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A Call for Provisions on Women with Disabilities in a Law to Prohibit Discrimination Based on Disability : A Survey on Living Difficulties of Women with Disabilities

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Established in 1986, DPI Women's Network Japan has been working to promote independent living of women with disabilities and has worked for the abolition of the Eugenic Protection Act in the past..

Moderately linked with the local organizations for women with disabilities along with individuals with disabilities, we are working on various issues such as providing information in Japan and at international level, making recommendations pertaining to the Third Basic Plan for Gender Equality and raising questions concerning the Obstetric Compensation System.

We believe that women with disabilities are discriminated due to the combination of disabilities and the gender gap. With this recognition, Convention on the Rights of Persons with Disabilities (CRPD) included the provisions on Women with Disabilities in Article 6. Hence, we made a proposal to the Committee for Disability Policy Reform (CDPR) in regards to revising the Basic Law for Persons with Disabilities. Influenced by our approach, the Second Opinion to Disability Police Reform subsequently included the need of measures for women with disabilities. We felt a strong sense of support by this. Unfortunately, the Basic Law for Persons with Disabilities, after it was revised, did not contain any descriptions on women with disabilities as found in the Second Opinion. Through this experience, we confirmed the stronger need to determine the current status of the multiple discrimination women with disabilities face and to position it explicitly in laws and regulations.

In this effort we conducted a survey on Living Difficulties of Women with Disabilities from April to November in 2011. The purpose of the survey was to disclose a large number of difficulties women with disabilities experience which require legal remedy.

Along with questionnaires and interviews with women with disabilities, a survey on the Domestic Violence Prevention Program and the Basic Plan for Gender Equality was conducted based on the annual reports and the plans posted on 47 prefectures' official websites. The responses of 87 surveyed individuals across the country were categorized into types of issues and analyzed. The results were issued as "Living Difficulties of Women with Disabilities – A Report on Current Status of Multiple Discrimination" (March 2012. Hereafter referred to as "the Report").

This document presents important questionnaire responses from an anti-discrimination standpoint such as sexual abuse, caregiving/assistance, reproductive health, and work & income along with their backgrounds, and then examines the lack of responsiveness in the measures to prevent these issues. Recognizing these issues may put us in a better position to understand the need to include provisions on women with disabilities in a law to prohibit discrimination based on disability (hereafter referred to as “the Anti-Discrimination Act”) to improve their difficult situations and ensure equality with other populations. Since we do not have expertise in drafting legal correspondence, we expect our sub-committee members, with their wisdom and skills, will take action to put our plea into shape.

A survey on Living Difficulties of Women with Disabilities: Results and Backgrounds

1) Sexual abuse

During our last subcommittee meeting (the 17th meeting) we had a discussion on harassment. We are aware that there are many forms of sexual abuse, and there have been discussions as to whether each case is classified as discrimination or harassment, and whether or not harassment is considered subject to the Anti-Discrimination Law. Regardless of how interpreted, sexual abuse is a serious issue women with disabilities go through and it must be solved. Therefore sexual abuse is herein addressed first.

The dominant response in the survey was sexual abuse: as many as 35% responded that they have experienced sexual abuse in their lifetime. The responses indicate that the offenders were their bosses at work, teachers or staffs at school, service providers at welfare facilities or healthcare settings, caregivers and family members at home. Victims need to stay and cannot easily leave these types of settings. Furthermore it was common among the reported incidents for the offenders to be in an advantageous position, which is highly likely to discourage victims to make any effort in reporting abusive incidents although they may fall under crime.

Some offenders may take advantage of characteristics of disabled women such as those who are unable to escape, to counter sexual abuse, or, because of their intellectual disabilities, are unable to have their testimony accepted or to identify offenders by voice or physical appearance. Difficulties in achieving financial independence may also hinder women with disabilities to escape from abusive situations and their vulnerability makes them difficult to report.

Not only women, but men also encounter sexual abuse. However, female victims are reported overwhelmingly more than male victims and it is evident that they are vulnerable to sexual abuse due to their disabilities. Below are some of the survey responses.

- *I had been insisting that I need no assistance and could get on and off the pickup bus for a sheltered workshop. But every day a male staff touched me while assisting me (40's. Mentally and intellectually disabled)*
- *During my break at work where I work as a masseuse, I was left alone with my boss. He grabbed me from behind and touched my breasts. At other times, he flipped up my white coat and touched my underwear. (40's. Visually disabled)*
- *I was sexually molested by my mom's boyfriend. While he was assisting me in bathing, he touched my breasts and other parts of my body. It was horrible. I told my mom but she did not believe me. That was even worse. (30's. Physically disabled)*
- *I was sexually harassed by my brother-in-law. I can't tell anyone about it because I can't live independently, I do not want to break my family apart, and it is too humiliating to even talk about it. (50's. Visually disabled)*
- *I have night blindness since I was a child. In the evenings, I needed to be accompanied to go to the lavatory that was outside the house. It was dark. Once my brother grabbed me, pinned my arms behind my back and put his genital area against me. I got so confused and could not resist. He told me not to tell anybody but I did tell my mother. She said, "What the hell are you talking about? You nasty girl!" I got desperate. I did not know what to do. I then had to hold to go to the lavatory or go somewhere outside late at night. When I was going home from high school, he did the same to me as he picked me up at the bus stop. I thought having night blindness is a weakness and I could not tell about my experiences to anyone. I still shake from fear whenever I hear male voices behind me. (60's. Visually disabled)*
- *At my college lab, one of the male staffs left me and other male lab student alone. I escaped. Later the male staff said to me, "I set it up for you. Why did you run away?" (50's. Visually disabled)*

Below is a detailed response of a woman in her 30's with physical disability from the Report. In the tight job market, the respondent was told that there was no need for disabled women in their company and disabled men would have been the lesser of two evils. She finally obtained a job in better conditions than her previous job but was sexually abused. Because of her disadvantages as a woman with disability, she could not say "no" to her bosses and was put in a position where she had no access to safety and was vulnerable to sexual abuse.

- Response of a woman with physical disability in her 30's

I was the only female, disabled and was a temp at my workplace. I worked hard to support my children and also tried hard to blend in with the people at work. On the way back from a company trip, my boss asked me to go out for a drink. I got drunk with him and fell asleep. He then took me to a hotel and raped me. Afterwards, he repeatedly forced me to have a sex with

him. I reported this to an employee counseling office but what the counselor said just hurt my feelings more. They just made up a biased story in favor of the offender and concluded, "It was not rape."

I brought a lawsuit against the offender and my employer. I lost the case in the first trial. The Support Group was formed for me. The Court of Appeals ordered the accused to admit his guilt on sexual assault and pay compensation. However, the same court orders were not made in the following trials, and the employer wasn't called to account. While I was filing an appeal to the Supreme Court this spring, I got laid off. The main reason for my layoff was because I "missed too many work days." But the offender and the employer were who caused me to take such a long time off from work. It is their fault.

As seen from the above, women with disabilities are at risk of various types of human rights violations and violence in their daily life. In order to understand the discrimination against those who are both disabled and women, and to form social norms to eliminate such discrimination, the Anti-Discrimination Act will have crucial roles.

2) Caregiving/Assistance

Relating to sexual abuse is caregiving and assistance, which is another problem for women with disabilities. Our survey discloses that opposite sex caregiving has a relatively high level of problems, both in its seriousness and quantitative aspects.

Caregiving by same-sex does not mean that the problems will be eliminated just by providing female caregivers should always be provided to females and male caregivers to males. Yet, it does mean they should be assisted by someone whom women with disabilities feel most comfortable with. A lot of women with disabilities request to be assisted by female caregivers.

The possible reasons are: caregiving frequently involves physical contact and those who receive caregiving that involves such contact are at high risk of sexual abuse. It is true that females are more likely to be sexually abused by males. Women with disabilities assisted by male caregivers are more uncomfortable and at a higher risk of sexual abuse than men with disabilities assisted by female caregivers. Women's bodies are often seen as sexual objects or valued as commercial products. Considering these characteristics of women, it explains why it is such a threat and pain for women with disabilities to receive assistance that involve physical contact from men.

On the other hand, some men with disabilities request to be assisted by male caregivers. Some of them claim that they are uncomfortable with female caregivers who act like a mother, and that may well be understood.

