

CRPD and Disability Policy Reform in Japan

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The Purpose of this Presentation

To explain some examples of developments and challenges of Japanese disability law and policy in the age of CRPD.

Japanese Disability Policy Reform in the age of CRPD

- **2007: Japan signed the CRPD**
- **2011: amendment of the *Basic Act for PWDs (BAP)***
- **2011: enactment of the *Act on the Prevention of Abuse of PWDs and Support for Caregivers***
- **2012: enactment (amendment) of the *Act on Comprehensive Support for PWDs***
- **2013: enactment of the *Act on the Elimination of Discrimination against PWDs (AEDP)***
- **2013: amendment of the *Act for Employment Promotion of PWDs (AEPP)***
- **2014: Japan ratified the CRPD**

Introducing Social Model of Disability in Japan

- What is the cause of disadvantages of PWDs? It is the impairments themselves according to the **medical model**. On the other hand, the social barriers are the cause according to the **UK social model**.
- The **US social model** says that the interaction between the impairments and social barriers is the cause. Under this model, problems of social barriers are emphasized in order to gain useful insights to help resolve issues of disadvantages of PWDs. (Kawashima 2011. Cf. Sugino 2007)
- The definition or concept of PWDs in CRPD as well as Japanese municipal laws (BAP & AEDP) adopts the **US social model**. (Kawashima 2010)

Participation of PWDs in Disability Policy in Japan

- **Social model of disability is a typical perspective of the disability movements, and not of the medical professions. The institutionalization of the social model in the area of disability law and policy denotes establishing a system of participation of PWDs in decision making process, which is represented by the CRPD slogan: “Nothing about us without us.” In the age of CRPD Japanese disability policy has been gaining legitimacy and effectiveness gradually through the participation of PWDs. (Kawashima 2016)**
- **Prof. Jun Ishikawa** who is blind is the Chairperson of the Committee on Disability Policy under the Cabinet Office in Japan and the Vice Chairperson of the UN CRPD Committee.

Introducing Non-discrimination Policies in Japan

- Social barriers include discrimination against PWDs.
- The ***Working Group on Disability Discrimination*** was established in the Cabinet Office in 2011.
- AEDP is an administrative law, not a civil law.
- AEDP prohibits the **unfair discriminatory treatment** which includes direct discrimination.
- AEDP includes the obligation of private business operators to make the best efforts to provide the **reasonable accommodation** and the legal obligation of administrative organs to do it.
- AEDP includes the obligation to make the best efforts to adopt **general anticipatory measures of accessibility**.

On Higher Education

- The number of students with disabilities accounted for **0.86% of all students** in FY2016 (27,257 students). It increases every year. (Jasso 2017)
- The Ministry of Education, Culture, Sports, Science and Technology held the ***Meetings to Consider the Study Support for Students with Disabilities*** in 2012 and 2017.
- Japan Student Services Organization (JASSO) has held the ***Cooperator Conference on Prevention and Settlement of the Conflict concerning Students with Disabilities*** since 2016.
- The ***Association on Higher Education and Disability of Japan (AHEAD Japan)*** was established in 2015.

On Higher Education

- There is sometimes a **tension** between reasonable accommodations and career supports for students with disabilities in universities. (Kawashima & Nishikura 2019)
- In the case of a **student with selective mutism**, the university staff shall respect her difference and change and coordinate the way she gives a presentation in the class from the point of view of **reasonable accommodations**. Universities have to ensure that students with disabilities can enjoy the equal opportunities by removing social barriers. Universities focus on the equal education opportunities **inside universities**.

On Higher Education

- On the other hand, the university staff would call on the student to continue her efforts to be able to speak in public in the same way as persons without disabilities do from the point of view of **career supports**.
- When providing career supports, universities urge students with disabilities to make efforts so that they can be talented people and make a significant contribution to society after graduation. Universities focus on the social activities of students with disabilities **outside universities**.
- The **interactive dialogue** between universities and students with disabilities is necessary to ease the tension.

On Employment

- Under AEPP the employment quota for PWDs is 2.0% (now 2.2%) in case of **private employers**. **Only half of them** meet the employment quota in FY2017. (Mhlw 2017)
- In case of **public institutions**, the employment quota for PWDs is 2.3% (now 2.5%). In August 2018 the government apologized for routinely overstating the number of PWDs. 3,700 PWDs at 28 of the 33 national administrative entities were inappropriately and fraudulently included. The revised ratio of PWDs dropped **from 2.49% to 1.19%**. It is an exceedingly serious situation.

On Employment

- After the incident, the various ministries and local municipalities have started to intensively employ PWDs to achieve the statutory employment ratio. Some of them adopt inappropriate or discriminatory conditions of employment including **working requirements of commuting and performing their job functions by themselves (i.e. without assistance)**.
- These requirements potentially exclude some persons with severe disabilities, which are unfair discriminatory treatments, and clearly deny certain types of reasonable accommodations including work assistance, which are **not consistent with the AEPP**. (Kawashima 2018)

On Political and Public Life

- In March 2013, the **Tokyo District Court** judged that the Article 11(1.1) of the Public Officers Election Act, which deprived PWDs under adult guardianship of their right to vote, is unlawful and unconstitutional.
- However the Court admitted that disenfranchisement could be accepted through an assessment of the voting capacity (political decision capacity) of specific PWDs. This is contrary to the *View* by the **UN CRPD Committee** which has “found the assessment of individuals’ capacity to be discriminatory in nature.” (Kawashima 2018)

On Political and Public Life

- Soon after the Tokyo District Court judgement, the parliament in Japan revised **the Public Officers Election Act**. This revision includes, *inter alia*, deletion of the Article 11(1.1) as well as revision of the Article 48(2).
- Under **this revised Article 48(2)**, only presiding officers are admitted to assist PWDs to vote, and personal attendants cannot assist PWDs even if requested by the PWD. This new provision is clearly contrary to the Article 29(a)(iii) of the CRPD, which provides that “at their request, allowing assistance in voting by a person of their own choice”.
(Kawashima, 2019)

Thank you!

Reference (* in English)

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Profile

Satoshi Kawashima is an Associate Professor and teaches law at the Okayama University of Science. Kawashima was born in Tokyo and received a Doctor of Laws (LLD) degree from Niigata University in 2005.