

Suggestions for a list of issues for Japan

Advocacy Centre of Persons with Psychosocial Disability
(ACPPD)

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ACPPD is a nationwide network of users and survivors of psychiatry and we changed the name “Japan National Group of Mentally Disabled People(JNGMDP)” to ACPPD in 2018 May.

JNGMDP was established in 1974. We are advocating our own human rights and our membership is only persons with psychosocial disability and our mission is to advocate our own human rights by our own voices.

When it was established, we started to stop the introduction of the security measures in the penal code cooperated with human rights NGOs and other organisations of persons with physical disability and labour unions etc. and to support Mr Akahori who was innocent but got the sentence of the death penalty, cooperated with persons with physical disability organisation. Mr Akahori got innocent sentence by the retrial in 1989.

We are a member organisation of World Network of Users and Survivors of Psychiatry (WNUSP) and we participated in making CRPD process with WNUSP international level. The contact person of ACPPD, Mari Yamamoto is a board member of WNUSP.

Our daily activities are to publish newsletters at least 6 times a year and to have the exchange meeting once a month, to support self-advocacy in the community and also from the coercive hospitalisations.

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The rough sketch of the situation in Japan

Institutionalisation

Japan has the largest number of beds in psychiatric hospitals in the world and there are many long-stay inpatients.

Historically the government has been increasing the beds' number of psychiatric hospitals for 2 purposes.

#1 To protect the society from “dangerous mental disordered persons”

#2 To reduce the burden of the family members caring ‘mentally ill’ persons and other persons with disability and make family members labour force for the economic boom in the 1960s.

The government took the policy to increase beds numbers of psychiatric hospitals in the 1960s, while other developed countries have decreased them.

The number of beds per 1000 population was 1 in 1960 and became 2.5 in the middle of the 1970s and 2.7 in 2010, while the average number of other OECD countries is 0.7 in 2010.

In the 1960s the government took many measures to increase beds numbers in private psychiatric hospitals. For instance, subsidies or the low-interest loan to build private psychiatric hospitals, making lower standards of doctors and nurses numbers for psychiatric hospitals than those in general hospitals. And also it made the medical fee for hospitalisation about a third of it in other general hospitals.

Now in Japan, about 90 % of beds in psychiatric hospitals in private psychiatric hospitals and the owners of private psychiatric hospitals influence mental health policy very much.

Psychiatric hospitals beds work as residential facilities

“OECD Reviews of Health Care Quality JAPAN 5 November 2014” described the situation of psychiatric hospitals in Japan as below

“it is important to note that in Japan a high number of psychiatric care

beds are utilised by long-stay chronic patients which might not be reported under the psychiatric bed category by other OECD countries. When excluding such long-stay beds the number of beds in Japan and ALOS(average length of stay) is closer to the OECD average. Nonetheless, many of these long-stay beds are occupied by patients who have, at root, a psychiatric diagnosis. Patients in these long-stay psychiatric beds may well have been institutionalised as part of a historically strong tendency to institutionalise patients with psychiatric disorders, along with patients with learning difficulties and dementia, who would not be admitted to 'psychiatric' long-stay beds, or even inpatient facilities, in many other OECD countries.”

Yes, it is right and last summer the Mainichi Newspaper released the articles that there were at least 1770 persons had been hospitalised over a half-century.

**“Over 1,700 patients stayed over 50 yrs at mental wards nationwide:
Mainichi survey**

August 21, 2018(Mainichi Japan)

At least 1,773 people remained at hospital mental wards for 50 years or more as of the end of June 2017, despite a Ministry of Health, Labor and Welfare policy to reduce numbers by moving them to community care, a Mainichi Shimbun survey has found.

The poll covered patients who were admitted before June 1967 at 1,588 hospitals, or 97.7 per cent of medical institutions with beds for patients with mental illnesses. The data is based on information annually submitted by Japan's 47 prefectural governments and the municipal government of the 20 specially designated cities with populations over 500,000 to the National Center for Neurology and Psychiatry in the western Tokyo suburban city of Kodaira.

