

“Reports” as advocacy activities on abuse against persons with intellectual disabilities

— The number of reported cases published by prefectures in recent years —

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知的障害者の虐待事例に関する権利擁護活動としての「報告」

— 近年に都道府県が公表した報告件数の紹介 —

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Abstract : In 1971, the Declaration on the Rights of Mentally Retarded Persons pointed out their rights to protection from exploitation, abuse and degrading treatment. The United Nations adopted the Declaration on the Rights of Disabled Persons in 1975, the International Covenant on Civil and Political Rights in 1979, and the Convention on the Rights of Persons with Disabilities in 2006. In Japan, however, despite a series of media reports on abuse against persons with intellectual disabilities, it took many more years until the Act on the Prevention of Abuse of Persons with Disabilities (the Act) was finally enacted in 2011. In order to catch up with other countries in development of legal systems, we need to sequentially check the implementation of advocacy activities stipulated in the Act. Therefore, with hope for the further development of the system, in this paper, the author would like to highlight “reports” as part of advocacy activities. Based on Article 20 of the Act, prefectural governors make an announcement on the number of reported cases of abuse for each fiscal year. The author would like to introduce the number of these cases in different regions of Japan, focusing on “reports” on abuse against persons with intellectual disabilities at care facilities for persons with disabilities from October 1, 2012, to March 31, 2017.

Key Words : abuse against persons with disabilities, care facilities for persons with disabilities, advocacy, the number of reported cases, Japan

抄録 : 1971年には「精神薄弱者の権利宣言」が「搾取、乱用及び虐待から保護される権利」を指摘した。1975年には「障害者の権利宣言」が表明されたし、1979年には「市民的及び政治的権利に関する国際規約」、2006年には「障害者の権利条約」が、国連で採択された。しかし、日本では知的障害者の虐待事件が何度も報道を騒がせ話題になりながらも、ようやく2011年に「障害者虐待防止法」が成立するまでの時間がかかった。我々は国際的に見た法整備の遅れを取り戻すために、本法が規定した権利擁護活動を順次点検して進まねばならない。そこで筆者はこの一層の整備を期待し、今回は権利擁護活動の一種としての「報告」に注目して発信したい。本法の第20条に則って、虐待事例については報告件数を都道府県知事が毎年度公表しているのである。2012年10月1日から2017年3月31日の期間の「障害者福祉施設等」での知的障害者の虐待事例に関する「報告」について、日本の各地の件数を紹介してみたい。

キーワード : 障害者虐待、障害者福祉施設、権利擁護、報告件数、日本

1. Introduction

The United Nations adopted the Declaration on the Rights of Mentally Retarded Persons in 1971, the Declaration on the Rights of Disabled Persons in 1975, the International Covenant on Civil and Political Rights in 1979, and the Convention on the Rights of Persons with Disabilities in 2006. In particular, the Declaration on the Rights of Mentally Retarded Persons, adopted at the 26th session of the UN General Assembly in 1971, points out their rights to protection from exploitation, abuse and degrading treatment. However, in Japan, it took many more years until the Act on the Prevention of Abuse of Persons with Disabilities (the Act) was finally enacted in 2011. It is pointed out that the diverse nature of persons with disabilities may have made it difficult to build a foundation to ensure their human rights¹. The Child Abuse Prevention Act was enacted in 1933 but was repealed in 1947. Then, the same law was enacted again in 2000. In 2005, the Act on the Prevention of Elder Abuse was enacted.

In response to the development of these laws, a few studies have been conducted to examine the issues on abuse in different regions. For example, one study points out regional differences among prefectures and major cities regarding the rates of handling consultation on child maltreatment². Another study compared cases of child abuse among different regions³. In the field of elder care, a study discussed regional characteristics in the care requirement certification rate under the national long-term care insurance, using data on care services supplied by municipalities⁴. Regarding the Act on the Prevention of Abuse of Persons with Disabilities, a relative latecomer, there is a study that looks at differences among municipalities with an aim to enhance home help services for persons with disabilities⁵. However, since no study has nationally introduced “reports” as advocacy activities on abuse against persons with disabilities, the author has decided to take on this task.

