

List of Issues for Japan
Japan National Group of Mentally Disabled
People (JNGMDP) Parallel Report



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General Remarks

1. About Us

The Japan National Group of Mentally Disabled People (JNGMDP) was established in May 1974, and is national group of persons with psychosocial disabilities. We are representative organization of persons with psychosocial disabilities in Japan.

2. Domestic Consensus Building

The JNGMDP held public hearings six times in Aomori, Tokyo, Kyoto, Osaka and Kumamoto, and heard opinions of persons with psychosocial disabilities, their families and mental health professionals in Japan to prepare this parallel report.

3. Collaboration with Other Organizations Which Submitted the Parallel Reports

The JNGMDP collaborate with the Japan Disability Forum (JDF), and the Japan Federation of Bar Associations through the JDF to prepare the parallel reports. This parallel report deal with issues which have strong impact on persons with psychosocial disabilities and are not enough dealt with in the parallel report of JDF.

The JNGMDP sent written request dated May 2019 for collaboration to the Advocacy Center of Persons with Psychosocial Disabilities (Kizuna), who are also going to submit the parallel reports. The Advocacy Center of Persons with Psychosocial Disabilities (Kizuna) replied as they would not collaborate with us.

4. Involvement in the Japan's Initial State Party Report

Information in the Japan's Initial State Party Report is different from perception of the JNGMDP.

Japanese government did not hear JNGMDP's opinion in the process of preparing the State Party Report. Only organizations which are member of the Cabinet Office Commission on Policy for Persons with Disabilities got opportunity to provide their opinions. However, the Cabinet Office Commission on Policy for Persons with Disabilities does not have a member who is recommended by organization which represents opinions of persons with psychosocial disabilities. So, it was impossible for us to monitor the State Party Report.

JNGMDP voluntarily submitted argument for amendment to the State Party Report, but the government did not reflect any arguments from us.

5. Arbitrary Interpretation by Japanese Government

The biggest problem in the State Party Report is that interpretation of article 12 and 14 of the CRPD deviate from standards of international human rights law. The Japanese government defines legal capacity in paragraph 2 of Article 12 as legal standing, and states that legal capacity does not include legal agency. This interpretation violates the Paragraph 12 of the General Comment No.1.

The government interprets Article 14 as that it prohibits deprivation of liberty based only on disability. According to the government's interpretation, involuntary hospitalization system and activity restrictions provided for in the Mental Health Law, which are applied based not only on the fact and that a person has a psychosocial disability but also on additional conditions that necessity of medical treatment and protection or possibility of self-harm and harming others etc., and forced hospitalization provided for in the Medical Treatment and Supervision Act do not violate the Article 14. This insistence violates Paragraph 7 and 20 of the Guidelines on Article 14.

6. Optional Protocol

The Japanese government has not ratified the optional protocol of the CRPD.

Articles 4 General Obligations

1. Issues

Participation of persons with psychosocial disabilities who recommended by organization which represents opinion of persons with psychosocial disabilities in policy making has not improved enough. There are no assessment mechanisms for participation of persons with disabilities in policy making.

Examination Organization	Participation of persons with psychosocial disabilities
Cabinet Office Commission on Policy for Persons with Disabilities	member: 0
	witness: 0
Disability Section of the Social Security Council	member: 1 (not recommended by representative organization)
	witness: as needed
Disability Employment Section of the Labor Legislation Council	member: 0
	witness: 0

Review Conference on the Review, etc. of Medical Care Plans	member: 0
	witness: 0
Review Conference on the Future State etc. of Mental Health	member: 2 (not recommended by representative organization)
	witness: 1
Commission on Promotion of Utilization of the Adult Guardianship System	member: 0
	witness: 0

2. Suggested Questions

* Does the government set target value and work on to implement it, in order to improve participation of persons with intellectual and psychosocial disabilities in policy making?

3. Suggested Recommendations

* Set target value for participation of persons with intellectual and psychosocial disabilities in policy making, and undertake measures to achieve the target value.

