Improving Access to Justice for the Elderly and Vulnerable Person

Based on SDGs 16.3, Recent Amendment of the Legal Aid Act

And

Legal Needs Survey

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Ⅰ　SDGs 16.3 and Recent Amendment of the Legal Aid Act in Japan

*Introduction*

The 2030 Agenda for Sustainable Development (SDGs) is declared by United Nations on 15 October in 2015[[1]](#footnote-1).

It is a plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. All countries and all stakeholders are expected to implement it. The 17 Sustainable Development Goals and 169 targets seek to realize the human rights of all and to achieve gender equality.

Goal 16 is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

Target 16.3 is to promote the rule of law at the national and international levels and ensure equal access to justice for all.

It came into effect on 1 January 2016 and for the full implementation of this Agenda by 2030.

In recent decades, Asian countries experienced the significant economical development, it is necessary to encourage economic activity based on equal rules, it is also eminent to guarantee access to justice to protect and individual rights.

In Japan, the Japan Legal Support Centre (The JLSC) is a public corporation established according to the frameworks of an Incorporated Administrative agencies under the Comprehensive Legal Support Act (promulgated on June 2, 2004)[[2]](#footnote-2). The mission of the JLSC is to promptly and properly implement to guarantee comprehensive legal support (Article 14 of the Comprehensive Legal Support Law). Creating a society where necessary information and legal services for legal solutions of disputes on both civil and criminal are universally available throughout Japan, The JLSC facilitates the use of the court and legal system to resolve disputes. The JLSC also provides comprehensive assistance for people to guarantee access legal services offered by lawyers.

Therefore, the JLSC is expected to play a central role to realize Goal 16.

*Recent reform of the Comprehensive Legal Support Act*

One of the most serious problem in Japan is decreasing birth rate and aging population. The total population in Japan is approximately 126.9 million in 2016. The total older persons who are aged 65 years or over is approximately 34.6million in 2016. The aging rate is 27.3 per cent[[3]](#footnote-3).

The decline of mortality causes the increase of older people who are aged 65 years or over. Furthermore, a decrease of young population under 15 years suggests future aging society.

The Report to build a plan to enhance comprehensive legal support by expert committee was published in 2015.

It points out following problems of elderly and disabled[[4]](#footnote-4).

First, elderly and disabled are most likely to experience billing fraud and consumer problems. The number of billing fraud was 13,605 in2016[[5]](#footnote-5). The number of legal advice which older people who are aged 70 years or over seek for National Consumer Affairs Center of Japan (NCAC) [[6]](#footnote-6) relating to consumer problems, such as telephone marketing sales and door to door sales, was 183,136 in 2016.

However, the percentage of older people who are aged 65 years or over and obtained legal advice from JLSC was only 14.9 per cent.

Disability and physical ill-health affects many older people to be constrained from accessing justice. It becomes apparent that the vulnerable people are generally lack of knowledge about obligations, rights and procedure. These barriers combined with other factors such as physical incapacity, concern of cost can contribute a reluctance to seek help in coordination with other institutes, such as welfare, medical institution and local government to resolve a justiciable problems.

Therefore it recommended to expand legal advice without considering means of elderly and disabled to obtain legal advice as accessible as possible.

Second, elderly and disabled are most likely to experience problems of welfare benefit, long-standing ill health and domestic violence. Therefore, it is necessary to expand civil legal aid not only for civil litigation, but also administrative complaint procedure with regards to application of welfare benefits

Third, the lack of expertise and specialist services for older persons, and the lack of referral points and gaps in sources of information, are two key gaps in critical services necessary to deliver access to justice to older persons.

Appropriate referral services should respond to needs and capabilities of older persons and easily accessible.

Proactive targeting problems through outreach and creating seamless referral system is very useful for older persons. Outreach legal services are well suited to older people and are most effective when they are provided at places, welfare, medical institution and local government, to help vulnerable people to access lawyers.

