

Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, pursuant to Human Rights Council resolutions 26/20, 26/12, 24/6 and 31/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the death, since March 2016, of at least 37 persons with psychosocial and intellectual disabilities following their relocation from Life Healthcare Esidimeni Hospital to non-governmental organizations in Gauteng. The relocation was the result of a decision by the Gauteng Department of Health to terminate its contract with the above-mentioned hospital, without a supplementary plan to upscale community-based support services, and adequate de-institutionalization housing plans, and without the necessary additional financial support.**

According to the information received:

On 21 October 2015, the Gauteng Department of Health announced the termination of its contract, running since 1979, with Life Healthcare Esidimeni Hospital, a private hospital group providing residential care, treatment and rehabilitation to over 2300 persons with psychosocial and intellectual disabilities. According to the authority, the termination of the contract with Life Healthcare Esidimeni Hospital was "in line with the Mental Health Care Act no 17 of 2002, which encourages mental health practitioners to treat mental health care users in the least restrictive environments" and was motivated by financial constraints. The Gauteng Department of Health planned to redistribute the budget allocated to Life Healthcare Esidimeni Hospital (some 3 million rand yearly) to other areas, including by increasing staffing in other hospitals with psychiatric wards, and to

refer the 2300 residents to other hospitals, community-based non-governmental organizations working on mental health, or discharge them.

In December 2015, the South African Federation for Mental Health issued a statement expressing concern about the Gauteng Department of Health's decision. It argued that while the decision seemed to have been taken in the spirit of deinstitutionalization, it was not supplemented by a real plan to upscale community-based support services, including adequate housing plans, nor to provide additional financial support (besides a small subsidy) to NGOs which would absorb the extra costs of providing support to the persons with disabilities discharged from Esidimeni Hospital. Moreover, many of the alternative facilities identified were not adequately equipped nor staffed to provide medical assistance for cases requiring high-level, specialized and intensive non-stop care. A media investigation called "Without ID, Without Family" into some of the buildings identified by the Gauteng Department of Health to relocate persons with disabilities showed that they were inadequate for human habitation, required extensive renovations, and included derelict buildings.

In February 2016, the families of some 1900 persons with intellectual and psychosocial disabilities who were to be discharged from Esidimeni Hospital held a march in Johannesburg to protest against their relocation, due to take place in March 2016, while the promised renovations had not been made to the identified facilities.

On 14 March 2016, several civil society organizations approached the High Court in Johannesburg for an interdict to stop the relocation of some 50 persons with psychosocial and intellectual disabilities from Esidimeni Hospital to the NGO "Takalani Home", without prior consultations with the persons concerned, their families and their representative organizations. However, the judgment denied the interdict and these persons were relocated without their consent.

On 15 March 2016, the South African Human Rights Commission (SAHRC) was seized of the situation of the 2300 persons to be relocated from Esidimeni Hospital, but only started an inquiry on 26 August 2016. As the majority of SAHRC's Commissioners ended their term on 30 September 2016, it appears that no further action has been taken on this case since then.

At the end of May 2016, some 1300 persons with disabilities were reportedly transferred from Esidimeni Hospital to some 122 NGOs, some of which are reportedly unregistered and/or deemed highly unsuitable, while others would have been sent back to their families without further support.

On 13 September 2016, the Gauteng Department of Health reported to the Gauteng legislature that 36 persons with psychosocial and intellectual disabilities that had been transferred since March 2016 from Life Healthcare Esidimeni Hospital to NGOs had died of undisclosed causes. Another person died shortly after this announcement. The Gauteng Department of Health indicated that the Department of Health started an investigation on these deaths, but the findings are not yet available. The South Africa's first Health Ombudsman (appointed in May 2016) has also been seized of this matter, but only has limited powers to intervene.

Subsequent unconfirmed information released in the media indicates that the number of casualties as of 31 October 2016 would have reached 60 people.

Without prejudging the accuracy of these allegations, we are expressing grave concern at the death of at least 37 persons with disabilities who have been relocated by the Gauteng Department of Health from Life Healthcare Esidimeni Hospital to non-governmental organizations in Gauteng without prior consultation and adequate support provided, and the seeming lack of conclusive investigations into this urgent matter.

Serious concern is also expressed for the situation of the remaining 1900 people who have been transferred or discharged from Life Healthcare Esidimeni Hospital to unknown locations without adequate support, which may result in further grave human rights violations, including violations of the right to life, physical and mental integrity, highest attainable standard of health, adequate standard of living, including housing, and putting these people at risk of extreme poverty, homelessness and loss of dignity.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of the applicable international human rights norms and standards relevant to this case, including the obligation to ensure that persons with disabilities may exercise fully and effectively all their human rights and fundamental freedoms on an equal basis with others, notably in the enjoyment of the right to life, the right to physical and mental integrity, health, housing, independent living, and freedom from exploitation, violence and abuse.

