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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018

Opinion No. 70/2018 concerning Ms. H (whose name is known by the Working Group) (Japan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended mandate of the Working Group for a three-year period in Council resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 23 July 2018, the Working Group transmitted to the Government of Japan a communication concerning Ms. H. The Government replied to the communication on 19 October 2018. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Ms. H, born in1949, is a citizen of Japan residing in Tokyo. The source reports that prior to her compulsory hospitalization, Ms. H had lived in various hotels for about 10 years. It is reported that she started doing so after a burglar had entered her apartment.

5. According to the source, Ms. H had been staying at the Shinjuku Washington Hotel for about four months when, on 1 or 2 August 2016, she accidentally soiled her bed. Ms. H informed the hotel's cleaning staff of this accident, but left the hotel without telling the front desk clerk about it.

6. The source further reports that when Ms. H returned to the hotel in the evening of the same day, two police officers were waiting for her. They took Ms. H to the Shinjuku police station in a police vehicle. From the Shinjuku police station, Ms. H was again taken by police to Matsuzawa Hospital. After being examined by a doctor, she was forcibly admitted to the hospital.

7. Ms. H stayed at Matsuzawa Hospital from August 2016 until March 2018, when she was transferred to Sankei Hospital where she reportedly remains to date, without the prospect of discharge.

8. The source notes that initially, Ms. H's hospitalization was classified as an "involuntary admission". The source specifies that according to article 29 of the Act on Mental Health and Welfare for the Mentally Disabled (Act No. 123 of 1950), a person is involuntarily admitted to a designated hospital by the authority of the prefectural governor after more than two qualified psychiatrists have examined the person and determined that he or she is mentally impaired and dangerous to him or herself or to others. The same article stipulates that the prefectural governor shall inform the person of the fact that the order for involuntary admission would be done in writing.

9. According to the source, after Ms. H's guardian agreed to her hospitalization, the type of hospitalization was changed to "hospitalization for medical care and protection". The source explains that this type of hospitalization is used in situations when a person with a psychosocial disability is involuntarily admitted based on an examination by psychiatrists and with the consent of a close family member or a guardian. Relevant provisions are contained in paragraph 1 of article 33 of the Act on Mental Health and Welfare for the Mentally Disabled.

10. The source maintains that the reason for the initial deprivation of liberty of Ms. H by the authority of the prefectural governor was not disclosed. The source states that it is currently making inquiries to determine the diagnosis arrived at by doctors at the time of the hospitalization. The source further maintains that Ms. H soiled the bed in the hotel because of a health condition and because of her advanced age, and that her psychosocial disability was not the cause of the accident.

11. According to the source, Ms. H has had difficulty walking from the very beginning of her hospitalization. Considering her physical condition, the source argues that the hospital administration does not have to keep her in a closed environment. The source maintains that the authorities should provide her with nursing care, using social welfare services rather than compulsory hospitalization.

12. The source further notes that under the Japanese legal system, Ms. H cannot participate in judicial proceedings and her adult guardian must act as her legal representative in lawsuits. However, the adult guardian of Ms. H consented to her compulsory hospitalization. There is thus a conflict of interest between Ms. H and her adult guardian. In the present case, Ms. H is unable to initiate judicial proceedings to challenge the decision to hospitalize her involuntarily.

13. The source submits that no matter what diagnosis was made by the designated doctors, there was no causal link between her psychosocial disability and the risk that Ms. H would harm herself or others. It is argued that this case therefore does not fulfil the requirement of article 29 of the Act on Mental Health and Welfare for the Mentally Disabled. Consequently,

the involuntary admission of Ms. H has no legal basis and amounts to arbitrary detention. The source concludes that the deprivation of liberty of Ms. H falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

14. The source also argues that the decision to hospitalize Ms. H was based on the fact that she had a psychosocial disability. She had no prior criminal record. According to the source, her hospitalization therefore amounts to discrimination based on her psychosocial disability. The source concludes that the deprivation of liberty of Ms. H thus falls within category V of the categories applicable to the consideration of cases submitted to the Working Group.

Response from the Government

15. On 23 July 2018, the Working Group transmitted the allegations from the source to the Government of Japan under its regular communications procedure. The Working Group requested the Government to provide, by 21 September 2018, detailed information about the current situation of Ms. H and to clarify the legal provisions justifying her continued detention, as well as its compatibility with Japan's obligations under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure her physical and mental integrity.

