

# Institutional Reform of Disability Policy (2009-14) in Japan: The Process and Outcome

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## ABSTRACT

The efforts of recent policy reform in Japan were analyzed and nine outcomes were extracted. The reform was carried out to harmonize existing laws with the Convention of the Rights of Persons with Disabilities before its ratification. The reform process was characterized by substantial participation of persons with disabilities and their family members.

The products of the reform include: (1) establishment of Policy Monitoring System involving DPO participation, (2) enactment of advocacy legislations, (3) expansion of legal definition of persons with disabilities, (4) resolution of the issue of uncovered population in the national disability survey, (5) development of ideas in disability laws, (6) employment of “social model view” in policy, (7) ratification of Convention of the Rights of Persons with Disabilities, (8) five “compass” documents for disability policy, and (9) stronger tie among DPOs.

However, serious gaps still exist between disability policy and legislations and the Convention, and further development is needed.

**Key words;** Institutional Reform of Disability Policy, CRPD, Skeleton Recommendation, disability, social model of disability

## Introduction

During the period of December 2009 through January 2014, a comprehensive review of disability policy and laws had been carried out in Japan by the government, and the review was requested and supported by disabled person’s organizations. The review was named “Institutional Reform of Disability Policy” (hereinafter referred to as “the Reform”).

The Reform did not produce enough policy change from the viewpoint of disability movement. A setback of political climate prevented its completion. The progressive party (Democratic Party) won the 2009 general election and replaced the conservative cabinet and started the Reform. But the Party soon lost many seats in the Diet election in 2010, and finally the regime change was made by the 2012 general election.

However, we see many significant progresses during these five years in the 60- year history of disability

policy after WWII. It would be important to recognize positive outcomes of the Reform to further develop the policy. And the detailed information of the Reform and its outcome in English might be useful for those concerned in foreign countries.

## I Background

Two factors exist behind the Reform. The first is international, and the second is domestic. As the international factor, the Reform was necessary to ratify the Convention of the Rights of Persons with Disabilities (CRPD). As the Constitution puts the position of a ratified convention between the Constitution and general laws in legislative hierarchy, Japan needed to amend the disability related laws so as to harmonize them with CRPD in advance of the ratification.

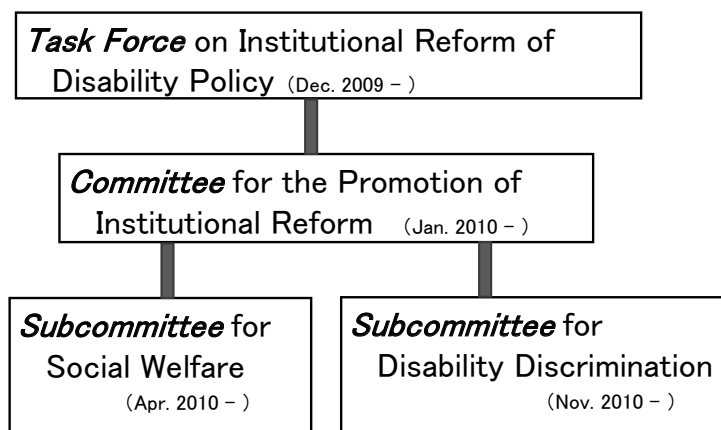
The domestic factor can be broken down to two aspects: (1) the change of political power in 2009 as mentioned above, and (2) the nationwide lawsuit against the Law of Support for Independence of Persons with Disabilities. The Law was enforced in 2006 and soon 71 persons with disabilities made a lawsuit accusing that the Law violated the Constitution. They have especially criticized the new copayment scheme that requested 10% copayment (user's charge) when they use social welfare services. In 2009 the new power took over the status of defendant and asked the plaintiff to withdraw the lawsuit promising that the new government will establish a new, rights-based social welfare law and enforce it by August 2013. It also promised to assure enough participation of DPO (disabled persons' organization) in the process of developing the new bill. These promises were documented into "Basic Agreement" (reconciliation document) in January 2010, five days before the first meeting of the Committee (explained below).

## II Organization

In December 2009, "Task Force on Institutional Reform of Disability Policy" was established in Cabinet Office and headed by the Prime Minister. Under the supervision of the Task Force "Committee for the Promotion of Institutional Reform of Disability Policy" was convened and two Subcommittees were organized for Social Welfare and for Disability Discrimination (Fig. 1). The Committee held 38 meetings in two and a half years, while the Subcommittee for Social Welfare held 19 meetings in approximately two years and the Subcommittee for Disability Discrimination held 25 meetings in approximately two years. Four recommendation documents were submitted to the Task Force by these committees.

