

**Mandates of the Special Rapporteur on the rights of persons with disabilities; the Independent Expert on the enjoyment of all human rights by older persons; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and the Special Rapporteur on extreme poverty and human rights**

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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; Independent Expert on the enjoyment of all human rights by older persons; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 35/6, 24/20, 34/3 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **negative impact of measures reducing social protection benefits on the realization of the rights of persons living in poverty and those of persons with disabilities, particularly affecting the rights to live independently and to be included in the community (art. 19 of the Convention on the Rights of Persons with Disabilities), and to an adequate standard of living and social protection (art. 28).**

We hope that this letter provides an opportunity to engage with your Excellency's Government in a dialogue on the matters being raised and clarify the State's obligations under the international human rights law provisions, applicable even in times of severe resource constraints.

According to information we have received:

In 2012, the Government introduced its Basic Policy on Economic and Fiscal Management and Reform aimed at relieving Japan's debt burden. The National Public Assistance program, which seeks to guarantee the minimum essential level of financial support and social protection to persons at risk of or in situation of poverty, became one of the main targets for budget reduction. According to article 11 of the Public Assistance Act, the Public Assistance program includes cash transfers for covering: livelihood, housing, educational, medical, maternity, occupational, and funeral expenses.

In 2013, the amount of cash transfers for livelihood assistance was lowered by 6.5 per cent on average, by as much as 10 per cent for some households, on the grounds of falling trend of food and commodity prices. Budget allocations at the national level for social protection were reduced as a whole by ¥74 billion in a

three-year timeframe. According to the available data, the share of households' members with disabilities that received some type of public assistance was 29.4 per cent.<sup>1</sup> The same year, the Committee on Economic, Social and Cultural Rights in its periodic review of compliance of Japan with the ICESCR, expressed its concerns regarding the negative impact of the significant cuts to budget allocations for social protection on the enjoyment of economic and social rights for disadvantaged and marginalized groups, including persons with disabilities (see E/C.12/JPN/CO/3, para. 9).

On 30 June 2015, as part of the Comprehensive Reform of Social Security and Tax, the Government introduced additional cuts in funding for social protection. Citing an overall decline in the cost of housing rents, the Government lowered the housing assistance rate. An estimated 607,287 households were negatively affected by the cuts,<sup>2</sup> leaving it up to the local governments to provide compensatory social protection measures to prevent a severe deterioration of the already lowered standard of living.

On 8 December 2017, the Ministry of Health, Labour and Welfare adopted further reductions in social protection spending. The Government re-examined the minimum living cost, which is pegged to the expenditures of the bottom 10 percent of income-earning households in Japan. It has been pointed out that this method of determining the minimum living cost is deeply problematic and may cause a downward spiral in the level of social assistance, given that only less than 20 per cent of those eligible for social assistance actually receive such assistance and the bottom 10 percent low-income households are often living in poverty. However, the Ministry has announced that the current base amount of livelihood assistance exceeds the minimum living cost and thus decided to further cut livelihood assistance by maximum 5 per cent in the amount of ¥16 billion over the next three years. It is estimated that 67 per cent of households that receive livelihood assistance will have their cash transfers either reduced or terminated. It is reported that the cuts will most seriously affect families with more than one child, single parents, and persons above the age of 65 in large cities. For instance, it is estimated that in large cities, a couple with two children (consisting of a primary school student and a middle school student) will receive a monthly assistance of ¥194,000, which is 11 percent less than the current level at ¥219,000. Similarly, the monthly livelihood assistance for a single adult above 65 years old will be reduced by 8 percent, from ¥80,000 to ¥73,000. Single parents with one child will have their monthly single parent allowance reduced from ¥21,000 to ¥17,000 on average. It is concerned that the lower minimum living cost may result in further decrease in other benefits and services for persons with disabilities and persons living in poverty, as it would depress the threshold income level to be eligible for such benefits and services.