It recommended that the JLSC shall play a central role to provide the comprehensive and seamless legal support linking with local governments, local bar associations, the Japan Federation of Bar Associations(JFBA), the associations of related legal profession and other specialist.

It also recommended to build a continuing education and training program for lawyers to be specialized in elderly and disabled issues.

The Comprehensive Legal Support Act was reformed in 2015 to implement those recommendations (Reform of Article3, 4 and 7).

The mid term of plan of the JLSC from on April 1in 2018 to March 31 in 2022 is published on 28 February in 2018. It is also emphasized to expand the legal advice for elderly and disable people linking with other institutions to provide legal help.

The number of legal advice coordinating with other institutes, such as social workers is expected to increase.

*Legal Aid Network among Asian countries*

We held LAWASIA Conference from September 18 to September 22 in 2017[[7]](#footnote-7). One of the theme of session is the Development and Future Issue of Publicly Funded Legal Aid in Asia – Roadmap to Sustainable Growth.

We also held Legal Aid and Access to justice Roundtable Conference hosted by the JLSC, JFBA and The Japan International Cooperation Agency(JICA) on September 22.

We discuss the following issues.

First is the current situation and issues of legal aid in Asia. We mainly discussed about the legal aid budget cut, quality of legal services and publicly-funded legal assistance.

Second is the current issues of Civil Legal Aid, especially special needs for elderly, disabled and foreigner.

Third is remaining issues regarding to Access to Justice. We discussed about the foreigners and information technology and legal aid.

Participating countries are Australia, Cambodia, Korea, Laos, Taiwan, Nepal, Vietnam and Japan.

This is the first international conference with regards to legal aid and access to justice after the JLSC was established. This is the first step to build a legal aid network among Asian countries.

Ⅱ　Legal Needs Survey of the Elderly People

- Conducted by Japan Federation of Bar Associations in 2016 and 2017

*Introduction*

The elderly people are those who are aged 65 years or over in Japan. Many older people are more likely to live with cognitive impairment and other disability.

To effectively implement legal aid for the elderly people, an empirical survey must be conducted regarding where and what kinds of needs there are, the fulfilment thereof, and if not fulfilled, the reason that they are not fulfilled. Based on the findings, we must review what collaborations and measures are needed to meet the legal needs of the elderly people.

However, questionnaire survey or face-to-face survey targeted the elderly people themselves directly are inaccurate and impractical because they have often cognitive impairment and cannot answer accurately to the questionnaire survey or face-to-face survey.

Therefore, Japan Federation of Bar Associations(JFBA) conducted a legal needs survey of the elderly people which targeted not the elderly people themselves, but the social caseworkers specialized in elderly issue working at local elderly care management centre[[8]](#footnote-8).

*Methodology of Legal Needs Survey that Targeted the Social Caseworkers*

Questionnaire sheets were sent to all the local elderly care management centres located in 23 wards of Tokyo and other three prefectures (Aichi, Kochi and Tottori)[[9]](#footnote-9). The number of local elderly care management centres in each three areas was 281 in 23 wards of Tokyo, 221 in Aichi, 40 in Kochi and 34 in Tottori. Average number of social caseworkers in each local elderly care management centres was 5 or 6 per one centre.

Social caseworkers at each centre were asked if they had experienced problems of the elderly people in the past one year that had remained in the deep impression: for example, “went well”, “went wrong”, “difficult to solve”, “had a challenging time” etc.

15 problems categories were prepared in questionnaire sheets, that is; elderly nursing care; elderly medical care; pension; housing; property management; elderly abuse (caregiver; care home); money/debt; consumer; divorce/dissolution of adoption; inheritance; trouble with relatives; trouble with neighbours; tax; crime (perpetrators; victims); wandering elderly.

1,046 social caseworkers returned questionnaire sheets to JFBA and 1,269 individual cases were reported. Of, 1,046 social caseworkers, 446(42.6%) were from Tokyo, 480(45.9%) were from Aichi, 58(5.5%) were from Tottori and 60(5.7%) were from Kochi. Significant regional difference among three areas were not observed.