These committees had new characteristics when compared to conventional government councils. First, persons with disabilities and their family constituted majority of the members in accordance with the principle of CRPD, i.e., "Nothing about us without us" (Table 1). Persons with disabilities or family members consisted 14 of total 26 members of the Committee. The Subcommittee for Social Welfare was composed of 55 members of which persons with disabilities or family members were 29, service providers were 14, persons with relevant knowledge and experience were 9 and heads of local government were 3.

Second, the management of these committees was not initiated by government but by the members.



**Fig.1 Organizational Structure of the Institutional Reform**

**Table 1 Composition of the committees**

		The Committee for Promotion of Institutional Reform	Subcommittee for Social Welfare
Persons with disabilities	Orthopedic	○○○○○	○○○○○
	Visual	○○	○○
	Hearing	○○	○○
	Deaf-blind	○	○○
	Psycho-social	○	○○○
	Intellectual	○	○○
	Chronic disease		○
Family members	Orthopedic		○○
	Intellectual	○	○○○○○
	Psycho-social	○	○
	Severe physical and intellectual		○
	Higher brain functions		○
	Chronic disease		○
	Developmental		○
Persons with relevant knowledge and experience		○○○○○○○	○○○○○○○○○
Heads of local government		○○	○○○
Services providers			○○○○○○○○○ ○○○○○○○○○
Labor union leaders		○	
<b>Total</b>		<b>24 persons</b>	<b>55 persons</b>
Persons with disabilities or families (written again)		14	29

For example in the case of the Subcommittee for Social Welfare, topics of discussion, schedule and time tables, and draft and final reports were prepared and decided by the members. Government officials worked behind the scenes and carried out such logistic tasks as finance, preparation of meeting rooms, printing of materials, and assurance of accessibility.

Third, enhanced accessibility to information. Sign language interpreter, summary note taker, finger Braille interpreter for deaf-blind persons and Braille materials were prepared. Members with intellectual disability had chosen a supporter who took the next seat and personally provided explanation. Moreover, the member with intellectual disability also used a “Yellow Card” to stop the meeting and requested easy-to-understand remarks.

Fourth, seats for the public, a relay broadcasting and on-demand video release were provided to secure transparency and openness to the public.

### III Process

Table 2 shows main points of the Reform.

Based on the initial report of the Committee, the Task Force and the Cabinet meeting decided principal direction and “Roadmap” for the Reform. And based on the second report of the Committee, the Basic Law of Persons with Disabilities was amended in 2011. Also based on the report of Subcommittee for Social Welfare, that is, the so-called “Skeleton Recommendation”, the Law for Support for Independence of Persons with Disabilities was amended with a new name ” the Comprehensive Support Act for Persons with Disabilities” in 2012. In 2013, based on the report of the Subcommittee for Discrimination, a new legislation, namely the Act for Resolution of Discrimination of Persons with Disabilities, was enacted in 2013. And following these three main reforms, the CRPD was ratified in 2014.

Among these reforms the reform of social welfare law was especially far from drastic change. Most points of Skeleton Recommendation were ignored and the government’s promise to establish a new law was not kept, although the government itself insists that the “new” law was enacted and the Skeleton recommendation was reflected as much as possible.

The Subcommittees dissolved after finalizing the report and the Committee was converted to the Policy

**Table 2 Main events of the Reform**

2010	Jan.	Committee for the Reform started
	Apr.	Subcommittee for Social Welfare started
	Jun.	Initial report of the Committee
	Nov.	Subcommittee for Disability Discrimination started
	Dec.	Second report of the Committee
2011	<b>Jul.</b>	<b>Amendment to the basic Law of Persons with Disabilities</b>
	Aug.	Report of Subcommittee for Social Welfare, “the Skeleton Recommendation”
2012	<b>Jun.</b>	<b>Amendment to the Law for Support for Independence of Persons with Disabilities, with a new name ”the Comprehensive Support Act for Persons with Disabilities”</b>
	Sep.	Report of Subcommittee for Discrimination
2013	<b>Jun.</b>	<b>Enactment of the Act for Resolution of Discrimination of Persons with Disabilities</b>
2014	<b>Jan.</b>	<b>Ratification of CRPD</b>

Committee for Persons with Disabilities on the ground of the amended Basic Law in 2012 (one year after the amendment).

