

Presentation for Round table 2  
(Social inclusion and the right to the highest attainable standard of health)

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Thank you, Mr. / Ms. Chairperson. It is my privilege to make a statement about a very important topic. When it comes to treating the topic of “social inclusion and the right to the highest attainable standard of health,” I would like to present to you matters regarding the health of persons with disabilities that have currently become an issue not only in Korea, but I suspect, in other countries as well.

To bridge gaps in health and accessing healthcare between persons with and without disabilities, Korea in December 2015 enacted the “Act on Guarantee of Right to Health and Access to Medical Services for Persons with Disabilities,” which went into effect from December 2017. It is Article 9 of this Act that stipulates guaranteed access to and use of medical institutions by persons with disabilities. Where persons with disabilities use medical institutions, Article 9 specifies that the national and local governments may provide appropriate accommodations suited to the characteristics of persons with disabilities and transportation convenience to guarantee access to medical institutions. This Article also specifies that the governments may implement visiting care programs for persons with disabilities who have difficulty in using medical institutions directly. In accordance with Article 16 of the same Act, the Ministry of Health and Welfare has been carrying out pilot projects on a system for the physician in charge of the health of persons with disabilities since May 2018. This system is designed to enable persons with severe disabilities to receive a sustained and comprehensive care for their chronic illnesses and disability-related health conditions by allowing them to personally select their physicians in charge. Furthermore, the same Act stipulates that medical institutions satisfying standards on facilities, personnel, and equipment as defined by Ordinance of the Ministry of Health and Welfare may be designated medical check-up institutions for persons with disabilities or rehabilitation hospitals. Under the objective of setting an institutional foundation to support the right to health of persons with disabilities by establishing a healthcare delivery system for them, institutes may also be designated Central Healthcare Center or local healthcare centers for them. As such, even with numerous issues still needing to be ironed out at this early juncture in the Act’s implementation, there is reason for optimism that the right to health of persons with disabilities will improve if State Parties can establish and execute such an explicit legal framework to guarantee access to healthcare for them.

Moreover, to enhance the understanding of disabilities on the part of healthcare personnel such as nurses’ aides, medical technicians, and pharmacists besides health professionals, the same Act requires to educate them on the right to health of persons with disabilities, with programs to further the understanding of the definitions and types of disabilities, communication methods, and instructions to follow when providing treatment.

However, it is not only healthcare personnel who must gain an understanding of the nature of disability and the right to health of persons with disabilities. In Korea, due to the recent proliferation of media reports sensationalizing murder suspects who have a history of schizophrenia or are suspected of being mentally ill and equating “schizophrenic persons” with “murderers,” despite the fact that the vast majority of persons with psychosocial disabilities do not commit crimes, they as a group have become stigmatized as a target of hate by the general public. Such stigma has led many persons with psychosocial disabilities to avoid hospital treatment, which has in turn resulted in their losing their chance at early diagnosis and treatment. As a result, some people have even advocated increasing forced hospitalization as a solution. It should be understood, however, that such calls for easier enforcement of forced hospitalization only serve to avoid social responsibility for the problems that have ensued. Hence, an effective preventive solution must

include not only the establishment of an emergency response system but also a smooth flow from hospital treatment to the community and a support system within that community. We must focus our attention not merely on how to quarantine persons with psychosocial disabilities, but on how to successfully include them instead. More than anything, the press must stop broadcasting its biased message on psychosocial disabilities.

Then, who should be the ones to educate healthcare personnel as well as the media and the public about disability and the right to health of persons with disabilities? Since such education conducted from the perspective of persons without a disability may have limited effect, we must emphasize the role of disabled persons themselves and of disability organizations.

Indeed, the role of disabled persons themselves must not stop at simply spreading awareness about disability and their right to health. Through peers with disabilities who share similar experiences of disability, experience lives in the community, and have an ample sensitivity to disability, persons with disabilities and their families can receive medical and health information and counseling on physical and mental health, which could indeed prove to be effective. Such peer support may start when persons with disabilities and their families first visit the healthcare delivery system for persons with disabilities and continue throughout their lifetimes. To this end, the healthcare delivery system for persons with disabilities should operate peer support programs by hiring those with disabilities to be peer counselors. Moreover, to vitalize such peer support programs, the national and local governments must increase financial support. For example, there is a need to expand wage subsidies for peer counselors at centers for independent living. There is increasing opinion that preventive medicine is more effective than curative medicine especially for persons with psychosocial disabilities, and as such, those with psychosocial disabilities and their families are in need of non-medical support such as peer counseling.

Regarding the health of persons with psychosocial disabilities, in March 2014, Korea amended Article 732 of the Commercial Act, which had completely banned them from entering into life insurance contracts, to allow psychosocially disabled persons with mental capacity to take out life insurance policies. As a result, this Article only prohibits a person with a psychosocial disability from entering into a life insurance contract providing accident coverage for the person's death if the person is devoid of mental capacity on the day of signing. As far as I am aware, even France has banned adults placed under guardianship or mental hospital inpatients from entering into life insurance policies. I am also aware of similar regulations in Anglo-American Law, which have deemed it hard to recognize insurable interest when the insured is a psychosocially disabled person devoid of mental capacity according to the principle of insurable interest.

Nevertheless, in the concluding observations on the initial report of Korea, Committee on the Rights of Persons with Disabilities "is concerned that the recently amended article 732 of the Commercial Act recognizes life insurance contracts for persons with disabilities only if the person 'possesses mental capacity.' The Committee notes that the denial of insurance contracts on the basis of 'mental capacity' constitutes a discrimination against persons with disabilities."

Realistically, according to the legal interpretation of Article 732, for a person with a psychosocial disability to enter into a life insurance contract, the person must prove that he/she "possesses mental capacity." The Convention on the Rights of Persons with Disabilities stipulates that life insurance be provided in a "fair and reasonable manner" to persons with disabilities. However, it is difficult to see that placing such a burden of proof on persons with psychosocial disabilities constitutes a "fair and reasonable manner" that the Committee presents. Therefore, this is a matter requiring further discussion.

I hope today's discussion will help us make more significant progress towards the achievement of social inclusion and the highest attainable standard of health for persons with disabilities. Thank you for your attention.