16. On 30 August 2018 the Government of Japan requested an extension of two months for its reply. In accordance with paragraph 16 of its methods of work, the Working Group granted an extension of one month, with the new deadline of 21 October 2018.

17. On 19 October 2018, the Government submitted a reply to the Working Group. In its reply the Government explains that it has investigated facts related to the allegations referred to by the Working Group in its request for information, and confirmed that Ms. H was always treated in a proper manner in line with both the Police Duties Execution Act and the Act on Mental Health and Welfare for the Mentally Disabled.

18. The Government argues that, in accordance with the relevant provision of article 8 of the Act on the Protection of Personal Information Held by Administrative Organs, it is not possible for it to submit further details. However, the Government confirms that the protection and hospitalization of the said person were conducted in an appropriate manner in line with the relevant domestic laws, and that these actions do not constitute arbitrary detention.

19. The Government submitted the explanation and excerpts of the national legislation reflected below, noting that the English text is an unofficial translation and requesting the Working Group to refer to the original Japanese version for accuracy.

Overview of protection by a police official for a person with mental derangement

20. The Police Duties Execution Act stipulates as follows:

> Article 3 (1). In the event that a police official identifies a person who clearly falls under any of the following items, judging reasonably on the basis of unusual behaviour and other surrounding circumstances, and moreover has reasonable grounds to believe that such person needs emergency aid and protection, the police official shall provide such person immediate protection at any appropriate place, such as a police station, hospital, shelter, etc.
>
> > (i) A person who is likely to endanger his/her own life or those of others, or inflict injury on his/her own body or property or those of others, due to mental derangement or drunkenness; or
> >
> > (ii) (omitted).

Overview of involuntary hospitalization system in Japan under the Act on Mental Health and Welfare for the Mentally Disabled

21. In Japan, the Act on Mental Health and Welfare for the Mentally Disabled stipulates "involuntary hospitalization by administrative order", "hospitalization for medical care and

protection" and other types of hospitalization as means of involuntary hospitalization of a mentally disabled patient.

(i) "Involuntary hospitalization by administrative order" is carried out when a prefectural governor, based on a police officer's report or notification, has a designated physician of mental health conduct evaluations of a person, and as a result it is found that the person has mental disorders and that the person may commit self-harm or harm others (art. 29);

(ii) "Urgent involuntary hospitalization" is carried out in a pressing situation when the procedures for "involuntary hospitalization by administrative order" cannot be taken for a person, and as a result of evaluations by a designated physician of mental health, if it is found that the person has a high risk of committing self-harm or harming others if not hospitalized immediately. The hospitalization period shall be for up to a maximum of 72 hours (art. 29-2);

(iii) "Hospitalization for medical care and protection" is carried out when it is found as a result of evaluations by a designated physician of mental health that a person has mental disorders requiring hospitalization for medical care and protection. When the person is not in a condition to decide his/her voluntarily hospitalization, the person concerned can be hospitalized with the consent of the person's family members (or legal representatives), even without the consent of the person in question. If such a person has no family members (or legal representatives) or if his/her family members (or legal representatives) cannot express his/her will, the person is hospitalized based on the consent of the head of the municipality to which the person belongs (art. 33);

(iv) Each of the hospitalizations as mentioned above is carried out by the due process of law. They cannot be carried out simply because a person has mental disorders but are carried out only when certain requirements are fulfilled, such as in cases where the person concerned may commit self-harm or harm others or where the person cannot be voluntarily hospitalized.

22. In addition, a request to the prefectural governor to discharge a person hospitalized in a mental hospital, or a request to the prefectural governor to order the administrator of the mental hospital to discharge the hospitalized person or improve his/her treatment, may be made by the hospitalized person him/herself or his/her family members (or legal representatives) (art. 38-4). When such a request is made, the prefectural governor shall request a psychiatric review board (an independent third party) to review the patient and, based on the review results of the psychiatric review board, the governor shall discharge the patient who has been recognized as not requiring the hospitalization, or shall order the administrator of the mental hospital to discharge the patient or take necessary measures for improving his/her treatment (art. 38-5). A psychiatric review board shall be established in every prefecture in order to review the requests from inpatients or their family members (or legal representatives) to discharge the patient and to decide whether such requests are acceptable or not (art. 12). Persons who are dissatisfied with "involuntary hospitalization by administrative order" may request the Minister of Health, Labour and Welfare to review the case.