Of 1,269 individual cases, 549(43.3%) were from male cases and 699(55.1%) were from female cases. Age distribution was age 65 to 74(320 cases, 25.2%), age 75 to 84(596 cases, 47.0%) and age 85 or over (305 cases, 24.0%).

*(Figure 1)*

In addition, 70 caseworkers belonging to the centres in Tokyo responded that they can accept face-to-face in-depth interviews. After scrutinizing the questionnaire sheets, 13 of the above 70 caseworkers proceeded to the face-to-face in-depth interview and 20 individual cases were analysed in detail.

*The Incidence of Problems*

The experienced problems were: elderly nursing care (62.4%), elderly medical care (50.4%), property management (43.5%), housing (35.7%), elderly abuse (23.6%), trouble with neighbours (22.8%), pension (19.2%), money/debt (16.3%) trouble with relatives (10.3%), inheritance (7.8%), wandering elderly (7.3%), consumer (5.4%) divorce/dissolution of adoption (3.9%), tax(2.4%), crime(2.0%).

Reported Incidence of Problem Types (n = 1,269)

|  |  |  |
| --- | --- | --- |
| Problem Type | Number | Percent (%) |
| elderly nursing care | 792 | 62.4 |
| elderly medical care | 639 | 50.4 |
| property management | 552 | 43.5 |
| Housing | 453 | 35.7 |
| elderly abuse (caregiver; care home) | 299 | 23.6 |
| trouble with neighbours | 289 | 22.8 |
| Pension | 244 | 19.2 |
| money/debt | 207 | 16.3 |
| trouble with relatives | 131 | 10.3 |
| Inheritance | 99 | 7.8 |
| wandering elderly | 93 | 7.3 |
| Consumer | 68 | 5.4 |
| divorce/dissolution of adoption | 49 | 3.9 |
| Tax | 31 | 2.4 |
| crime (perpetrators; victims) | 26 | 2.0 |
| Others | 219 | 16.5 |

*(Table 1)*

*Multiple Problems and Problem Clusters*

The number of legal problems per person was 3 (257 cases, 20.7%), 2(249 cases, 20.1%), 1(215 cases, 17.3%), 4(212 cases, 17.1%), 5(137 cases, 11.0%), 6(87 cases, 7.0%), 7(44 cases, 3.5%), 8(26 cases, 2.1%), 9(5 cases, 0.4%), 10(6 cases, 0.5%), 11(2 cases, 0.2%).

*(Figure 2)*

Variety of problems were likely to occur in combination with elderly nursing care, elderly medical care, property management and housing.

　　 　　　　　 Dendrogram Between Problem Groups

elderly nursing care

elderly medical care

property management

housing

elderly abuse

trouble with neighbours

pension

money/debt

trouble with relatives

inheritance

wandering elderly

consumer

divorce/dissolution of adoption

tax

crime

*(Figure 3)*

*Response to Problems and Reasons for Not Consulting with Others*

In this Survey, the assisted elderly people were not aware of the problems in most of the cases (705 cases, 56.2%) and aware of the problems only in 296 cases (26.9%).

Traditionally, barriers to legal services were understood in terms of 1) barrier of cost, 2) barrier of information, 3) barrier of physical distance, 4) psychological barrier. Additionally, this survey highlighted the new barrier of 5) barrier of awareness or barrier of recognition in the midst of aging society.

*(Figure 4)*

However, even the elderly people who were aware of their own problems (296 cases ,26.9%) were not likely to consult with others. The reasons for not consulting were mostly because they “want to keep the problem to myself (122 cases, 41.2%)”, “there is no one to rely on and cannot go out on their own (75 cases, 25.3%)”, “reluctant to contact with others (47 cases, 15.9%)”, “family members or housemate do not allow to contact with others (23 cases, 7.8%)”.

