**Recommendations by UN human rights mechanisms concerning the rights of persons with disabilities with respect to Korea**

**Main issues raised by TBs:**

* Adopt human rights based approach to rights of persons with disabilities over a welfare/medical model
* Need for inclusive education and training of teachers in inclusive education
* Ensure right to equal recognition before the law and right to liberty to prohibit involuntary institutionalisation and hospitalisation and treatment without free and informed consent.
* Develop supports and services for children and adults with disabilities and their families in the community to prevent institutionalisation, including social protection measures to cover disability related expenses and personal assistance to live independently in the community.
* Discontinue segregated workplaces for persons with disabilities (sheltered workshops) and ensure respect for minimum wage for persons with disabilities
* Pending ratification of the Optional Protocol to CRPD

**CRPD Committee, CRPD/C/KOR/CO/1, 2014**

1. The Committee considered the initial report of the Republic of Korea (CRPD/C/KOR/1) at its 147th and 148th meetings, held on 17 September and 18 September 2014, respectively, and adopted the following concluding observations at its 165th meeting, held on 30 September 2014.
2. The Committee welcomes the initial report of the Republic of Korea, which was prepared in accordance with the Committee’s reporting guidelines, and thanks the State party for the written replies (CRPD/C/KOR/Q/1/Add.1) to the list of issues prepared by the Committee.
3. The Committee appreciates the fruitful dialogue held with the State party’s delegation and commends the State party for the strength of its delegation, which included many representatives of relevant Government ministries. The Committee welcomes the independent participation of the National Human Rights Commission of Korea.

II. Positive aspects

1. The Committee congratulates the State party for the progress made in many areas of the Convention and the legislative harmonization undertaken, including the adoption of the Act on Welfare Support for Children with Disabilities, effective on 5 August 2012. The Committee notes with appreciation the existence of the Anti-Discrimination against and Remedies for Persons with Disabilities Act (ARPDA). It also welcomes the development of the Five-year Policy Development Plan for Persons with Disabilities.
2. The Committee commends the State party for the large number of measures taken in international cooperation for the rights of persons with disabilities, including in particular, its initiative to support the launching and implementation of the Incheon Strategy.

III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1–4)

1. The Committee is concerned that the Welfare of Disabled Persons Act refers to the medical model of disability.
2. **The Committee recommends that the State party review the Welfare of Disabled Persons Act and harmonize it with the human rights-based approach to disability as espoused in the Convention.**
3. The Committee is concerned that the new disability determination and rating system under the Welfare of Disabled Persons Act only relies on medical assessments in providing services and fails to take into account the various needs of persons with disabilities and to encompass all persons with disabilities, including those with psychosocial disabilities. The Committee is concerned that, as a result, this system limits eligibility of persons with disabilities for welfare services and personal assistance, based on their ratings.
4. **The Committee recommends that the State party review the current disability determination and rating system under the Welfare of Disabled Persons Act to ensure that it customizes to the characteristics, circumstances and needs of persons with disabilities and that welfare services and personal assistance be expanded to all persons with disabilities, including those with psychosocial disabilities, in accordance with their requirements.**
5. **The Committee encourages the State party to ratify the Optional Protocol to the Convention.**

B. Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

1. The Committee is concerned about the lack of effective implementation of the 2008 Anti-discrimination against and remedies for persons with disabilities Act. The Committee is particularly concerned that the majority of complaints seeking remedies have not been resolved. The Committee notes that the courts need to appreciate the injunctive powers bestowed upon them.
2. **The Committee recommends that the State party increase the human resources and independence of the National Human Rights Commission of Korea. It is further recommended to exempt or reduce the cost of lawsuits for victims of disability discrimination in order to ensure the access to remedies through court, and lower the requirement for the order for correction by the Minister of Justice (Article 43 of the ARPDA). The Committee also encourages the State party to raise awareness among judges on the need to effectively implement the 2008 Anti-discrimination against and remedies of persons with disabilities Act and to appreciate the injunctive power bestowed upon them.**

Women with disabilities (art. 6)

