

Yokohama Declaration

October 4th, 2010
At Yokohama

The World Congress on Adult Guardianship Law 2010, held in Yokohama, Japan, from 2 October to 4 October 2010, is the first world congress in the field of Adult Guardianship Law, and its hosts and co-hosts decided to issue the Yokohama Declaration to reconfirm the extremely significant implications of the Adult Guardianship Law and the international roles it will play in the years to come, while making a proclamation to the world on the proper use of the adult guardianship system.

This Yokohama Declaration is the result of a three-day congress, as summarized by the participants of the World Congress on Adult Guardianship Law 2010. Part I covers the issues shared by countries around the world and Part II covers the issues specific to Japan.

The World Congress on Adult Guardianship Law 2010 Organizing Committee expresses its gratitude to all participants involved in the drafting of this Yokohama Declaration and hopes that this declaration will contribute to the continued development of the Adult Guardianship Law around the world.

I. International Part

1. WE, the participants in the World Congress on Adult Guardianship Law 2010, held in Yokohama, Japan, from 2 October to 4 October 2010

ACKNOWLEDGE that:

- (1) throughout the world the number of older people is increasing due to a combination of demographic factors, social changes, medical advances, and improvements in living conditions;
- (2) the existence of an aging population has an enormous impact on resources for health care, pensions, benefits, housing, transport, and social services, and will be a serious socioeconomic issue for decades to come;
- (3) mental capacity sometimes deteriorates with age, and the number of older people who are suffering from age-related impairments or disorders of the mind is also increasing;
- (4) there is emerging evidence and awareness of the nature and extent of the abuse of vulnerable older people in both family and institutional environments;
- (5) although older people are the primary recipients of adult guardianship services, mental incapacity can affect younger people with psychiatric illnesses, learning disabilities, and acquired brain injuries; and
- (6) despite an overall improvement in the protection of human rights, in many states the law relating to adult guardianship has been either neglected or not fully developed to take into account modern thinking with regard to anticipatory decision-making, best practices when assessing mental capacity, and establishing

the procedures for substituted proxy decision-making on behalf of adults who lack the capacity to make decisions for themselves.

2. AFFIRM the guiding principles and provisions of:

- (1) the *Hague Convention of 13 January 2000 on the International Protection of Adults*, which entered into force on 1 January 2009, and regulates jurisdiction, applicable law, recognition, enforcement and co-operation; and
- (2) the *United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities*, which requires states who are parties to the convention to reaffirm the universality, indivisibility, interdependence, and interrelatedness of all human rights, and to reaffirm the need for persons with disabilities to be guaranteed full enjoyment of such rights without discrimination.

3. DECLARE that in the context of adult guardianship:

- (1) a person must be assumed to have the mental capacity to make a particular decision unless it is established that he or she lacks capacity;
- (2) a person is not to be treated as unable to make a decision unless all practicable steps to help him or her do so have been taken without success;
- (3) legislation should recognize, as far as possible, that capacity is both “issue specific” and “time specific” and can vary according to the nature and effect of the decision to be made, and can fluctuate in an individual from time to time; and
- (4) measures of protection should not be all-embracing and result in the deprivation of capacity in all areas of decision-making, and any restriction on an adult’s capacity to make decisions should only be imposed where it is shown to be necessary for his or her own protection, or in order to protect third parties.
- (5) measures of protection should be subject to periodic and regular review by an independent authority wherever appropriate.

4. FURTHER DECLARE that every adult who lacks the capacity to make a particular decision at a particular time, and is without any other means of support or representation in the decision-making process, is entitled to have a competent guardian who will:

- (1) act with due care and diligence when making any decision on behalf of the adult;
- (2) act honestly and in good faith;
- (3) act in the best interests of the adult;
- (4) respect and follow the adult’s wishes, values, and beliefs to the greatest possible extent, where these are known or can be ascertained, and clearly will not result in harm to the adult;
- (5) limit interference in the adult’s life to the greatest possible extent by choosing the least intrusive, least restrictive, and most normalising course of action;
- (6) protect the adult from ill-treatment, neglect, abuse, and exploitation;
- (7) respect the adult’s civil and human rights, and take action on his or her behalf whenever those rights are threatened;
- (8) provide the adult with assistance and support, and actively pursue things to which he or she may be entitled, such as pensions, benefits, or social services;
- (9) not take advantage of his or her position as guardian;
- (10) be alert to, and seek to avoid, any conflict between his or her interests as guardian and the interests of the adult for whom he or she is acting;
- (11) actively assist the adult to resume or assume independent or interdependent living wherever possible;

- (12) involve the adult in all decision-making processes to the greatest possible extent;
- (13) encourage participation and help the adult to act independently in those areas where he or she is able;
- (14) keep accurate accounts records, and be ready to produce them immediately whenever required to do so by the court, tribunal, or public authority that appointed him or her;
- (15) act within the scope of the authority conferred upon him or her by the court, tribunal, or public authority that appointed him or her; and
- (16) keep under review the continuing need for any form of guardianship.