Among the patients, their reason for admission was available for 1,291 people. Of them, 811 stayed of their own will, while 476 patients were admitted based on the judgment of an expert doctor and the consent of family members, but without the consent of patients themselves. Four patients were admitted due to legal orders from prefectural governors and others out of concern that the patients could cause harm to others or

themselves.

Of 1,246 people who had a clear diagnosis of their conditions, about 80 per cent had schizophrenia.

The actual number of patients staying at hospitals for half a century or more may, in fact, be larger. Kanagawa Prefecture, just south of Tokyo, did not release the years and dates of admission for inpatients with mental illnesses. Only the figures for the designated cities of Yokohama, Kawasaki and Sagami-hara were available in the prefecture.

Meanwhile, in Nagasaki Prefecture in southern Japan, there was a record of a patient who was admitted to a hospital on Nov. 28, 1923 -- more than 80 years ago.

(Japanese original by Tetsuro Hatakeyama, Osaka Science & Environment News Department and Masakatsu Yamasaki, Osaka City News Department)”

But until now the government takes no effective measure to resolve this human rights violation, though every year about 12 % of new in-patients are kept in hospitals for over one year. Furthermore, the government claimed that about 60 % of new in-patients persons staying over one year are “severe and chronic patients” and they need a long-stay in psychiatric hospitals.

Also, Prime Minister Abe declared that no one should be left the workplace for caring one’s parents. It does not mean that the government would provide adequate and enough support for older persons in the community but it means that it would send them to the facilities especially to psychiatric hospitals and also declared that there would be “the demands” to 100,000 beds in psychiatric hospitals for long-stay in-patients in 2025.

So in Japan, many psychiatric hospitals beds work as residential facilities and some of them work terminal facilities.

In Japan, the austerity policy has made cut and cut the number of public officers including in social welfare divisions. So officers cannot work for the rights of users and most of them depend on institutionalisations especially coercive hospitalisations in psychiatric hospitals and most of the guardians also take the same measures because they are the easiest way to get the

profit.

In some cases, Tokyo public officers send users to psychiatric hospitals or institutions far away from Tokyo systematically and they automatically have become long-stay inpatients.

I quoted the letter from “Committee for realizing the visit of the United Nations Working Group on Arbitrary Detention(WGAD) to Japan in 2017” asking the official visit of WGAD to Japan. The committee was an NGO and M Yamamoto was a member of it.

“ 2. Psychiatric hospital forcibly admitted persons with psychosocial disabilities, despite a lack of medical need Hotoku-kai Utsunomiya Hospital in Tochigi Prefecture, which is over 100 kilometers far from Tokyo, and is a psychiatric hospital where two patients died in 1983 as a result of staff violence.

By existing law, a person with psychosocial disabilities can be voluntarily admitted to a psychiatric hospital (voluntary admission), and when a patient asks to be discharged, the hospital must discharge him or her unless it was forced admission (section 22, clause 3, of The Mental Health and Welfare Act. However, Utsunomiya Hospital ignored inpatients’ discharge requests and kept them hospitalized. In addition, many inpatients are treated in a locked ward eventually, between 2011 and 2015, lawyers were able to obtain a discharge for more than 30 inpatients whose discharge requests had been denied.

About half of the inpatients at Utsunomiya Hospital received public assistance, and many had no relatives to depend on. The hospital was suspected of keeping long-term inpatients, despite a lack of medical need, to generate sustainable income, since the patients’ medical expenses were covered by public assistance.”

Even now lawyers group find the same cases in Tokyo.

We got two opinions from WGAD that two cases coercive hospitalisation in Tokyo were arbitrary last year and one victim of two cases, Ms. H is still detained in the psychiatric hospital by the guardian and it is not a rare case.

