

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

REFERENCE:
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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 44/10.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the rights of **117 persons with psychosocial disabilities residing at the Shina Rehabilitation Center (hereinafter "Shinawon") in Songpa-gu, Seoul, including their right to live independently, the denial of access to appropriate housing and healthcare services, increasing significantly the risk of exposure to infection from COVID-19.**

According to the information received:

The Shina Rehabilitation Center has currently 117 residents, who are persons with psychosocial and developmental disabilities, who live in the institution together with 67 staff and operators. The Shinawon facilities consist of three buildings with flats composed of three to four bedrooms, a common living room, and a common bathroom. Up to 12 or 13 persons live in each flat.

Shinawon is among those institutions upon which a so-called "cohort isolation" has been imposed, as part of the response to the COVID-19 pandemic put in place by the Government of the Republic of Korea.

The authority to implement "cohort-isolation" of institutions resides with the local government where the institution is located, upon approval by the Central Disaster Management Headquarters. When one or more residents are found to have contracted COVID-19, the government may immediately implement the 'cohort isolation' (i.e. complete lockdown) on the institution and conduct COVID-19 tests of all residents, staff, and, based on contact-tracing, anyone who had close contact with the confirmed patients within two weeks.

The "cohort isolation" policy consists in a lockdown of an entire institution, regardless of whether a resident or staff has contracted the virus or not, and has the aim to contain the virus within said facility. It is applied to nursing homes, institutions and other residential facilities. The policy also provides for the transfer of all persons who become infected with COVID-19 from their community to hospitals or other facilities, in order to quarantine or isolate separately from other residents. Some local governments have implemented the 'preventive cohort isolation' policy, lockdown of the institution with prohibition of visits, limitations of freedom from going in and out of the institution, even in instances where no resident had tested positive for COVID-19, but with the aim to prevent a potential outbreak of the virus in that

facility.

Following the infection of some residents (5 reported cases positive to COVID-19 as of 25 December 2020) and the lack of prompt action to ensure appropriate access to health care, quarantine and isolation facilities, Shinawon saw an exponential increase in the number of infections, which reached 76 cases on 12 January 2021.

On 11 January 2021, the Government took an emergency discharge decision, allowing all the residents of Shinawon to be transferred to other facilities (including hospitals and hotels) in order to prevent further infections. In particular, 20 residents who contracted the virus were relocated to hospitals; 36 residents who previously tested positive, received treatment and were transferred to hotels, together with the other 58 residents who had not contracted the virus.

On 13 January 2021, after completing the disinfection of the Shinawon premises, the Seoul Metropolitan Government announced that all residents who tested negative for the COVID-19 virus were expected to return to the institution as from 14 January 2021.

On 19 January 2021, only eight days after the evacuation of the facilities, and notwithstanding the strong objection of the disability community, the Seoul city government and Shinawon center enforced the return of 58 of the residents from the emergency shelters where they had been relocated back to Shinawon.

According to the official response to COVID-19 of your Excellency's Government, self-quarantine should be implemented for 14 days for all people who are considered suspected and probable cases. In order to conduct self-quarantine, one person should stay alone in a closed room. When a person lives with other persons in the same house, and even if the other housemates are also considered probable cases, individual quarantine is still mandatory.

In the case of Shinawon, it is reported that residents were forced to move back into the institution only eight days after the emergency evacuation, and 15 of them were forced to move back after four days. In the institution, self-quarantine is not achievable due to lack of physical space, as outlined above. Organizations of persons with disabilities and the disability community demanded that the residents should not be sent back to the institution earlier than 25 January 2021, which would correspond to the 14th day after the evacuation. However, the Seoul Metropolitan city government maintains that the starting date of the residents' self-quarantine was 5 January, i.e. the date when all the residents of Shinawon were transferred to hospitals and other facilities for the emergency evacuation.

It is alleged that this decision, while promoting the continuation of the practice of institutionalization of persons with disabilities, is also contrary to the 14-days mandatory quarantine that is requested for persons living outside of institutions/in communities. Additionally, as stated above, the premises are

structured in a way that may allow residents to access to individual bedrooms, but only provides shared access to other living spaces (living rooms and bathrooms, for instance). This entails that physical distancing in Shinawon premises cannot be ensured at all times, thus forcing all the residents to go back would also expose them to the risk of contracting the virus, once again causing potential mass infections and outbreaks.

It is further reported that persons with disabilities and their representative organizations were not consulted or provided information on recent developments and decisions taken by the local government and institutions: information was collected from unofficial phone calls and reports by the media.

