**Response to the Questionnaire from the Special Rapporteur on the Rights of Persons with Disabilities, on the right to liberty and security of persons with disabilities**

**May 25, 2017**

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| 1. 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. |

○ In Korea, the rights and interests of persons with disabilities are protected under the *Act on Welfare of Persons with Disabilities,* in accordance with the law, the State established and has operated the Central Institutions for Protection of Rights and Interests of persons with disabilities since February 2017.

○ The *Act on the Prohibition of Discrimination against Persons with disabilities, Remedy against Infringement of Their Rights* was adopted and put in force to prohibit any discrimination against persons with disabilities in social environments including employment, daily life, use of amenities and social participation and to promote their rights and interests. In this regard, the procedures for filing a petition against discrimination towards persons with disabilities were put in place according to the above mentioned Act.

○ In particular, the *Act on Guarantee of Rights of and Support for People with Developmental Disabilities* protects and promote the rights and interests of people with developmental disabilities who are considered vulnerable to human rights violation.

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| 2. Please provide information on relevant legislation and policies related to:  - excise of legal capacity  - the rights of persons with disabilities in institutions including process of deinstitutionalization  - involuntary admission to mental health services or other institutions  - criteria to be found not criminally responsible  - unfitness to stand trial or unfitness to plead  - security measures and diversion programs |

○ The *Act on Guarantee of Rights of and Support for People with Developmental Disabilities* states that every person with a developmental disability shall independently determine his/her dwelling, consent to or reject medical services, communicate with others, decide whether to use welfare services, and choose the type of service (Art. 8), and that the State and local governments may provide adult guardianship service (Art. 9).

○ The *4th National Plan for Disability Policy 2013-2017*, in effort to support deinstitutionalization of persons with disabilities residing in facilities, is providing support services and expanding the number of group homes for people with developmental disabilities. In addition, institutions for the protection of rights of persons with developmental disabilities are being established nationwide to protect and promote their rights and support their integration to local communities after deinstitutionalization.

○ The *Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients* prescribes that in order to minimize the duration of hospitalization or admission of persons with mental disabilities, a primary consideration shall be given to medical treatment of these persons within local communities and that it shall be recommended to respect the intention of persons with mental disabilities in hospitalization or admission to mental health improvement facilities. The head of a mental medical institution can hospitalize a mentally ill person, only in cases where there is a consensus on hospitalization among two or more psychiatrists including at least one psychiatrist from national or public mental medical institutions within two weeks after hospitalization. Furthermore, the head of the mental medical institution shall ask the Committee for Examination as to Legitimacy of Admission, founded separately, for permission within one month after hospitalization.

○ In Korea, according to the *Criminal Act* (Article 10), the act of a person who, because of mental disorder, is unable to make discriminations or control one’s will, shall not be punished. However, if there is any risk of a second conviction for an offense by a person with mental disabilities, medical benefits will be granted to her/him, thereby facilitating her/his return to society and preventing another offense.

○ In addition, if a crime is committed by a person with mental or physical disability, she/he shall be punished in accordance with her/his criminal responsibility. The Court makes decisions on the criminal responsibility with reference to the judgement result delivered by an expert.

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| 3. Please provide the most recently available data, disaggregated by sex and age if possible, on the number of:  - persons under guardianship  - cases where the state has been appointed adult guardians  - institution for persons with disabilities  - persons with disabilities placed in institutions  - persons with disabilities in institution under guardianship  - involuntary admissions to mental health facilities  - beds for mental health inpatient in psychiatric hospitals and general hospital  - average days a person spends under involuntary admission at mental health facilities  - persons who have been declared unfit to stand trial or unfit to plead  - measures to protect persons with mental disabilities in the Criminal Act |

○ The number of cases where the public guardianship support for persons with developmental disabilities is provided, in accordance with the *Act on Guarantee of Rights of and Support for People with Developmental Disabilities*, is 753 from July 2015 to May 2016.

○ Among adults who need a guardian, the percentage of those receiving civil (public) guardians is 8.97%, meaning less than one person out of ten.

○ Facilities for persons with disabilities are regulated as welfare facilities for persons with disabilities according to the *Act on Welfare of Persons with Disabilities*. In 2015, there were 1,213 community rehabilitation facilities (such as welfare centers for persons with disabilities, day-care centers, etc.), 1,484 residential homes and 560 vocational rehabilitation facilities.