Conflict of interest between the statutory agent and the adult ward

23. According to the Civil Code and the Code of Civil Procedure, in general, an adult ward may not perform any procedural acts except through a statutory agent (a guardian of an adult). However, if there is a conflict of interest between the statutory agent and the adult ward, the statutory agent may be unable to exercise the authority of representation. If an act involves a conflict of interest between a guardian and a ward, a guardian shall apply to the family court to have a special representative for the ward appointed (Civil Code, arts. 860 and 820 (1)). A special representative can be appointed at the request of a ward or his/her relative, or a guardian, or ex officio.

24. The family court may appoint a supervisor of a guardian, when it finds this necessary, at the request of a ward or his/her relative, or a guardian, or ex officio. A supervisor of a guardian represents the ward in conduct where there is a conflict of interest between the ward and the guardian (Civil Code, arts. 849 and 851 (4)).

Protection of personal information in Japan.

25. In Japan, the Act on the Protection of Personal Information Held by Administrative Organs has been enacted. According to this law, restrictions are imposed on the provision of personal information retained by an administrative organ. The provisions of the relevant article are shown below.

Article 8

26. The head of an administrative organ must not, except as otherwise provided by laws and regulations, use or provide another person with retained personal information for purposes other than the purpose of use.

27. Notwithstanding the provisions of the preceding paragraph, when the head of an administrative organ finds that a case falls under circumstances specified by any of the following items, the head of that administrative organ may use or provide another person with retained personal information for purposes other than the purpose of use; however, this does not apply if it is found that the use by the head or provision to another person of the retained personal information for purposes other than the purpose of use is likely to cause unjust harm to the rights or interests of the relevant individual or a third party:

(i) If the retained personal information is used or provided with the consent of the relevant individual, or if it is provided to the relevant individual;

(ii) If an administrative organ uses retained personal information within the organ only to the extent necessary for executing processes under its jurisdiction provided by laws and regulations, and there are reasonable grounds for the use of that retained personal information;

(iii) If the retained personal information is provided to another administrative organ, incorporated administrative agency, etc., local public entity or local incorporated administrative agency in which the person who receives the information uses it only to the extent necessary for executing processes or business under its jurisdiction as provided for by laws and regulations, and there are reasonable grounds for the use of that retained personal information; or

(iv) If, beyond the cases listed in the preceding three items, the retained personal information is provided exclusively for statistical purposes or academic research purposes, provision of the information to other persons is obviously beneficial to the relevant individual, or there are other special grounds for providing the retained personal information.

28. The Government's reply was sent to the source for further comments on 21 October 2018.

Discussion

29. The Working Group thanks the source and the Government for their submissions and appreciates the cooperation and engagement of both parties in this matter.

30. The source has submitted that the involuntary hospitalization of Ms. H does not fulfil the requirement of article 29 of the Act on Mental Health and Welfare for the Mentally Disabled, as there was no causal link between any psychosocial disability which Ms. H may have been diagnosed with and the risk of her harming herself and/or others. Consequently, the involuntary admission of Ms. H has no legal basis and amounts to arbitrary detention, falling under category I of the Working Group. The Government denies these allegations by asserting that Ms. H was always treated in a proper manner in line with both the Police Duties Execution Act and the Act on Mental Health and Welfare for the Mentally Disabled. The Government has argued that it is not able to submit further details, in accordance with the relevant provision of article 8 of the Act on the Protection of Personal Information Held by Administrative Organs.

31. The Working Group firstly reiterates its long-standing practice that, if the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes

to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.[1]

32. Moreover, it is also not sufficient for the Government to argue that its national legislation prevents it from providing a detailed explanation of the actions of the national authorities. Given that the Working Group was created to serve the needs of victims of arbitrary arrests and detention worldwide and for Member States to hold each other accountable, Member States must have intended for the mechanism to resolve the disputes brought by the victims. That was also the motivation of the Human Rights Council when it reminded States to cooperate fully with the Working Group, as it did most recently in its resolution 33/30.

33. Therefore, a reply from the Government is normally expected by the Working Group within 60 days, during which appropriate inquiries may be carried out by the Government so as to furnish the Working Group with the fullest possible information.[2] The contention by the Government that its national legislation prevents it from providing detailed information is incompatible with this requirement.