Article 12 Equal Recognition before the Law

1. Issues

(1) Restriction of legal capacity based on disability (paragraph 2 of Article 12)

The adult guardianship system is intended to uniformly limit the capacity to act on ground of that the persons is considered to have insufficient or constant lack of capacity to discern right and wrong due to psychosocial disability. The adult guardianship system provides three categories in the Civil Code. The categories include guardian category that establishes virtually comprehensive authority of representation, curator category that establishes partial authority of representation, and assistant category. The adult guardianship system in Japan does not provide authority of representation in marriage, reproduction, childbirth, and medical consent, but provide authority of representation in contraction and disposition of property.

It is naturally inevitable for the adult guardianship system to violent paragraph 2 of Article 12 of the CRPD. However, the Japanese government interprets that legal capacity at paragraph 2 of Article 12 of the CRPD as “capacity to hold rights” (paragraph 1 of Article 3 of the Civil Code) and legal capacity does not include “capacity to act” (on and

after Article 7 of the Civil Code). The government should consider abolishing the adult guardianship system, but the government refers to the governmental interpretation and does not start to consider revising legislation to reform and abolish the adult guardianship system.

In addition to the above, capacity to sue or be sued in civil case (Article 31 of the Code of Civil Procedure) is also a system which limits legal capacity based on disability.

(2) Necessary support to exercise of legal capacity (paragraph 3 of Article 12)

The adult guardianship system cannot be considered to be necessary support to exercise legal capacity. The Civil Code in Japan does not have a provision that guarantee access to necessary support when exercising legal capacity. The State Party Report does not mention the Guidelines for the Support for Decision Making Relating to the Provision of Welfare Services for Persons with Disabilities (Ministry of Health, Labor and Welfare, 31 March 2017), and the Guideline for Clerical Work Adult Guardian etc. in Accord with System to Support Decision Making (Association on Support Decision Making in Osaka, March 2018). These guidelines cannot be considered to be necessary support to exercise legal capacity. The Guidelines for the Support for Decision Making Relating to the Provision of Welfare Services for Persons with Disabilities does not assume support based on will and preferences of person with disabilities but intervention based on the best interest for person with disabilities. The Guideline for Clerical Work Adult Guardian etc. in Accord with System to Support Decision Making causes contradict situation that restrict legal capacity based on disability and intend to support decision making at the same time.

(3) Prevention from abuse, and violence of privacy (paragraph 4 and 5 of Article 12)

The government asks organizations of adult guardian etc. to prevent their members from abuse, instead of developing legal system for prevention from abuse. The Public Interest Incorporated Association of Legal Support Adult Guardian Center is the biggest organization composed of people who work as adult guardian etc. in Japan. The Incorporated Association places members with an obligation to check passbooks of their adult wards and report the information of passbook to the Incorporated Association, in order to prevent members from misconduct.

Some adult guardians did not provide the information of passbook with the Incorporated Association in 2017, because their adult wards refused to provide information of the passbook. The Incorporated Association decided that the adult guardians violated their obligation of report, and expelled them from the Incorporated

Association. The adult guardians filed a lawsuit against the Incorporated Association, insisting it did not violate the obligation not to report the private information based on will and preference of the adult wards, and expel of the Incorporated Association should be invalid. However, the adult guardians lost the suit (Tokyo High Court, (Ne) No. 3114 in 2018).

Therefore, it can be said that adult guardian etc. have no other choice other but to uniformly provide information of adult wards with the Incorporated Association, even if the adult wards refuses to open his or her information. This system is not based on will and preference of persons with disabilities, and has also problems in terms of privacy described in Article 22 of the CRPD.

2. Suggested Questions

(1) Restriction of legal capacity based on disability (paragraph 2 of Article 12)

* Are there any plans to change interpretation of legal capacity, and interpret legal capacity as including capacity to act, to meet standards of international human rights law?

* Are there any plans to start to consider abolishing laws which restrict capacity to act, capacity to sue or be sued, and capacity to plead based on disability, such as the adult guardianship system?

(2) Necessary support to exercise of legal capacity (paragraph 3 of Article 12)

* Are there any provisions which ensure to access to necessary support to exercise of legal capacity in the Civil Code.

* Does the Guidelines for the Support for Decision Making Relating to the Provision of Welfare Services for Persons with Disabilities (Ministry of Health, Labour and Welfare, 31 March 2017) etc. allow intervention based on the best interest?