*(Figure 5)*

In the past general legal needs survey including younger generation[[10]](#footnote-10), the reasons for not consulting were mostly because “they did not know what to do” or “felt any effort to be meaningless”. Moreover, while the reasons for not getting a consultation given by younger generations were primarily “all efforts seemed meaningless”, “don’t know what to do”, “taking action is bothersome” and “taking action seems difficult”, the older generations added “want to keep the problem to myself” or “want to resolve the problem on my own” as reasons, with increasing frequency as age went up.

*Process* *that Problems Became Tangible*

Problems were most likely to become tangible via supporters such as care manager, home caregiver, caregiver at nursing-care centre, district welfare officer, neighbours etc (621 cases, 48.9%) except family members. The following is family members of the elderly (197 cases, 15.5%), the elderly themselves (156 cases 12.3%) and others (295 cases, 23.2%).

Therefore, this survey demonstrated that collaborating with supporters such as care manager, home caregiver, caregiver at nursing-care centre, district welfare officer is essential so that the problems of the elderly become tangible.

*(Figure 6)*

*Use of Lawyers*

Firstly, problems were likely to become tangible via supporters such as care manager, home caregiver, caregiver at nursing-care centre, district welfare officer, neighbours etc. except family members as already mentioned.

Secondly, problems which became tangible were usually brought into local elderly care management centres that social caseworkers are working under the pubic nursing care insurance law.

Thirdly, social caseworkers working at local elderly care management centre narrowed down the problems and limited cases were brought into lawyers.

Flow leading to consultation by lawyers

*(Figure 7)*

Of 1,269 cases brought into local elderly care management centres, social caseworkers at centres mostly consulted non-legal professionals to try to resolve problems. Lawyers were used for only a minority of problems (237 cases, 19.1%).

*(Figure 8)*

Although the average use of lawyers was 19.1%, typical legal problems were more likely to be brought into lawyers. The highest was divorce/dissolution of adoption (42.9%) and followed by consumer (41.8%), money/debt (35.3%), inheritance (34.3%), property management (27.5%).

*Reasons Social Caseworkers Do Not Consult Lawyers*

The reasons social caseworkers at local elderly care management centre do not consult lawyers were mostly because “the problem would not be legal (363 cases, 36.1%)” and followed by “problem is legal but would not be very important (270 cases, 26.8%)”, “it would cost too much (161 cases, 16.0%)”, “don’t know appropriate lawyers for the problem (131 cases, 13.0%)”,”feel awkward in consulting lawyers (130 cases, 12.9%)”, “it would take time and effort (117 cases, 11.6%)”, “it would be possible to resolve without lawyers(36 cases, 3.6%)”.

*(Figure 9)*

The reasons like “not legal”, “legal but not very important”, “don’t know appropriate lawyers”, “feel awkward in consulting lawyers” etc. are still so abstract and ambiguous that in-depth interview with caseworkers was conducted. Following table is the excerpt from impressive in-depth interviews.

The reasons social caseworkers do not consult lawyers

|  |  |  |
| --- | --- | --- |
|  | choices from questionnaire | in-depth interview with caseworkers |
| 1 | * not legal | Although the case included legal issue, the elderly person refused the assistance firmly in the early phase. So, the caseworker terminated the case and interpreted that this is not the legal case that should be brought into lawyers. But this case should be defined “legal case” that fundamentally should be brought into lawyers. |
| 2 | - feel awkward in consulting lawyers  - legal but not very important | The caseworker did not have any experience to consult lawyers in the past and could not have image to consult them. So, the caseworker felt awkward in consulting lawyers. Finally, the caseworker interpreted that the case may be legal but would not be very important. But this case included important legal issue in fact (risk of eviction due to the improper property management) and should be brought into lawyers. |
| 3 | - don’t know appropriate lawyers  - cost too much  - take time and effort | The case included legal problem (elderly abuse) and it was necessary that experienced lawyer should visit elderly’s house repeatedly with the caseworker. But the caseworker didn’t know the appropriate lawyer who can handle this complicated type of case smoothly and patiently with affordable cost and reasonable time and effort. So, the caseworker finally gave up consulting lawyers. |
| 4 | - feel awkward in consulting lawyers | The case included elderly abuse issue and it was necessary that lawyer should visit elderly’s house repeatedly with the caseworker. This caseworker worried that consulting lawyers at the early phase would bother the lawyer and wondered when the case should be brought into the lawyer. (But finally, this caseworker missed the chance to consult the lawyer after wondering a while.) |

*(Table 2)*

Caseworkers often pointed out in in-depth interview that they have tendency to consult lawyers at late stage after damage was done and sometimes after becoming too late. They frequently mentioned that it would be necessary to set up some access point that caseworkers can feel free to consult with experienced lawyer who is easy to talk to without cost or with affordable cost from the early phase.

