

# Legal issues and challenges in the process of developing the Seventh Strategic Energy Plan

## Representativeness issues in the advisory and consultative bodies

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*Note: this document is a modified translation of the executive summary of a report prepared by ClientEarth lawyer Tomoko Fukunaga published in July 2024. The full report in Japanese is available on the website of ClientEarth Japan [here](#).*

### **1. Importance of the Seventh Strategic Energy Plan**

In 2024, the Government of Japan will adopt the Seventh Strategic Plan on Energy Supply and Demand. It is an administrative plan that establishes the basic direction and measures of Japan's energy policy based on the Energy Supply and Demand Outlook, in accordance with the Basic Act on Energy Policy.<sup>1</sup> (Hereinafter referred to as the Strategic Energy Plan').

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<sup>1</sup> See Basic Act on Energy Policy (Act no.71 of June 14, 2002) (エネルギー政策基本法 (平成十四年法律第七十一号) Japanese Law Translation. An unofficial translation available [here](#).

Energy accounts for approximately 84% of Japan's greenhouse gas (GHG) emissions and electricity generation for approximately 37% of GHG emissions. In this respect, the Strategic Energy Plan, which sets national policy on energy, is of prime importance in the context of Japan's global warming mitigation and decarbonisation.

It is noteworthy that the carbon intensity of the Japanese electricity grid is currently the highest among G7 countries and that within the 38 OECD countries, Japan has the 5<sup>th</sup> higher carbon intensity. There is no doubt that the Strategic Energy Plan will have a broad impact on all of us living in Japan, including the businesses of domestic companies and the lives of the Japanese people.

## **2. Issues with composition of the Advisory Committee and subcommittees**

However, the composition of the members of the 15 main bodies that is deliberating in relation to the Seventh Strategic Energy Plan lacks fairness and balance. There was a similar issue during the development of the Sixth Strategic Energy Plan (adopted in 2021). There is a bias towards inclusion of persons from specific industries, belonging to a certain age range, being male and/or exhibiting specific stances. Climate Integrate has published an analysis demonstrating this bias in April 2024.<sup>2</sup>

It appears that representatives of businesses and industry associations with an interest in maintaining the existing energy system, such as thermal power generation, as well as policy academics with a track record of opposition to a swift energy transition, represent a majority of the members of the different advisory bodies. Other typical stakeholders in energy policy, such as renewable energy companies, energy storage companies, demand side response companies, demand side users (such as IT companies and industries that are significantly affected by climate change), and investors are scarcely represented. Furthermore, neither academic experts from the climate science field nor representatives of environmental, youth and women's organisations from civil society are included at all. Consumer organisations also have only a small number of seats.

The absence of these stakeholders is not aligned with international best practices.

## **3. Rules applicable to 'advisory bodies'**

The Advisory Committee for Natural Resources and Energy (hereinafter referred to as the 'Energy Advisory Committee'), which has the mandate to discuss the policies of the Strategic Energy Plan, is an advisory body formed under the National Government Organisation Act. For this reason, the general legal norms concerning advisory bodies apply to this body. The same legal norms should also apply to all the bodies holding substantive discussions which are placed under the Energy Advisory Committee.<sup>3</sup>

The aims and objectives of an Advisory body system are reconciliation of interests, introduction of expertise in the decision-making process, public participation in public administration, and ensuring fairness. The Basic Act on Energy Policy provides that the content of the administrative plan is left to deliberation and decision-making within the administrative authority (i.e. the Advisory Committee) rather than the Parliament. This is why it is necessary to ensure a decision-making process that delivers on the

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<sup>2</sup> Climate Integrate, *Policy Making Process in Japan: Strategic Energy Plan as a Case Study*, 6 May 2024, available in English [here](#).

<sup>3</sup> I.e. Committees, Subcommittees, Public-private Councils, and Working Groups.

above-outlined objectives. Social stability is maintained by enabling public participation in administrative decision-making, reflecting the will of interested parties, and incorporating external expertise through the advisory body system. By fulfilling certain conditions regarding the composition of their members, committees can ensure fairness and neutrality in administration through their deliberations, and examine the policies and attitudes of administrative agencies.

It is our assessment that it is not in accordance with the original aims and objectives of the advisory body system to have it be made up of members who are biased towards certain industries and interests. It is our recommendation that it is necessary to appoint a wider range of stakeholders as members to introduce wide-ranging knowledge and engage in substantive discussions.

From the same perspective, it is also essential to conduct hearings with these key stakeholders in the course of the discussions of the advisory body.