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<sup>1</sup> Social Security in Japan, National Institute of Population and Social Security Research, page 43. Available at <http://www.ipss.go.jp/s-info/e/ssj2014/PDF/ssj2014.pdf>

<sup>2</sup> <https://bit.ly/2EkYa55>

The series of cuts to the social benefits over the last few years have been implemented against the backdrop of persistently high poverty rates, particularly among single parent families. The relative poverty rate in 2015 was 15.6 percent,<sup>3</sup> well above the OECD average of 11.5 per cent.<sup>4</sup> According to a survey conducted by the Ministry of Health, Labour and Welfare in 2015, over 50 per cent of single parent households were living in relative poverty, and 82.7 per cent of them responded that the life was “difficult”.<sup>5</sup> The persons with disabilities, that are now receiving lower financial benefits and no longer receiving allowances paid under certain conditions by local authorities out of their own budget, are experiencing disproportionately severe difficulties. For example, in the winter of 2017-2018, persons with disabilities residing in the Hokkaido prefecture could no longer afford paying the costs for heating their homes while at the same time covering the extra costs of living with a disability.

In addition, the local public authorities have decreased the financial allocation for community based services aimed at supporting persons with disabilities to continue living independently in their own homes, which leads to their institutionalisation.<sup>6</sup> Independent civil society reports submitted in the context of the Universal Periodic Review of Japan indicate that the number of placements in institutional care increased nearly threefold in the last two decades, and that the number of non-consensual placements rose to 40 per cent.

Further, information received indicates that the stigma attached to persons in need of social protection, known as "Seikatsu Hogo" prevents persons with disabilities and persons living in poverty from applying for the necessary financial support and services. Persons with disabilities have reported instances of intimidation and discriminatory behaviour by the local government officials. Available data indicates that only a very low number of people eligible for some type of social protection actually claim the necessary support to which they are entitled.<sup>7</sup> These concerns are backed by the 2017 UPR explicit recommendation that the Government carry out reforms to address stigma against persons with disabilities.

According to the official data collected by the Ministry of Health, Labour and Welfare, in 2012, the rate of suicide among social protection system users was already twice the national average.<sup>8</sup> The Ministry of Health, Labour and Welfare has not released disaggregated suicide statistics since then, preventing

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<sup>3</sup> <http://www.mhlw.go.jp/toukei/saikin/hw/k-tyosa/k-tyosa16/dl/16.pdf>

<sup>4</sup> OECD, Income inequality remains high in the face of weak recovery, <http://www.oecd.org/social/OECD2016-Income-Inequality-Update.pdf>

<sup>5</sup> <http://www.mhlw.go.jp/toukei/saikin/hw/k-tyosa/k-tyosa16/dl/16.pdf>

<sup>6</sup> Services and Supports for Persons with Disabilities Act No. 123 of 2005

<sup>7</sup> According to the data collected by the Ministry of Health, Labour and Welfare, in 2015, Japan had a poverty rate of 15.6 per cent (<http://www.mhlw.go.jp/toukei/saikin/hw/k-tyosa/k-tyosa16/dl/03.pdf>). An estimated 20 million persons or 8.32 million households were living in poverty. The number of persons and households receiving public welfare (Seikatsu Hogo) was about 2.1 million persons, which indicates a capture rate of 10.5 percent of persons or 18 per cent for households.

independent human rights monitoring organisations from carrying out an independent assessment of the impact of austerity measures. However, as evidenced by data from other countries, the increase of suicide rates correlates with the enactment of social protection cuts.

We would like to engage with your Excellency's Government in a constructive and human rights-based discussion on the concerns raised above. The purpose of this communication is to encourage the Government of Japan to adopt necessary steps to ensure the enjoyment of the rights of all persons to social protection and to an adequate standard of living, including persons with disabilities, persons living in poverty, single parents, and older persons. We would like to specifically highlight in this context the right of persons with disabilities to live independently in the community, without discrimination as a matter of principle throughout the life cycle.