Among other types of occupations, there is a significant difference in the ratio of men versus female caregivers. Research indicates that 80.6% of caregivers are female and 90.8% of home-visit caregivers are female (A Survey of Care Workers. 2007. *Care Work Foundation*). The number of male caregivers at hospitals and other facilities are, however, on the increase. Although women with disabilities request to be assisted by female caregivers as shown in the cases below, at some facilities daily activities such as excretion care and bathing are conducted with male staff assistance according to the workplace rules. This may be because hospitals and other facilities prioritize the job assignments of caregivers and labor management over the request of those who receive the services.

Issues with opposite sex caregivers are sometimes compared with medical services. The argument is that in the light of protecting individuals' lives and health, there is a social consensus in favor of opposite sex medical professionals administering medical exams and surgeries. Unlike medical practice, however, caregiving is intended to assist persons with disabilities in daily living. Below are responses of two women with respect to caregiving found in the Report.

- Response of a woman in 50's with progressive muscular dystrophy (interviewed at the Muscular Dystrophy Ward at National Hospital. Questions from the interviewer included.)

The hardest thing for me is to go to the lavatory with assistance. I became in need of assistance in my 30's. At the facilities female staff is available for me, but at the hospital I am not allowed to reject the male staff. When I am using the lavatory, they come in without asking. I have no choice. If I ask them to be replaced with female staff, a female nurse will come and say, "If you keep asking for female staff, we end up doing extra work and male staff is going to work less. It is not going to work. You have to follow the rules."

Lately, I almost got used to be assisted by male staff. I do feel uncomfortable as a woman but I no longer have the feelings I used to have – that feels awful.... These days, there is male staff who assist even in bathing at some wards. That is way too much. At least for bathing I beg, "Please get me female staff!" Those who do not dare to ask as I do are skipping the bath.... We have a patients' council at this ward so the situation is somehow better than the others, though.

Question: Do you think the level of living difficulties for woman with disabilities are different from men with disabilities?

I suppose so. It seems easier for men with disabilities. We all ask for assistance because we are helpless. Men can ask more frankly than women. Men do not feel so uncomfortable with female staff around, do they? But I think women hesitate and worry in many occasions like going to the lavatory and taking a bath....

- Response of a woman in 50's with muscular dystrophy

I have been using a respiratory apparatus since I had tracheotomy. These days I mostly get

full assistance. I live independently in a reformed apartment. All of the home-visit caregivers who assist me are female now. When I was hospitalized, there were many male workers to assist in bathing and at the lavatory.... I was then in my 30's. It must have been harder for those women younger than me. It became a problem within the entire ward but there was nothing we could do.... We need to be assisted so we did not have a say. Later on, male workers even started to change sanitary pads....

Question: Did they used to provide same-sex assistants at that hospital?

Yes, but they said, "It requires too much physical work for female staff to continue."... I know it is a lot of physical work but there is no way I could bear with male assistants. So I kept saying, "No way". But they said that they would not be able to change things for me. I kind of gave up on it because, you know, I am helpless.... What if I did not have muscular dystrophy or were not disabled? I would probably deserve a better life, wouldn't I? Those who remain hospitalized continue to live like that. A friend of mine, she was crying, said that she has no place to go so she has to hang in there.... We did make a complaint to the hospital. There have been always more male than female patients with muscular dystrophy. At that time, the ratio of hospitalized males and females was 4:1. Male patients have very little complaints about being assisted by female caregivers. Even to go to the lavatory, we are allowed to go only at a regular time each day. But we are humans, we do not know when we need to go. And yet, they decide OUR lavatory schedule to make it work for their own work schedule. It feels as if we are not treated as people, but as objects. The patients are begging the staff and resorting to flattery though the staff is getting paid. They won't do us a favor to assist us if they are in a bad mood. That was unbearable. Was that the way to respect me as a human or woman? They would open the lavatory curtains while I was inside and male patients were passing by. Can you believe it?

The issues addressed above were not limited to the muscular dystrophy ward. Our survey collected the following cases.