In this regard, we would like to refer to articles 3(c) (full and effective participation and inclusion in society), 10 (right to life), 16 (freedom from exploitation, violence and abuse), 17 (integrity of the person), 19 (living independently and being included in the community), 25 (health) and 28 (adequate standard of living) of the Convention on the Rights of Persons with Disabilities, which South Africa ratified on 30 November 2007. We would like to stress in particular the right of persons with disabilities, as enshrined in article 19, to "choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement" as well as State Parties' obligation to provide them "access

to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation and segregation from the community”.

We would also like to draw your attention to Article 14 of the Convention on the Rights of Persons with Disabilities which introduces strong safeguards against arbitrary detention and deprivation of liberty for persons with disabilities. The Committee on the Rights of Persons with Disabilities has categorically stated that the implementation of article 14 requires respecting the right of persons with disabilities to choose their place of residence, as enshrined in article 19. The Committee has expressed concern about the institutionalization of persons with disabilities and the lack of support services in the community; and has recommended implementing support services and effective deinstitutionalization strategies in consultation with organizations of persons with disabilities. In addition, it has called for the allocation of more financial resources to ensure sufficient community-based services.¹

We also wish to draw your Excellency’s Government’s attention to Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights, ratified by your Government on 10 December 1998, which respectively guarantee the right of every individual to life and security. Following General Comments 6 and 31 of the Human Rights Committee, States must adopt positive measures to protect the right to life of individuals, and to prevent violations of this right by state and non-state actors. Under human rights law, the State is not only prohibited from directly violating the right to life, but is also required to meet its due diligence obligations to take appropriate measures to deter and prevent abuses by non-State actors. In this particular situation, both the responsibilities of the State to respect the right to life of people with disability, and its obligations to protect and ensure their right to life appear to be engaged

Furthermore, we would like to remind your Excellency’s Government about article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by South Africa on 12 January 2015, which establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this connection, General Comment No. 14 of the Committee on Economic, Social and Cultural Rights states that the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of disability.

In a similar vein, articles 2 and 11 of the International Covenant on Economic, Social and Cultural Rights guarantee non-discrimination in the exercise of the rights in the Covenants, and the right to an adequate standard of living, including housing, respectively. The Committee on Economic, Social and Cultural Rights in its General

¹ CRPD/C/CHN/CO/1, para. 26; CRPD/C/AUT/CO/1, para. 31; CRPD/C/SWE/CO/1, para. 36.

Comment No. 4 has stressed that the right to adequate housing includes various aspects including habitability, availability and location, and calling for all feasible alternatives are explored in consultation with the affected persons, ensuring that alternatives are provided to avoid homelessness. We also refer to General Comment No. 20 on non-discrimination in the exercise of all rights in the Covenant, including in relation to persons with disabilities.

We also recall the Special Rapporteur on adequate housing's report on the obligations of subnational and local governments in the implementation of the right to adequate housing (A/HRC/28/62), and her more recent report to the General Assembly on the intimate link between the right to life and the right to housing (A/71/310).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.
2. Please provide information regarding the measures taken by the authorities to ensure due diligence and duty of care with regard to the relocation of persons with disabilities.
3. Please provide the details, and where available the results, of any investigation, including judicial or other inquiries, carried out in relation to the alleged death of 37 persons, the lack of adequate medical care, and lack of adequate support of persons with intellectual and psychosocial disabilities who have been transferred from Life Healthcare Esidimeni Hospital. Have penal, disciplinary or administrative sanctions been imposed on the responsible authorities, and remedies provided to the families of the deceased? If no inquiries have taken place, or if they were inconclusive, please explain why.
4. Please explain any measures taken to promptly prevent further casualties among the remaining persons with disabilities who have been

deinstitutionalized, including any independent monitoring of the facilities where they have been taken.

5. Please provide information on the deinstitutionalization process in South Africa, including the detailed plan, timelines, stages, and the alternative support measures available for persons with disabilities who have been or are in the process of being deinstitutionalized.
6. Please disclose your de-institutionalization housing plan and its compliance with binding international human rights standards, including how you intend to ensure all the necessary supports are available to those who are being discharged from Life Healthcare Esidimeni Hospital”.
7. Please provide the details of any consultations conducted with persons with disabilities, their families and representative organizations to determine the most suitable living arrangements of their choice, as well as measures taken to ensure that those choices are respected.
8. Please explain the mechanisms and measures taken at the central Government to provide guidance to municipalities and local governments in relation to their international human rights obligations, in particular in relation to persons with disabilities and the full protection of their economic, social and cultural rights, notably the rights to health and to housing.
9. Please explain the mechanisms and measures taken to ensure appropriate legal representation, when needed, for persons with disabilities who were directly impacted by the decision of the Hospital to de-institutionalize them.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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