Policies that focus solely on achieving short-term macroeconomic targets (such as those justified by tackling deficit) regardless of their human rights impacts, or that only promise future social benefits, may harm individuals in an irreversible manner, may have disproportionate impact on specific population groups or individuals, affecting their human rights. Hence, we express concern at the implications of the measures adopted so far. On the whole, these measures appear to have a disproportionate and indirectly discriminatory impact on persons with disabilities that, in turn, perpetuates or exacerbates inequality.

Below are the references to the international human right instruments that should guide States efforts in establishing disability-inclusive social protection models that promote active citizenship, social inclusion and community participation and are just, efficient, sufficiently funded, comprehensive and non-discriminatory.

As a State Party to the Convention on the Rights of Persons with Disabilities (CRPD), the Government of Japan is obliged to guarantee the rights of persons with disabilities to social protection and to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of these rights without discrimination on the basis of disability.

More specifically, article 28 creates an obligation for States to take appropriate measures to ensure that persons with disabilities receive equal access to mainstream social protection programmes and services — including basic services, poverty reduction programmes, housing programmes, and retirement benefits and programmes — as well as access to specific programmes and services for disability related needs and expenses. In recognition of the fact that persons with disabilities often incur additional expenses, States shall take into account disability-related costs to ensure a sufficient allocation of benefits for persons with disabilities.<sup>9</sup>

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<sup>9</sup> Concluding observations to States by the Committee on the Rights of Persons with Disabilities

Social protection also resonates with other provisions of the CRPD, including in relation to the right to live independently and be included in the community. Article 19 outlaws institutionalization and challenges social protection policies that segregate persons with disabilities in social care or medical settings. In line with article 19 of the Convention, States have an obligation to ensure that persons with disabilities enjoy choice and control over their lives on an equal basis with others; have the opportunity to decide where, how and with whom they want to live; access to a range of in-home, residential and other community support services (including the provision of personal assistance); and access to all community services available to others, including in the context of the labour market, housing, transportation, health care and education.

Social protection systems must also respond to the needs of heterogeneous groups within the disability community, including those that may be easily forgotten in policymaking, such as persons with psychosocial or intellectual disabilities. They also significantly contribute to ensuring the financial security of older persons with disabilities and are a suitable means of reducing the at-risk-of-poverty rate, their vulnerability and social exclusion, in line with the United Nations Principles for Older Persons to ensure that older persons have access to adequate food, water, shelter, clothing and health care.

In addition, considering that the initiated reforms appear to be motivated by the Government's will to reduce social spending, we call your attention to the human rights obligations of States when considering austerity measures.

Any response to financial crises, in particular sovereign debt crises, must fully comply with human rights law. As a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Government of Japan is obliged to take steps to achieve progressively the full realisation of the right to social security, as well as the right to an adequate standard of living, including housing, as guaranteed under article 9 and 11 of the ICESCR. This positive obligation in turn implies that retrogressive measures are to be considered with extreme caution<sup>10</sup> and that such measures must be fully justified in the context of the full use of the maximum available resources.<sup>11</sup>

In the Committee's view, austerity measures that may reduce the enjoyment of economic, social and cultural rights should not discriminate or disproportionately affect the rights of the disadvantaged and marginalised individuals and groups.<sup>12</sup> States must also demonstrate that the affected groups participated in the assessment of the proposed measures and alternatives.

Finally, if a state is to engage in retrogressive measures, such as cuts, they are mandated to ensure that the essential levels of each of the Covenant rights are guaranteed

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<sup>10</sup> General Comment No. 3 (1998) on the nature of States parties' obligations and General Comment No. 19 (2007) on the right to social security.

<sup>11</sup> Office of the High Commissioner for Human Rights, Report on austerity measures and economic and social rights (2013), paras. 40-41.