- *When I was hospitalized at an epilepsy hospital, I had a seizure while taking a bath. I did not remember anything. Then I found myself naked lying on the bed in a patient room. Supposedly, two male nurses brought me there. (40's. Mentally and intellectually disabled)*
- *I used to go to a special needs school where a bachelor male teacher was assisting one of my female classmates in the lavatory. That was disgusting. (40's. Physically disabled)*
- *When I was living with my family as a child, my father used to assist me with daily tasks. When I was in high school, I learned about independent living centers, came to understand about the idea of "caregiving by same-sex" and wanted to live independently soon. After I began living independently, I tried not going back to my parents' house because I knew my father would assist me whenever I returned there. (20's. Physically disabled)*

▪ *I was at a care facility where male staff assist women with disabilities in bathing as a matter of course. (20's. Physically disabled)*

3) Reproductive Health

Among the responses in our survey, there were of those who were forced to undergo eugenic sterilization under the Eugenic Protection Law. There were other responses from those who were recommended hysterectomy in order to be free of assistance during menstruation. Although it has been argued about possible cases of hysterectomy performed, official investigation has not been held. Thus, it holds great significance for this to be reported as their own experiences.

On April 20, 2012, during a NHK Educational TV show "Heart Net TV", a single disabled mother and two couples with disabilities appeared. They are presently raising children but once during pregnancy, they said that they were strongly recommended abortions by others. At this moment "the reproductive health and rights" for disabled people - disabled women in particular - are at risk and need to be established as an urgent matter. Below are some of the responses.

▪ *It was around 1963, I was in my teens, when they operated sterilization (a surgery to disable reproductive functions) on me by force. That caused menstrual cramps and dullness. I got married when I was about 20 but divorced. My remarried husband also left me because I could not have a baby. (60's. Mentally disabled)*

▪ *I started my period when I was in junior high. My mom then said, "You do not need periods, do you?" She meant that I should take out the uterus. I thought I would not be able to have a baby or get married without one so I disagreed with her. But I felt terrible to just hear her say such a thing. I've heard that uterus removal was common among the elderly disabled women when they were younger. (40's. Physically disabled)*

▪ *When I was a child, my doctor instructed my mother, "Your child cannot have a baby. If she becomes pregnant, she must have an abortion." Later I learned that some disabled women did have babies. In my teens, I asked another doctor whether I could have a baby. She only said, "Well, let's see..." I figured I couldn't even become pregnant. I thought I had no future. (40's. With intractable disease)*

▪ *As I became pregnant, my doctors along with my mother recommended abortion because they thought I was going to have a disabled baby and doubted whether I would be able to raise him/her. (40's. Visually disabled and with intractable disease)*

To further supplement details, sterilization has been performed without consent of the referred person under the Eugenic Protection Law which became effective in 1948 and was revised as the Maternity Protection Law in 1996. The law was made to "prevent the birth of

inferior offspring”. “Inferior offspring” meaning the disabled persons and sterilization has been performed to those with genetic disabilities as well as to those with likelihood of having disabled children. Sterilization is a surgery to disable reproductive functions. Based on the provisions in Articles 4 and 12 of “the Eugenic Protection Law”, upon a medical doctor’s application, sterilization may be performed without consent of the referenced person. Consequently, 70% of the operated individuals without their consent turn out to be women.

In respect to this practice, during the 64th General Assembly of the UN Commission of Human Rights in 1998, the Final Review of the Commission of Human Rights was issued as a recommendation to the Japanese government stating that “the Commission recognizes the need to abolish enforced sterilization, regrets that the current laws do not contain provisions for the rights to compensation for those women subjected to such procedure, and recommends the government to take necessary legal measures.” However, provisions to “the rights to compensations” as recommended as above have not been prescribed since.

Evidently, this is an ongoing issue as seen in “Heart Net TV” on April 20th. It cannot be denied that enforced sterilization is likely still performed today. (See Appendix for related data and references of sterilization.)

4) Work and Income

Our survey reveals that there are many women with disabilities who wish to work but are not understood by others. Our social norm is founded on a traditional gender role to have “men earn money for a living and feed women who engage in housekeeping”. Because of this gender role, unmarried women who are not supported by their husbands are likely to be exposed to financial difficulties. Quite a few women with disabilities, since their childhood, have made a determination to one day get a job and live independently because they thought that they might not get married due to their disabilities. Regardless of their determination, the types of jobs women with disabilities can obtain tend to be low wage or unstable because they are women. Given the uncertain work situation of women with disabilities, they are likely to encounter workplace harassment. Below are some of the survey responses.

