

2022 The League For Persons With Disabilities, R.O.C replies to List of issues in relation to the second report of the Republic of China (Taiwan)

Participate in writing groups list :

Taiwan Association for Psychosocial Rehabilitation

Taipei Life of Heart Association

The Alliance for the Mentally of R.O.C, Taiwan

Taipei Mental Rehabilitation Association

Mental Rehabilitation Association of New Taipei

Mental Rehabilitation Association of Taichung

Involved articles and list of issues points:

Article 12 point 9

Article 14 point 11

Article 17 point 14

Article 22 point 19

Article 24 point 21

Article 25 point 22

Article 33 point 30

Equal recognition before the law (art.12)

9. Please explain to the Committee:

(a) How the draft amendments to the Mental Health Act reported on in the media in January 2022 will enhance respect for the will and choices of persons with disabilities as protected in Article 12 of the CRPD and General Comment No.1;

Reply:

1. The draft mental health act is still based on the management perspective of administrative agencies, and repeatedly utilized jargons such as "compulsory hospitalization" and "compulsory community treatment" for high-intensity patient restraint, without considering that what patients need most is communication and consultation, assistance in decision-making and improvement self-management. It failed to respect the inclination and options of people with disabilities.
2. In the same draft where escorted patient who shall be transferred to a psychiatric medical institution designated by the local competent authority for further treatment after proper treatment by the medical institution. This provision does not consider that the patient may have been seeking medical treatment for a long time at a hospital who has a better understanding of the patient's condition and medical history. Arbitrarily transfer the patient to other designated psychiatric medical institutions for continued treatment is an act ignoring the closeness between the patient and the original medical institution and the right to choose medical treatment¹.
3. The members of the community treatment review committee include patient rights groups, but patients and their families are not included².

Liberty and security of the person (art. 14)

11. Please inform the Committee:

(b) Of the rationale for the amendment [27 January 2022] to the Mental Health

¹ Article 49(3) of the draft mental health law

² Article 54(2) of the draft mental health law

Act's provision for a national "mental health care command center" and explain its functions and how it could restrain or protect and advance the rights of persons with disabilities;

Reply:

4. The central government will set up a national mental care command center, establish a cross-system risk early warning platform, and connect with the local 24-hour emergency response mechanism, which focuses on the mastery and control of community patients. However, the draft mental health law does not mention its statutory business, and practical operation on the number of patients. It also did not depict how the center coordinate with community support services and how patients and their families are involved.

Personal Integrity (art. 17)

14. Please provide the Committee:

(a) With an update about the amendments to the Genetic Health Act (Eugenic Health Act) and Mental Health Act regarding coerced medical procedures, including sterilizations and abortions (see, para. 49 of the initial Concluding Observations from 2017);

Reply:

5. According to the draft mental health law, whether compulsory community treatment is decided by the judge's reservation principle or by an expert review committee has not yet been determined. However, no matter which method is adopted, compulsory community treatment may involve interventions against the wishes of the patients. The government should construct community treatment strategies of different intensities and diversity, and strengthen communication with patients to ensure that the wishes of persons with disabilities and options are respected.

Respect for privacy (art. 22)

19. Please explain to the Committee:

(a) The legal basis for restrictions on the use of smartphones and other means of communicating with the outside world, by patients in mental health hospitals/wards;

Reply:

6. According to Article 39 of the Draft Mental Health Law, "Inpatients shall enjoy the rights of personal privacy, free communication and reception; psychiatric institutions shall not impose restrictions unless they are due to the patient's condition or medical needs." Currently psychiatric hospitals will confiscate patients' mobile phones or restrict freedom of communication, albeit in the name of fulfilling medical needs, is generally treated uniformly for administrative reasons rather than individual measures of patient status. Completely isolating patients from using mobile phones or restricting communication will not help patients return to the community in the future, and it is not an intervention that applies to everyone. Hospitals and psychiatric medical institutions should formulate specifications for the use of communication devices, evaluate and discuss with patients whether they are applicable, rather than unilaterally banning them by psychiatric hospitals.

Education (art. 24)

21. Please provide information to the Committee:

(a) On plans to eliminate special classes and schools in order to conform with the normative content of inclusive education as described in General Comment No.4 by the Committee on the Rights of Persons with Disabilities.

(b) The causes of slow progress of inclusive education in terms of percentage of students with disabilities at the senior high school level or below attending regular school/regular class;

(c) How the concept of Universal Design for Learning is being applied through the education system and not only for learners with disabilities;

(d) How the concept of reasonable accommodation is being promoted throughout the school system in order to reduce the exclusion of learners with disabilities from regular schools at all levels.

(e) What measures are being implemented to eliminate the need for families to pay for support services in order for their children to be allowed to attend school.

