only a small amount of assistance is given by an independent administrative agency entrusted by the Government⁹². As there are many cases where such a condition as “those who can commute by themselves” is made a condition for recruitment of local governments, employment of persons with disabilities is hindered.
- [4] In case of discrimination and non-provision of reasonable

⁹¹ Refer to Report 1, Article 27-3.

⁹² Refer to Report 1, Article 27-5.

accommodation in employment, it is interpreted that the current Employment Promotion Act does not have any effect in private law, such as directly obligating correction of discrimination and reasonable accommodation, which are insufficient as remedial measures.

(2) Proposals

- [1] Implement policies to improve the retention rate of persons with disabilities, including those who became disabled during employment by enhancing individualized support for them.
- [2] Take measures for supporting commutation of persons with disabilities and ensure performance of provisions prohibiting discrimination for commutation so that such a condition as “those who can commute by themselves” is not made a condition for recruitment.

27(c) Awareness-raising of Employers (Article 27)

(1) Current Status

- [1] According to a fact-finding investigation, awareness of employers about employment of persons with disabilities is not high⁹³.
- [2] The employment rate of persons with disabilities is not sufficient both in the private and public sectors. As a result of revelation of overstatement of employment rate, after mass employment, the actual employment rate by the Government is 2.31% (statutory employment rate is 2.5%) and 2.05% in private sector businesses (statutory employment rate is 2.2%), which shows that awareness-raising for promotion of employment of persons with disabilities is insufficient both in the private and public sectors.

(2) Proposals

Implement policies to promote satisfaction of the statutory employment rate provided for in the Employment Promotion Act both in the private and public sectors and raise awareness of employers about employment of persons with

⁹³ Percentage of business owners who responded he/she “wants to actively employ” and “wants to employ, if certain administrative support is provided” persons with disabilities only remained at 34.1% for persons with physical disabilities and 19.9% for persons with mental disabilities. (2018 Fact-finding Investigation of Employment of Persons with Disabilities)

disabilities.

28(a) Housing Issues (Article 28)

(1) Current Status

[1] In many cases, public housing prohibits residence of “those who require care at all times⁹⁴.”

[2] There are some cases persons are refused, by reason of disability⁹⁵, to rent private housing⁹⁶.

(2) Proposals

[1] Abolish unfair restrictions on residence in public housing, such as “those who require care at all times.”

[2] Take effective measures to eliminate refusal of residence in private housing by reason of disability.

28(b) Guaranteed Income (Article 28)

(1) Current Status

[1] In Japan, there are about 9,370,000 persons with disabilities⁹⁷, but only 2,680,000 persons receive disability pension benefits⁹⁸, which means that over 70% of persons with disabilities do not receive pension benefits. This is because requirements for benefits are unfairly strict⁹⁹ ¹⁰⁰.

[2] The great majority of persons with disabilities living together with their parents cannot receive welfare benefits¹⁰¹.

(2) Proposals

[1] Reform the system so that all persons with disabilities who need

⁹⁴ Refer to Report 1, Article 28-1.

⁹⁵ “Because of the fear of fire,” “because of the worry about a solitary death,” etc.

⁹⁶ Refer to Report 1, Article 28-2.

⁹⁷ White Paper on Persons with Disabilities 2018

⁹⁸ Statistics Information of the Ministry of Health, Labour and Welfare, “Overview of Welfare Pension Insurance/National Pension Service” 2017, Ministry of Health, Labour and Welfare, Pension Bureau, December 2018

⁹⁹ Refer to “Disability Pension Practice Handbook for Lawyers” (Published by JFBA, Rights of Elderly Persons and Persons with Disabilities Support Center, March 2018)

¹⁰⁰ Refer to Report 1, Article 28-3.

¹⁰¹ Refer to Report 1, Article 28-4.

guaranteed income are able to receive basic disability pensions.

- [2] Reform the system so that, even if a person with a disability lives together with his/her family, the person can receive welfare benefits according to the nature of the disability of the person at the option of the person, in which operation of permitting separation of the household from the family with income and assets should generally be applied.