▪ *At a job interview, I was told, “I tell you what, we do not need disabled people. But I am socially obliged at least to interview you. So do not expect too much. I would rather prefer you were man with invisible disabilities. So that is that and I am done. Enough for you, too right?”*

(30’s. Physically disabled)

▪ *When going toward my desk at work, I walked off my way and bumped at the seat of a male employee. My boss saw it and said, “That happened because you were wandering closer to men’s smell!” It was humiliating as a woman and made me feel impure.*

(40’s. Visually disabled)

- *After having a baby, I was recommended to switch from full-time to part-time and become a dependent of my spouse. Half a year later, another woman without disability at the same workplace came back to work full-time after having a baby. (40's. Visually disabled and with intractable disease)*
- *My supervisor at the hospital I work at said, "With your disabilities, it must be hard to raise a child." and suggested me to quit. I protested as a union member and continued to work, which resulted in increasing the number of staff. (50's. Physically disabled)*
- *People said to me, "You do not have to work hard. You are disabled anyway." Women with disabilities have barriers to self-realization, which is premised on one's financial independence. (30's. Visually disabled)*
- *In case of a husband with severe disabilities and his wife without disabilities, it falls into the category of "a single mother household" and the child support allowance is calculated based on the wife's annual income. Recently, in case of a wife with severe disabilities and her husband without disabilities, they became able to receive the allowance as they fall into the category of "a single father household". Although this is good news, many households with a wife with severe disability in Japan are not entitled to the allowance because the average wage of men is higher than that of women. Even if the total amounts of household income are the same, a "single mother household" is entitled to but a "single father household" is not entitled to the child support allowance. Entitlement for the allowance is judged based on the spouse's income and not that of the disabled person. That is unfair. (40's. Visually disabled)*
- *My income is too low. I do not like that the pension being paid collectively. (30's. Mentally disabled.)*

Issues pertaining to a gender role society have been seen in other areas such as a gender gap in compensation payments for accidents that cause disabilities. That is because the amount of the compensation for loss of earnings is calculated by the average wage of men and women of the society at time. That is evident in the survey response of a woman (20's) shown in the Report:

- Response of a woman in 20's with physical disability.

I have my left thigh amputated and am using a prosthetic leg. I became disabled in a traffic accident. My loss of earnings counted much lower than what a man would have been receiving because it was based on the current employment status and wages considering gender gap. The accident happened before I went to college. I was planning to work and get paid like a man.... I heard that the compensation for loss of earnings is lower for a man than a woman in case of facial disfiguration. That means, women are judged by their looks, right? Same disabilities, same circumstances but different compensations between man and women... This is how we are discriminated... way too much.

Among different studies National Institute of Population and Social Security Research conducted the Living Standards Survey of People with Disabilities (Principal Yukiko Katsumata) at Inagi City, Tokyo and at Fuji City, Shizuoka from 2005 to 2006. The survey further focuses on disparities of work and income between women with disabilities and other populations.

The key findings were: employment rates are 90% of men without disabilities, over 60% of women without disabilities, over 40% of men with disabilities and less than 30% of women with disabilities. The average of single household annual income including pensions and allowances is 4 million yen for men without disabilities, 2.7 million yen for women without disabilities, 1.81 million yen for men with disabilities and 920,000 yen for women with disabilities. Additionally, data on labor income excluding pensions and allowances finds that 50% of women with disabilities receive less than 500,000 yen and 70% less than 990,000 yen. Even with pensions, income level would still be too low to live independently. (Poverty of Women with Disabilities. *DPI - A Voice of Our Own. Vol. 24-3.*) Low living standards makes women with disabilities vulnerable and that makes them victims to sexual abuse.

5) The measures for women lacking responsiveness to women with disabilities

Above-mentioned from 1) to 4) are the cases of multiple discriminations women with disabilities face. Our survey evaluated whether or not the policies of the central and local governments are sufficiently responsive.