Reply:

7. In 2022, the Ministry of Education's draft amendment to the Special Education Law restricts "integration" to the implementation scope of special education service provision and facility setting, and does not declare the development spirit and direction of inclusive education as a future overall education³. This revision of the law the content has not yet made policy direction announcements or plans for substantial changes to the departure, retention or transformation of existing special education schools and special classes.
8. The integration of ordinary classes should be improved first, the quality of inclusive education should be improved, so that parents can witness and support the generalization of inclusive education. At present, the dual-track choice of ordinary or special education is still reserved.
9. In the education system, there is a lack of channels through which students with disabilities can take the initiative to propose reasonable adjustments, and there is also a lack of norms or penalties for schools that fail to respond to relative obligations.
10. During the period of temporary long-term suspension or quarantine due to the prevention and control of COVID-19, each school adopts different online learning software and textbook designs, but they generally lacks a universal design, which has a particularly significant impact on students with hearing impairments, visual impairments, and other learning disabilities, for examples : unable to distinguish the mouth shape of the teacher and classmates, no subtitles or online sign language assistance, and the no visually impaired software to transcribe the text into audible format. The special education assistants who were originally deployed to assist learning in the school now does not meet the current application qualifications because the learning area was changed to home.

³ February 2022 Ministry of Education version of the "Draft Amendment to the Special Education Law"

Health (art. 25)

22. Please inform the Committee:

(a) Of the proportion of medical facilities in the State that have been audited for disability access and whether there is a process to obligate Ministry of Health and Welfare to prioritize the implementation of barrier-free medical environments with universally accessible medical services and equipment e.g. accessible bathrooms and beds, examination tables, birthing beds, transfer aids, X-ray and scanning equipment and weight measuring equipment, as well as ensuring reasonable accommodation to processes and procedures and whether the such data on these needs, and measures taken to address them, are published and made available to persons with disabilities;

Reply:

11. A large numbers of community clinics in Taiwan have not been included in the relevant norms of accessibility improvement⁴, therefore, people with disabilities must spend extra travel time to large hospitals with accessibility facilities in order to receive treatment smoothly. The government promoted medical triage during the COVID-19 pandemic, as a result, large hospitals suspended general outpatient clinic, and many people with disabilities were forced to see doctors or get vaccinated outside the clinics because they could not access nearby community clinics, which highlighting the lack of accessible facilities.
12. Ministry of Health and Welfare, the competent authority, encouraged existing clinics to apply for the "Reward for Establishing a Barrier-Free Medical Environment for Medical Institutions" in 2021, but only 6.1 % of the clinics in Taiwan have achieved it⁵. For the newly established clinics, although the Ministry of Health and Welfare has plans to revise the "Standards for the Establishment of Medical Institutions" by the end of 2021, it plans to meet different levels of barrier-free access and toilet conditions according to the needs of new clinics under different scales, with an aim to improve the community medical care for the

⁴ The relevant regulations are "Operational Procedures and Certification Principles for Alternative Improvement Plans for Barrier-Free Facilities in Existing Public Buildings"

⁵ According to statistics in 2020, a total of 1,384 clinics in Taiwan applied for improvement and received awards, accounting for only 6.1% of the 22,653 clinics nationwide.

physically and mentally handicapped with accessibility of medical treatment. However, since the draft was promulgated in December 2021, this case has been postponed due to strong opposition from some physician groups. It is not known whether it will be proclaimed and implemented.

National implementation and monitoring (art. 33)

30. Please update the Committee:

(a) About the role and functions of the newly established National Human Rights Commission (NHRC), independent monitoring mechanism, in the monitoring of the implementation of the CRPD;

Reply:

13. When people with disabilities are involved in individual discrimination cases such as education and labor, after the final trial in the domestic court, there is still no agency to provide final review mechanism such as the United Nations CRPD Committee to conduct human rights review at a higher level. The National Human Rights Commission (hereinafter referred to as the Human Rights Commission) is a committee established under the organization act of the Control Yuan, but so far there is no independent mechanism for handling complaints, but the Control Yuan's channels for civil complaints are applied. Is there a right to review and re-examine judicial verdicts that violate the intention of the Convention? What remedies are available for extrajudicial individual complaints? So far, the Human Rights Council has not seen any action.
14. Many administrative agencies refuse to respond to the issue of how to improve the impaired rights and interests of persons with disabilities (especially in the case of COVID-19) on the grounds that they have not yet been enacted in domestic laws or are awaiting amendments. They have ignored the fact that the implementation act of CRPD already has the force of domestic law, which means the special rank of CRPD shall prevail until the domestic law is amended. At present, the Human Rights Commission only conducts post-mortem investigations, and has yet to do anything about the administrative departments that have obviously neglected and did not act upon it, even they have not yet committed substantial violations. For

example, the promotion of rational adjustment in Taiwan's public and private sectors has been slow. Although the Human Rights Council emphasized its importance in its 2021 independent assessment opinion and criticized the executive branch, it has not been able to collaborate with the executive branch to promote any change.

15. The National Human Rights Commission should have the function of active monitoring to prevent the occurrence of human rights violations, and proactively provide public opinions to the executive and legislative departments on the current policies and laws that do not meet the requirements of the Human Rights Covenant. Meanwhile, the issues of procedures for accepting, investigating, and remedying individual complaints, plus working in coordination with the judicial and administrative departments, should also be planned with schedules for the public to review.