

## 本期企劃

# 國際障礙人權規範與標準： 反對精神障礙歧視 不等於反對精神醫療

International Standards for Disability Rights:  
Anti-Mental Disability Discrimination, Not Anti-Psychiatry

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## 摘要

身心障礙者權利公約強調障礙並非醫學問題，而是社會結構與法律制度阻礙了多元身心狀況的人平等社會參與的資格與機會。障礙者權利委員會針對許多國家的國家報告作出之結論性意見，經常提醒並建議各國政府盡速終止替代決策之實踐，以及消除未經本人知情同意、非自願之精神治療。委員會於2014、2015年通過第1號一般性意見及「關於第14條準則」，強調障礙者在法律之前獲得平等肯認的重要性，及其人身自由與安全與其他人權之間的連結。惟包括臺灣在內，

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迄今仍無國家完全遵守這些規定。在此脈絡中，本文先介紹國際障礙人權規範，接著討論國家實踐及其對相應規定之理解，最後試圖從「逐步實現健康權」的角度提出暫時但絕非完美的詮釋路徑，以求拋磚引玉。

The Convention on the Rights of Persons with Disabilities (CRPD) emphasises that disabilities are not a medical problem but the barriers created by social structures and legal institutions that prevent people with diverse mental and physical conditions from opportunities to participate equally in society. The Committee on the Rights of Persons with Disabilities, through its concluding observations on the state reports of many countries, has frequently reminded and recommended that governments urgently end substitute decision-making practices and eliminate involuntary psychiatric treatment without informed consent. The Committee adopted its General Comment No. 1 in 2014 and the Guidelines on Article 14 of the CRPD in 2015, accentuating the significance of equal recognition before the law for persons with disabilities and the connection of personal liberty, security, and other human rights. However, all countries, including Taiwan, still have not fully complied with these norms. This article first introduces international disability rights law, inconsistent state practices, and their understanding of relevant rules. Finally, I propose a provisional – yet imperfect – interpretative approach from the perspective of ‘progressively realising the right to health’ to foreground a larger public and academic discussion.

## 壹、序言

根據障礙者權利委員會（Committee on the Rights of Persons with Disabilities）2015年通過的「關於身心障礙者權利公約第14條準則」，「人身自由與安全是每個人都應享有最珍貴的權利之一……所有障礙者，尤其智能障礙與心理社會障礙者，均享有本公約第14條所賦予的自由<sup>1</sup>。」許多國際人權公約裡，人身自由與人身安全都是最基本的權利，除了少數例外情況，如針對刑事案件犯罪人之處罰，而許多國家（包括臺灣）仍有以治療精神疾病為目的之強制住院治療成為一項備受爭議的法律制度。在身心障礙者權利公約（Convention on the Rights of Persons with Disabilities, CRPD）於2008年生效前，對嚴重精神疾病患者進行非自願住院（involuntary hospitalisation）與強制治療（forced treatment）在全球範圍到處可見而似乎被極度正常化了，以致其合法性與正當性很少受到挑戰。

根據CRPD第15條規定，某些強制治療手段甚至可能構成酷刑（torture）及殘忍、不人道或有辱人格的待遇（cruel, inhuman, or degrading treatment），例如障礙者權利委員會針對澳洲2013年的國家報告提出的結論性意見就提到，以治療為由的人身自由限制，如隔離等手段，構成了不人道的待遇<sup>2</sup>。根據聯合國健康權特別報告員2015年提出的報告，許多國家的法律都接受並許可強制住院，而這可能導致系統性的人權

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1 Committee on the Rights of Persons with Disabilities, Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities, UN Doc. A/72/55 (2015), annex, para. 3. 此處中文翻譯，採用人權公約施行監督聯盟的重譯版，[https://covenantwatch.org.tw/wp-content/uploads/2019/08/crpd\\_guidelines\\_14\\_ch\\_cw\\_082719.pdf](https://covenantwatch.org.tw/wp-content/uploads/2019/08/crpd_guidelines_14_ch_cw_082719.pdf)（瀏覽日期：2023年4月8日）。

2 Committee on the Rights of Persons with Disabilities, Concluding Observations: Australia, UN Doc. CRPD/C/AUS/CO/1 (2013).