**Maat for Peace’ submission on “the Draft Guidelines on deinstitutionalization of persons with disabilities, including in emergency situations”**

**Executive Summary**

The COVID-19 pandemic, and the measures adopted by countries to contain it, have put many persons with disabilities in the Middle East at risk of losing their sources of income and social protection benefits, while at the same time increased the likelihood of them being forcibly placed in social care institutions, or forcibly isolated and separated from the family. Although all persons with disabilities have been affected by developments related to the outbreak of the COVID-19 pandemic, these developments have particularly affected persons with disabilities who are subject to systemic and structural discrimination, including those who remain in institutional care, persons with intellectual disabilities, and persons with psychosocial disabilities, children, women and the elderly with disabilities. Moreover, Maat noted that people with disabilities who live in humanitarian emergencies and armed conflicts in the countries of the Middle East are usually left in harsh conditions without any humanitarian services or assistance provided either by governments or by external donors, where governments are forced to immediately stop providing these services with their direct involvement in the armed conflicts and the intensification of their severity. Persons with disabilities also find it extremely difficult to access humanitarian assistance provided by external stakeholders, like others.

Previous developments have prompted the international community to think about trying to find a regulatory framework or a set of general guidelines, that would provide better protection for persons with disabilities in a way that enables them to live independently, integrate into society and choose their lives in a complete freedom, which is what the Committee on the Rights of Persons with Disabilities is trying to achieve it at the present time, by developing a set of guidelines aimed at deinstitutionalization of persons with disabilities, including in emergency situations, which we are going to comment on in our current interventions. Based on the call of the Committee on the Rights of Persons with Disabilities to all stakeholders to provide written comments on the paragraphs of the proposed draft guidelines, Maat for Peace, Development and Human Rights is making its contribution by commenting on some paragraphs of the draft related to some controversial issues including Paragraph No. (8) and (12) related to the obligation to deinstitutionalize, Paragraph No. (14) regarding understanding and implementing the main elements of the deinstitutionalization process, Paragraph No. (27) and (28) related to the allocation of funding and resources, Paragraph No. (43) related to Children with Disabilities, and Paragraph No. (117) related to remedies, compensation, and reparation, which will be dealt with in some detail as follows:

**Duty to End Institutionalization: Paragraphs No. (8) and (12)**

Maat believes that ending institutional care for persons with disabilities is an urgent necessity imposed by the best interest of persons with disabilities, as placement in institutions is considered a type of discriminatory practice against persons with disabilities and involves an actual denial of their legal capacity, as it is a form of arbitrary detention and deprivation of liberty, it directly contradicts the right of persons with disabilities to live independently and integrate into society, which is guaranteed by Article No. 19 of the Convention on the Rights of Persons with Disabilities, and General Comment No. 5 of 2017 on independent living and social integration.

However, Maat believes that institutional care should not be completely abolished for all persons with disabilities. While Maat believes that institutional care is a discriminatory practice harmful to the vast majority of persons with disabilities, at the same time it believes that institutional care may be a form of protection for people with disabilities, especially for those who are ostracized by their families, who do not have their own shelter or housing, who suffer from an intellectual disability that puts them at risk to themselves and others, and for those who lead a life of homelessness in the streets, squares, and public places as for many people with mental and intellectual disabilities in the Middle East.

Therefore, Maat recommends amending Paragraphs No. 8 and 12 of the draft guidelines on the abolition of institutional care for persons with disabilities in a manner that ensures that institutional care for persons with disabilities is not completely abolished, and in a manner that makes this care available in its minimum limits for a limited number of persons with disabilities, whose mental and social conditions impose a duty on them to be institutionalized instead of a life of loss and homelessness. While Maat has recommended institutional care for a limited number of persons with disabilities according to their special circumstances, it would like to point out that they should not to circumvent the general rule that requires ending institutional care for persons with disabilities or narrowing it to the extreme, by expanding the exception that authorized institutional care for limited numbers of persons with disabilities and in specific circumstances.

**Understanding and implementing the key elements of the deinstitutionalization process: Paragraph No. (14)**

Paragraph No. 14 of the draft stipulates that institutional care that should be abolished for persons with disabilities includes all forms of placement and detention in institutions, including psychiatric institutions and mental health places in which individuals are held for the purposes of observation, care, treatment or preventive detention. Maat believes that this paragraph should be amended, in such a way that psychiatric institutions and mental health settings are excluded from forms of institutional care that should be terminated or abolished for persons with disabilities. Practical experience has shown that psychiatric institutions and mental health facilities may be the most appropriate places to care for persons with disabilities who have mental or psychiatric disabilities, especially for those who pose a danger to themselves and others around them. Therefore, the placement of persons with serious mental and psychological disabilities that make them endanger private and public life in psychiatric institutions may be the most appropriate preventive measure to protect them and others.

