

**Mandate of the Special Rapporteur on the rights of persons with disabilities**

REFERENCE:  
OL HUN 2/2018

6 April 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolution 35/6, further to your letter of 29 August 2017 referring to the joint urgent appeal UA HUN 4/2017.

In this connection, I would like to thank your Excellency's Government for its reply and acknowledge that I have duly taken note of the Government's efforts to fulfil its human rights obligations set under the Convention on the Rights of Persons with Disabilities (CRPD), ratified on 20 July 2007.

In its reply, the Government provides detailed information on the national legislation and policy frameworks regulating the placement of persons with disabilities in segregated social care institutions, as well as its plans to carry out deinstitutionalization reforms. Hence, it is my duty to further engage your Excellency's Government in an open and constructive dialogue on the interpretation and the fulfillment of its obligation to secure the equal right of persons with disabilities to live independently in the community, in light of the article 19 and its tight links to the articles 5, 12 and 14 of the Convention.

First, I would like to call your Excellency's Government's attention that any form of segregation on basis of actual or perceived disabilities, such as provision of social protection and disability related support services in specialized care institutions, is a form of discrimination.<sup>1</sup> The practice of institutionalization leads to multiple, irreversible and extremely grave rights violations. Due to its targeted and harmful impact on persons with disabilities, institutionalization falls within the definition of discrimination provided at article 5 of the Convention<sup>2</sup> and States have an immediate obligation to repeal all laws and regulatory frameworks that allow for and/or condone institutionalization.

Second, turning to the argument that forced institutionalization, including for reasons that involve forced mental health treatment, cannot be considered a form of deprivation of liberty, I would like to draw your Excellency's Government attention to the articles 12 and 14 of the Convention. The Committee on the Rights of Persons with Disabilities has clarified in its General Comment No. 1 that placing persons with disabilities in institutions, either without their free and informed consent or with the consent of a substitute decision-maker, constitutes arbitrary deprivation of liberty and

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<sup>1</sup> See General comment No. 5 (2017) on living independently and being included in the community, para.13 (CRPD/C/GC/5).

<sup>2</sup> See Report of the Special Rapporteur on the rights of persons with disabilities (2016), para.66 (A/HRC/34/58).

violates articles 12 and 14 of the Convention.<sup>3</sup> Similarly, the Committee has stated that involuntary confinement to institutions for the apparently disability-neutral reasons, like presumed “danger to self or others” or alleged need of medical treatment, contradicts the absolute ban on deprivation of liberty on the basis of impairments (article 14(1)(b)).<sup>4</sup>

In the same vein, the “United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court” state that persons with disabilities who are detained in a psychiatric hospital or similar institution and/or subjected to forced treatment, should have a legal avenue for challenging their detention and requesting the termination of forced treatment. Instead of resorting to coercive practices, States must provide access to housing, means of subsistence and other forms of economic and social support so that persons, previously detained in social care or psychiatric institutions, could return to their communities and live independently.<sup>5</sup>

In line with the human rights standards indicated above, I would respectfully urge the Government to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

Lastly, while the information that your Excellency’s Government has recognized the need for deinstitutionalization is encouraging, I should recall that such efforts must be guided by the article 19 of the Convention and the principles of autonomy and freedom of choice and control stated therein. The current plan raises a range of substantive and procedural concerns, including the marginal engagement with representative organizations of persons with disabilities in the development stages, the long timeframe for deinstitutionalization, the continuing investment in institutions and insufficient allocation of resources for community-based support service networks, failure to look comprehensively at the barriers that hinder people from participating in society, and the exclusion of persons with high support needs.

For comprehensive guidance on phasing out institutions and transitioning to community based support, I encourage your Excellency’s Government to peruse the General Comment on living independently and being included in the community adopted by the Committee on the Rights of Persons with Disabilities<sup>6</sup> and my report on how to

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<sup>3</sup> See Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) on the right to equal recognition before the law, para.40 (CRPD/C/GC/1).

<sup>4</sup> See Guidelines on the right to liberty and security of persons with disabilities, para.13 (A/72/55, annex).

<sup>5</sup> See the United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court (2015), para.126 (d)(e) (A/HRC/30/36).

<sup>6</sup> See General comment No. 5 (2017) on living independently and being included in the community, para.13 (CRPD/C/GC/5).

ensure the provision of different forms of rights-based support and assistance for persons with disabilities<sup>7</sup>.

For a long time, segregation and institutionalization were the only responses designed by States to support the needs of persons with disabilities. However, with the entry into force of the Convention on the Rights of Persons with Disabilities, failure to take immediate measures towards deinstitutionalization and the full and meaningful inclusion of persons with disabilities in the communities is no longer acceptable. Therefore, I urge your Excellency's Government to take a principled stand against institutionalization by introducing an immediate moratorium on new admissions to institutions. I encourage the Government to review its policy framework on deinstitutionalization and ensure access to human rights compliant support for persons with disabilities.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in the Special Procedures communication report to be presented to the Human Rights Council for consideration at its 39<sup>th</sup> session in September 2018.

I thank your Excellency's Government for its attention on this important matter and make myself available to provide the expert support or assistance it might require, in light of the mandate given to me by the Human Rights Council.

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

Catalina Devandas-Aguilar  
Special Rapporteur on the rights of persons with disabilities

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<sup>7</sup> See Report of the Special Rapporteur on the rights of persons with disabilities (2016) A/HRC/34/58.