While I do not wish to pre-judge the accuracy of these allegations, I wish to express my deep concern over the alleged violations of the rights of persons with disabilities, particularly with regards to institutionalization, discrimination, access to health and appropriate housing on the basis of disability.

While welcoming the 11 January 2021 emergency discharge decision and emergency deinstitutionalization of the residents of Shinawon by the Government, I am concerned that the decision was taken more than two weeks after the initial outbreak of late December, and that this delay may have contributed, together with the lack of appropriate separation between COVID-19 positive and negative residents, to the sharp increase of infections and the outbreak in Shinawon.

I remain highly concerned at the plans of the Government to send these persons back once they will heal from the COVID-19 infection, reinstating the “cohort-isolation” and thus exposing them to a renewed risk of mass infection and to denial of, or delay in, ensuring effective access to healthcare and medical treatment of persons with disabilities on the same basis as others.

In connection with the above alleged facts and concerns, I wish to express my deep concern at the decision of your Government to send the residents of Shinawon back to an isolated and segregated facility, potentially exposing them to a high risk of infection and contrary to the provisions of international human rights law.

In addition, I wish to express my concern that the fact that persons with disabilities who had been evacuated to alternative facilities after the emergency discharge of Shinawon were not granted the opportunity of self-quarantining for 14 days before being forced to return to Shinawon, may constitute discrimination.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

In view of the urgency of the matter, I would appreciate a response on the steps taken by your Excellency’s Government to safeguard the rights of the residents of Shinawon and to comply with the provisions of international instruments towards de-institutionalization.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please clarify the steps being taken to implement the provisions of Article 14 and Article 19 of the CRPD, with a view to ensure that persons with disabilities can fully enjoy their right to live independently in their community, including with regards the progressive deinstitutionalization of all persons with disabilities both in the emergency context caused by the COVID-19 pandemic, and with a view to repeal existing policies and legislation that allow for the deprivation of liberty and institutionalization on the basis of disability.

While awaiting a reply, I urge that all necessary interim measures be taken to promptly halt the alleged violations and prevent their re-occurrence. In particular:

- (a) Discharge and release persons with disabilities from all institutions and promptly ensure the provision of housing, support in the community through family and/or informal networks, and/or adequately funded support services by public or private service providers that can be freely chosen by the person requiring support. Ensure the meaningful participation and consultation of persons with disabilities and their representative organizations in this process.
- (b) Ensure that deinstitutionalization does not result in discharging persons into homelessness or into substandard housing, and that psychosocial or other services and affordable and adequate long-term housing with long-term security of tenure are provided or in operation before institutions are closed.
- (c) Prioritize testing and access to vaccines for persons with disabilities and those who support them; promote preventive measures within institutions to reduce infection risks by addressing overcrowding, implementing effective physical distancing measures for residents, modifying visiting hours, mandating use of protective equipment, and improving hygiene conditions.
- (d) Increase temporarily the resources of institutions including human resources and financial resources to implement preventive measures.
- (e) Ensure continued respect of the rights of persons living in institutions during the emergency period, including their freedom from exploitation, violence and abuse, non-discrimination, the right to free and informed consent, and access to justice.

- (f) Adopt deinstitutionalization strategies to close institutions and return persons with disabilities to their community, and strengthen and support community-based services for persons with disabilities¹.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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(s) responsible for the alleged violations.

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

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities

¹ See https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer to the attention of your Excellency's Government's the international human rights standards that are applicable in this case, enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both acceded by the Republic of Korea on 10 April 1990, and the Convention on the Rights of Persons with Disabilities (CRPD), ratified on 11 December 2008.

Article 19 of the CRPD sets out the right for persons with disabilities to live independently and be included in their communities and to choose where and with whom they live; and stipulates that States must ensure that (b) persons with disabilities have 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 or segregation from the community; and (c) community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

The provisions of Article 19 outlaw institutionalization and challenge social protection policies that segregate persons with disabilities in social care or medical settings. In its General comment No. 5 (2017) on living independently and being included in the community (CRPD/C/GC/5), the Committee on the Rights of Persons with Disabilities stressed that, in order to respect the rights of persons with disabilities under Article 19 of the CRPD, States need to phase out institutionalization². I note that Article 19 should be read in conjunction with Article 28 of the CRPD on adequate standard of living and social protection, which sets out the obligation of States to develop alternatives to institutional care for persons with disabilities and to further their deinstitutionalization, including by ensuring access to public housing programmes.

The right to adequate housing is enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 28 of the CRPD and must be understood not only to include the provision of four walls and a roof, but essentially entails the right for everyone to stay in a place in security, peace and dignity (Committee on Economic, Social and Cultural Rights, General Comment No. 4, para. 7). Security in the context of the COVID-19 pandemic means that all persons should as well have access to a room that allows for their self-isolation to be protected against the virus.

