

Mandate of the Special Rapporteur on the rights of persons with disabilities

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Dear Ms. Almojuela,

I have the honour to address you in my capacity as Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolution 26/20.

In this connection, I would like to bring to the attention of your Government and to the Congress of the Philippines information I have received concerning the **pending adoption of a Mental Health Act (Senate Bills No. 1190)**.

The bill known as the “Mental Health Act of 2016”, introduced on 6 October 2016 before the Senate and the House of Representatives of the Congress of the Philippines is currently referred to the Committee on Health and Demography for further discussions. A first working meeting of the Technical Working Group, created by the Committee with the aim of advising on the content of the draft, took place on 1 February 2017.

While the declared aim of the bill is to uphold the basic right of all Filipinos to mental health and to promote respect for the fundamental rights of people who require mental health services, the State needs to carefully consider all provisions on free and informed consent to treatment so as to prevent and prohibit discrimination on the basis of disability and potential violations of Articles 12, 14, 17 and 25 of the Convention on the Rights of Persons with Disabilities.

In connection with the above alleged facts and concerns, I would like to remind your Government and the Congress of the Philippines of the applicable international human rights norms and standards in relation to the rights of persons with disabilities.

The Convention on the Rights of Persons with Disabilities, ratified by Philippines on 15 April 2008, provides authoritative guidance in relation to the promotion, protection, fulfilment and enjoyment of all human rights and fundamental freedoms by persons with disabilities.

The Convention adopts a human rights-based approach to disability recognizing that all persons with disabilities, including those with psychosocial disabilities, enjoy all human rights and fundamental freedoms on equal basis with others. It supersedes previous international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.

The Convention contests widespread practices of involuntary detention and involuntary treatment embedded in most mental health systems. Its Article 12 states that persons with disabilities, including those with psychosocial disabilities, have the right to equal recognition before the law, and enjoy legal capacity on an equal basis with others. Article 14 prohibits all unlawful or arbitrary deprivation of liberty of persons with disabilities, clarifying that the existence of a disability cannot justify a deprivation of liberty. Article 17 provides that every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others. Article 25(d) requires States to provide health care to persons with disabilities on the basis of free and informed consent. Therefore, any involuntary detention and treatment based on an actual or perceived mental impairment is contrary to the Convention. This includes detention or treatment on grounds such as "medical necessity" or "alleged danger to themselves or others".

Furthermore, the Convention provides the obligation of States Parties to provide different forms of support to persons with disabilities for the full exercise of their rights, including decision-making support on health related matters. Advance directives, peer support groups and self-advocacy networks are a few examples of supports provided with respect towards the will and preferences of the person. Advance directives, for example, have proven to be an effective tool to ensure the best interpretation of the will and preferences of individuals in situations of severe emotional distress. In these situations people need to be supported, not denied of their rights.

In this regard, mental health laws as they exist today represent a challenge for the full implementation of the Convention. The majority of mental health laws, despite their human rights rhetoric, confer clinical authority on mental health professionals to detain and treat persons with psychosocial disabilities without their consent. Moreover, instead of ensuring the provision of support, mental health laws legitimize coercion as a valid response in cases of severe emotional distress, an approach contrary to the Convention.

It is worth noting that, for many years, mental health laws were drafted following the guidelines of the WHO Resource Book on Mental Health, Human Rights and Legislation. However, the World Health Organization has withdrawn this document because it was drafted prior to the coming into force of the Convention and is therefore not compliant with the latest human rights norms and standards (more information available at: http://www.who.int/mental_health/policy/legislation/en/).

I would like to encourage you to take into consideration all these recent developments within the international human rights law framework during the debate of the proposals for a Philippine Mental Health Act.

Finally, I would like to remind you the obligation of the Philippines to closely consult with and actively involve persons with disabilities, in particular persons with psychosocial disabilities, through their representative organizations, in the development and implementation of any mental health legislation or policy (Article 4(3)). Good faith should be a foundation stone of this process, and consultations must embrace

transparency, mutual respect, meaningful dialogue and a sincere desire to reach consensus.

The full texts of the human rights instruments and standards outlined above are available at www.ohchr.org and can be provided upon request.

In the exercise of my mandated responsibilities, I stand ready to provide further advice and technical assistance in support of the national efforts to ensure that the current law reform process respects the standards put forward by the Convention on the Rights of Persons with Disabilities.

Your Government's response will be made available on the same website as well as in a report to be presented to the Human Rights Council for its consideration.

Please accept, Ms. Almojuela, the assurances of my highest consideration.

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities