

**Mandates of the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 35/6 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government and to the National Diet of Japan information we have received concerning the **pending adoption of a bill amending the "Act on Mental Health and Welfare for the Mentally Disabled" (Act No. 123 of 1950)**.

According to the information received:

On 26 July 2016, a man killed 19 people and severely injured 26 others at an institution for persons with severe disabilities in Kanagawa, Japan.

On 20 January 2017, Prime Minister Shinzo Abe made a Policy Speech to the 193<sup>rd</sup> Session of the National Diet, in which he referred to the incident of July 2016 and declared : "Many innocent people at a facility for disabled persons lost their lives in July 2016. This type of incident should never happen and cannot be allowed. We will revise the Law on Mental Health and Welfare for the Mentally Disabled and steadily take prevention measures, such as creating a framework to continue assistance for involuntary admission patients after leaving the hospitals."

A bill amending the Act No. 123 of 1950 on "Mental Health and Welfare for the Mentally Disabled" (hereinafter called Mental Health Act) is expected to be submitted to the National Diet of Japan for adoption in January 2018. Article 29 of the Mental Health Act allows for the coercive hospitalisation based on the dangerousness of a person upon the order of a Prefectural Governor.

According to articles 47-2, 47-2-2, 47-2-3, 47-2-4, of the new draft bill, the prefecture should establish a "support plan" for persons with psychosocial disabilities (referred to as "mentally disabled" in the draft bill) who are subjected to coercitive hospitalisation under article 29 of the Mental Health Act. The plan aims to regulate, before the coercive hospitalization ends, where people should receive post-hospitalization medical treatment and other support. However, the bill does not provide guarantees that the person concerned can express her or his will and preferences about the plan, challenge it or complain about it. If a person

changes domicile, article 47-2-6 provides that the local authorities transfer the “support plan” and related confidential information about the person to the new prefecture, without seeking the person’s informed consent.

Moreover, articles 51-11-2 and 51-11-2-2 provide that the prefecture establish a “committee of community for the mentally disordered persons” – composed of government officials, medical professionals, service providers and the police among others – to discuss support and medical treatment to be provided to the person concerned and to implement the support plan, without the participation of the person concerned. As per articles 51-11-2-6 and 51-11-2-7, the committee can seek and share confidential information about a person with a support plan without her or his informed consent.

Without prejudging the accuracy of these allegations, we are expressing concern at the provisions in the current Mental Health Law which allow for the coercive hospitalisation based on the criteria of dangerousness of a person, as well as those of the new bill regulating how persons with psychosocial disabilities are deemed to be provided medical treatment and support once the hospitalisation ends, without considering their will and preferences, and without seeking their free and informed consent. We also express grave concern at the provisions which would allow to disclose private and confidential information about persons with psychosocial disabilities among members of the “committee of community for the mentally disordered persons” and to local authorities (prefectures) in the event that a person moves home.

In connection with the above alleged facts and concerns, we would like to remind your Excellency’s Government of the applicable international human rights norms and standards relevant for persons with disabilities, including the rights to equality and non-discrimination, equal recognition before the law, liberty and security of the person, living independently and being included in the community, respect for privacy, and enjoyment of the highest attainable standard of physical and mental health.

In this regard, we would like to refer to the Convention on the Rights of Persons with Disabilities (CRPD), acceded by Japan on 20 January 2014, which 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 CRPD contests widespread practices of involuntary detention (which includes involuntary hospitalisation) 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, State Parties to the CRPD have the obligation 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 CRPD. 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 CRPD 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/](http://www.who.int/mental_health/policy/legislation/en/)).

In this context, we would like to draw your attention to articles 2 (non discrimination) and 12 (highest attainable standard of physical and mental health) of the International Covenant on Economic, Social and Cultural Rights, which Japan acceded on 21 June 1979. According to the General Comment No. 5 of the Committee on Economic, Social and Cultural Rights, States must ensure that persons with disabilities receive equal medical care of equal quality and within the same system as the other members of society. In this context, the right to health requires that mental health care be brought closer to primary care and general medicine, integrating mental with physical health, professionally, politically and geographically. The right to mental health not only integrates mental health services into mainstream health care so they can be accessible for everyone, it ensures that entire groups of people who are traditionally isolated from mainstream health care, including persons with disabilities, receive care and support on an equal basis with others (A/HRC/35/21, para 78).

We would like to encourage you to take into consideration all these developments within the international human rights law framework during the debate for the amendment of the Mental Health Act.

Finally, we would like to remind you the obligation of Japan 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.

In the exercise of our mandated responsibilities, we 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 of the Convention on the Rights of Persons with Disabilities.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the measures taken to consult and actively involve persons with disabilities, and particularly persons with psychosocial disabilities, through their representative organizations, in the development of this draft bill, and in any other future mental health legislation or policy.
3. Please provide detailed information on the measures adopted by your Excellency's Government to regulate and develop comprehensive mental health services, with a rights-based approach that incorporates the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including for persons with psychosocial disabilities.
4. Please provide information on the measures adopted by your Excellency's Government to take into consideration the recommendations mentioned above.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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

Dainius Pūras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health