(3) Prevention from abuse and violence of privacy (paragraph 4 and 5 of Article 12)

* Do organizations of adult guardian uniformly check a passbook of the adult ward even when the check is not carried out based on adult ward's will and preference, in order to prevent adult ward from being damaged his or her property such as being embezzled by the adult guardian etc.?

3. Suggested Recommendations

(1) Restriction of legal capacity based on disability (paragraph 2 of Article 12)

* Change interpretation of legal capacity, and interpret legal capacity as including capacity to act, to meet standards of international human rights law.

* Promptly start to consider abolishing laws which restrict capacity to act, capacity to

sue or be sued, and capacity to plead based on disability, such as the adult guardianship system.

(2) Necessary support to exercise of legal capacity (paragraph 3 of Article 12)

* Revise the Civil Code to ensure to access to necessary support to exercise of legal capacity, and prohibit intervention based on the best interest for person with disabilities and establish provisions on support based on will and preference of persons with disabilities.

(3) Prevention from abuse and violence of privacy (paragraph 4 and 5 of Article 12)

* Prohibit all measures to prevent misconduct (including passbook check by organizations of adult guardian) which are not based on will and preference of persons with disabilities.

Article 14 Liberty and Security of Person

1. Issues

Admission systems provided for in the Mental Health Law include involuntary hospitalization through administrative disposition (“Compulsory Hospitalization” in Article 29, and “Emergency Compulsory Hospitalization” in Article 29-2), involuntary hospitalization through consent by family, etc. against the will of the person with a psychosocial disability (“Hospitalization for Medical Care and Protection” in Article 33; “Emergency Hospitalization” in Article 33-7), and hospitalization according to the will of the person with a psychosocial disability (“Voluntary Hospitalization” in Article 20). For the voluntary hospitalization, although admission is voluntary, discharge is not. In the case of involuntary hospitalization, compulsory transport without consent of person with psychosocial disabilities from the home to the hospital is permitted under the transport system (Article 34). For inpatients of psychiatric hospitals, the Mental Health Law allows activity restrictions based on psychosocial disability, such as physical restraint, segregation, closed treatment and restriction on open treatment (Article 36 and 37). In addition, the Medical Treatment and Supervision Act (Medical Treatment and Supervision Act is “Mentally Incompetent Persons Medical Care and Treatment Act” on the japan government reports.) provides for the forced hospitalization of persons who have committed seriously criminal acts while they were mentally incompetent.

Forced hospitalizations provided for in the Mental Health Law are admission systems which make person with psychosocial disabilities hospitalize without his or her consent on additional conditions such as necessity of medical treatment and protection or

possibility of self-harm and harming others etc. Activity restrictions provided for in the Mental Health Law are treatments ordered by psychiatrist based on psychosocial disability, such as physical restraint, segregation, closed treatment and restriction on open treatment etc. It is naturally inevitable for forced hospitalization and activity restrictions provided for in the Mental Health Law to violate Article 14 of the CRPD. However, the Japanese government interprets Article 14 as that it prohibits deprivation of liberty based only on disability, and forced hospitalization system provided for in the Mental Health Law, which are applied based not only on the fact that a person has a psychosocial disability but also on additional conditions such as necessity of medical treatment and protection or possibility of self-harm and harming others, does not violate the article 14 (Paragraph 105 of the State Party Report). In addition the government answered in the Diet that “compulsory hospitalization, hospitalization for medical care and protection, as well as inpatient and outpatient treatments do not violate the provisions of Article 14 of the Convention on the Rights of Persons with Disabilities” (196th Diet Session (Ordinary Diet Session) Written Answer No. 63, April 17, 2018). Although the government should consider abolishing forced hospitalization system and activity restrictions provided for in the Mental Health Law and the Medical Treatment and Supervision Act provides for the forced hospitalization, but the government refers to the governmental interpretation and does not start to consider revising legislation to reform and abolish these practices.