34. Turning to the allegations made by the source, the Working Group notes that Ms. H was taken from the hotel where she was staying on either 1 or 2 August 2016 by two police officers who took her to the Shinjuku police station in a police vehicle. The Working Group particularly notes that this initial arrest by the police was not preceded by allegations of any crime committed by Ms. H or her being violent towards others or a danger to herself. Indeed, it was preceded by an unfortunate event of alleged bed soiling which, the Working Group observes, is not a crime. The Government has provided no explanation as to why police escorted Ms. H from the hotel where she was staying as a paying guest, and has thus failed to invoke a legal basis for the initial detention of Ms. H. Article 9 of the Covenant protects the right of Ms. H to be informed of the reasons for her arrest, a right which was violated in the present case.

35. From the police station, Ms. H was then taken from the police station to Matsuzawa Hospital where, after being examined by doctors, she was involuntary admitted until March 2018. She was then transferred to Sankei Hospital, where she remains. The Government has not contested these allegations.

36. The initial involuntary hospitalization of Ms. H took place, according to the source, in accordance with article 29 of the Act on Mental Health and Welfare for the Mentally Disabled (Act No. 123 of 1950). However, the legal guardian of Ms. H later agreed to the hospitalization, which changed the type of hospitalization to "hospitalization for medical care and protection", as per article 33 (1) of the same Act. Once again, the Government has not contested these allegations.

37. The Working Group observes that arbitrary detention can occur not only in criminal justice settings but also in health-care settings, such as psychiatric hospitals and other institutions where individuals may be deprived of their liberty. As the Working Group stated in its 2016 annual report, the deprivation of personal liberty occurs when a person is being held without his or her free consent.[3] In the present case, Ms. H has been unable to leave the hospital, initially due to the involuntary nature of her hospitalization and then due to "hospitalization for medical care and protection", to which her legal guardian consented.

38. The Working Group notes that according to article 9 of the Covenant, a person may be deprived of liberty only when it is prescribed expressly by the national legislation and in accordance with the procedure set out in that legislation. In the present case, the Working Group observes that article 29 of the Act on Mental Health and Welfare for the Mentally Disabled (Act No. 123 of 1950) permits hospitalization only when two or more designated mental health doctors have arrived at the same judgment that the person in question has a psychosocial disability and that the person could harm him/herself or others due to his/her psychosocial disability unless he/she is hospitalized for medical care and protection. In such

[1] A/HRC/19/57, para. 68. See also, for example, opinions No. 15/2017, No. 51/2017 and No. 43/2018.
[2] A/HRC/36/38, para. 15.
[3] A/HRC/36/37, para. 51. See also A/HRC/30/37, para. 9; and opinions No. 68/2017 and No. 8/2018.

a case, the prefectural governor shall inform the person, in writing, of the fact that he/she shall be subjected to involuntary admission.

39. Without making any assessment of the compatibility of the above provisions of that national law with the international human rights obligations undertaken by Japan, it appears obvious to the Working Group that those provisions were not followed during the involuntary hospitalization of Ms. H. First, the initial detention of Ms. H was carried out by the police, most likely following an unfortunate incident of Ms. H allegedly soiling her hotel bed and not on the basis of a decision made by a designated doctor who had made an assessment of the health of Ms. H. The Working Group is mindful that there is no indication that Ms. H was violent or posed a danger to herself or others prior to or during her detention.

40. Second, when Ms. H was transferred to Matsuzawa Hospital, she was not examined by at least two designated doctors who confirmed the need for the hospitalization, as clearly required by the national legislation. As claimed by the source, and not contested by the Government, Ms. H was involuntary hospitalized by the decision of a single doctor. Third, Ms. H was not notified in writing of the need for her involuntary admission. Consequently, the involuntary admission of Ms. H to Tokyo Metropolitan Matsuzawa Hospital disregarded all the prescriptions of article 29 of the Act on Mental Health and Welfare for the Mentally Disabled (Act No. 123 of 1950).