1. The Committee is concerned that legislation and policies concerning persons with disabilities do not include a gender perspective. The Committee is also concerned about the lack of sufficient measures to prevent domestic violence against women with disabilities, as well as sexual violence against women with disabilities both inside and outside residential institutions. It is further concerned at the difficulties faced by women and girls with disabilities in participating in lifelong education programs and at the lack of sufficient support for women with disabilities during pregnancy and child-bearing.
2. **The Committee recommends that the State party mainstream a gender perspective in its disability legislation and policies and develop specialized policies for women with disabilities. The Committee also recommends that the State party take effective measures to address violence against women with disabilities, both inside and outside residential institutions, in particular by introducing a disability-sensitive perspective when formulating educational programs on preventing sexual and domestic violence.** **The Committee further recommends that the State party ensure that women with disabilities receive appropriate lifelong education according to their choices and needs, regardless of whether they have finished or were excluded from mainstream education. It also recommends that the State party increase its support to women with disabilities during pregnancy and child-bearing.**

Awareness-raising (art. 8)

1. The Committee notes that the State party fails to systematically and continuously publicize and educate government officials, members of Parliament, the media, and the general public on the contents and purpose of the Convention
2. **The Committee encourages the State party to strengthen the awareness-raising campaigns to reinforce the positive image of persons with disabilities as holders of human rights. In particular, it recommends that the State party systematically and continuously publicize and educate government officials, members of Parliament, the media, and the general public on the contents and purpose of the Convention.**

Accessibility (art. 9)

1. The Committee is concerned about the low number of accessible buses and taxis in rural and urban areas. The Committee is further concerned that accessibility standards for buildings are restricted by minimum size, capacity or date of construction of the buildings and have not yet been applied to all public buildings. The Committee is further concerned that many websites remain inaccessible for persons with visual impairment, and that web accessibility catering to each disability type, such as hearing impairment as well as intellectual and psycho-social disabilities, remains weak.
2. **The Committee recommends that the State party review current public transportation policies, in order that persons with disabilities can use all types of public transportation safely and conveniently. The Committee encourages the State party to apply accessibility standards to all public facilities and workplaces, regardless of their size, capacity or date of construction, in accordance with article 9 of the Convention and General Comment No. 2. The Committee further recommends that the State party** **amend relevant laws in order that all persons with disabilities could access information via Internet websites on an equal basis with others and facilitate access to smart phone for persons with visual and other impairments.**

Situations of risk and humanitarian emergencies (art. 11)

1. The Committee is concerned about the absence of specific strategies in accessible formats for all persons with disabilities for situations of emergencies, including natural disasters. The Committee is particularly concerned that the enforcement decree of the Framework Act on Building and the Act on Promotion of Convenience for the Disabled, Senior Citizens, and Pregnant Women fails to include evacuation systems for persons with disabilities.
2. **The Committee recommends that the State party adopt and implement a comprehensive plan to ensure, in situation of risk, including the occurrence of natural disaster, the protection and safety of persons with disabilities in consideration of the characteristics of their disabilities and to further ensure universal accessibility and disability inclusion in all stages and levels of all disaster risk reduction policies and their implementation.**

Equal recognition before the law (art. 12)

1. The Committee is concerned that the new adult guardianship system, which started in July 2013, permits guardians to make decisions regarding property and personal issues of “persons deemed persistently incapable of managing tasks due to psychological restrictions caused by disease, disability or old age”. The Committee notes that such system continues to advance substituted decision-making instead of supported decision-making, contrary to the provisions of article 12 of the Convention, as elaborated in General Comment No. 1.
2. **The Committee recommends that the State party move from substitute decision-making to supported decision-making, which respects the person’s autonomy, will and preferences and is in full conformity with article 12 of the Convention and General Comment No. 1, including with respect to the individual's right, on their own, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose their place of residence. The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges, and social workers on the recognition of the legal capacity of persons with disabilities and on mechanisms of supported decision-making.**

Access to justice (art. 13)