The Rapporteur on the Rights of Persons with Disabilities and Special Rapporteurs on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health submitted “Mandates of the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Reference: OL JPN 4/2017, 9 January 2018) and questioned about forced hospitalization and activity restrictions provided for in the Mental Health Law. The Japanese government submitted the response letter (TK/UN/99, Geneva, 9 March 2018). The government’s response is based on the interpretation that Article 14 of the CRPD prohibits deprivation of liberty based only on disability. The Working Group of Arbitrary Detention adopted the two opinions (A/HRC/WGAD/2018/8, 23 May 2018, and A/HRC/WGAD/2018/70, 16 January 2019), which recognized forced hospitalization provided for in the Mental Health Law as arbitrary detention, in 2018. However, the Japanese government repeated similar answer again, and has not at all started to consider revising legislation to reform and abolish forced hospitalization and activity restrictions based on disability.

2. Suggested Questions

- * Are there any plans to change the government's interpretation that Article 14 of the CRPD prohibits deprivation of liberty based only on disability, and interpret Article 14 as that it prohibits deprivation of liberty not only on disability but also on additional condition, to meet standards of international human rights law?
- * Will the government promptly start to consider abolishing forced hospitalization and activity restrictions provided for in the Mental Health Law?

3. Suggested Recommendation

- * Change the government's interpretation that Article 14 of the CRPD prohibits deprivation of liberty based only on disability, and interpret Article 14 as that it prohibits deprivation of liberty not only on disability but also on additional conditions, to meet standards of international human rights law.
- * Promptly start to consider abolishing forced hospitalization and activity restrictions provided for in the Mental Health Law.

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

1. Issues

The Medical Treatment and Supervision Act is a system that allow for forced medical intervention based on judicial decisions to prevent re-offences of persons with psychosocial disabilities who have been found not guilty by reason of mentally incompetent or other reasons.

Yamanashi Prefectural Kita Hospital introduced a forced treatment review system in its forensic psychiatric ward and conducts forced medication and modified electroconvulsive therapy (m-ECT). Inpatients who indicate their will to refuse treatments even after 72 hours after their admission are subject to forced treatments. In such cases, the attending doctor is deemed to have applied for forced treatment (medication and m-ECT) and passed the review.

In addition, a forensic psychiatric facilities in Tokyo conduct forced cognitive behavioral therapy known as "self-reflection programs" as medical intervention to prevent re-offences. This program requires, for example, an inpatient to place the mortuary tablet of the victim of their acts next to their bed and apologize every day.

The government did not respond to the statements regarding mental health care (Paragraph 22) of the Concluding Observations by the Committee Against Torture

regarding Japan's second periodic report (55th session (from May 6 to 31, 2013) of the Committee).

2. Suggested Questions

- * Has the government prepared considerations for the abolishment of the Medical Treatment and Supervision Act?
- * Has the government prepared specific and effective measures to prohibit forced treatment (drug administration and m-ECT) and provide remedies for people who received forced treatment?
- * What kinds of specific and effective measures have been taken in responding to the statements regarding mental health care (Paragraph 22) of the Concluding Observations by the Committee Against Torture regarding Japan's second periodic report, taking ratification of the CRPD into account?

3. Suggested Recommendation

- * The government should start considerations for the abolishment of the Medical Treatment and Supervision Act.
- * Establish specific and effective measures to prohibit forced treatment (drug administration and m-ECT) and provide remedies for people who received forced treatment.
- * Establish specific and effective measures based on the CRPD regarding the matters stated regarding mental health care (Paragraph 22) of the Concluding Observations by the Committee against Torture regarding Japan's second periodic report.

Article 16 Freedom from Exploitation, Violence and Abuse

1. Issues

(1) Applicable scope of reporting obligations under the Persons with Disabilities Abuse Prevention Act

The State Party Report (Paragraph 110) reports on the Persons with Disabilities Abuse Prevention Act. We commend the fact that a consultation system was established through the enactment of this law and it has become possible to ascertain the implementation of training and how many times they have been conducted. However, the applicable scope of the reporting obligations under the Persons with Disabilities Abuse Prevention Act is limited to only families, welfare facilities and workplaces. The reporting obligations do not cover schools, nurseries, hospitals, public agencies and other

similar institutions. Regarding this fact, the Human Rights Committee questioned the Japanese government in Paragraph 15 of the List of Issues (November 14, 2017; CCPR/C/JPN/QPR/7) with respect to the status of the establishing of laws to cover psychiatric hospital under the reporting obligations. The Ishigooka Hospital incident was an incident that a hospitalized person with a psychosocial disabilities was kicked and assaulted in other ways by several hospital employees and died in January 2012. If other hospital employees had been obligated to report this as an incident of abuse, the worst-case scenario could have been avoided. In addition to mentioned above, there are many cases of human rights violations resulting in abuse deaths of patients in psychiatric hospitals.