Under the Basic Law for a Gender-Equal Society, the central government issued the third basic plan for gender equality (December, 2010) to address issues of individuals with multiple challenges including women with disabilities and expressed the need for solutions. The Domestic Violence Prevention Act (Act on the Prevention of Spousal Violence and the Protection of Victims), which became effective in 2001, was revised in 2004 to additionally incorporate basic policies including accommodations for victims with disabilities. Despite such government plan, practical measures are scarcely present.

Some gender equality measures of local governments refer to women with disabilities, but they are focused on training such as Daily Home Living Training for Blind Women that merely provides practical daily living skills within household settings. We are in doubt as to whether such measures are aligned with the goal of a gender-equal society that is to cultivate “a society which is responsible for both men and women to participate in every sectors.” (the Basic Law for a Gender-Equal Society).”

In response to the third basic plan of the central government, some of the plans revised and issued during the past year suggest the need to respond to individuals with multiple challenges

including women with disabilities. Nevertheless, currently no measure was found with a plan to address issues regarding being both women and disabled, and how poorly women (men) with disabilities are supported in measures for persons with disabilities.

In the measures for domestic violence prevention, although victims with disabilities are assumed to exist, there are no data to show their current status, and out of 47 prefectures, as little as 4 maintain records on counseling and temporary custody for individuals with disabilities. Overall, individuals with disabilities have not been provided the necessary information and many of them may have no access even to counseling after encountering domestic violence. In fact, DV counseling is mainly conducted by phone or face-to-face counseling. 19 prefectures' plans include descriptions on sign-language interpretations during face-to-face counseling and 2 include descriptions on transcription services.

Additionally, our survey uncovered the fact that many prefectures are considering to use social welfare facilities or day habilitation centers for the temporary custody of disabled and elderly individuals which lack the same quality of security systems as those of DV shelters. Therefore, protection facilities including DV shelters are behind in removing both physical and informative barriers.

In regard to the Persons With Disabilities Abuse Prevention Act which will become effective in October 2012, the definition of abuse is unfortunately too narrow to respond to the wide range of violence women with disabilities are encountering.

6) Summary

The above mentioned from 1) to 5) confirm that women with disabilities are subject to multiple discriminations not only due to disabilities but also to gender gap. However, the measures for persons with disabilities do not recognize such gender gap and fail to respond to these issues. On the other hand, the measures for women contain descriptions regarding women with disabilities but do not provide beneficial and specific approaches. As a consequence, women with disabilities do not have access to reasonable accommodations they need and remain as the subjects to unequal treatment as compared to men with disabilities as well as women without disabilities. We hereby demand that such inequality against women with disabilities be acknowledged as discrimination, and provisions to ensure equality with others be included in the Anti-Discrimination Act.

At the revision of the Basic Law for Persons with Disabilities last year, the word "gender" was added in three provisions as items to consider upon planning measures, but it is too insufficient to emphasize gender equality. For example, the passage "Support for independent living based on gender" may be misinterpreted under the current division of labor by gender role as "men should be supported to work and women should be supported do housekeeping." It is critical that the text clearly state the need to acknowledge ongoing disparities due to

gender gap in addition to disabilities and to provide accommodation to redress this gap

Many of the difficulties women with disabilities face have not been socially recognized or have been neglected. Women with disabilities have been dealing with the issues on their own so far, but it is necessary to highlight their issues so that the society as a whole will be aware of them and take action.

The Anti-Discrimination Act enables those who have been discriminated to file a lawsuit. The laws do not take effect only in court. What is written in the laws can potentially form social norms, which may mobilize public opinion.

Finally, with the best knowledge gained from the sub-committee members, we expect that provisions for women with disabilities will be included in the Anti-Discrimination Act.

*** Appendix for 2) Reproductive Health ***

* Data and references on sterilization performed upon medical doctors' applications without consent of the referenced person from 1949 through 1996 under Article 4 and 12 of Chapter 2 of the Eugenic Protection Act are as follows. Women counted 40% of all cases and over 80% of the cases under Article 12.