#### IV Outcome 1: Establishment of Policy Monitoring System involving DPO participation

The 2011 amendment to the Basic Law stipulates that national and prefectural governments must, and municipal government must endeavor to, establish Disability Policy Committee in their jurisdiction. The role of previous committees stipulated before the amendment had been limited to give some comments to the draft disability plan of each government. But the roles of the Disability Policy Committees include, in addition, monitoring of the implementation of disability plan and the CRPD and giving a recommendation for a policy change when necessary.

At the same time, governments must consider the composition of the committee so that the opinions of members with diverse types of disabilities could be reflected.

#### V Outcome 2: Enactment of advocacy legislations

The Reform promoted the enactment of new type of laws in Japan, such as the Act for Resolution of Discrimination of Persons with Disabilities and the Abuse Prevention Act for Persons with Disabilities (enacted in 2011). Also the Act for Promotion of Employment of Persons with Disabilities was amended in 2013 and stipulated anew the prohibition of employment discrimination on the ground of disability including denial of provision of reasonable accommodation.

In the 60-year history of disability policy, focus was placed on the legislation to provide services to persons with disabilities. Now we also have advocacy legislations.

#### VI Outcome 3: Expansion of legal definition of persons with disabilities

The article 2 of the Basic Law was amended and underlined words were added:

“Person with a disability” means a person with a physical impairment, a person with an intellectual impairment, a person with a mental impairment (including developmental impairment), and other persons with an impairment of functions of the body or mind (hereinafter referred to collectively as "impairment"), and who are in a state of facing substantial limitations in their continuous daily life or social life owing to an impairment or a social barrier.

“Other persons with an impairment of functions of the body or mind” mean those persons who do not have the “Disability Notebook” (an identification notebook which proves the person has an impairment of the permanent nature and considerable severity) issued by government. Those persons with disabilities but without the Notebook had been excluded from disability services such as social welfare services

or employment support services. This revision means all persons with an impairment of all types and severity are now covered by the disability policy if he/she has a support needs, and this understanding was confirmed in the Diet.

However the Basic Law is a principle law and therefore substantive laws need to be revised. So far, the new definition of persons with disabilities has been employed in the Act for Resolution of Discrimination of Persons with Disabilities and partially introduced in the Comprehensive Support Act for Persons with Disabilities, namely, inclusion of persons with some types of chronic disease as the target population.

### VII Outcome 4: Resolution of the issue of uncovered population in the national disability survey

As a relating outcome to the previous one, a progress was made in the area of disability survey. The Ministry of Health, Labor and Welfare had been carrying out two surveys on children and adults with disabilities living in community every five years, i.e., the one for physical disabilities and the one for intellectual disabilities. But in the process of the Reform the Ministry carried out a new survey, named “Difficulty in Living Survey”, which covered all persons with disabilities including non holders of the Disability Notebook. The results showed only about 5% of prevalence of persons with disabilities among total population. But it is expected that the prevalence would get closer to 15%, which is the world prevalence estimated by WHO, in proportion as the new definition of disability become familiar in Japanese disability community.

### VIII Outcome 5: Development of ideas in disability laws

The amended Basic Law stipulate ideas (principles, missions or viewpoints) listed in Table 3. Most of them are very new ideas imported from the CRPD. We see a big progress in the ideas of the Law, and

**Table 3 Ideas in the amended Basic Law**

View of human being, human rights	◆ dignity of an individual person
	○ respect to individual characteristics
	○ basic human rights
	◆ assurance of opportunity to take part in activities in every areas
	○ assurance to offer a choice (place to live, means of communication)
View of the Society, View of Persons with disabilities	○ co-existent (inclusive) society
	○ equality between persons with and without a disability
	◆ prohibition of discrimination on the ground of disability
	○ removal of societal barrier
Basic direction of disability policy	◆ comprehensive and planned implementation
	○ planning and implementation based on the situation of lives of PwD
	○ planning and implementation based on the opinions of PwD

◆ already existed before the amendment

○ added by the amendment

Categorization of ideas into three groups and the group names are produced by the author.

some of them are also used in the Act for Resolution of Discrimination of Persons with Disabilities and the Comprehensive Support Act for Persons with Disabilities.

But the CRPD stipulate the rights of persons with disabilities to live in the community and participate to the society on equal terms with persons without disabilities, the rights to receive necessary support to realize these rights, and also the responsibilities of the state parties to provide these supports. The ideas of the Basic Law are still behind compared to the CRPD, and carefully avoiding “the rights of the persons with disabilities to receive services” and “the duty of the governments to provide them”.