Year of occurrence	Hospital name	Main details
1984	Utsunomiya Hospital	Patients were beaten to death by hospital staff. The hospital director and staff abused patients, had patients engage in forced labor, diagnoses by unqualified staff, illegal autopsies. Hundreds of patients were missing.
1985	Umayabashi Hospital	A nurse beat a patient, fracturing his skull
	Otaki Hospital	Sudden deaths of hospitalized patients, illegal autopsies, etc.
1992	Kawano Kasuya Hospital	Two patients died due to electric shocks
1993	Yamatogawa Hospital	A male patient was assaulted in the hospital and died under suspicious circumstances
	Minatogawa Hospital	A male patient was assaulted by someone and seriously injured
1995	Minagawa Memorial Hospital	A male patient was choked on liquid food while restrained to his bed and died of suffocation
1997	Yamamoto Hospital	A female patient was killed by two staff members
2002	Wakaura Hospital	A male patient was beaten to death by a nurse's aide
2003	Sanseikai	A patient with chronic heart disease was

	Hospital	given electric shock therapy. The patient died.
2008	Kaizuka Chuo Hospital	A patient under restraint died.
2012	Ishigooka Hospital	A patient was assaulted and injured in a segregation and died two years later.
2017	Yamato Hospital	A patient under restraint died.

(2) Advocate

Advocate, who visits psychiatric hospital and contact with inpatient, has been seemed to be effective measure to prevent abuse from happening in psychiatric hospital. However, enactment of the advocate still stays consideration stage. Training for the advocate became an option in the project by budget in 2018 FY, but it has still not enforced.

2. Suggested Questions

(1) Applicable scope of reporting obligations under the Persons with Disabilities Abuse Prevention Act

- * Why are schools, nurseries, hospitals and public agencies excluded not included as organizations for which reporting obligations for abuse of persons with disabilities are imposed?
- * What kinds of preparations are being made by the government to amend the Persons with Disabilities Abuse Prevention Act based on the revision provisions?

(2) Advocate

- * Has the government enacted advocate, who visits psychiatric hospital regularly and protects the rights of inpatients, as an effective measure to prevent abuse from happening in psychiatric hospital.

3. Suggested Recommendation

(1) Applicable scope of reporting obligations under the Persons with Disabilities Abuse Prevention Act

- * The Committee recommends that all institutions, such as schools, nurseries, hospitals and public agencies, be included in the scheme for reporting obligation under the Persons with Disabilities Abuse Prevention Act.
- * The Committee recommends that the government accelerate procedures for amendment of the law by reflecting the opinions of organizations of persons with disabilities, who are persons concerned with medical and educational institutions that are not included in current informer protection provisions.

(2) Advocate

* The Committee recommends to enact advocate, who visits psychiatric hospital regularly and protects the rights of inpatients, as an effective measure to prevent abuse from happening in psychiatric hospital.

Article 17 Protecting the Integrity of the Person

1. Issues

A man with psychosocial disabilities in Iwate was forcibly hospitalized with consent by his family in 2001. He repeated his request to discharge during his stay in a psychiatric hospital for two years. One day, he was forced by his family to agree to have operation to lose his fertility in exchange for his discharge from the psychiatric hospital. He rejected to have the operation, but he was forcibly underwent sterilization. Like this case, persons with disabilities still are forced to undergo sterilization or abortion even after transitioning to the Maternal Protection Law in 1996.