Suggestions for questions

Article 12

- 1 Why did Japan introduce the new legislation to promote guardianship after the ratification of CRPD?
- 2 Does Japan recognise that CRPD requires abolishing any substitute decision-making system including the guardianship?
- 3 How many persons in institutions and psychiatric hospitals are under guardianship or substitute decision-making system and how long do they stay in them?
- 4 Please explain the plan and measures to abolish any substitute decision-making system including the guardianship and to ensure the right to refuse any service or support for persons with disability concerned including in supported decision-making system.

Japan ratified CRPD in 2014 with no declaration or reservation except the declaration of Art.23.4¹ .

But as the government report, the government claims that the guardianship and also “Act on Mental Health and Welfare for the Mentally Disabled” (hereinafter MHA) that works as coercive hospitalisation system including coercive hospitalisation by incompetence, is compliant with CRPD.

In principle, the wards or others under guardianship should pay the cost of the guardianship by themselves and it is a good way to cut the burden of the official social welfare system and officers. And for the lawyers or social workers, the guardianship is the big market to gain the profit and furthermore, if they sell the house of wards and send them to the institutions or psychiatric hospitals, they get the money additionally to monthly fee from it and also reduce their duty to look after them in the community.

The government claims that the guardianship guarantees the right, will and

¹ “The Government of Japan declares that paragraph 4 of Article 23 of the Convention on the Rights of Persons with Disabilities be interpreted not to apply to a case where a child is separated from his or her parents as a result of deportation in accordance with its immigration law.”

preference of persons but in fact, the guardianship often results in sending them to institutions or psychiatric hospitals. Most persons under guardianship are denied the right of Art.19 “living independently and being included in the community”

Article 13

1 Please explain how does Japan ensure effective access to the court for persons with disability, especially for persons with psychosocial disability and intellectual disability to the criminal court.

In Japan only the public prosecutor has the mandate to decide if he prosecutes the arrested persons or not without any judicial procedure and many persons with disability especially who are arrested for minor offences, are not prosecuted and especially persons with psychosocial disability or intellectual disability are deprived of the right to the trials and sent to psychiatric hospitals by MHA and they are detained indefinitely

“Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity (hereinafter the “Mentally Incompetent Persons Medical Care and Treatment Act”)”² also deprived the

² The government report explained “Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity” as below in the state report paragraph 106

It was enforced in 2005.

It is the first security measure legislation in Japan and we have special hospitals and community treatment order for the first time. Target population: People with mental disabilities who committed or attempted the crimes of homicide, arson, robbery, rape, sexual assault and also committed injury but not to be prosecuted or to be sent to prisons.

106. Treatment, including hospitalization, of persons with mental disabilities as specified in the, is conducted only in cases where: a person with a mental disability commits a serious criminal act such as homicide or arson; the person is considered to have been insane or to have had diminished capacity when the act was committed; and the person is exempted from prosecution or is declared innocent and it is considered necessary for him/her to obtain medical care under the Act to help improve the mental disability which was

right to trials by courts and most cases are detained indefinitely.

And in some cases, prosecuted persons with disability especially persons with intellectual disability and with psychosocial disability get no reasonable accommodations to ensure the effective access to the court, and the court sentenced even capital punishments.

Article 14

1 Dose Japan recognise that CRPD prohibits any coercive hospitalisations and institutionalisations and requires to abolish MHA and “Mentally Incompetent Persons Medical Care and Treatment Act”?

2 Please explain the plan and measures to abolish MHA and “Mentally Incompetent Persons Medical Care and Treatment Act”.

In MHA we have two types of typical coercive hospitalisations that are hospitalisation by dangerousness (Art.29) and medical necessity and incompetence (Art 33) and in both articles, there is the factor that one is mentally disordered, so MHA violates CRPD Art.14. And also “Mentally Incompetent Persons Medical Care and Treatment Act” imposed only for persons with psychosocial disability and it violates CRPD Art 14.

