**Questionnaire: The right to liberty and security of persons with disabilities**

1. **Context**

For her report to the Human Rights Council, 40th session, the Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas Aguilar, intends to focus on the right to liberty and security of persons with disabilities.

The Special Rapporteur intends to undertake an innovative research on the various forms of deprivation of liberty experienced exclusively by persons with disabilities across the globe. In her report, she aims to examine the global challenges in relation to securing enjoyment of the right to liberty and security of person by persons with disabilities on an equal basis with others, identify disability-specific forms of deprivation of liberty and scrutinize them through the lens of human rights, as well as to present emerging trends and good practices related to securing implementation of this right.

The Special Rapporteur hopes to further develop the understanding of the scope of the right to liberty and security of the person in relation to persons with disabilities and to provide a clear guiding framework aimed at assisting governments in the implementation of rights as set under the article 9 of the International Covenant on Civil and Political Rights, article 37(b) of the Convention on the Rights of the Child, and article 14 of the Convention on the Rights of Persons with Disabilities.

The following questionnaire will assist the Special Rapporteur to identify instances in which persons may be deprived of their liberty for reasons tied to their actual or perceived disabilities and to better grasp the current situation when it comes to the enjoyment of the right to liberty and security by persons with disabilities.

1. **Questionnaire**
2. Please provide information in relation to the existence of legislation and policies that are intended to ensure and protect the right to liberty and security of persons with disabilities.

The Japan National Group of Mentally Disabled People, the respondent of this questionnaire, is national organization of persons with psychosocial disabilities. It was established in 1974. All members of the organization are persons with psychosocial disabilities.

1. Please provide information on relevant legislation and policies related to:
	1. exercise of legal capacity;

Japanese government have not provided a system to enable persons with disabilities to exercise their legal capacity. The government recently established the “decision-making support system,” but it is just a system of care management and not useful to enable persons with disabilities to exercise their legal capacity. The “decision-making support system” is designed to be combined with the guardianship. The government established the Act on the Promotion of Utilization of Guardianship and seek to increase the number of guardianship users.

* 1. the rights of persons with disabilities in institutions[[1]](#footnote-1) including processes of deinstitutionalisation;

There is a legislation to prevent abuse in institutions in Japan. In order to implement deinstitutionalization, the government establishes the target number of transition to communities and provide care management or nursing. However, little progress has been made in a deinstitutionalisation of persons with intellectual or psychosocial disabilities.

* 1. involuntary admission to mental health services or other institutions;

There are three types of involuntary hospitalization in mental hospital.

* involuntary hospitalization to prevent from harming themselves or others (article 29 of the Act on Mental Health and Welfare for the Mentally Disabled)
* involuntary hospitalization by the reason of requirement of medical treatment (article 33 of the Act on Mental Health and Welfare for the Mentally Disabled)
* involuntary hospitalization in forensic mental health institution (article 27 and 33 of the Act on Mental Health and Welfare for the Mentally Disabled, and the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity)
	1. criteria to be found not criminally responsible (insanity defence, *inimputabilidad*, etc.);

There is criminal procedure for defendants to plead not guilty by reason of insanity in Japan. (article 39 of the Penal Code)

* 1. unfitness to stand trial or unfitness to plead;

There are following legislations which prevent persons with disabilities from standing trial on the basis of impairment. In this regard, the procedure of administrative litigation is same as the procedure established by Code of Civil Procedure.

* incompetence to stand civil trial (article 28 of the Code of Civil Procedure)
* unfitness to plead (article 115 if the Code of Civil Procedure)
* incompetence to stand criminal trial (article 28 of the Code of Penal Procedure)
	1. security measures and diversion programmes;

A court is allowed to provide involuntary hospitalization for persons with disabilities in forensic mental health institution by the Medical Treatment and Supervision Act.

1. Please provide the most recently available data, disaggregated by sex and age if possible, on the number of:
	1. persons under guardianship;
* 26,836 applications for commencement of full guardianship in 2016
* 5,325 applications for commencement of curatorship in 2016
* 1,297 applications for commencement of assistance in 2016

We can find the statistical number of applications to court, but there is no statistics on the number of persons who use the guardianship in Japan.

(The Supreme Court: http://www.courts.go.jp/vcms\_lf/20170324koukengaikyou\_h28.pdf)

* 1. cases where the state or an organisation has been appointed guardian;
	2. institutions for persons with disabilities;

The number of institutions in Japan is 5,221.

The number of people which these institutions can accommodate is 180,159.

(Ministry of Health, Labour and Welfare: http://www.mhlw.go.jp/toukei/saikin/hw/fukushi/15/dl/kekka-shousaihyou01.pdf)

* 1. persons with disabilities placed in institutions;

Almost institutions for persons with disabilities are in suburban area of Japan and apart from communities. There is no statistics related to informal institutions. Children with disabilities are under the jurisdiction of the child welfare administration.

The number of persons with disabilities placed in institutions except those who are under 20 years old is 150,006.

(Ministry of Health, Labour and Welfare:

* 1. persons in institutions under guardianship;

There is no statistics on the number of persons in institutions under guardianship.

* 1. registers of the use of seclusion and restraints and its frequency;

There are only statistics on the number of physical restriction and isolation in mental hospitals on 30 June every year. The numbers of both increase year by year.