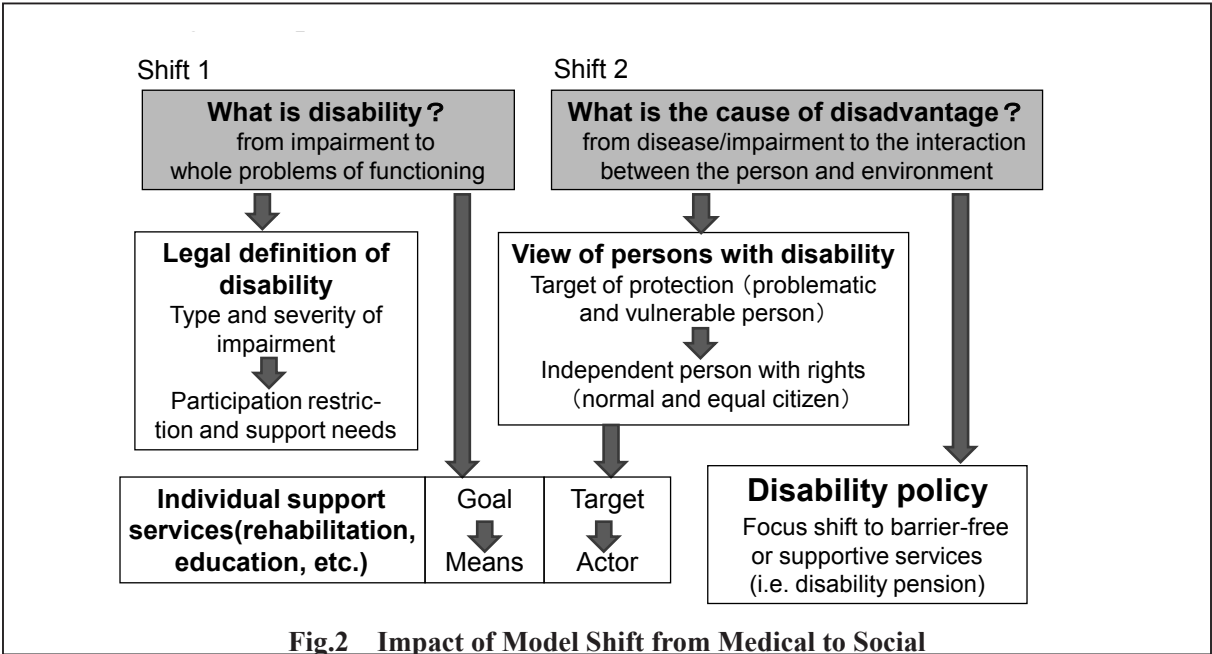
### IX Outcome 6: Employment of “social model view” in policy

“Social model view of disability” is one of the ideas introduced in the Reform, but its influence is wide and deep and therefore it seems appropriate to mention as a separate outcome.

There are two definitions of “social model”, so to speak: “genuine social model” and “integrated social model”. The former explains the cause of disadvantage suffered by persons with disabilities solely exists in the environment, and the latter explains it as a product of the interaction between the persons with a health condition and his/her environment. The Reform employed the idea of “integrated social model” following the CRPD and WHO-ICF.

Main examples of introduction of this idea in legislation include (1) “social barrier” is defined as one of the causes of disadvantage in the Basic Law and the Comprehensive Support Act for Persons with Disabilities, (2) the Basic Law stipulates that the planning and implementation of disability policy need to be based on the living situation and opinions of persons with disabilities, (3) the Comprehensive Support Act for Persons with Disabilities described a phrase “removal of social barriers” and arranged “an enlightenment program to raise disability awareness“ as a new program.

This idea of “social model” is expected to influence broad areas concerning disability, from micro activities in clinical settings to macro policy and legislation. As Fig. 2 shows, the model shift of idea has





two components. The one is a shift of dimension of disability, i.e. from body-function and structure to “functioning” which consists of body-function and structure, activity and participation, in other words, from impairment to disability. This shift may impact the definition of target population of disability programs and more needs oriented definition will be employed. In micro practice such as rehabilitation, education and social support services, focus is now placed on “participation” rather than “body-function and structure or activity”. Most of clinical intervention which aims to strengthen the person is now not itself a goal but means to achieve the goal for participation.

The other component is a shift of understanding of the cause of disadvantage. With a perception of importance of social barriers, people’s view of persons with disabilities would be changed. And this change would impact the micro practice and now persons with disabilities are not a client or target but positive main actors who are using services to realize their own goals for participation. And also in policy level of national and local governments, the understanding of importance of barriers would set a higher value on environment and such policy as accessibility, awareness raising, income security, anti-discrimination, support services would be further developed.