41. The Working Group recalls that it is not sufficient that a law exists which may justify the detention of persons; the authorities must invoke that law in the individual circumstances and do so in compliance with the procedure prescribed by the said law.[4] In the present case, while article 29 of the Act on Mental Health and Welfare for the Mentally Disabled (Act No. 123 of 1950) may have justified the deprivation of liberty of Ms. H, the failure of Japanese authorities to follow the procedure prescribed in that law means that they cannot rely on the provisions of this Act as the legal basis justifying the deprivation of liberty. In other words, the Working Group concludes that the authorities of Japan failed to respect their own national legal provisions in relation to the involuntary hospitalization of Ms. H and thus also breached article 9 of the Covenant, which specifically requires that any detention must be carried out in accordance with the law.[5]

42. The Working Group wishes to further underline that any instance of deprivation of liberty, including internment in psychiatric hospitals, must meet the standards set out in article 9 of the Covenant. The Working Group, in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, has stated that, where a person with a disability is deprived of his or her liberty through any process, that person is, on an equal basis with others, entitled to guarantees in accordance with international human rights law, necessarily including the right to liberty and security of person, reasonable accommodation and humane treatment in accordance with the objectives and principles of the highest standards of international law pertaining to the rights of persons with disabilities. A mechanism, complete with due process of law guarantees, shall be established to review cases of placement in any situation of deprivation of liberty without specific, free and informed consent. Such reviews are to include the possibility of appeal.[6]

43. The Working Group observes that all such due process guarantees were absent in relation to the involuntary hospitalization of Ms. H, in a further breach of article 9 of the Covenant.

44. The Working Group further recalls that according to the Basic Principles and Guidelines, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.[7] That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of

[4] See, for example, opinions No. 46/2017, No. 66/2017 and No. 75/2017.
[5] See opinion No. 68/2017.
[6] A/HRC/30/37, annex, paras. 104–105.
[7] Ibid., paras. 2–3.

liberty,[8] as well as to all situations of deprivation of liberty, not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrest, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes.[9] Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.[10]

45. The Working Group notes that those provisions were clearly ignored in the case of Ms. H, as she was unable to challenge the legality of her involuntary admission to Tokyo Metropolitan Matsuzawa Hospital. Moreover, the Working Group notes that during the involuntary hospitalization, Ms. H was not the subject of any reviews of her case by an independent authority that would ascertain whether involuntary hospitalization was necessary, appropriate and proportionate in the individual circumstances of the case. This is a clear further breach of article 9 (4) of the Covenant.

46. The Working Group notes that at some point the type of hospitalization of Ms. H was changed to "hospitalization for medical care and protection", with the consent of her legal guardian. The source submits that there is no mechanism for Ms. H to challenge this consent as, in accordance with the Japanese legal system, she cannot participate in judicial proceedings.

47. The Working Group notes that, according to the information submitted by the Government, in instances when there is a conflict of interest between a guardian and a ward, a guardian shall apply to the family court to have a special representative for the ward appointed (Civil Code, arts. 860 and 820 (1)), and such special representative can be appointed at the request of a ward or his/her relative, a guardian, or ex officio by the family court. In such instances, a guardian's supervisor is appointed to represent the ward where there is a conflict of interest between the ward and the guardian (Civil Code, arts. 849 and 851 (4)).

48. The Working Group observes, however, that the application of this procedure rests entirely upon the action of the guardian, who has to come forward and declare his/her conflict of interest. There appears to be no possibility for the ward him/herself to challenge the appointed guardian, which is contrary to the provisions of article 9 (4) of the Covenant.[11]

49. Moreover, the Working Group also observes that during the period of Ms. H's "hospitalization for medical care and protection" with the consent of her legal guardian, her case was not subject to any reviews by an independent authority that would ascertain whether that was necessary, appropriate and proportionate in the individual circumstances of the case. This is yet a further breach of article 9 (4) of the Covenant.

50. The Working Group therefore concludes that both the involuntary hospitalization and the "hospitalization for medical care and protection" with the consent of her legal guardian of Ms. H since 1 or 2 August 2016 are arbitrary and fall under category I, as they were not carried out in accordance with the procedure established by national law and therefore lacked the requisite legal basis and did not provide for the requisite due process guarantees, as Ms. H was not able to challenge the legality of her detention.[12] In arriving at this finding, the Working Group is mindful of the 2014 concluding observations on Japan of the Human Rights Committee, in which it expressed concerns over the frequent use of involuntary hospitalization on very broad terms of people with psychosocial disabilities for lengthy

[8] Ibid., para. 11.
[9] Ibid., para. 47 (a).
[10] Ibid., para. 47 (b).
[11] See paragraph 23 above.
[12] See also opinions No. 68/2017 and No. 8/2018.

periods of time and without access to an effective remedy to challenge violations of their rights.[13]

51. The source has also submitted that the detention of Ms. H falls under category V, since her involuntary hospitalization was discriminatory, as it was carried out on the basis of her psychosocial disability. The Working Group notes the response of the Government summarized in paragraph 27 above.