*The Degree to which Lawyers’ Advice is Relied on by Caseworkers*

The degree to which lawyers’ advice is relied on by caseworkers was bipolarized. Of 987 respondents, 338 respondents (34.3%) answered they relied on lawyer’s advice and 354 respondents (35.8%) answered they did not rely on lawyer’s advice. Intermediate were 243 (24.6%).

Interestingly, the more caseworkers contact lawyers, the more caseworkers became to rely on lawyer’s advice.

The Degree to which Caseworkers Contacted Lawyers

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Reliance on lawyers’ advice | Number | Every  day | Once a week | Once a month | Once every 3 months | Not Contacted | No answer |
| Relied　greatly | 135 | 0 | 7 | 42 | 52 | 32 | 2 |
| Relied to some extent | 203 | 0 | 4 | 41 | 83 | 75 | 0 |
| Intermediate | 243 | 0 | 1 | 10 | 32 | 200 | 0 |
| Not relied so much | 111 | 0 | 0 | 1 | 18 | 92 | 0 |
| Not relied at all | 243 | 0 | 0 | 1 | 9 | 232 | 1 |
| No answer | 52 | 0 | 0 | 0 | 1 | 22 | 29 |
| Total | 987 | 0 | 12 | 95 | 195 | 653 | 32 |

*(Table 3)*

*Meeting Chance (=Route) to Get to Know Lawyers*

Meeting chance (=route) that caseworkers get to know lawyers were divided into relatively formal route and informal one. The most formal one was via Japan Legal Support Centre that is legal aid organization established by Japanese government (69 cases, 29.1%). The following was via ongoing case conference (35 cases, 14.8%), via local bar association (17cases, 7.2%) etc. The informal one included wide variety of meeting chances such as consultation events, counselling seminar, one-stop counselling events in local community, personal connection with care manager, workshop or study group with caseworkers, liaison conference between caseworkers and stakeholders etc. (94 cases, 39.7%).

*(Figure 10)*

According to the in-depth interview, caseworkers commented:

*“Reliable formal route like Japan Legal Support Centre is important, of course. But we would like to know as many as experienced lawyers possible via informal route and know lawyers’ personal character as well as legal expertise. Informal route is helpful to understand lawyers’ personal character.”*

*“Caseworkers would like to provide services tailored to elderly’s specific needs. To do so, caseworkers need to know variety type of lawyers specialized in elderly law via informal route as well as formal route.*

This survey, especially the in-depth interview made it clear the importance of expanding the both formal and informal route to realize the access to justice for the elderly.

*Consulting Lawyers and Problem-solving Rate*

Did problem-solving rate improve significantly after caseworkers brought the case into lawyers and consulted them? Unfortunately, this survey demonstrated that there is not any significant difference about problem-solving rate between the cases brought into lawyers by caseworkers and those not brought into them.

Although problem-solving rate does not improve significantly, the more difficult and challenging the cases become, the more the cases were brought into lawyers by caseworkers. The rate that cases were brought into lawyers was 10.2%(20 cases) in not difficult but not simple case, 15.4%(94 cases) in difficult case, 29.1%(118 cases) in the most difficult case.

*(Figure 11)*

*(Figure 12)*

*(Figure 13)*

One possible explanation problem-solving rate does not improve significantly is that the cases brought into lawyers by caseworkers are often the most difficult cases at late stage after severe damage was done. As a result, it is often difficult for lawyers to improve problem-solving rate in short terms. However, because lawyers can prevent the further deterioration of the case by intervening it in long terms, the more difficult and challenging the cases becomes, the more the cases were brought into lawyers by caseworkers.