## X Outcome 7: Ratification of Convention of the Rights of Persons with Disabilities

Since 1970 the Basic Law of Persons with Disabilities has existed and as the basic law (fundamental law) in the policy area of disability it has “guided” and coordinated all other laws. The ratification of the CRPD in January 2014 means Japan now has a higher and more powerful basic law, because (1) ratified convention has a superior position than general laws, (2) the CRPD provides both of the rights of persons with disabilities and duties of governments, but the Basic law puts emphasis on the guidelines for government policy and program, and (3) international monitoring mechanisms are incorporated in the CRPD.

However it is pointed out that Japanese government and NGOs have not made full use of other human rights conventions that were already ratified. It takes some time to know the impact of CRPD in Japan.

## XI Outcome 8: Five “compass” documents for disability policy

As mentioned above, the Committee adopted two reports and each Subcommittee adopted one report in the Reform period. Some points of these four documents have not been realized until today.

For example, there is no provision of guidance and relief body in the Act for Resolution of Discrimination of Persons with Disabilities in spite of the recommendation of the Subcommittee for Discrimination. And most of recommendations by the Subcommittee for Social Welfare (the Skeleton Recommendation) were not enacted, although the government is trying to incorporate some of them in the three years review process after the enforcement of the Comprehensive Support Act for Persons with Disabilities in 2013.

The recommendations in the four documents are all based on the CRPD and their realization is sooner



**Table 4 Basic Framework of Social Welfare Law: Enacted and Recommended**

	Enacted in 2012 and enforced in 2013	Recommended in 2011 by the Subcommittee
	Comprehensive Support Act for Persons with Disabilities	the Skeleton Recommendation
View of society	Individual person and family are responsible	Society for all, inclusive society
View of persons with disabilities	Object of protection	Equal citizen, rights holder
Primary purpose	Budget control (financial sustainability)	Life in community of his/her choice
Priority service	Training for independence	Supportive service
Nature of provision	Uniform and fair	Sensitive to individual needs
Service structure	Centralized	Appreciation of discretion of professional and local government
Target population	Identification Notebook holder + a part of chronic disease patients	All persons with disabilities with needs
Right to use service	No	Yes
Duty of national and local government	Must endeavor to provide service	Must provide service needed
Co-payment	Co-payment according service amount and family's ability to pay	No user's pay in principle, and payment according to the person's ability to pay
Service program system	Categorized on the base of finance	Categorized on the base of functions

or later needed for the implementation of the CRPD.

In addition “the Basic Agreement” between government and the plaintiffs in 2010 has not been implemented in many points. As this is the public promise made by government on the judicial system and not “a recommendation submitted to the government”, the significance is different from the above four documents.

Therefore these five documents should serve as the “compass” for future disability policy in Japan.

Table 4 is the comparison of social welfare policy between enacted and recommended ones. The difference is not small, but the CRPD strongly prompts to implement the Skeleton Recommendation.

## XII Outcome 9: Stronger tie among DPOs

During the Reform period, cooperation and solidarity among organizations of persons with different types of disabilities and family organizations had been developed and strengthened nationally as well as locally. In some Prefectures and big cities, umbrella organizations have been formed including organizations of persons with disabilities, family's organizations, and organizations of service providers, with a common mission such as “to establish the X city regulation to prohibit the disability discrimination.”

In Kumamoto Prefecture, for example, a total of 24 organizations including organizations of persons with disabilities, organizations of chronic disease patients, family organizations, organizations of social welfare facilities for persons with disabilities jointly organized “the Network to establish the Kumamoto

Prefectural Regulation to Prohibit Disability Discrimination” in 2009, and after negotiations with the Prefectural government the Regulation was enacted by the Prefectural Council in 2011. After that the Network became more permanent organization with the name of “Kumamoto Disability Forum.”

## Conclusion

We see some slowing down in the process of the Reform than initially expected. However, compared to the previous disability policy, we can recognize that many progresses in policy and legislation have been made during the Reform.

The Reform has been carried out to harmonize domestic laws to the CRPD, and now Japan has entered the new stage, i.e., to implement the CRPD. In this new stage further progress in disability policy could be expected with the support of international monitoring system. However, the main driving force for change would exist inside of Japan. Further in-depth study on above mentioned 9 outcomes would produce useful insights for the future development of disability policy in Japan.