Years　　Isolation　 Physical restriction

 2004　　　7,673　　　　5,242

 2005　　　8,097　　　　5,623

 2006　　　8,567　　　　6,008

 2007　　　8,247　　　　6,786

 2008　　　8,456　　　　8,057

 2009　　　8,800　　　　8,193

 2010　　　9,132　　　　8,930

 2011　　　9,283　　　　9,254

 2012　　　9,791　　　　9,695

 2013　　　9,883　　　　10,229

(Ministry of Health, Labour and Welfare: http://www.ncnp.go.jp/nimh/keikaku/630/)

* 1. involuntary admissions to mental health services or other social care facilities;
* involuntary hospitalization to prevent from harming themselves or others

In 2014: 6,861 cases

In 2013: 6,941 cases

In 2012: 6,685 cases

In 2011: 5,818 cases

In 2010: 5,706 cases

In 2009: 5,735 cases

In 2008: 5,524 cases

In 2007: 5,511 cases

* involuntary hospitalization by the reason of requirement of medical treatment (reported numder)

In 2015: 177,640 cases

In 2014: 169,799 cases

In 2013: 159,555 cases

In 2012: 155,797 cases

In 2011: 151,981 cases

In 2010: 148,684 cases

In 2009: 141,907 cases

In 2008: 137,775 cases

In 2007: 131,109 cases

- involuntary hospitalization in forensic mental health institution

(Ministry of Health, Labour and Welfare: http://www.mhlw.go.jp/toukei/saikin/hw/eisei\_houkoku/15/dl/gaikyo.pdf)

* 1. existing inpatient mental health facilities;

The number of mental hospitals is 1,064 on 1 October 2015.

(Ministry of Health, Labour and Welfare: http://www.mhlw.go.jp/toukei/saikin/hw/iryosd/15/dl/gaikyo.pdf)

* 1. beds for mental health inpatients in psychiatric hospitals and general hospitals;

The number of beds in mental hospital is 251,631 on 1 October 2015.

The number of beds for mental health inpatients in general hospitals is 84,651 on 1 October 2015.

The total number of these is 336,282.

(Ministry of Health, Labour and Welfare: http://www.mhlw.go.jp/toukei/saikin/hw/iryosd/15/dl/gaikyo.pdf)

* 1. average days a person spends under involuntary admission at mental health facilities;

Days an inpatients spends at mental health facilities on 30 June 2012 are as follows;

From 6 months to 1 year: 36%,

From 1 year to 5 years: 30%,

From 5 years to 10 years: 14%,

From 10 years to 20 years: 12%,

Over 20 years: 8%.

The length of time which an inpatient spends at mental health facilities in Japan is the longest in the world. This is very serious problem of human rights violation.



* 1. persons who have been declared unfit to stand trial or unfit to plead;

There is no statistics on the number of persons who were declared incompetence to stand civil trial, unfitness to plead, or incompetence to stand criminal trial.

* 1. persons who have been found not to be criminally responsible;

The number of persons who were declared not guilty by reason of insanity is 6 in 2015. There is no statistics on the number of persons who were commuted by reason of quasi-insanity.

(Ministry of Justice: http://hakusyo1.moj.go.jp/jp/62/nfm/mokuji.html)

* 1. institutions where persons who have been declared unfit to plead, stand trial or found to be not criminally responsible are placed and number of inmates;
	2. security or preventive measures applied in the criminal justice context.

Recently the Japanese government is revising the Act on Mental Health and Welfare for the Mentally Disabled. They intend persons with psychosocial disabilities who were involuntarily hospitalized to prevent from harming themselves or others, to be watched by a team which includes the police in its member for the purpose of crime prevention.

The number of forensic mental health institution is 32 on 1 April 2017.

1. Please provide information on jurisprudence, complaints or investigations in relation to abuses and violence against persons with disabilities at home.

Psychosocial disabled people are not only capable of getting support from their families. There are circumstances in which families are proactively recommending transportation to hospitals because of their relationships and fatigue in support. Some families ask for illegal contractors and forcibly take them to hospitals and related institutions. Historically, the Family Association declared that we are the parties and sometimes conflicted with party groups of psychosocial disabled people.

1. Please provide any other relevant information (including information from surveys, censuses, administrative data, reports, studies, and case law) in relation to the right to liberty and security of persons with disabilities in your country. Please also refer to any innovative initiatives that have been taken at the local, regional or national level to promote and ensure the right to liberty and security of persons with disabilities and identify lessons learned from these.

Advocate practices which are the most effective and independent from government, are informal practices provided by civil society organizations or individuals, especially by persons with psychosocial disabilities. However, these are small, and face serious human resource and financial difficulties.

Thank you for your responses and contributions.

1. **Submission of responses**

Due to limited capacity for translation, we kindly request that you submit your answers, if possible, in **English, Spanish or French** and, no later than **30 May 2017.** Kindly identify links or provide copies of any laws, documents or cases, related to your answers. All responses will be posted in the official web page of the Rapporteur unless you indicate otherwise at:

[http://www.ohchr.org/EN/Issues/Disability/SRDisabilities](https://www.ohchr.org/EN/Issues/Disability/SRDisabilities)

Kindly be concise in your responses and them preferably via email to: sr.disability@ohchr.org, copying registry@ohchr.org.

For any question, please contact the Special Rapporteur through Ms. Alina Grigoras, human rights officer at Special Procedures Branch- OHCHR: email: agrigoras@ohchr.org; phone: +41 22 917 92 89; or Ms. Cristina Michels, human rights officer at Special Procedures Branch- OHCHR: email: cmichels@ohchr.org, phone +41 22 928 9866.

1. For the purposes of this questionnaire, institutions include all facilities that are aimed to provide shelter, care or a living arrangement **for persons with disabilities** such as residences, nursing homes, orphanages, homes for the elderly, community homes, tutorised homes, farms, faith based institutions, boarding schools, prayer camps, or others. [↑](#footnote-ref-1)