

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

REFERENCE:
OL GBR 3/2018

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 resolutions 35/6, further to your letter of 17 August 2017 referring to the joint urgent appeal UA GBR 2/2017.

In this connection, I would like to thank your Excellency's Government for its reply and acknowledge that I have duly taken note of its position on denial of legal capacity and substituted decision-making, involuntary detention and non-consensual mental health treatment, as well as its views on the compatibility of the national law with the State's obligations under the Convention on the Rights of Persons with Disabilities.

The United Kingdom of Great Britain and Northern Ireland ratified the Convention on the Rights of Persons with Disabilities (CRPD) in June 2009. However, the State maintains a national legal framework which openly contradicts the standards established at articles 12, 14, 15 and 25 of the Convention, by way of limiting the legal capacity and permitting exceptions whereby persons with psychosocial disabilities may be involuntarily detained and subjected to non-consensual treatment on grounds of their actual or perceived impairment.

Given the centrality of articles 12, 14, 15 and 25 to the enjoyment and exercise of all rights set out in the Convention, which are in essence non-discrimination provisions aimed at eliminating historical injustices against persons with disabilities, it is my duty to urge your Excellency's Government to initiate the process of legal harmonization without further delay.

Article 12 on equal recognition before the law guarantees the rights of all persons with disabilities to exercise legal capacity and therefore to make autonomous decisions and have those decisions respected. According to article 12.3, persons with disabilities should have access to adequate decision-making support when seeking to make informed choices. Respect for the legal capacity of persons with disabilities extends to the area of health and decision related to medical treatment (see CRPD/C/GC/1, para. 41). Article 14 on liberty and security of person prohibits unlawful and/or arbitrary detention on grounds of disability, including involuntary deprivation of liberty or non-consensual medical treatment. Article 14.1(b) affirms that the existence of a disability shall in no case justify a deprivation of liberty. Article 25 on health recognizes that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination, and it requires health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent.

This position is further supported by the Committee on the Rights of Persons with Disabilities, the independent body of experts mandated to provide authoritative interpretation of the Convention. In their work, the Committee emphasizes full respect for legal capacity, the absolute prohibition of involuntary detention based on impairment and the elimination of forced treatment (see General Comment No. 1 CRPD/C/GC/1 and guidelines on article 14 of the Convention).

As noted in our initial communication of 13 April 2017, with the adoption of the CRPD there is consensus that certain involuntary mental health practices, such as mechanical and chemical restraints, solitary isolation and seclusion, may amount to cruel, inhuman or degrading treatment or torture (see A/HRC/22/53; A/66/268, paras. 67-68, 78). Torture, as the most serious violation of the human right to personal integrity and dignity, poses an immediate obligation on States to enforce national laws and frameworks to combat and prevent its occurrence.

The independent review of mental health legislation and practice, announced by your Excellency's Government, is a timely opportunity to consider the legislative and structural changes needed to guarantee recognition of and respect for the universal legal capacity of all persons with disabilities, including in the mental health system. Importantly, all recommendations outlining the direction of the reform should be informed by the principles of autonomy, choice and control, based on the will and preferences of persons concerned. Recommended measures need to be rooted in the understanding that exceptions to the full enjoyment of the right to legal capacity and coercion in mental health services constitute severe human rights violations. Instead, professionals and decision-makers need to identify and regulate effective ways to implement supported decision-making arrangements and deliver community based services that meet the diversity of support needs of persons with disabilities.

I hope that this letter provides an opportunity to engage in an open, constructive and human rights-based dialogue with your Excellency's Government to further progress in the implementation of its international human rights obligations, notably as provided by the Convention on the Rights of Persons with Disabilities.

Your Excellency's Government's response will be made available in the communications report of special procedures to be presented to the Human Rights Council for consideration at its 39th session in September 2018.

I thank your Excellency's Government for its attention on this important matter and make myself available to provide any additional information or assistance on the issues raised in this letter.

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

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