1. The Committee is concerned about the lack of effective implementation of article 26 of the Anti-Discrimination against and Remedies for Persons with Disabilities Act requiring that the government ensure reasonable accommodation during judicial procedures for persons with disabilities. The Committee is further concerned that judicial personnel lack sufficient awareness on the rights of persons with disabilities. The Committee notes the existence of “Guidelines for Judicial Assistance for Persons with Disabilities” published by the Korean Supreme Court in 2013.
2. **The Committee recommends that the State party increases its efforts to ensure the effective implementation of article 26 of the Anti-Discrimination against and Remedies for Persons with Disabilities Act. It further recommends that standard modules on working with persons with disabilities, the provision of procedural and age-appropriate as well as gender-sensitive reasonable accommodation and the guarantee of access to justice be incorporated into training programmes for police officers, prison staff, lawyers, the judiciary and court personnel. It is recommended that the “Guidelines for Judicial Assistance for Persons with Disabilities” published by the Korean Supreme Court be legally binding and effectively implemented.**

Liberty and security of the person (art. 14)

1. The Committee is concerned that the existing legal provisions in the Mental Health Act, as well as the draft amendment to this Act, allow for deprivation of liberty on the basis of disability. The Committee is further concerned about the very high rate of institutionalizations, including long term institutionalizations, of persons with psychosocial disabilities in absence of their free and informed consent.
2. **The Committee recommends that the State party repeal the existing legal provisions allowing for the deprivation of liberty on the basis of disability, including a psychosocial or intellectual disability, and adopt measures to ensure that health care services, including all mental health care services, are based on the free and informed consent of the person concerned. The Committee further recommends that until the law is amended, all cases of deprivation of liberty of persons with disabilities in hospitals and specialized institutions be reviewed and that the review include a possibility of appeal.**
3. The Committee is concerned about the lack of information on the safeguards and guarantees that are actually in force to ensure persons with disabilities that are declared unfit to stand trial, the right to a fair trial in the Republic of Korea. From the information given by the State, apart from appointing legal aid to these persons and the rendering of non-guilty verdicts, no information is given on the actual measures the Republic of Korea applies as sanctions to those persons considered unfit to stand trial.
4. **The Committee recommends the establishment of procedural accommodations that ensure fair trial and due process guarantees to persons with disabilities. It further recommends that the declaration of unfitness to stand trial be removed from the criminal justice system in order to allow due process for persons with disabilities on an equal basis with others.**

Freedom from torture and cruel, inhuman or degrading treatment or punishment (art. 15)

1. The Committee is concerned that, within psychiatric hospitals, persons with psychosocial disabilities are subjected to acts considered cruel, inhuman or degrading treatment, including solitary confinement, constant beating, restraint and excessive drug treatment.
2. **The Committee urges the State party to abolish forced treatment which subjects persons with disabilities to cruel, inhuman and degrading treatments and punishments. As long as institutionalization continues, the Committee urges the State party to protect persons with disabilities in psychiatric hospitals from violence, abuse and ill-treatment of any kind through the establishment of effective external independent monitoring mechanisms ensuring representation of organizations with disabilities.**

Freedom from exploitation, violence and abuse (art. 16)

1. The Committee is concerned that persons with disabilities continue to face violence, abuse and exploitation, including forced labour. It is concerned about the failure of the State party to punish the perpetrators and provide reparation to the victims, and about the absence of shelters for persons with disabilities, except for victims of sexual and domestic violence.
2. **The Committee urges the State party to investigate all cases of violence, exploitation and abuse experienced by persons with disabilities both inside and outside institutional settings, ensure that the perpetrators are punished and the victims receive reparation, and provide accessible shelters for persons with disabilities who are victims. The Committee recommends, in particular, that the State party strengthen its investigations on the incidents of forced labour of persons with disabilities and provide adequate protection to the victims.**

Protecting the integrity of the person (art. 17)

1. The Committee is concerned about cases of forced sterilization of women with disabilities despite legal provisions prohibiting this practice. It is also concerned about the absence of information on investigations undertaken by the State party on this matter.
2. **The Committee urges the State party to take measures to eradicate the practice of forced sterilization, including by raising awareness of the rights of women and girls with disabilities among their families,** **in the communities and within the institutions, and by ensuring that mechanisms providing protection against forced sterilization are effective and accessible. The Committee also recommends that the State party carry out investigations on recent and current cases of forced sterilization.**