28(c) Social Protection and Support for Persons with Intellectual or Psychosocial Disabilities after their Deinstitutionalization (Article 28)

(1) Current Status

In 2018, “ Services and Supports for Persons with Disabilities” System was established, in which social workers regularly visit in rotation homes of persons with intellectual or psychosocial disabilities, etc., who transitioned to independent living.

The direction of establishment of the system should be evaluated, however, it is rare that persons with severe intellectual or psychosocial disabilities are provided with use of human support system at home at all times¹⁰².

(2) Proposals

Significantly increase financial assistance of the Government to local governments so that persons with severe intellectual or psychosocial disabilities can use visiting care for persons with severe disabilities at all times.

29 Guarantee of Opportunities to Vote and Accessibility to Information (Article 29)

(1) Current Status

[1] Guarantee of Opportunities to Vote

- i. Only persons with severe physical disabilities are permitted to vote by mail or by other means, and implementation of electronic voting has hardly progressed¹⁰³.
- ii. Voting by proxy may not be possible due to the fact that the method of confirming wishes is not unified, etc. There are such problems under the

¹⁰² “Visiting Care for Persons with Severe Disabilities” System under the Comprehensive Support Act.

¹⁰³ Refer to Report 1, Article 29-1.

proxy voting system as blank voting cannot be made and voters with disabilities cannot select an assistant (CRPD, Article 29 (a) (iii)), etc.¹⁰⁴

iii. No measures have been taken to ensure opportunities to vote for women with disabilities in particular.

[2] Accessibility to Information

i. Sign language interpreters and/or closed caption are added only to some election broadcasts, etc.¹⁰⁵

ii. There are regional differences in accessibility to information of election bulletins and at local elections, they are not sufficiently guaranteed¹⁰⁶.

(2) Proposals

[1] Guarantee of Opportunities to Vote

i. Regarding the scope of voting by mail, etc., amend the Act to include persons with visual disabilities, intellectual disabilities, psychosocial disabilities and those with less severe physical disabilities, etc.

ii. Amend the Act to introduce an electronic voting system for all voting in general, including national elections in Japan.

iii. Take specific measures to provide reasonable accommodation at polling stations throughout Japan.

iv. Amend the Act so that a person selected by a person with a disability will be permitted to assist in voting by proxy.

v. Take specific measures to fully guarantee opportunities to vote for, in particular, women with disabilities.

[2] Accessibility to Information

i. Amend the Act to add sign language interpreters and/or closed captions to all election broadcasts of the Diet elections.

ii. Amend the Act, etc., so that, if published, election bulletins are published with the full text in Braille, voice or expanded text versions, whether national or local elections.

C Specific Obligations (Article 31 – 33)

¹⁰⁴ Refer to Report 1, Article 29-1.

¹⁰⁵ Refer to Report 1, Article 29-2.

¹⁰⁶ Refer to Report 1, Article 29-2.

33 Commission on Policy for Persons with Disabilities (Article 33)

(1) Current Status

The Commission on Policy for Persons with Disabilities is not an organization which is able to perform duties with an independent monitoring mechanism as required by the CRPD, Article 33, paragraph 2 because it does not have authority to protect (remedy) and the authority to monitor is limited to monitoring of the status of implementation of the Basic Programme for Persons with Disabilities, and members are appointed by the Prime Minister and the Commission does not have an independent secretariat.

Furthermore, multiple persons with disabilities, who are members of organizations of persons with disabilities are appointed as members, however, there is no provision obligating appointment of a certain number of persons from among persons with disabilities.

34 Human Rights Monitoring Mechanism in Accordance with the Paris Principles (Article 33)

(1) Current Status

Neither the activities of human rights protection organizations of the Ministry of Justice nor the above Commission on Policies for Persons with Disabilities, which are positioned by the State Party as a framework to protect implementation of the CRPD, has the function and the independence required by the Paris Principles¹⁰⁷.

(2) Proposals

Establish with a sense of urgency an independent monitoring mechanism in accordance with the Paris Principles to promote, protect and monitor implementation of the CRPD.

¹⁰⁷ Refer to Report 1, Article 33.