

## **Opinions of the Commission on Policy for Persons with Disabilities on the Status of Implementation of the Convention on the Rights of Persons with Disabilities**

April 2022

Commission on Policy for Persons with Disabilities

The Commission on Policy for Persons with Disabilities (hereinafter referred to as the “Policy Commission”) plays a role as an entity in charge of monitoring the status of national implementation of the Convention on the Rights of Persons with Disabilities (hereinafter as the “Convention”) through the monitoring of the status of implementation of the Basic Program for Persons with Disabilities.

Before the submission of the Initial Report of the Japanese Government on the status of national implementation of the Convention, the Policy Commission conducted the monitoring of the status of implementation of the Third Basic Program for Persons with Disabilities and reported its opinions as a “Summary of Discussion,” which was submitted to the United Nations as the Appendix to the Initial Report. The Policy Commission’s opinions were reflected in the main body of the Initial Report with regard to the eight topics selected by the Policy Commission in the Summary of Discussion as topics of particular importance.

In preparation for the examination of the status of implementation in Japan by the United Nations Committee on the Rights of Persons with Disabilities and in light of the status of implementation of the Fourth Basic Program for Persons with Disabilities, the Policy Commission held an additional discussion focusing on the progress in initiatives carried out by Japan after the period subject to the Initial Report (since March 2016 and thereafter) and the future challenges, and compiled its opinions in this document.

The Policy Commission continued to focus on the eight areas that it cited upon the submission of the Initial Report as areas that were of particular importance and posing major challenges. It also included, in the scope of its discussion, additional areas for which it found progress or concerns after the submission of the Initial Report, namely Articles 5, 7, 8, 9, 11, 16, 30, and 33 of the Convention, and compiled its opinions

accordingly.

## **[Discussion in Specific Areas]**

### **Article 5: Equality and non-discrimination**

The Policy Commission acknowledges the following progress.

- The amendment to the Act for Eliminating Discrimination against Persons with Disabilities<sup>i</sup> was passed by the Diet in May 2021 and promulgated in June of the same year. The major changes introduced by this amendment include a measure to obligate all private businesses to provide reasonable accommodation.

The Policy Commission urges the following actions.

- Both the national and local governments must make further efforts to develop necessary systems so as to deal with consultation requests and to prevent or solve disputes in connection with discrimination on the basis of disability.
- Discrimination against persons with disabilities is found in such cases as where these persons are disallowed from taking examinations under qualification or license systems or the like due to falling under the relative grounds for disqualification, denied entry to higher educational institutions or professional training colleges, or denied employment. Measures need to be taken to ensure that persons with disabilities will not be denied participation in examinations, entry into schools, or employment if it is possible to have them engage in jobs that require qualifications by providing reasonable accommodation.

### **Article 6: Women with disabilities**

The Policy Commission acknowledges the following progress.

- Progress was made in the establishment of one-stop support centers for victims of sexual crimes and sexual violence which provide support for victims including persons with disabilities.<sup>ii</sup>

The Policy Commission urges the following actions.

- To comply with the provisions concerning “women with disabilities” as specified in Article 6 of the Convention, it is necessary to introduce nursing care by persons of the same gender at welfare facilities, in-home nursing care services, and medical institutions as a standard method of providing nursing care, and further promote measures to prevent sexual crimes against women with disabilities.
- There is an issue of gender balance for the membership of various councils and experts’ panels at which policies of the national and local governments are determined, and positive actions<sup>iii</sup> have been promoted to address this issue. From

the perspective of eliminating intersectional discrimination, further efforts must be made to promote the participation of women with disabilities in councils and experts' panels for deliberating on measures for persons with disabilities, including the Policy Commission.

#### Article 7: Children with disabilities

The Policy Commission is concerned about the following point and requests responses.

- Children with disabilities are exposed to the risk of being abused. Assistance and support for such children need to be enhanced by taking into account the prevention of child abuse.

#### Article 8: Awareness-raising

The Policy Commission urges the following actions.