Liberty of movement (art. 18)

1. The Committee is concerned about the provisions of article 11 of the Immigration Control Act which deny entry to the State party to persons with psychosocial disabilities “who lack reason and are not accompanied by an assistant for sojourn” and of article 32 of the Welfare of Persons with Disabilities Act which restrict basic disability services to migrants with disabilities.
2. **The Committee recommends that the State party repeal article 11 of the Immigration Control Act and article 32 of the Welfare of Persons with Disabilities Act in order to ensure that persons with disabilities are not deprived of the right to enter the Republic of Korea on the basis of disability and to free migrants with disabilities from restriction of basic disability services.**

Living independently and being included in the community (art. 19)

1. The Committee is concerned about the lack of efficiency of the deinstitutionalization strategies and the lack of sufficient measures aimed at including persons with disabilities in the community, as reflected by the increase in the number of institutions for persons with disabilities and residents, and the lack of policies for inclusion in the community with all necessary support services, including personal assistance services.
2. **The Committee urges the State party to develop effective deinstitutionalization strategies based on the human rights model of disability and to significantly increase support services in the community, including personal assistance services.**
3. The Committee is concerned that the amount of money that the person with disabilities need to pay to receive personal assistant services is calculated based on the “degree of impairment” rather than on the characteristics, circumstances and needs of the person with disabilities and on the income of the family rather than the income of the person concerned, resulting in the exclusion of some persons with disabilities from receiving personal assistant services.
4. **The Committee encourages the State party to ensure that social assistance programmes provide sufficient and fair financial assistance so that persons with disabilities can live independently in the community. The Committee recommends, in particular, that the State party base the amount of payment of the personal assistant services on** **the characteristics, circumstances and needs of the persons with disabilities, rather than on the “degree of impairment”, and on the income of the person with disabilities concerned, rather than on the income of his/her family.**

Freedom of expression an opinion, and access to information (art. 21)

1. The Committee is concerned that the Republic of Korea’s Sign Language is not recognized as an official language in the State party and that the draft law declaring Braille as an official written script is still pending before the National Assembly. The Committee is also concerned that the regulation ensuring access to broadcasted material for persons with disabilities, in particular television programs, includes a standard on programming quantity but fails to include standards to ensure the quality of the programmes and to provide adequate accessible information through sign language, close-caption, descriptive video/audio description, easy-to-read/easy-to-understand content and through other access formats, modes and means of communication.
2. **The Committee encourages the State party to recognize Korean Sign Language as an official language of the Republic of Korea, and to adopt the draft law recognizing Braille as official written script of the Republic of Korea.** **The Committee further recommends that the regulation on ensuring access to broadcast material for persons with disabilities include standards on programming quality as well as adequate accessible information through sign language, close-caption, descriptive video/audio description, easy-to-read/easy-to-understand content and through other access formats, modes and means of communication.**

Respect for home and the family (Article 23)

1. The Committee is concerned that support services provided to families of children with disabilities is limited to low income families including persons with severe disabilities. Due to short supply, even such services are insufficient. Further, the Committee is concerned that the government provides more subsidies and benefits to families adopting children with disabilities than to their families of origin, which encourages the abandonment of children with disabilities by their own families, in particular by single mothers who face compounded stigma, and denies the child’s right to family.
2. **The Committee recommends that the State Party provide legal bases and implement comprehensive policies in order for parents, including single mothers, of children with disabilities receive support to raise their child within the family and to ensure the child’s right to family and participation in the community on an equal basis with other children.**

Education (art. 24)

1. The Committee is concerned that, despite the existence of an inclusive education policy, students with disabilities in regular schools return to special schools. The Committee is further concerned about reports that students with disabilities enrolled in regular schools fail to receive education that is suitable to their impairment-related needs.
2. **The Committee recommends that the State party:**
3. **Conduct research into the effectiveness of the current education inclusion policy;**
4. **Step up efforts to provide inclusive education and reasonable accommodation in schools and other learning institutions by providing, inter alia, assistive technology and support in classrooms, accessible and adapted educational materials and curricula, as well as accessible school environments; and**
5. **Intensify training for education personnel, including teachers and administrators in regular schools.**