Many of the criteria set out in the 'Guidelines for the Management of Advisory Bodies'<sup>4</sup> based on the 'Basic Plan for Reorganization and Rationalization of Advisory Bodies'<sup>5</sup> are also not being met in relation to the balance and fairness of the membership of the advisory bodies for the Strategic Energy Plan. Under these guidelines, direct stakeholders such as thermal power producers and industry associations should only be appointed to the extent that they do not exceed half of the total number of members. It is our assessment that members who favour a clean energy transition should be appointed until the number of these members reaches the same level as members reluctant towards energy transition. This is so that the opinions, knowledge and experience of the members represented by them remain balanced. The appointment of former government officials should also be strictly limited. Therefore in principle, former government officials of the Ministry of Economy, Trade and Industry (METI), the ministry responsible for the Strategic Energy Plan, should be prohibited. Excessive dual appointments should be eliminated, and intergenerational and gender balance should be ensured.

With regard to intergenerational balance, it is important to lower the age of the committee members overall. Members in their 40s and 30s or younger who are currently active in the field, such as academic experts and representatives of companies and industry groups, should be appointed. This is because the younger generation can be expected to work with a higher level of interest and ownership as they will be living in an age when the adverse effects of climate change will become more apparent.

## 4. Constitutional rights

The Strategic Energy Plan amounts to a plan for the development of physical infrastructure which is necessary to support some of the human rights protected under the Japanese Constitution. These include the right to maintain minimum standards of wholesome and cultured living, freedom of economic activities of business operators, consensus building procedures for regulation and use, and the protection of the right to the pursuit of happiness and equality.

In particular, the infringements on life, body and health caused by climate change are already a reality for people living in Japan in various forms, such as the damage caused by extreme weather events and natural disasters in recent years, and the rapid increase in heat strokes. In addition, health risks due to climate change tend to be higher for vulnerable groups such as low-income earners, the elderly and children.

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<sup>4</sup> See Ministry of Internal Affairs and Communications (27 April 1999) (審議会等の運営に関する指針) (Japanese version available [here](#) )

<sup>5</sup> See Cabinet Secretariat (27 April 1999) (審議会等の整理合理化に関する基本的計画) (Japanese version available [here](#))

We must therefore recognise with a sense of urgency that the Strategic Energy Plan is closely linked to the constitutional human right to the pursuit of happiness leading to a healthy and happy life.

Furthermore, in recent years, there have been numerous reports of high temperatures causing negative effects on the growth and quality of the agricultural, livestock and fisheries products. This is destabilizing the foundations of production, income and livelihoods in agricultural, forestry, or fisheries dominated communities. At the same time, it is predicted that this will deprive people of food resources and endanger their livelihoods, which means this is also a serious human rights issue.

Therefore, it is a constitutional issue if in formulating the Strategic Energy Plan, priority was given to interests of domestic industrial policies centred on fossil fuels without sufficiently taking into account the fact that this policy amounts to an environmental policy and should include a number of scientific perspectives. We believe that constitutional legal questions are raised if the procedural guarantees protecting the rights of the general public that could be affected by the energy policy in question (including future generations and businesses in a wide range of industries) are not sufficiently taken into account.

From this perspective, it is also extremely important that representatives of parties who can be rights-holders are directly involved in the process of formulating the Strategic Energy Plan.

## 5. The need for youth representation under The Basic Act on the Child

Young people should have opportunities to express their opinions and participate in the formulation process of the Strategic Energy Plan in accordance with the Basic Act on the Child.<sup>6</sup> This Act is the implementing the Constitution of Japan and the United Nations Convention on the Rights of the Child of 1989.

The Basic Act on the Child stipulates that "*all children... shall be ensured opportunities to express their opinions on all matters directly related to them and to participate in diverse social activities*" and that "*the State and local governments... shall take necessary measures to reflect the opinions of children who are subject to the said children's policies... or those who care for the children and other persons concerned*". The Preparatory Office for the Establishment of the Children and Families Agency in the Cabinet Secretariat envisages that examples of "necessary measures" include: "*promoting the participation of children and young people as members of advisory and consultative bodies*" and states that "*it is desirable to provide feedback to children on whether the opinions heard are reflected in the measures and to widely disseminate them to society.*"

In this regard, the "Guidelines for Reflecting the Opinions of Children and Young People in Policies"<sup>7</sup> of the Children and Families Agency states that "*children and young people are parties to policies, plans, measures and projects that affect their lives now and in the future, such as those related to climate change*". In this regard, a general comment from the UN Committee on the Rights of the Child's states that "*environmental decisions generally concern children.*"<sup>8</sup> In light of the above, the Strategic Energy Plan, which sets out important policies that will determine Japan's future response to climate change,

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<sup>6</sup> See Basic Act on Children (Act No.44 of 2022), こども基本法 (令和四年法律第七十七号), unofficial English translation available [here](#)

<sup>7</sup> こども・若者の意見の政策反映に向けたガイドライン, Children and Families Agency (Japanese) (Japanese version available [here](#))

<sup>8</sup> See General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, available [here](#)

should be said to be included under 'children's policies' in the Basic Act on the Child, as it clearly has an impact on children and young people's lives now and in the future.