52. The Working Group notes that Japan has been a party to the Convention on the Rights of Persons with Disabilities since 20 January 2014. The Working Group reiterates[14] that it is contrary to the provisions of that Convention to deprive a person of his or her liberty on the basis of disability (art. 14).[15] Moreover, as the Working Group stated in the Basic Principles and Guidelines, the involuntary committal or internment of persons on the grounds of the existence of an impairment or perceived impairment is prohibited.[16]

53. The Working Group once again wishes to emphasize that Ms. H was initially detained due to an allegation that she had soiled a bed in the hotel where she was staying, an unfortunate event but not one that could be described as violent or dangerous to herself or others. The Working Group is especially mindful that the Government has not contested the circumstances leading up to the detention of Ms. H.

54. Neither at the time of her detention nor prior to it was there any evidence of Ms. H being violent or otherwise presenting a danger to herself and/or others. Her subsequent transfer to Tokyo Metropolitan Matsuzawa Hospital appears to have had no connection to the initial event of the alleged bed soiling, which, as noted earlier, is neither a crime nor a violent act in itself.

55. It appears to the Working Group that Ms. H may have become somewhat of a nuisance to the hotel where she was staying as a paying guest, and that the hotel used the alleged incident as an excuse to be rid of her with the full support of the police and the medical authorities. The Working Group is disconcerted at the treatment of Ms. H by the Japanese authorities and considers that the deprivation of liberty of Ms. H was conducted purely on the basis of her psychosocial disability, and was thus discriminatory. The Working Group therefore concludes that the detention of Ms. H and her subsequent internment in Tokyo Metropolitan Matsuzawa Hospital and Sankei Hospital were discriminatory and fall under category V. In arriving at this finding, the Working Group is mindful of the 2013 concluding observations of the Committee against Torture on Japan, in which the Committee expressed its concerns over the frequent use of involuntary hospitalization of people with psychosocial disabilities for lengthy periods of time.[17] The Working Group also notes that these concerns were echoed by the Human Rights Committee in its 2014 concluding observations on Japan.

56. The Working Group also refers the present case for further consideration to the Special Rapporteur on the rights of persons with disabilities, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the enjoyment of all human rights by older persons.

57. The Working Group would welcome the opportunity to work constructively with the Government of Japan to address its serious concerns relating to arbitrary deprivation of liberty. On 30 November 2016, the Working Group sent a request to the Government to undertake a country visit and welcomes the engagement of the Government through the meetings the Working Group has held with the Permanent Mission of Japan to the United Nations Office at Geneva to discuss further the possibility of such a visit. On 2 February 2018, the Working Group reiterated its request to the Government to undertake a country visit and hopes that it will receive a positive response from the Government as a sign of its

[13] CCPR/C/JPN/CO/6, para. 17.

[14] A/HRC/36/37, para. 55; see also opinion No. 68/2017.

[15] See also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 19.

[16] A/HRC/30/37, annex, para. 103.

[17] CAT/C/JPN/CO/2, para. 22.

willingness to enhance its cooperation with the special procedures of the Human Rights Council.

Disposition

58. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Ms. H, being in contravention of articles 2, 3, 6, 7, 8 and 9 of the Universal Declaration of Human Rights and of articles 2, 9, 16 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and V.

59. The Working Group requests the Government of Japan to take the steps necessary to remedy the situation of Ms. H without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

60. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. H immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law.

61. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. H and to take appropriate measures against those responsible for the violation of her rights.

62. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the rights of persons with disabilities, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the enjoyment of all human rights by older persons.

63. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

64. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Ms. H has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. H;

(c) Whether an investigation has been conducted into the violation of Ms. H’s rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Japan with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

65. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

66. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

67. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[18]

[*Adopted on 20 November 2018*]

[18] See Human Rights Council resolution 33/30, paras. 3 and 7.