Article 15, 16, 17

Dose Japan recognise that CRPD prohibits any coercive medical treatments?

2 How many inpatients and outpatients are subjected to coercive medical

present when the criminal act was committed and to facilitate his/her social reintegration. The Act provides that before deciding on the treatment, the subject must undergo a psychiatric evaluation, the judgment must be made in the presence of an attorney or an expert on health and welfare, etc. The subject must be given an opportunity to express his/her opinion, and the collegial body consisting of the judge and the mental health evaluator (who is a doctor) must properly determine the necessity of treatment and its contents (Article 2, and Articles 33 through 42, of the Mentally Incompetent Persons Medical Care and Treatment Act).

treatments or medical treatments without free and informed consent by persons with disability concerned not only the patients under “Mentally Incompetent Persons Medical Care and Treatment Act” but also under MHA and users of psychiatry?

3 How many persons with disability are subjected to sterilisation without free and informed consents of them after 1996 when the coercive articles for sterilisation were deleted from Eugenic Protection Law?

4 Please explain your plan and measures to abolish any coercive medical treatments or medical treatments without free and informed consents by persons with disability concerned including abortions and sterilisation.

5 Please explain your plan and measures to abolish restraints and seclusions.

In MHA there are no articles of rights to refuse the medical treatments and also no articles to justify coercive medical treatments, but coercive medical treatments are common practices in mental health system in Japan not only for persons subjected to coercive hospitalisations but also persons admitted by so-called voluntary hospitalisations and also persons with psychosocial disability and with intellectual disability in the community.

When the psychiatrists claim that we get the informed consents from our patients under MHA and also under “Mentally Incompetent Persons Medical Care and Treatment Act”, these are not FREE and informed consents. These so-called consents are often the condition to discharge or to receive social benefits or other welfare for persons with disability.

Thus most persons with psychosocial disability and persons with intellectual disability are subjected to coercive medical treatments, for instance, antipsychotic drugs, polypharmacy and electric convulsion treatments etc..

Furthermore described by our rough sketch there are many persons with disability or with perceived disability were left behind in psychiatric hospitals and these 10 years the number of restraints and the number of seclusions is increasing.

The Eugenic Protection Act which had the articles of coercive sterilisation

and these articles were deleted in 1996 and the name of The Eugenic Protection Act was changed.

But sterilisation without free and informed consent with the person with disability concerned are still reported after 1996 and one of the typical ways is that family members make the sterilisation as the condition for the discharge from the psychiatric hospitalisation. The psychiatrist wrote the letter to introduce Mr Katagata to the doctor who gave him the sterilisation and in the letter; his psychiatrist wrote that the stabilization was the condition for the discharge.

Article 19

1 Why will there “the demands” for 100,000 beds for long-stay inpatients even in 2025? And how do you decrease or wash away “the demands” until 2025?

2 Why do 12 % of persons who were admitted to psychiatric hospitals, still stay in the hospitals after 1 year?

3 Why are 60 % of the persons who stay in hospitals for 1 year, “severe and chronic” and need longer hospitalisation?

4 When and how to ensure and to guarantee the right of living in the community for persons who have been hospitalised for over 50 years?

The research group sponsored by the government declared that 60 % of the persons who stay in hospitals for 1 year were “severe and chronic” and need longer hospitalisation and it justified the government declared there would be “the demands” for 100,000 beds for long-stay inpatients even in 2025.

Article 33

When and how will Japan establish independent monitoring frameworks (IMF) as a national monitoring mechanism in Art.33?

We have no National Human Rights Institution in Japan so there is no mechanism to monitor national human rights standards from the

international point of view, and it makes very hard to follow the UN recommendations in Japan.

And also the government declared that there was no obligation to follow up recommendations from UN human rights programs in May 2013.

But Japan should establish IMF by CRPD Art.33 and it should be compliant with “Committee on the Rights of Persons with Disabilities Guidelines on Independent Monitoring Frameworks and their participation in the work of the Committee”.