In specific facts that support the view of Maat in this regard, a man with intellectual disabilities killed his wife in February 2020 by smashing her head with a tree branch and burning her body in a stove in Zvishavane, Zimbabwe[[1]](#footnote-1). A person with mental disabilities also killed his sister, who works as a psychiatrist in the municipality of Sidi Jilali, Algeria, in June 2021 after she tried to restore his calmness and return him to his normal state[[2]](#footnote-2). A mother with a psychological disability beheaded her three children and then attempted suicide in May 2022 in Dakahlia Governorate in the Arab Republic of Egypt.[[3]](#footnote-3)

**Allocation of Funding and Resources: Paragraphs No. (27) and (28)**

Paragraphs No. (27) and (28) of the draft stipulate that states parties should stop using public funds to build and renew institutions, prohibit investment in or renew alternative care institutions for persons with disabilities, and direct all types of investments in order to abolish institutional care for persons with disabilities as an emergency measure. Although Maat supports the general idea of ​​the previous two paragraphs aimed at abolishing forms of institutional care for persons with disabilities and providing all necessary and appropriate forms of support that enable persons with disabilities to live independently and integrate into society, however, Maat considers Persons with disabilities must be given the opportunity to choose between staying in or leaving institutional care systems, as the prior assumption that persons with disabilities are unwilling to remain in alternative care institutions without giving them the opportunity to choose or test their will, implies an actual denial of legal capacity for persons with disabilities recognized in Article 12 of the Convention.

Accordingly, Maat recommends the necessity of giving persons with disabilities the opportunity to choose between staying in or leaving institutions, an opportunity that cannot be provided without maintaining, renewing, and investing in the minimum number of alternative care institutions for persons with disabilities. Hence, Maat recommends amending the previous two paragraphs in a way that guarantees the possibility of renewing institutions or investing in them at their minimum levels, in a manner that guarantees the freedom of choice for people with disabilities. If Maat recommended licensing investment and renewing alternative care institutions for persons with disabilities within its minimum limits to respect the freedom of choice for persons with disabilities, at the same time it indicates that the general rule supported by the association that the forms of institutional care for persons with disabilities must be ended or curtailed to the greatest extent should not be circumvented, by extending the exception that permitted the possibility of renewal or investment in institutions as a result of the freedom of choice of persons with disabilities, and in recognition of their legal capacity in this regard.

**Children with Disabilities: Paragraph No. (43)**

Paragraph No. (43) of the draft stipulates that state parties should guarantee the right to family life for all children with disabilities, and the need to stop all forms of support provided to orphanages or residential care and other forms of institutional care provided to children with disabilities and replace them with other forms of family life. Although Maat supports the general idea contained in this paragraph in a way that guarantees children with disabilities the right to family life in all its forms, at the same time it would like to point out that children with disabilities find it very difficult to obtain forms of family life, especially if they have lost their parents or were ostracized by their families, the special circumstances of children with disabilities make it very difficult for them to obtain care or an alternative family life to that provided by parents or family members. Hence, alternative care homes, including orphanages, become the most appropriate measures to protect children with disabilities from homelessness and loss. Accordingly, Maat for Peace, Development and Human Rights recommends amending this paragraph in a way that ensures the provision of minimal support to orphanages and other alternative care institutions for children with disabilities who are unable to obtain family life forms.

**Remedies, Compensation and Redress: Paragraph No. (117)**

Paragraph No. (117) of the draft states that states parties should establish a mechanism to provide official apologies and immediate compensation to persons with disabilities who have survived institutionalization. Although Maat supports the general idea of ​​this paragraph, at the same time it believes that compelling states to provide official apologies and immediate compensation to persons with disabilities who have been removed from institutions and to consider them as survivors, may constitute a major obstacle to states’ adoption of the draft guidelines which we are about to comment on now, as the practical experience has shown that states always seek to evade any legal or moral obligations that would entail an international obligation to pay financial compensation or provide certain apologies. Hence, Maat recommends amending this paragraph to encourage as many countries as possible to adopt the guidelines on the abolition of institutional care for persons with disabilities, including in emergency situations.

1. معاق ذهني يهشم رأس زوجته ويحرق جثتها في جريمة مروعة، صدى البلد، 25 فبراير 2020، الرابط: <https://bit.ly/3mPblnj> [↑](#footnote-ref-1)
2. مختل عقليا يقتل شقيقته الأخصائية النفسية.. وتحدث الصدمة، دنيا الوطن، 13 يونيو 2021، الرابط: <https://bit.ly/3HmGUym> [↑](#footnote-ref-2)
3. خبير نفسي: سيدة الدقهلية التي قتلت أولادها تعاني من الاكتئاب الوجداني، أخبار اليوم، 31 مايو 2022، الرابط: <https://bit.ly/3HmIGQ2> [↑](#footnote-ref-3)