It is reported that the number of sterilizations based on eugenic reasons under the former Eugenic Protection Law was about 25,000. The number of forced sterilizations without consent of the persons themselves alone is about 16,500 for roughly 50 years from 1949 until 1996 (according to material from the Ministry of Health, Labour and Welfare). In 1998, the UN Human Rights Committee regrettably pointed out that “the rights of people who were subject to forced sterilizations to receive compensation are not stipulated” and recommended taking “necessary legal measures.” The Japanese government received another recommendation from the Human Rights Committee in 2014 and was recommended by the Committee on the Elimination of Discrimination against Women in 2016 to conduct investigations and research on forced sterilizations, take legal measures, provide compensation for victims and recover their rights.

On April 24, 2019, the Act on the Provision of Lump-sum Compensation to Persons Who Received Eugenic Surgery, etc. under the Former Eugenic Protection Law was enacted. However, the subjects of the lump-sum compensation are limited to persons who was underwent sterilization based on eugenic reasons under the former Eugenic Protection Law until 1996. So, persons like the man in Iwate became out of the subjects of the lump-sum compensation. It is a serious problem that persons who suffer similar damage become out of the subjects of the lump-sum compensation

2. Suggested Questions

* Has the government planned to expand coverage etc. of relief subjects of the Act on the

Provision of Lump-sum Compensation to Persons Who Received Eugenic Surgery, etc. under the Former Eugenic Protection Law?

3. Suggested Recommendations

* Expand coverage etc. of relief subjects of the Act on the Provision of Lump-sum Compensation to Persons Who Received Eugenic Surgery, etc. under the Former Eugenic Protection Law.

Article 19 Living Independently and Being Included in the Community

1. Issues

The average number of days spent in psychiatric hospitals in Japan is 250.5 days, much longer than the average 15.6 days spent in general hospitals (excluding cases of tuberculosis and psychosocial disease) (source: Hospital Report - June 2018 Estimate by the Ministry of Health, Labour and Welfare). In addition, when looking at the number of patients by length of admission, about 60% of patients were hospitalized for one year or longer, while about 20% of patients were hospitalized for ten years or longer (excerpts from 2017 630 Survey). In Japan, there are about 350,000 beds in psychiatric hospitals, accounting for 25% of the total number of 1,250,000 hospital beds.

The Vision for Reforming Mental Health Care and Welfare was formulated in 2005. The Vision indicated that there are about 72,000 socially hospitalized patients who can be discharged if there is a support for them, and aimed to transit them from hospital to community in ten years. However, actually less than 20,000 patients achieved hospital-to-community transition in ten years, and the cause of this failure has not been examined. Before the examination, the government decided new aim of hospital-to-community transition in the 5th Welfare Service Plan. In the aim of the government, in the formula for calculating the amount of infrastructure development for persons with psychosocial disabilities (an indicator for the supply of social resources to achieve the hospital-to-community transition target value) it is deemed that a group of about 70% of long-term inpatients do not have to be discharged as they have medical care needs known as “severe and chronic.” This means that the severe disabilities are used as a reason to not include them in the calculation for hospital-to-community transition target value and justifies placing them in facilities (hospitals) at the policy level. In addition, use of home-visit care for persons with severe disabilities to support living in community is low number, because subject of the home-visit care is limited only to persons with profound psychosocial disabilities.

Because the aim of government is not practicable, hospital-to-community transition have not sufficiently achieved. The government is trying to adopt the Residential Facility Converted from Hospital and change only signboard from hospital to residential facility, in order to conceal this fact and pretend to statistically succeed in hospital-to-community transition

2. Suggested Question

* Has the government formulated any effective hospital-to-community transition or community settlement strategies, including the reduction of hospital beds, in order to support all persons with disabilities hospitalized in psychiatric hospitals live in their community?

3. Suggested Recommendation

* Promptly change political aim of hospital-to-community transition, and propose effective and deliberative measures to reduce hospital beds.

Article 32 International Cooperation

1. Issues

Measures in partnership with “civil society, in particular organizations of persons with disabilities” specified in the text of the CRPD regarding technical cooperation by the Japanese government is insufficient. Especially, the government does not at all provide budgetary support to organizations of persons with psychosocial disabilities which are involved in international cooperation.

2. Suggested Questions

* Has the government provided budgetary support to organizations of persons with psychosocial disabilities which are involved in international cooperation?

3. Suggested Recommendation

* Provide budgetary support to organizations of persons with psychosocial disabilities which are involved in international cooperation.