

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

**Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

**Expert meeting on the deprivation of liberty of persons with disabilities on the basis of disability**

**Executive summary**

1. **Introduction**

On 7 September 2015, the Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, convened an *Expert meeting on the deprivation of liberty of persons with disabilities on the basis of disability*, which was attended by 21 international experts, with experience in the areas of deprivation of liberty, mental health and the rights of persons with disabilities.

1. **Summary of discussions**
   1. **Overview of international standards**

Relevant IHRL standards on the deprivation of liberty of persons with disabilities include: Art. 3 UDHR (non-binding, but normative force), Art. 9 ICCPR, Arts. 10 and 11 CAT, Art. 37 CRC, and Art. 14 CRPD. The latter constitutes the most recent expression of the right to liberty in a UN treaty, and is the most legitimate, due to the involvement of persons with disabilities.

Acknowledging that many countries still retain detention on grounds of disability, discussions focused on how to ensure that, in practice, the existence of a disability does not justify, under any circumstances, a deprivation of liberty, including in “hard cases” situations.

* 1. **Mapping of forms of deprivation of liberty worldwide**

An overview of existing psychiatric and non-psychiatric forms of deprivation of liberty based on actual or perceived disability was provided through different presentations, which illustrated various practices existing worldwide, including:

* Forced institutionalization in psychiatric hospitals and other specialized institutions,
* Detention at home, including shackling of persons with or perceived to have a disability
* Detention of autistic persons due to misdiagnosis, lack of inclusive education, misinterpretation and criminalization of autistic behaviors
* Forced treatment in mental health settings

Participants discussed some of the reasons why these forms exist, and identified among others: strong links with stigma, prejudice and discrimination against persons with disabilities; intolerance and difficulties in accepting diversity and different forms of behaviour, society’s acceptance of such forms.

They also discussed the existing challenges on the ground to making the implementation of Art. 14 of the CRPD a reality, which include, but are not limited to:

* Limited or inexistent resources (financial, training, expertise), or a perception thereof, by States; Stigma
* Societal acceptance of institutionalization as normal and commonplace, instead of as a human rights violation
* Lack of alternatives, such as community housing and support organizations
* Legal barriers, especially legislation allowing the deprivation of legal capacity
* Lack of interest in reform by policy makers, who also do not listen to users/survivors because they don’t have an ‘official’ voice
* Lack of understanding of difference between DPOs and disability organizations, where the latter may be invested in systems of coercion and confinement or have conflicts of interest;
* Lack of understanding of CRPD by States, domestic organizations, and lack of awareness of domestic legislation by some self-advocates.
  1. **The way forward: what is required to end disability-specific deprivation of liberty?**

In the second part of the meeting, experts exchanged views on the way forward, and acknowledged the need to find new alternatives to existing practices which are: i) respective of the human dignity of persons with disabilities, ii) tailored to local contexts and realities, iii) sufficiently resourced and iv) provide guarantees of non-repetition to victims.

However, no agreement could be reached on the way forward, or on recommendation for strategies, since they acknowledged that the practitioners who have documented such good practices were not present.

The following are a mere list of concrete suggested actions for improvement, but which was not endorsed as such by the group of experts:

* Policy and legal review, to repeal legislation which allows deprivation of liberty on the basis of disability (e.g., mental health acts)
* Prompt judges take a prominent role in enforcing Art. 14 of the CRPD
* Identify and document good practices, such as peer support alternatives to psychiatry, de-institutionalization, and community based services
* Focus on prevention, by adopting preventive standards and setting up services required to prevent people from ending up in crisis
* Draw on commonalities with wider “struggles”, discourses and tactics used by other groups subjected to stigma and discrimination (e.g., LGBTI)
* Ensure that rights-holders with disabilities are informed of their rights as well as of existing avenues for redress and reparation
* Engage service users in dialogue.

1. **Next steps**

Given the sensitivity and complexity of the topic, this meeting constituted a first initiative to convene and build bridges between different key actors involved in the implementation of these standards.

The main findings of this preliminary Expert Meeting will be used by the two Special Rapporteurs in the framework of their respective work, including in the formulation of specific recommendations to Member States, UN human rights mechanisms and entities, healthcare professionals, organizations of persons with disabilities (DPOs), academia, and other stakeholders.

The Special Rapporteurs on the rights of persons with disabilities and on the right to health may envisage organizing another expert meeting in the future with practitioners to discuss and identify good practices and concrete solutions to implement alternatives to disability-specific forms of deprivation of liberty that respect an individual’s human dignity, will and preferences.