<sup>12</sup> Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012.

at all times.<sup>13</sup> The Committee has stressed that the minimum core obligation requires the State to, inter alia, “ensure access to a social security scheme that provides a minimum essential level of benefits to all individual and families to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education” on a non-discriminatory basis.<sup>14</sup>

While certain spending cuts may be temporarily necessary, the States concerned must always ensure, to the extent possible, that social spending is affected last and the least. The protection of disadvantaged groups must have the highest priority. In his report to the Human Rights Council, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights calls for exemptions from cuts or even the implementation of new social protection programmes.<sup>15</sup> In his more recent report, he also underlines the importance of carrying out ex-ante human rights impact assessments of economic reform policies, in particular to avoid disproportional impacts of specific population groups, such as persons with disabilities.<sup>16</sup>

In this regard, while we welcome Japan’s declared commitment to promote the rights of persons with disabilities, as stated in the initial report presented on 30 June 2016 in line with the State’s reporting obligations under the Convention on the Rights of Persons with Disabilities, we are alarmed that in their report the Government avoided to reflect on the overall impact of cutbacks in social protection on the situation of persons with disabilities. It appears that the Government failed to carry out the necessary assessment of potential adverse consequences on persons with disabilities before introducing the benefit cuts, nor did it evaluate alternative measures that might have adequately compensated for that impact.

In light of the information available, there is sufficient ground for concern that the new measures aimed at reducing the social protection expenditure are disproportionately affecting persons with disabilities. The cuts in benefits and reduced expenditure on community support services are not only affecting the standard of living of those who relied on such benefits, but also limit their capacity to live independently, often leading to their institutionalization.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify and further reflect on the impact of the measures described above. 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.

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<sup>13</sup> Committee on Economic, Social and Cultural Rights’ concluding observations on Spain (2016).

<sup>14</sup> Committee on Economic, Social and Cultural Rights, General comment No. 19 (2008), para. 59 (a).

<sup>15</sup> A/HRC/31/60 (2016)

<sup>16</sup> A/HRC/37/54 (2018)

2. Please provide information about the national legal framework and policies that determine the cuts to social protection benefits, including reference to the existing social protection programmes and services for persons with disabilities.
3. Please provide information and details about human rights impact assessments carried out before the economic reforms policies, including budget cuts and austerity measures, were put into effect. In this regard, please provide details of the various population groups that were included in such assessment, if it was undertaken, and in particular of persons with disabilities.
4. Please provide more details about the assessments carried out by the Government to evaluate the impact of planned reforms and measures to reduce public spending in rights-relevant sectors, such as public health care, housing and social security and pension systems, on persons with disabilities.
5. Please explain the measures taken to mitigate the potential negative impact of lowered housing assistance rate adopted on 30 June 2015 as part of the Comprehensive Reform of Social Security and Tax.
6. What evidence is available to establish that your Excellency's Government has considered alternative options to the cuts in social protection, in the context of the full use of maximum available resources?
7. In determining the extent of the benefit reduction, has your Excellency's Government given due consideration to the minimum essential levels of support that all persons with disabilities may require in order to enjoy an adequate standard of living in the community? Please provide evidence of such an analysis, if available.
8. Please provide data on the number of people with disabilities in social care institutions, as well as those placed in mental health facilities.
9. Could you please elaborate what measures are taken to ensure in-home, residential and other community support services for persons with disabilities?
10. Please provide any statistics or information available on the rate of suicide among persons with disabilities, directly or indirectly caused by the reduction in benefits as a result of the austerity measures implemented since 2012.
11. Please describe the existing mechanisms and processes to ensure consultation with persons with disabilities in all decision-making processes, to address their concerns and enhance the responsiveness of social protection system to their needs.
12. Please include information about the available remedies of which persons with disabilities can avail themselves when their rights are violated.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Furthermore, we may publicly express our concerns as, in our view, the information is sufficiently reliable and indicates a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

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Special Rapporteur on the rights of persons with disabilities

Rosa Kornfeld-Matte  
Independent Expert on the enjoyment of all human rights by older persons

Juan Pablo Bohoslavsky  
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