One hypothesis is if the cases were brought into lawyers at early stage before becoming the most difficult, lawyers might be able to resolve the problem and problem-solving rate could improve significantly in relatively short terms.

*Conclusion*

Unmet Legal Needs of the Elderly People

In this survey, the assisted elderly people were not aware of the problems in most of the cases (56.2%). Even the elderly people who were aware of the problems (296 cases ,26.9%) were not likely to consult with others due to the reason like; “want to keep the problem to myself”, “there is no one to rely on and cannot go out on their own”, “reluctant to contact with others etc.

Problems were most likely to become tangible via supporters such as care manager, home caregiver, caregiver at nursing-care centre, district welfare officer, neighbours etc (621 cases, 48.9%).

Even after supporters brought the problem into social caseworkers at local elderly care management centre, caseworkers were likely to consult with non-legal professionals to try to resolve problems. Lawyers were used for only a minority of problems (19.1%).

Caseworkers often pointed out in in-depth interview that they have tendency to consult lawyers at late stage after damage was done and sometimes after becoming late.

Therefore, this survey demonstrated that that legal needs of the elderly people have a tendency not to become tangible to lawyers compared with those of other generation and there is a huge amount of unmet legal needs behind the elderly people.

To Resolve the Unmet Legal Needs of the Elderly People

The degree to which lawyers’ advice is relied on by caseworkers was bipolarized. 34.3% caseworkers answered they relied on lawyer’s advice and 35.8% caseworkers answered they did not rely on lawyer’s advice. However, according to the survey, the more caseworkers come to contact lawyers, the more caseworkers became to rely on lawyer’s advice. In relying on lawyers’ advice, caseworkers tended to seek for both formal and informal route.

Caseworkers frequently mentioned that it is necessary to set up some access point that caseworkers can feel free to consult with experienced lawyer who is easy to talk to without cost or with affordable cost from the early phase so that every caseworker can rely on lawyers’ advice when necessary. Otherwise, caseworkers will hesitate to consult with lawyers at early phase and cases will be brought into lawyers at late stage after severe damage was done and cases became more complex. And finally, problem-solving rate does not improve significantly although lawyers might be able to prevent the further deterioration of the case by intervening it.

This survey demonstrated that “early intervention” and more “collaborative” approach between social caseworkers and lawyers is required to cater for the complex legal and non-legal needs of the elderly people who are more likely to live with cognitive impairment and other disability.

1. https://sustainabledevelopment.un.org/post2015/transformingourworld [↑](#footnote-ref-1)
2. http://www.houterasu.or.jp/en/index.html [↑](#footnote-ref-2)
3. *T**he government report of aging society Korei Hakusho*, p2(2017). [↑](#footnote-ref-3)
4. *The Report to build a plan to enhance comprehensive legal support by expert committee,* at3(2014). [↑](#footnote-ref-4)
5. *The government report of Criminal Offence, Hanzai Hakusho*, p2(2017). [↑](#footnote-ref-5)
6. The National Consumer Affairs Center of Japan, established as an incorporated administrative agency, works as a core consumer advocate organization in accordance with the Basic Consumer Act(www.kokusen.go.jp. [↑](#footnote-ref-6)
7. http://lawasia.asn.au/toyko\_2017\_event.html. [↑](#footnote-ref-7)
8. Local elderly care management centre is public organization stipulated under the pubic nursing care insurance law in Japan that provide assistance necessary for maintaining mental and physical health and for stabilization of the lives of local elderly people. [↑](#footnote-ref-8)
9. 23 wards of Tokyo is representative of metropolitan area, Aichi is representative of sub-metropolitan area, Kochi and Tottori is representative of local area in Japan. [↑](#footnote-ref-9)
10. Legal Needs Survey by Japan Legal Support Centre in 2008 [↑](#footnote-ref-10)