The right to adequate housing for person with disabilities includes furthermore the essential element of access to required support services, including social and psychological services, and if required reasonable accommodation, which means undertaking potential modification and adjustments to existing housing units and their environment to enable persons with (mental) disabilities to live independently and participate fully in all aspects of life (Articles 2, 5.3 and 19 CPRD). In the context of

² See CRPD/C/GC/5, para. 49.

deinstitutionalization the right to adequate housing furthermore strictly requires that no-one should be discharged into a homelessness or substandard housing. After deinstitutionalization everyone should have access to adequate and affordable housing with long-term security of tenure, in which she or he can live alone or together with others in a community and place of his or her choice (see Article 19 CRPD, CESCR, General Comment No.4, and A/72/128).

Additionally, according to Article 19 of the CRPD, States have the obligation to ensure that persons with disabilities enjoy choice and control over their lives on an equal basis with others; have the opportunity to decide where, how and with whom they want to live; access to a range of in-home, residential and other community support services (including the provision of personal assistance); and access to all community services available to others, including in the context of the labour market, housing, transportation, health care and education.

Furthermore, I wish to bring to the attention of your Excellency's Government that the institutionalization of persons with disabilities falls within the definition of discrimination, as provided in Article 5 of the CRPD, and the consequent immediate obligation of States to repeal all laws and regulatory frameworks that allow for, or condone institutionalization.

Although States took extraordinary measures to protect the health and well-being of the population in light of the COVID-19 pandemic, I wish to remind your Government that, even in the context of a public health emergency, these measures need to be based on the rule of law and be aligned with human rights standards. In particular, emergency declarations and policies that are based on the COVID-19 outbreak, such as the "cohort-isolation" policy adopted by your Excellency's Government, should not be used as a basis to target or allow discrimination against particular individuals or groups, including persons with disabilities³. This is in line with the provisions of Article 4 of the International Covenant on Civil and Political Rights (ICCPR)⁴.

Article 10 (1) of the ICCPR establishes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In its General Comment No. 21, the Human Rights Committee explained that this provision applies to anyone deprived of their liberty under the laws and authority of the State, including in prisons, hospitals, psychiatric institutions, or elsewhere, without discrimination.

Article 11 of the CRPD on situations of risk and humanitarian emergencies provides the obligation of States to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, crisis and emergency, the definition of which the COVID-19 pandemic ascribes to.

Article 14 of the CRPD on liberty and security of person also prohibits unlawful and/or arbitrary detention on grounds of disability, including confinement to a residential or detention facility, involuntary deprivation of liberty or non-consensual medical treatment. Article 14.1(b) affirms that the existence of a disability shall in no

³ See https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf

⁴ See also <https://undocs.org/pdf?symbol=en/E/CN.4/1985/4>

case justify a deprivation of liberty. 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 also expressed concern about the institutionalization of persons with disabilities and the lack of support services in the community; has recommended implementing support services and effective deinstitutionalization strategies in consultation with organizations of persons with disabilities. Recently, in a joint statement, the Committee and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility stressed that States parties should accelerate measures of deinstitutionalization of persons with disabilities from all types of institutions⁵.

In its Guidelines on the right to liberty and security of persons with disabilities⁶, the Committee stressed that Article 14 of the CRPD does not allow any exception whereby persons may be detained on the grounds of their actual or perceived impairment. Any legislation providing instances in which persons may be detained on the grounds of their actual or perceived impairment, provided there are other grounds for their detention, including that they are deemed dangerous to themselves or others, are discriminatory in nature and amount to arbitrary deprivation of liberty.

Finally, I wish to recall that, in its 2014 Concluding Observations on the Republic of Korea (CRPD/C/KOR/CO/1), the Committee on the Rights of Persons with Disabilities had expressed its concern at the existing legal provisions that allow for deprivation of liberty on the basis of disability, as well as at the high rate of institutionalization, including long-term institutionalization, of persons with psychosocial disabilities without their free and informed consent. It also expressed concern at the lack of efficiency of the deinstitutionalization strategies and the lack of sufficient measures aimed at including persons with disabilities in the community. The Committee recommended, inter alia, that the Republic of Korea develop effective deinstitutionalization strategies based on the human rights model of disability, and repeal the existing legal provisions allowing for the deprivation of liberty on the basis of disability.⁷

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

⁵ Joint statement by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility - Adopted on 1 April 2020, available on <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDStatements.aspx>

⁶ See [A/72/55 \(Annex\)](#), para. 6.

⁷ See [CRPD/C/KOR/CO/1](#), paras. 25-26 and 37-40.