# Opinion to the Draft Guidelines on DI, including in emergencies by the UN CRPD Committee

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**Submitted by**

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## Background

With gratitude to the Working group’s dedication during the COVID-19, we more than welcome the Guidelines on Deinstitutionalisation, including in emergencies. Korean civic groups translated the draft and gathered opinions. Please refer to the following two concerns by the Korean disability community.

## Concerns over adapting DI guidelines to the Republic of Korea

### Report by States Parties about the implementation

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| Related guideline  (No contents currently) |

#### 1) Concern

##### Passive policies by the government in following the guidelines

South Korean government implements a deinstitutionalization plan but lacks independent law and system. Therefore, it can lead to the superficial adoption of the guidelines by the government.

##### Lack of will to deinstitutionalization after the COVID-19 crisis

The guidelines aim to urge States Parties’ actual implementation of deinstitutionalization, reflecting the worldwide experiences during the COVID-19 crisis. However, as the South Korean government’s post-COVID-19 disability policy is still based on institutionalization, this purpose cannot be fully realized.

#### 2) Suggestion

States parties should report the guidelines implementation status(ex. establishing a legal and political framework on DI) to the UN CRPD Committee, considering its direct and crucial impact on the lives and safety of persons with disabilities. Furthermore, this reporting system can harmonize the domestic system to the guidelines.

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| Amendment to guidelines  States Parties are asked to submit a deinstitutionalization strategy – with specific measures(including legal framework), time-frame, and budget - based on the UN CRPD, general comment 5, and DI guidelines. |

### A careful approach to the ‘choice and autonomy’

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| **Related guidelines**  91. The deinstitutionalization process starts while the person is still in the institution and should entail a transition plan customised to each person leaving the institution. All persons shall have an equal opportunity to be deinstitutionalized and to leave of their own volition at any time.  (…)  93. Persons leaving institutions should:  (a) Be respected as decision-makers, with support if required, in respect of all aspects of leaving institutions;  (b) Be provided with adequate time and opportunities for preparing physically and emotionally for living in the community. States Parties should ensure that all persons who request them have an individualized plan in place;  (c) Be at the core of processes of individualized planning and respected as a survivor to whom reparations are due;  (d) Be provided with full disclosure about the ending of institutionalization, and their will and preferences should be reflected in the plan.  (e) In preparation to leave the institution, be offered a wide range of experiences to assist with community integration to help build their experience, strengths, socialization, life skills, remove fears and gather positive experiences of living well and independently;  (f) Receive information about housing options, work and employment, individualized funding support, and all other measures necessary to ensure an adequate standard of living. |

#### 1) Concerns

##### Pro-institutionalization arguments by the government, institutions, and families

UN CRPD and the DI guidelines declare that persons with disabilities have the right to choice and autonomy over their life. They also say institutionalization, a human right violation, cannot be an accommodation option for persons with disabilities.

However, the Korean government reverts the realization of the rights to DI of persons with disabilities by recognizing institutions as one of the desirable accommodation options. It is based on the discriminatory perception on the legal capacity and autonomy of persons with disabilities that they are incapable of making decisions with autonomy and that someone(i.e., institutions) should make a decision for them.

Accordingly, not only the government but also institutions and families of persons with disabilities (especially learning/psychosocial disabilities) argue that the deinstitutionalization policy violates the autonomy and right to choice of persons with disabilities. They also insist that the institutions are “good and safe homes” for disabled people who are “not suitable for independent living in the community”. These strong oppositions are the biggest obstacles to realizing DI in Korea.

##### Lack of DI plan for the persons with high support requirements

Even in cases of shutdown institutions due to crimes(embezzlement, physical/sexual violence), the persons with high support requirements are tackled to leave institutions by families, institutions, and sometimes even governments. They even say that DI of the persons with high support requirements is human rights violation, because the government did not ‘clearly confirm’ their own will to leave institution.

The UN CRPD, General Comment 5, and the draft guidelines on DI recognize the right of ALL persons with disabilities to live in the community and emphasize relevant obligations of States Parties. However, it is concerned that if deinstitutionalization is allowed only after confirming one's own volition, persons with high support requirements will be left in institutions under the excuse of "unidentified volition to leave."

#### 2) Suggestions

The “volition” should be confirmed in particular not when leaving institutions but when staying in insititutions for limited period of DI process by States Parties.

For every person with disabilities in institutions, States Parties should take DI as the fundamental principle. Furthermore, the demand for maintaining institutions for any reasons(including social, economic circumstance of the person or their family, type of disability, and/or the range of required support, etc.) should be considered a human rights violation act.

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| Amendment to the guidelines  91. The deinstitutionalization process starts while the person is still in the institution and should entail a transition plan customised to each person leaving the institution. All persons shall have an equal opportunity to be deinstitutionalized and to leave **~~of their own volition~~** at any time.  (…)  93. Persons leaving institutions should:  (a) Be respected as decision-makers, with support if required, in respect of all aspects of leaving institutions. In the process, deinstitutionalization should be taken as the principle. **Unless the person clearly expresses own will to stay in the institution, family or other relevant person’s demand to keep the person in institution should be considered as a serious human rights violation. The stay of one’s own volition should be limited to the period of deinstitutionalization plan by States Parties**;  (b) Be provided with adequate time and opportunities for preparing physically and emotionally for living in the community. States Parties should ensure that all persons **~~who request them~~** have an individualized plan in place. **The individualised plan should be launched immediately and accomplished within minimum period with maximum resources;**  (c) Be at the core of processes of individualized planning and respected as a survivor to whom reparations are due;  (d) Be provided with full disclosure about the ending of institutionalization, and their will and preferences should be reflected in the plan.  (e) In preparation to leave the institution, be offered a wide range of experiences to assist with community integration to help build their experience, strengths, socialization, life skills, remove fears and gather positive experiences of living well and independently;  (f) Receive information about housing options, work and employment, individualized funding support, and all other measures necessary to ensure an adequate standard of living. |

1. KDF([www.thekdf.org](http://www.thekdf.org)) is a coalition organization of 16 Disabled Peoples’ Organisations in the Republic of Korea. Since 2012, KDF has been working for international disability rights advocacy including disability-inclusive SDGs and UN CRPD. It has ECOSOC special consultative status since 2020. [↑](#footnote-ref-1)
2. FootAct([www.footact.org](http://www.footact.org)) is the first deinstitutionalization organization in Korea and it has been working for truth-seeking, law-making and research activities for deinstitutionalization, and establishing institution-community transition model since 2005. [↑](#footnote-ref-2)
3. PNPD([www.bumo.or.kr](http://www.bumo.or.kr)) is a national network of the parents with disabled children. The organization is working for protecting the rights of the persons with disabilities and their families and making a society that no one is left behind. [↑](#footnote-ref-3)
4. SADD([www.sadd.or.kr](http://www.sadd.or.kr)) is a national disabled people’s organization and the members implement direct action to achieve full participation and equal opportunities of the persons with disabilities in the society. [↑](#footnote-ref-4)
5. KCIL([www.kcil.or.kr](http://www.kcil.or.kr)) is a coalition of Independent living centers which endeavor to protect the right to independent living in community of every persons with disabiltiies. [↑](#footnote-ref-5)
6. KSHB([kshb.or.kr)](http://www.kshb.or.kr/main) is an organization of the persons with brain lesion and it is working to improve the rights and support for the persons with brain lesion. [↑](#footnote-ref-6)