It should be noted that the data used in this paper are not the results of an epidemiological study. The “reports” stipulated in the Act have a legal characteristic:

They do not correspond precisely to the number of actual cases. In particular, “reports” as advocacy activities can be significantly influenced by such factors as publicity efforts by local municipalities and intense media coverage immediately before these reports are made. However, since checking of data is needed more than anything in Japan for general discussion on the legal system, the author has decided to introduce the trends in the published administrative data on reported cases as they are. Fortunately, Ministry of Health, Labour, and Welfare (MHLW) has annually collected and published relevant data for the last several years. However, since these government data are cross-sectional, the author compiled these statistical data over the years to see the spread of the reported cases across the country.

2. Materials and Method

In November 2013, a report titled “FY 2012 survey report on response to cases of abuse based on the Act on the Prevention of Abuse of Persons with Disabilities and Support for Caregivers” was published by Welfare Division for Persons with Disabilities at Department of Health and Welfare for Persons with Disabilities, Social Welfare and War Victims' Relief Bureau, MHLW⁶. This report covers the period between October 1, 2012, when the Act became effective, and March 31, 2013. Since the second year, the report has been published in December, covering the 12 months in the previous fiscal year (from April to March)⁷⁻¹⁰. In this paper, the author used these data from October 1, 2012, to March 31, 2017.

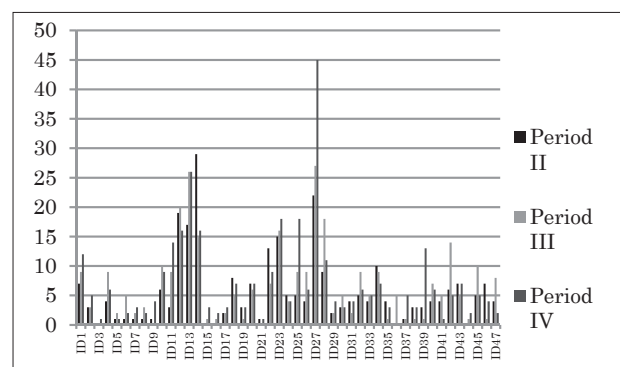


Figure 1. The number of reported cases by prefecture

Table 1. The number of reported cases of abuse at care facilities for persons with disabilities (by prefecture)

ID	Prefecture	Period I	Period II	Period III	Period IV	Period V	Total
1	Hokkaido	2	7	9	12	23	53
2	Aomori	0	3	3	5	2	13
3	Iwate	1	0	0	1	0	2
4	Miyagi	3	4	9	6	3	25
5	Akita	1	1	2	1	1	6
6	Yamagata	0	1	5	2	1	9
7	Fukushima	1	1	2	3	2	9
8	Ibaraki	2	1	3	2	2	10
9	Tochigi	2	1	0	4	6	13
10	Gunma	2	6	10	9	7	34
11	Saitama	3	3	9	14	25	54
12	Chiba	3	19	20	16	30	88
13	Tokyo	7	17	26	26	21	97
14	Kanagawa	8	29	15	16	26	94
15	Niigata	0	0	1	3	4	8
16	Toyama	0	0	1	2	0	3
17	Ishikawa	2	2	2	3	4	13
18	Fukui	0	8	5	7	8	28
19	Yamanashi	0	3	1	3	2	9
20	Nagano	3	7	6	7	6	29
21	Gifu	0	1	0	1	0	2
22	Shizuoka	3	13	7	9	12	44
23	Aichi	5	15	16	18	31	85
24	Mie	1	5	4	4	3	17
25	Shiga	1	5	9	18	5	38
26	Kyoto	4	4	9	6	10	33
27	Osaka	5	22	27	45	53	152
28	Hyogo	3	9	18	11	17	58
29	Nara	1	2	2	4	1	10
30	Wakayama	2	3	5	3	0	13
31	Tottori	1	4	2	4	3	14
32	Shimane	1	5	9	6	3	24
33	Okayama	3	4	5	5	7	24
34	Hiroshima	1	10	9	7	13	40
35	Yamaguchi	0	4	1	3	8	16
36	Tokushima	0	0	5	0	0	5
37	Kagawa	0	1	1	5	5	12
38	Ehime	0	3	1	3	3	10
39	Kochi	0	3	1	13	7	24
40	Fukuoka	1	4	7	6	8	26
41	Saga	1	4	5	1	2	13
42	Nagasaki	0	6	14	5	5	30
43	Kumamoto	2	7	5	7	6	27
44	Oita	1	0	1	2	5	9
45	Miyazaki	2	5	10	5	10	32
46	Kagoshima	2	7	1	4	5	19
47	Okinawa	0	4	8	2	6	20
	Total	80	263	311	339	401	1394

[Note] The table was created by the author based on “Survey report on response to cases of abuse based on the Act on the Prevention of Abuse of Persons with Disabilities and Support for Caregivers,” published annually by Welfare Division for Persons with Disabilities at Department of Health and Welfare for Persons with Disabilities, Social Welfare and War Victims' Relief Bureau, MHLW. Period I covers October 1, 2012, to March 31, 2013. Periods II to V cover FY 2013, 2014, 2015, and 2016, respectively.