Therefore, including youth representatives in the conference bodies that discuss the Strategic Energy Plan, and ensuring that young people have opportunities to express their opinions and participate in the hearings of such conference bodies (including feedback on whether the opinions heard have been reflected in the measures) is a requirement of the Basic Act on the Child.

## 6. International instruments and international norms

### *International instruments*

There are a number of international treaties and other instruments applicable to stakeholder participation in the process of formulating environment-related policies:

- Principle 10 of the Rio Declaration, which Japan co-signed in 1992 “Transforming our world: the 2030 Agenda for Sustainable Development”, which is part of the SDGs, provides for *“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.”*<sup>9</sup>
- The Paris Agreement, adopted in 2015, stipulates that it *“affirms “the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement” (preamble) and “Enhance public and private sector participation in the implementation of nationally determined contributions” (art. 6(8)(b))*
- the 2017 OECD Recommendation of the Council on Open Government, which Japan supported the adoption of as a Member State, recommends that OECD members “grant all stakeholders equal and fair opportunities to be informed and consulted and actively engage them in all phases of the policy-cycle and service design and delivery.”<sup>10</sup>

Thus, the participation of a wide range of stakeholders in environment-related administrative decision-making is stipulated or recommended in various international conventions, and its importance is widely recognised internationally.

In addition, the Aarhus Convention, which was adopted by the UNECE in June 1998 in response to Principle 10 of the Rio Declaration provide for the guarantee of the public's rights to access to information, participation in decision-making and access to justice in the environmental field. The Escazu Agreement is another regional agreement implementing this Principle 10. These regional agreements to which Japan is not a party are considered to amount to best international practices in this field.

In its the SDG Implementation Guidelines published by the Ministry of Foreign Affairs of Japan calls for *“promoting dialogue and collaboration with a wide range of stakeholders”* in relation to the *“transformation to a new industrial structure”*.<sup>11</sup>

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<sup>9</sup> Available [here](#)

<sup>10</sup> Available [here](#)

<sup>11</sup> See SDGs implementation guiding principles, available [here](#) (English), p. 8

### ***Public participation under the Sixth Basic Environmental Plan***

To implement the 2030 Agenda, the Japanese Ministry of the Environment adopted the Sixth Basic Environment Plan.<sup>12</sup> It states that "*the 2030 Agenda also declares the promotion of 'full-participation' partnerships involving all stakeholders. Partnership is a common element required for all environmental policies*" and that "*further promotion of public participation in the policy-making process, policy communication for this purpose and visualisation of the results are necessary.*"

In Japan, where carbon dioxide from energy sources accounts for the majority of greenhouse gas emissions, the Strategic Energy Plan will inevitably set out policies that are also extremely important in terms of climate change countermeasures. Therefore, it is important to integrate the Plan with other relevant government plans, in particular the Basic Environment Plan, which defines the environmental measures of the Government as a whole. The "*further promotion of public participation in the policy-making process, policy communication for this purpose and visualisation of the results*" stipulated in the Basic Environment Plan needs to be applied to the Strategic Energy Plan as well.

## **7. Conclusion**

Many of the issues seen in the composition of the current advisory bodies in charge of the preparation of the Strategic Energy Plan are connected and/or similar to problems seen in other advisory and consultative bodies. To some extent, they can be seen as finding their roots in structural problems in the Japanese advisory body system.

The Advisory body system has a long history of being criticised for being a so-called 'front' and for encouraging bureaucratic sectionalism. A number of experts have proposed improvements such as making the selection of advisory body members more transparent, democratising administration, appointing diverse human resources and making discussions more open. The aforementioned 'Guidelines for the Management of Advisory Bodies' was established as part of the administrative reforms aimed at resolving these issues.

Given the importance of the Seventh Strategic Energy Plan, which is currently under discussion, it is particularly important that the government plays a role by establishing specific and clear legal rules for the selection criteria and deliberation procedures of advisory body members, to ensure that the structural problems of the advisory body system are not repeated.

The composition of the advisory body should conform to the criteria set out in the 'Guidelines for the Operation of Advisory bodies', etc., and any bias by direct stakeholders such as thermal power producers and industry associations, or by members with negative opinions on the energy transition, should be corrected as soon as possible. From a legal point of view, it is also strongly recommended that reforms will be implemented quickly to encourage the inclusion of other stakeholders in energy policy, such as renewable energy-related businesses, energy demand-side and primary industry businesses, institutional investors, climate scientists and civil society (environmental organisations, youth organisations, women's organisations, consumer associations, etc.). This is so that a variety of actors can participate in the planning process.

It is strongly expected that the Government of Japan will show leadership and bring fairness, diversity and transparency to the process of formulating the Strategic Energy Plan, in cooperation and collaboration among relevant ministries and agencies.

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<sup>12</sup> Sixth Basic Environmental Law, adopted in May 2024, available in Japanese [here](#).

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