○ In 2015, the number of persons with disabilities using residential homes was 31,222, while that of persons with disabilities using vocational rehabilitation facilities was 16,414.

○ In 2014, 81, 625 persons were institutionalized in mental health facilities, among whom 61% was forced to institutionalization by family members whereas the ratio of voluntary hospitalization was 29.7%.

○ In 2014, there were 1,769 mental health facilities, out of which 1,402 were medical institutions (national, public, private mental hospitals, department of psychiatry in general hospitals, psychiatry units at hospitals, and mental clinics), 59 mental health care facilities, 308 psychosocial rehabilitation centers.

○ In 2014, the number of beds at mental hospitals per 1000 persons was 1.62. The total number of days for which persons with mental disabilities were hospitalized or received outpatient treatment amounted to 23,474,015 and the average number of days for which a person with mental or behavioral disabilities stayed at hospital was 129.5 (126.2 days for men and 134.0 days for women).

○ In accordance with Articles 224-5 and 276-2 (Special Rules for Those who Need Special Protection including Disabled Persons) of the *Criminal Procedure Act* in Korea, if a criminal suspect (defendant) lacks the ability to discern right from wrong or make and communicate a decision due to a physical or mental disability, a prosecutor or judicial police officer (the presiding judge or a judge) may allow a person who has a reliable relationship with the criminal suspect (defendant) to sit in company with the criminal suspect (defendant), ex officio or upon request of the criminal suspect (defendant), his/her legal representative, or the prosecutor.

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| 4. Please provide information on jurisprudence, complains or investigations in relation to abuses and violence against persons with disabilities at home. |

○ The *Act on Welfare of Persons with Disabilities* states that the shelters for persons with disabilities shall be established and operated to give temporary protection to victimized persons with disabilities and to support their return to society – there are currently 6 shelters available. The number of shelters is planned to increase gradually throughout 17 cities and provinces, with 8 more shelters scheduled to be built by the end of 2017.

- As shown in the two tables below on the age of users and types of disabilities in 4 shelters for persons with disabilities nationwide, the percentage of users from age 10 to 29 is slightly higher while persons with intellectual disabilities account for the greater part of all persons with disabilities using those shelters.

**<Age of Users>**

(Unit: persons, %)

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| **Category** | **Enter** | **Leave** |
| Below age 10 | - | - |
| Age 10-19 | 10 (25.0) | 9 (34.6) |
| Age 20-29 | 10 (25.0) | 7 (26.9) |
| Age 30-39 | 3 (7.5) | 3 (11.5) |
| Age 40-49 | 8 (20.0) | 3 (11.5) |
| Age 50-59 | 7 (17.5) | 4 (15.5) |
| Over age 60 | 2 (5.0) | - |
| Other | - | - |
| Total | 40 (100.0) | 26 (100.0) |

**<Disability Types of Users>**

(Unit: persons)

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| **Category** | **Enter** | **Leave** |
| Physical disabilities | 1 (2.5) | - |
| Hearing-impairment | - | - |
| Intellectual disabilities | 34 (85.0) | 22 (84.7) |
| Autism | 2 (5.0) | 2 (7.7) |
| Mental disabilities | - | - |
| Brain legions | 1 (2.5) | 1 (3.8) |
| Epilepsy | 1 (2.5) | - |
| Disabilities not registered | 1 (2.5) | 1 (3.8) |
| Other | - | - |
| Total | 40 (100.0) | 26 (100.0) |

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| 5. Please provide any other relevant information 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 |

○ The procedures to protect the rights of persons with disabilities and the basis for remedy against infringement of their rights are arranged in accordance with the *Act on Welfare of Persons with Disabilities* and the *Act on the Prohibition of Discrimination against Persons with Disabilities, Remedy against Infringement of Their Rights*.

○ Also, the State, local governments, public institutions, etc. (hereinafter, ‘public institutions’) are obliged to provide education to raise awareness on persons with disabilities at least once a year and the Ministry of Health and Welfare are monitoring public institutions on the implementation of the Acts every year to ensure the prevention of discrimination against persons with disabilities and the remedy against infringement of their rights.

○ In addition, in order to protect the rights of persons with disabilities, the Korea Disabled people’s Development Institute (KODDI), a public institution under the Ministry of Health and Welfare, is conducting researches on issues such as prevention of suicides committed by persons with disabilities and their family, support for the family of persons with disabilities, and disability-inclusive manuals and support systems in disasters for persons with disabilities.