Number of sterilization performed under Article 4:

Total: 14,568 Male: 4,856 Female: 9,712 (66.6%)

Number of sterilization performed under Article 12:

Total: 1,909 Male: 308 Female: 1,601 (83.8%)

Grand total number of sterilization performed under Articles 4 and 12:

Total 16,477 Male 5,164 Female 11,313 (68.6%)

Source:

An Eighty -Years' History of the Healthcare System. *The Ministry of Health and Welfare* . (1955)

Eugenic Protection Statistical Report. *The Ministry of Health and Welfare & The Ministry of Health, Labor and Welfare*. (All the issued editions)

The above-mentioned are the numbers of sterilizations performed followed by standard procedures. There were also obviously illegal cases. By Article 28 of the Eugenic Protection Act, it is prohibited to perform an operation or take X-rays to disable reproductive functions by any mean except under the provisions of the Act. By Article 34, those who have violated the provisions of Article 28 shall be subject to penalty clauses including imprisonment with work.

Despite these provisions, there are women with disabilities whose reproductive functions have been disabled through X-rays and hysterectomies. Because the central government has not investigated the status, there is no statistical data on these women who are subject to such sterilization. Even for the sterilization with consent, there is no denying that they were pressured to consent to sterilization.

Whereas it stipulates that “the medical doctors may perform abortions with consent of the referenced person or her spouse” in Article 14 of the Eugenic Protection Law, it is commonly known that many abortions have been performed to leprosy patients in sanatoriums without consent.

*** Articles underlying bases of sterilization**

The Eugenic Protection Act (Former Law, Act No. 156 of 1948)

Chapter I General Provisions

Article 1 (The purpose of Law) The purpose of this Law is to prevent birth of inferior offspring from the aspect of eugenics and protect the lives and health of mothers.

Article 2 (Definition) The term “sterilization” as used in this Law is defined as an ordered medical procedure to disable the reproductive functions without removal of the reproductive glands.

Chapter II Sterilization

Article 4 (Application for sterilization that requires a review) In cases where a medical doctor confirms after a medical examination that a person has any of the diseases as listed in the appended table and if it is affirmed that it is necessary in the public interest to perform sterilization to prevent such diseases to be inherited, it is required to file an application to the Eugenic Protection Review Board of the prefectural governments for a review as to whether or not sterilization is appropriate for the referenced person.

Article 12 (Sterilization for persons with mental illness, etc.) Pertaining to persons with mental illness or mental retardation excluding the genetic illnesses as listed under (i) or (ii) of the appended tables, in case where a consent is obtained from a person who has legal custody as stipulated by Article 20 (in case where a guardian, spouse, a person who exercises parental authority or his/her supporter has legal custody) of the Mental Health Act (Act No. 123 of 1950) or Article 21 of the same law (in case where a mayor of a municipality has legal custody), a medical doctor may file for an application to the Eugenic Protection Review Board of the prefectural governments for a review as to whether or not sterilization is

appropriate for the referenced person.

Article 28 (The prohibitions) No person may perform an operation or to take X-rays to disable reproductive functions for no reason except under the provisions of this law.

Article 34 (Violation of Article 28) A person who has violated the provisions of Article 28 shall be punished by imprisonment with work for not more than one year, or a fine of up to 100,000 yen, and in the case of causing death thereby, imprisonment with work for not more than three years shall be imposed.

* The Notice from the Ministry of Health and Welfare on Implementation of Sterilization (1953)

In Clause 4 of “3. Sterilization that requires a review” of “I. Sterilization” in the Notice from the Administrative Vice-Minister of the Ministry of Health and Welfare (June 12, 1953), it states, “Sterilization may be performed on a person against his/her will in cases where an order to be considered appropriate to perform sterilization becomes final and binding after the review procedures are completed.” It continues, “Enforcement allowed in such occasions shall be limited to the minimum necessary to perform an operation, and resorting to the use of force shall be avoided. However, it may be interpreted that the use of physical restraint, anesthetic or deception may be allowed merely when essentially inevitable according to each of the specific cases” (The Standard Laws on Health and Medical Treatment 1996)

* Suggested citation:

Living Difficulties of Women with Disabilities - Multiple Difficulties as Lifelong Struggle - A Report on Current Status of Multiple Discrimination. *DPI Women's Network Japan*.
<http://dpiwomennet.choumusubi.com/houkokusyo.html>