The number of reported cases by prefecture refers to the total of the following, in accordance with Articles 17 to 19 of the Act: the number of reports from municipalities to prefectures, the number of cases jointly confirmed by prefectures and municipalities, and the number of cases directly reported by citizens to prefectures. The data on reported cases at care facilities for persons with disabilities (care facilities) were used in this paper because they were consistently available in each year, particularly reflecting incidents that attracted media attention and pushed for advocacy efforts. As shown in Table 1, the author assigned an ID number to each prefecture and grouped the data into five periods. Period I covers October 1, 2012, to March 31, 2013. Periods II to V cover FY 2013, 2014, 2015, and 2016, respectively. The author created Figure 1 as a sample, using the data from Periods II to IV. Each Period covers the whole year. The results show some variation in the number of reported cases over the years. The horizontal axis indicates ID numbers, and the vertical axis indicates the numbers of reported cases.

Then, in order to see a broader picture, the author grouped the prefectures into so called “eight regions,” the grouping often used in Japanese government administration, to conduct data mapping. More specifically, Prefecture #1 was defined as Division A (Hokkaido Region), Prefectures #2 to #7 as Division B (Tohoku Region), #8 to #14 as Division C (Kanto Region), #15 to #23 as Division D (Chubu Region), #24 to #30 as Division E (Kinki Region), #31 to #35 as Division F (Chugoku Region), #36 to #39 as Division G (Shikoku Region), and #40 to #47 as Division H (Kyushu and Okinawa Region).

3. Results

According to the data, the total number of cases of abuse at care facilities across the country was 80 in Period I, which only covers 6 months. The number constantly increased from Period II to Period V: 263, 311, 339, and 401, respectively. In other words, the total number of reported cases across the country over

the 4.5 years reached 1,394. Looking at the data by Division, the total number over the 4.5 years was 53 in Division A, 64 in Division B, 390 in Division C, 221 in Division D, 321 in Division E, 118 in Division F, 51 in Division G, and 176 in Division H. Figure 2 presents these data visually, showing the similar variation to Figure 1.

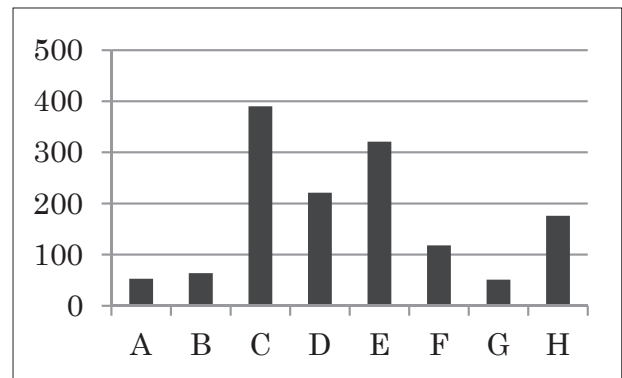


Figure 2. The total number of reported cases in eight regions

For reference purposes, the author made an “east-west” comparison to see the extent and variation of the reported cases across the country. In Japan, we often divide this small island country into “Eastern Japan” and “Western Japan,” emphasizing their differences in traditional cultures and social organizations that may result in different behavioral standards. As the author compared Division B and Division F, both having almost the same land area, while the total number was 64 in the former, it was 118 in the latter, nearly twice as large. Indeed, the latter is located in the western part of Japan.

Next, the author focused on Division C, whose total was 390, the largest among the eight Divisions. Considering the geographical characteristics of this region, it seemed reasonable to find “inland-coastal” differences. The total numbers were particularly large among four prefectures in Division C, between 50 and 99. Among these four prefectures, #11 is a landlocked prefecture. Meanwhile, #12, #13 and #14 have coastal areas. Among these four prefectures, the average number was 54 in the landlocked prefecture while it was 93, nearly twice as large, among the prefectures with coastal areas. The other landlocked prefectures in

Division C were #9 and #10, whose total numbers were even smaller. Looking at other regions, Division D also has multiple landlocked prefectures. In this Division, the total number for four prefectures with coastal areas along the Sea of Japan was 52, while the total for two prefectures along the Pacific coast was 129. On the other hand, the total for three landlocked prefectures was 40, the smallest number in these three subregions. It has been pointed out that geographical features may have effects on differences in the natural environment and traditional lifestyle. These data may imply such effects.