5. AND FURTHER DECLARE that, because adult guardianship can involve a deprivation of liberty, human rights are engaged, and because the work and duties of guardians worldwide are generally based on public intervention:

- (1) states should address the development of professional standards, provide appropriate instruments of control, and guarantee a satisfactory infrastructure supported by adequate resources; and
- (2) this Yokohama Declaration should be disseminated and communicated to public bodies and national governments to raise awareness of the issues involved, and to obtain the support required to implement the provisions that we have acknowledged, affirmed, and declared herein.

II. Japanese Part

After expressing their full accord with the spirit of Part I of this declaration, the Japanese participants of the World Congress on Adult Guardianship Law 2010 urged the Japanese government to ratify at the earliest opportunity the United Nations Convention on the Rights of Persons with Disabilities and the Hague Convention concerning the protection of adult(s), and confirmed the following items to be included in the Yokohama Declaration with the full support of overseas participants:

- 1. Revision of the current Adult Guardianship Law and improvement in the operation of the law
 - (1) Mayors around the country should make legislative preparations for a system that further facilitates statements to be made by mayors on guardianship for adult(s), etc.
 - (2) Public subsidies should be provided to those who have difficulty paying the costs of the adult guardianship system
 - (3) Given that the commencement of adult guardianship has an aspect of restricting the rights of adults, an appraisal and interview with adults should not be omitted and the current situation—in which the rate of execution of appraisals and interviews with adults remains at a low level—should be improved.
 - (4) Although the current Adult Guardianship Law specifies that a guardian of an adult must be assigned with power of attorney for the adult's property only, the guardian's power of attorney should not be limited to property management alone and this point should be revised. The guardian should be able to consent to medical treatment for the adult as well.
 - (5) Disqualifications remaining in the current adult guardianship system should be abolished. There are no rational grounds for disfranchisement on the

determination of the commencement of guardianship. Doing so contravenes the principles of the constitutionally guaranteed right to vote and represents a gross violation of basic human rights.

- (6) Although the continuing power of attorney system is the most appropriate system in terms of “respect of the right to self-determination,” it has not been widely used. Legislative measures should be taken to promote the use of the continuing power of attorney system and at the same time to prevent abuses.

2. Creation of a public support system

Irrespective of the scale of the user’s assets or the existence of the petitioner, the adult guardianship system should be positioned as a system available for everyone and for this reason it is essential that the government publically support the entire adult guardianship system. Since the public support system results in the “socialization of guardianship for adult(s),” a public support system by the government is recommended. The main premise of smooth implementation of a public support system should be further expansion and enhancement of functions of the judiciary, especially functions of the family courts in the operation of the adult guardianship system. The establishment of such a public support system is to expand the network among the adults’ families, the general public and the specialists in each field and to contribute to securing appropriate guardians of adults and enhancing the advocacy functions of the adult guardianship system.

3. Potential of the new adult guardianship system

The potential for further development should always be sought after in search of a new philosophy rather than staying within the framework of the current Adult Guardianship Law.

- (1) The current adult guardianship system is based on the three types of protection, namely guardianship, curatorship, and advisership. Guardianship, in particular, considerably limits the capacity of the adult. Considering the effect of Article 12 of the United Nations Convention on the Rights of Persons with Disabilities, it is necessary to study appropriateness of the current three types. At the same time it is also necessary to study procedural protections of the adult in the procedures for the guardianship of adult(s).
- (2) Although one possible method to protect adults without limiting their capacity is the use of trusteeship, this type of trusteeship is not commonly used in Japan. Courts need to study the introduction of a trusteeship system as a substitute for adult guardianship with respect to the setting of trusteeship.
- (3) To improve the present situation, in which victims of traffic accidents with higher brain dysfunction rarely use the adult guardianship system, it is necessary to adopt new legislative measures to encourage people with higher brain dysfunction to use the system.

The World Congress on Adult Guardianship Law 2010
WCAG2010 Organizing Committee
All Participants of WCAG2010