Health (art. 25)

1. The Committee is concerned that the recently amended article 732 of the Commercial Act exclusively recognizes the subscription to insurance when the person with disability “possesses mental capacity”. The Committee notes that the denial of subscription to insurance on the basis of “mental capacity” constitutes a discrimination against persons with disabilities.
2. **The Committee encourages the State party to remove article 732 of the Commercial Act** **which** **exclusively recognizes the subscription to insurance when the person with disability “possesses mental capacity”, and to withdraw its reservation on the provision of article 25 (e) of the Convention regarding life insurance.**

Work and employment (art. 27)

1. The Committee is concerned that the Minimum Wage Act excludes from the benefit of the minimum wage “those who clearly lack the capacity to work” and fails to set clear standards on how assessments and decisions are made to define the lack of capacity to work. The Committee is further concerned that, as a result, many persons with disabilities who work, especially those with psychosocial disability, receive compensation below the minimum wage and that there is a continuation of sheltered workshops which do not aim to prepare entry into the open labour market.
2. **The Committee encourages the State party to introduce a supplementary wage system to compensate the persons with disabilities excluded from the benefit of the minimum wage by the Minimum Wage Act and** **to discontinue sheltered workshops and seek alternatives in line with the Convention to promote the employment of persons with disabilities in close consultation with organizations of persons with disabilities.**
3. The Committee is concerned that, despite the existence of a mandatory employment quota system for persons with disabilities, unemployment is higher for persons with disabilities, and in particular for women with disabilities, than for the general population.
4. **The Committee recommends that the State party put in place measures to narrow the employment gap, giving a particular attention to the employment of women with disabilities. The Committee recommends, in particular, that the State party ensure the effective implementation of the mandatory employment quota system for persons with disabilities** **as well as the publication of** **relevant statistics on the achievements and results in this area.**

Adequate Standard of Living and Social Protection (art. 28)

1. The Committee is concerned that the National Basic Living Security Act excludes from the benefit of the minimum living support persons with disabilities having family members with a certain amount of income or properties. It is further concerned that eligibility for the benefit of the minimum living support is based on the existing disability grading system and is limited to “persons with severe disabilities”.
2. **The Committee recommends that the State party grant the minimum living support on the basis of the personal characteristics, circumstances and needs of the persons with disabilities, rather than on the basis of the disability grading system and the income and properties of the family.**

Participation in political and public life (art. 29)

1. The Committee is concerned that many polling booths are not fully accessible to persons with disabilities and that voting information is not provided to persons with disabilities in consideration of the various types of disabilities. The Committee is further concerned about the low level of participation of persons with disabilities in political activities and as candidates in elections due to the barriers that they continue to face in this regard. It is also concerned that persons declared incompetent are denied the right to vote and stand for elections.
2. **The Committee recommends that the State party step up its efforts to ensure that voting is fully accessible to all persons, irrespective of disability, and that voting information is provided in all accessible formats. It further recommends that the State party take specific measures to promote the participation of persons with disabilities in elected bodies. It also recommends that the State party repeal provisions denying the right to vote and stand for elections and provide the right to vote and stand for elections regardless of type of disability.**

Participation in cultural life, recreation, leisure and sport (art. 30)

1. The Committee is concerned that the State party has not ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which allows access to published material to blind persons, persons with visual impairments or persons with other difficulties in having access to printed materials.
2. **The Committee encourages the State party to adopt all appropriate measures to ratify and implement the Marrakesh Treaty as soon as possible.**

C. Specific obligations (arts. 31–33)

Statistics and data collection (art. 31)

1. The Committee is concerned that the statistical data relating to persons with disabilities collected by the State party fail to take into account the diversity of persons with disabilities, thereby rendering it impossible to evaluate the impact of each policy on persons with disabilities. The Committee is further concerned that statistical data is not being produced and shared in all accessible formats.
2. **The Committee recommends that the State party systematize the collection, analysis and dissemination of data, disaggregated by sex, age, disability, place of residence, geographic areas and beneficiaries to policies, and that the statistics be freely accessible by all persons with disabilities through the provision of the information in accessible formats.**