- The amendment to the Barrier-Free Law<sup>iv</sup> in 2020 has introduced provisions concerning a “mental barrier-free”.<sup>v</sup> It is necessary to make efforts to further promote the understanding of this concept so that it will be correctly understood from the perspective of a social model and human rights model of disability.
- The existence of the eugenic and ableist ideology that denies people with disabilities was further revealed by the Tsukui Yamayuri En incident (2016). Awareness-raising and education to eradicate the eugenic and ableist ideology are necessary.

#### Article 9: Accessibility

The Policy Commission acknowledges the following progress.

- Progress was made in town-building based on universal design mainly in urban areas, such as the amendment to the Barrier-Free Law on two occasions<sup>vi</sup> and the introduction of the obligation of hotels of a certain size or larger to develop barrier-free rooms for at least 1% of all rooms. A framework for monitoring the status of implementation of the Barrier-Free Law was established and the participation of organizations of persons with disabilities and other related organizations in this framework was institutionalized.

The Policy Commission urges the following actions.

- Laws and measures to improve the environment for accessibility to information are needed. For example, public organizations should preferentially procure information and communication equipment and services that conform to accessibility standards; and private businesses should promote accessibility of their websites and mobile

apps.

- In order to enhance the accessibility of public transportation systems and small retailers in regional areas, it is necessary to take effective measures, including support for businesses.

#### Article 11: Situations of risk and humanitarian emergencies

The Policy Commission urges the following actions.

- It is urgently necessary to take measures to promote the introduction of universal design for shelters, welfare shelters, and temporary housing, and measures to solve problems with accessibility to disaster prevention information, evacuation information, information during a disaster, and information after a disaster, while taking into account opinions of persons with disabilities who are affected by a disaster.

#### Article 12: Equal recognition before the law

The Policy Commission urges the following actions.

- The fully substitute guardianship category in the adult guardianship system should be used as a last resort for protecting the rights and interests of persons with disabilities in cases where it is difficult for them to exercise their capacity for judgement even after the best assistance has been provided. However, under the current system, persons with disabilities who are judged to lack the ability to appreciate their situation<sup>vii</sup> are restricted from exercising their capacity for judgement even if they have mental capacity.

It is urgently necessary to build a social framework to help persons with disabilities exercise their capacity for judgement and make decisions on everyday affairs that lead to the exercise of their capacity for judgement.

#### Article 14: Liberty and security of person

The Policy Commission urges the following actions.

- It is absolutely necessary to ensure that rights advocates who are independent from families and health-care professionals are involved in the treatment of psychiatric patients in order to protect the rights of the patients. From this perspective, concerning the systems and their operation under the Mental Health and Welfare Act,<sup>viii</sup> etc., it is necessary to reexamine the appropriateness of Article 33 of the Mental Health and Welfare Act, which is the provision concerning involuntary hospitalization for medical care and protection.

The Policy Commission is concerned about the following point and urges the appropriate actions.

- Involuntary hospitalization, seclusion and restraint including chemical restraint in mental care and in-patient facilities are applied to persons such as those with mental disabilities, dementia, and severe behavioral disorders even when these measures are not necessary as emergency measures or measures of last resort. No specific roadmap to eliminate such practices has been developed or implemented.

#### Article 16: Freedom from exploitation, violence and abuse

The Policy Commission is concerned about the following point and urges appropriate action.

- Effective measures to prevent abuse at psychiatric hospitals have not been implemented.

#### Article 19: Living independently and being included in the community

The Policy Commission acknowledges the following progress.

- A law providing for the establishment of support centers for children in need of medical care and the provision of medical care<sup>ix</sup> and other support at nursery centers, schools, etc.<sup>x</sup> was promulgated in June 2021 and put into effect in the same year.
- In order to promote the establishment of a comprehensive local care system applicable to mental disabilities as well, the use of peer support and the provision of outreach support have been implemented through the subsidy programs for prefectures and municipalities since FY2017. Commissioned programs to support initiatives of prefectures and municipalities have also been implemented.

The Policy Commission urges the following action.