The author also made a comparison between prefectures facing the Sea of Japan and those along the Pacific coast. The former tend to have a lot of snow; it is often argued that such climate conditions have created the unique culture in the region throughout the history. However, for example, Division A consists of only one prefecture which faces both the Sea of Japan and the Pacific Ocean. Division G and Division H have no prefecture that faces the Sea of Japan. The author concluded that Division B and Division F would be suitable for this comparison. Regarding Division B, #4 had the exceptionally large number among the six prefectures. It should be noted that a major city has been developed along the Pacific coast in #4, contributing to the significant economic development in the region. Meanwhile, in Division F, #31 (facing the Sea of Japan) and #33 (facing the Pacific Ocean) are located next to each other; the total numbers were 14 and 24, respectively. In the same Division, #32 (facing the Sea of Japan) and #34 (facing the Pacific Ocean) are next to each other; the total numbers were 24 and 40, respectively. In both pairs, the prefectures facing the Pacific Ocean indeed had the larger numbers.

Lastly, the author focused on the urban-peripheral variation. In other words, the author compared metropolitan areas developed through modernization and their surrounding areas. For example, #13, #23 and #27 contain major cities with a large number of usual residents. The total numbers were 97, 85 and 152, respectively, significantly larger than the numbers in

surrounding prefectures.

4. Discussion

Readers should note the following points in this paper. First, the Act on the Prevention of Abuse of Persons with Disabilities in Japan also covers those not certified as persons with disabilities under other relevant laws. Therefore, the population parameter cannot be defined under the Act. Second, since the Act does not intend to punish perpetrators or to take security measures, limiting the target group to examine risks and prevalence does not coincide with the purposes of the Act. Article 11 states that the authority to carry out an investigation or questioning must not be construed as being granted for criminal investigation purposes.

Third, this paper does not intend to explore “regional differences” to analyze trends. Rather, it describes possible variation in the national trends in response to the new law, with hope for further expansion of advocacy activities at each municipality and the higher awareness of rights at the grassroots level. Since Japan now has quite a few linguistic minorities, an English report like this paper will also contribute to enhancement of our own multicultural harmony through awareness raising. Moreover, the author’s legal axiology is usually inclined to fallibilism. In recent years, the author has been interested in preventive laws against various forms of mistreatment in domestic settings, including development of laws on abuse. While prefectural institutions usually develop advocacy activities in the fields of domestic violence and child abuse, efforts have been insufficient regarding abuse against persons with disabilities. Therefore, it is hoped that checking of reported cases can be effectively used among different municipalities. Article 4 of the Act also stipulates that local governments are to strengthen coordination among government agencies and to raise awareness.

From the beginning, in Japan, it has been rare for cognition of persons with intellectual disabilities to attract particular attention in the legal field¹¹. However,

we finally live in the era where “the human rights movement for persons with disabilities has been making progress at an astonishing rate, in terms of both domestic and international laws¹².” Covering the rights of persons with intellectual disabilities, who may not be certified due to gaps of existing laws in Japan, will also help the country take a significant step forward to catch up with the international community.

It should be stressed that this paper does not intend to identify risk factors for abuse in different regions based on specified reports of vital statistics. Therefore, the author does not have the perspective of post-labeling, in which readers can see intention of the law enforcement authority in crime statistics as if they were security issues. As a person who has focused on the reality of legal phenomena themselves, the author considers that presenting the facts on “reports” being made as advocacy activities in various parts of Japan should contribute to legal studies in the future. In order to test this hypothesis, studies should also be conducted on the number of reported cases of abuse by persons other than employees of care facilities. The author would like to study this issue as well. Under the Act, employees will be protected if they detect abuse at care facilities and report it directly to municipalities. In other words, the provisions regarding unlawful disclosure of confidential information and other confidentiality obligations under the Penal Code should not prevent reporting of abuse against persons with disabilities by employees of care facilities. The Act stipulates that employees of care facilities who report abuse, as in this paper, should not be dismissed or otherwise treated in an adverse manner because of their reporting. In Japan, the Whistleblower Protection Act also became effective in April 2006.

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