National implementation and monitoring (art. 33)

1. The Committee takes notes that the Bureau of Policy for Persons with Disabilities is in charge of the overall implementation of the Convention, the Policy Coordination Committee for Persons with Disabilities formulates, coordinates and monitors the implementation of basic policy on persons with disabilities, and the National Human Rights Commission of Korea provides advice or comments to the Policy Coordination Committee for Persons with Disabilities on the implementation of the Convention. However, the Committee is concerned that the Policy Coordination Committee for Persons with Disabilities is not properly functioning, and that the National Human Rights Commission of Korea lacks sufficient human and financial resources to effectively monitor the implementation of the Convention.
2. **The Committee recommends that the State party ensure that the Policy Coordination Committee for Persons with Disabilities carry out its role of effective development and implementation of policies related to persons with disabilities and provide sufficient human and financial resources to the National Human Rights Commission of Korea to effectively monitor the implementation of the Convention. The Committee further recommends that the State party adopt legal provisions to ensure the full participation of persons with disabilities and their representative organizations in the monitoring of the implementation of the Convention.**

**Follow-up and dissemination**

1. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. It recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in relevant ministries, local authorities and members of relevant professional groups, such as education, medical and legal professionals, as well as to the media, using modern social communication strategies.
2. The Committee strongly encourages the State party to involve civil society organizations, in particular organizations of persons with disabilities, in the preparation of its periodic report.
3. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families, in national and minority languages, including sign language, and in accessible formats, and to make them available on the government website on human rights.

**CRC Committee, CRC/C/KOR/CO/3-4, 2012**

3. The Committee welcomes the adoption of the following legislative measures:

(f) The enacting of the Act on Supporting the Welfare of Disabled Children, in 2011;

4. The Committee also welcomes the ratification of or accession to:

(a) The Convention on the Rights of Persons with Disabilities (CRPD) on 11 December 2008.

Non-discrimination

28. The Committee regrets that the draft Anti-discrimination Act of the State party was discarded without consideration at the National Assembly in December 2007 and that the legislative definition of discrimination does not contain an express prohibition of discrimination based on sexual orientation and nationality. Furthermore, the Committee is concerned at the multiple forms of discrimination that continue to persist in the State party, including those against Children from multi-cultural or migrant backgrounds or who have come from the Democratic People’s Republic of Korea; refugee children; children with disabilities; and, single mothers, particularly those who are adolescent, including with regard to their preclusion from State support measures.

29. The Committee urges the State party to:

a) Expeditiously enact anti-discrimination legislation with the objective of adopting legislation that is in full compliance with article 2 of the Convention;

b) Take all necessary measures, including awareness-raising and public education campaigns, to eradicate and prevent discriminatory attitudes towards children in vulnerable or minority situations;

c) Provide adequate support to single mothers, including those who are adolescent.

Children with disabilities

51. The Committee welcomes the Act on Supporting the Welfare of Disabled Children, its Rehabilitation Program for Children with Disabilities and the Childrearing Assistance Program for Families with Disabled Children. However, the Committee is concerned that government assistance for children with disabilities is only provided to low income households and does not cover physical therapy and vocational training. The Committee is further concerned about the difficulties children with disabilities, particularly females, face in receiving education, at the limited availability of special education teachers and supervisors , and that the majority of children with disabilities receive their education in special schools or classes that are segregated from children without disabilities.

52. The Committee urges the State party to take into account the Committee’s General Comment No. 9 adopted in 2006 on the rights of children with disabilities (CRC/C/GC/9) and:

a) Provide appropriate assistance to all children with disabilities;

b) Facilitate access to education for children with disabilities and undertake measures to increase the number of special education teachers and further strengthen its measures to provide adequate training to teachers and school supervisors with a view to ensuring that children with disabilities have their educational needs fully catered to;

c) Implement the Bill for the Special Education of Persons with Disabilities more effectively, by inter alia supporting it with adequate budget and personnel;

d) Ensure that, whenever possible, inclusive education is provided for children with disabilities.