- Slow progress in the facility-to-community transition of persons with disabilities is a challenge. It is necessary to promote such transition from the perspective of realizing diverse ways of living pursuant to their wishes, by taking such measures as establishing small group homes and securing accessibility to medical care.
- Persons with disabilities who lead independent lives in the community while receiving medical care support on a daily basis are not provided with sufficient medical care services or nursing care services, and there are large regional gaps in terms of the availability of these services. It is necessary for persons with disabilities to be guaranteed 24-hour medical care and nursing care so that they can live with

human dignity and respect for personal privacy wherever they live.

- It is urgently necessary to enhance psychiatric care and mental health welfare and improve the environment for persons with mental disabilities so that they can continue to live in the community, by taking such measures as helping those hospitalized to leave the hospital and start their lives in the community, and providing those who live in the community with home-visit services.

#### **Article 21: Freedom of expression and opinion, and access to information**

The Policy Commission acknowledges the following progress.

- A law to ensure the smooth use of telephones by persons with hearing disabilities, etc. was promulgated in 2020 and put into effect in December of the same year.<sup>xi</sup> This law provides for measures including the introduction of a system to designate entities to provide telephone relay service by helping persons with hearing disabilities, etc. communicate by telephone using sign language, etc., and provide a subsidy to the designated service providers.

The Policy Commission is concerned about the following points and urges appropriate action.

- There are challenges in providing information and supporting communication according to the diversity of disabilities. Major challenges exist with respect to responses in cases of emergency, responses to persons who use highly individualized communication methods, including the deafblind and persons with intractable diseases, cross-ministerial responses, and regional gaps.
- In addition, it is necessary to further promote measures to secure the provision of accessible textbooks, educational materials, and services corresponding to the diversity of persons with disabilities, including digital textbooks, and to secure accessibility to information to be provided by public organizations and private businesses.

#### **Article 24: Education**

The Policy Commission acknowledges the following progress.

- Progress was made in the support for children and students with disabilities enrolled in normal classes, through such measures as dispatching specialized staff including special needs education assistants, establishing a system of special support service in resource rooms, and standardizing and increasing the number of teachers involved in special support service in resource rooms.

- Through such measures as the revision to the National Curriculum Standards (Course of Study), it was made obligatory to prepare individualized teaching plans and individualized education support plans for children and students who receive special needs service in resource rooms. Preparation of individualized teaching plans was also recommended for children and students with disabilities who do not receive special support services in resource rooms.
- As a result of the Act for Eliminating Discrimination against Persons with Disabilities<sup>xii</sup> coming into effect, progress was made in the provision of reasonable accommodation to students with disabilities at higher education institutions.

The Policy Commission urges appropriate action.

- It is necessary to further promote the following measures: to conduct a detailed survey to identify the actual situations of children and students with disabilities; to improve the educational environment in normal classes; and to review the allocation of budgets and human resources to support children and students with disabilities by providing reasonable accommodation.

The Policy Commission is concerned about the following point and urges appropriate action.

- The number of children and students enrolled in special needs education schools and special needs education classes has been increasing significantly. Measures to secure the provision of reasonable accommodation and individualized support in an inclusive education environment are only halfway complete.

#### **Article 27: Work and employment**

The Policy Commission acknowledges the following progress.

- In the employment sector, in April 2016, the prohibition of discrimination against persons with disabilities and the obligation to provide reasonable accommodation to such persons were imposed on employers. The “Guidelines on Prohibition of Discrimination against Persons with Disabilities” and the “Guidelines on Reasonable Accommodation” were formulated, and the dispute resolution procedure was established.
- Since April 2018, persons with mental disabilities were included in the scope of persons whom employers are obligated to employ in addition to persons with physical disabilities and persons with intellectual disabilities. The actual rate and number of persons with disabilities employed by private companies have been



increasing steadily.

The Policy Commission is concerned about the following point and urges appropriate action.

- Persons with intractable diseases are not included in the scope of persons with disabilities covered by the employment rate system for persons with disabilities.<sup>xiii</sup>

#### Article 30: Participation in cultural life, recreation, leisure and sport

The Policy Commission acknowledges the following progress.

- Following the establishment of the Act on Cultural and Artistic Activities by Persons with Disabilities,<sup>xiv</sup> measures to promote cultural and artistic activities by persons with disabilities were promoted in a planned manner.

The Policy Commission urges the following actions.

- It is necessary to further enhance efforts to secure accessibility of persons with disabilities to tourist sites, entertainment facilities, and cultural and art facilities.

#### Article 31: Statistics and data collection

The Policy Commission acknowledges the following progress.

- The Comprehensive Survey of Living Conditions in 2022 will investigate the situation regarding the degree of limitation in functioning in daily activities, using the short set of questions developed by the Washington Group on functioning.
- The 2021 Survey on Time Use and Leisure Activities will investigate the differences in terms of the time used depending on whether persons with disabilities have problems in daily activities, using the set of questions developed by the Statistical Office of the European Union (Eurostat).

The Policy Commission urges the following actions.

- It is necessary to promote the enhancement of statistics that can be used for monitoring and evaluating measures regarding persons with disabilities, by including questions on persons with disabilities, and women with disabilities, in particular, in basic statistical surveys regarding important sectors for measures for persons with disabilities, such as employment and education.

#### Article 33: National implementation and monitoring

The Policy Commission is concerned about for the following point.

- There is no independent national organization committed to human rights remedy in accordance with the Principles relating to the Status of National Institutions (the Paris Principles).

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<sup>i</sup> Act Partially Amending the Act for Eliminating Discrimination against Persons with Disabilities (Act No. 56 of 2021)

<sup>ii</sup> The establishment of support centers in all prefectures was achieved in October 2018, ahead of the achievement goal of establishing at least one center in each prefecture (by the end of 2020).

<sup>iii</sup> This term means that the opportunity to voluntarily participate in activities in all fields of society as an equal constituent member of society is positively provided to either of the gender groups to the extent necessary to narrow the gender gap.

<sup>iv</sup> Act on Promotion of Smooth Transportation, etc. of Elderly Persons, Disabled Persons, etc. (Act No. 91 of 2006)

<sup>v</sup> The “barrier-free mind” means the state where all people who have different physical and mental characteristics and minds have communication and support each other to deepen mutual understanding. The Universal Design 2020 Action Plans (approved on February 20, 2017, by the Ministerial Council on Universal Design 2020) cites the following as the points that represent the “barrier-free mind”:

(1) To understand the “social model of disability,” which is the social responsibility to remove the social barriers for persons with disabilities.

(2) To thoroughly ensure that there is no discrimination (unfair discriminatory treatment and not providing reasonable accommodation) against persons with disabilities (and their families).

(3) To foster the abilities to communicate with various people who have different conditions and develop the sensibility or empathy to imagine the difficulties and pain that everyone undergoes.

<sup>vi</sup> The 2018 amendment provided that public transport businesses, etc. must promote measures to introduce tangible and intangible improvements in an integrated manner; and the 2020 amendment designated public elementary and junior high schools as specially specified buildings and included them in the scope of buildings subject to the obligation to comply with the barrier-free standards.

<sup>vii</sup> The ability to make a reasonable judgment as to what one would gain or lose due to one's own juridical act.

<sup>viii</sup> Act on Mental Health and Welfare for the Mentally Disabled (Act No. 123 of 1950)

<sup>ix</sup> Medical practice such as respiratory management by artificial ventilator and mucus aspiration.

<sup>x</sup> Act on Support for Children in Need of Medical Care and Their Families (Act No. 81 of 2021)

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<sup>xi</sup> Act on the Smooth Use of Telephones by Persons with Hearing Disabilities (Act No. 53 of 2020)

<sup>xii</sup> Act for Eliminating Discrimination against Persons with Disabilities (Act No. 65 of 2013)

<sup>xiii</sup> This system is provided under the Act to Facilitate the Employment of Persons with Disabilities (Act No. 123 of 1960).

<sup>xiv</sup> Act on Cultural and Artistic Activities by Persons with Disabilities (Act No. 47 of 2018)