



**Written submission to the
United Nations Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment
concerning global trends and developments on torture in preparation of the Special
Rapporteur on Torture report in respect of the absolute prohibition on torture and
other ill-treatment, pursuant to Human Rights Council resolution 52/7**

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1. INTRODUCTION

1. The Validity Foundation – Mental Disability Advocacy Centre (*hereinafter*: “Validity”) is an international non-governmental human rights organisation headquartered in Budapest, Hungary. Validity is a specialist legal advocacy organisation that uses legal strategies to promote, protect and defend the human rights of persons with intellectual disabilities and persons with psychosocial disabilities worldwide. Validity holds participatory status at the Council of Europe and special consultative status at the UN Economic and Social Council (ECOSOC). Validity provides legal expertise to movements of persons with disabilities, conducts monitoring, research and advocacy programmes across Europe, Africa and at other international fora, and collaborates with a broad range of networks and coalitions of persons with disabilities worldwide. For more information, please visit www.validity.ngo.
2. The aim of this written submission is to provide the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment with comments concerning the preparation of the upcoming report on global trends and developments on torture from a disability rights point of view.

2. GENERAL COMMENT

3. Validity is of the opinion that the mandate has consistently addressed challenges that persons with disabilities are facing in the field of freedom from torture and ill-treatment and would appreciate it if the Special Rapporteur could highlight in her forthcoming report the specific issues listed below to address ongoing challenges.

3. SPECIFIC COMMENTS

Preventing torture and other cruel, inhuman or degrading treatment or punishment

4. The UN Committee against Torture (the CAT Committee) has explained that the CAT Convention requires State Parties to “...prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, *the mentally ill or disabled*, in military service, and other institutions”.¹
5. The United Nations Special Rapporteur on Torture has provided useful guidance on the prohibition against torture, inhuman and degrading treatment as applied to persons with disabilities:

“[T]he requirement of intent in article 1 of the Convention against Torture can be effectively implied where a person has been discriminated against on the basis of disability. This is particularly relevant in the context of medical treatment of persons with disabilities, where serious violations and discrimination against persons with disabilities may be masked as ‘good intentions’ on the part of health professionals.”

¹ CAT Committee, General Comment No. 2 on implementation of Article 2 by States parties, 24 January 2009, CAT/C/GC/2, para. 15 (*Emphasis added*).

Purely negligent conduct lacks the intent required under article 1 and may constitute ill-treatment if it leads to severe pain and suffering.

Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Persons with disabilities often find themselves in such situations, for instance when they are deprived of their liberty in prisons or other places, or when they are under the control of their caregivers or legal guardians.”²

6. The Special Rapporteur has repeatedly affirmed an “absolute ban” on the use of restraints and seclusion on persons with mental disabilities, stating that the imposition of solitary confinement, of any duration, on persons with mental disabilities may constitute torture, cruel, inhuman or degrading treatment.³
7. Despite this, persons with intellectual and psychosocial disabilities continue to be placed in mental referral institutions where there has been documented extreme abuses,⁴ including seclusion in dark rooms without toilets, clothing, or sensory interaction as seen in *Benon Kabale v Attorney General of Uganda*, a case Validity is currently litigating addressing torture and other cruel, inhuman degrading treatment.⁵ Persons with psychosocial disabilities also continue to be placed in psychiatric institutions including psychiatric hospitals, where grave human rights violations, including torture and ill-treatment, continue to happen. In 2024, in the case of *V.I. v. The Republic of Moldova*,⁶ where Validity represented the applicant, the European Court of Human Rights found a violation of the right to be free from inhuman and degrading treatment on account of applicant’s involuntary placement in a psychiatric hospital and psychiatric treatment. In the case of *Validity Foundation on behalf of T.J. v. Hungary*,⁷ which concerned the death of a person with disabilities in a social care home, the Court found that the respondent State failed to demonstrate the existence of a requisite standard of protection to prevent the deterioration of T.J.’s health and her untimely death while domestic authorities were fully aware of prevailing conditions of neglect and abandon in the social care home as well as the particular risk the deceased faced, and found that the living conditions, medical and therapeutic care were inadequate and there was an excessive use of means of restraint.
8. We urge the Special Rapporteur to highlight these aspects in the upcoming report.

Deprivation of Liberty

9. Persons with disabilities are disproportionately affected by detention in a wide variety of places. While detention on the basis of disability or impairment is widespread in

² United Nations General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary General, 28 July 2008, A/63/175, paras 48-50.

³ Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Human Rights Council, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (by Juan E. Méndez) at para 63.

⁴ Mental Disability Advocacy Center and Mental Health Uganda, [Psychiatric hospitals in Uganda. A human rights investigation](#), MDAC, 2014.

⁵ The Centre for Health, Human rights & Dev’t & Benon Kabale v Attorney General: <https://www.cehurd.org/publications/download-info/cehurd-seclusion-case-judgment/>.

⁶ European Court of Human Rights, *V.I. v. The Republic of Moldova* (Application no. 38963/18, judgment of 26 March 2024).

⁷ European Court of Human Rights, *Validity Foundation on behalf of T.J. v. Hungary* (Application no. 31970/20, judgment of 10 October 2024).

institutions,⁸ there are many other places where persons with disabilities are otherwise deprived of their liberty, through denial of reasonable accommodations, support and community-based services.⁹

10. We would like to bring to the attention of the Special Rapporteur that there is a worrying trend in Europe to name mini-institutions for example, ‘group homes’ and ‘family-type homes for children’ where acts of torture continue to be perpetrated to children and adults with intellectual and psychosocial disabilities, yet these institutional service structures are wrongly categorised as ‘community-based services’.
11. Recently, the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in its General comment No. 1 on article 4 of the Optional Protocol (places of deprivation of liberty) adequately covered the full range of disability-specific forms of deprivation of liberty and concretely covered all disability-specific places of detention, including social care institutions, psychiatric institutions, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, child welfare institutions, group homes, rehabilitation centres, forensic psychiatric settings, albinism hostels, leprosy colonies, religious communities, family-type homes for children and prayer camps.¹⁰
12. Article 14 of the UN Convention on the Rights of Persons with Disabilities (*hereinafter*: “CRPD”) requires that persons with disabilities shall enjoy the right to liberty and security of person on an equal basis with others. Article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment.¹¹ Detention on the basis of impairment or disability constitute arbitrary deprivation of liberty.¹²
13. According to the Guidelines on deinstitutionalization, including in emergencies, adopted by the UN Committee on the Rights of Persons with Disabilities (*hereinafter*: “CRPD Committee”):

*Mental health settings where a person can be deprived of their liberty for purposes such as observation, care or treatment and/or preventive detention are a form of institutionalization.*¹³

*Definitions of community-based support services (...) should prevent the emergence of new segregated services, such as group housing – including small group homes – (...) institutions for the provision of respite care (...) coercive measures such as community treatment orders, which are not community-based services.*¹⁴

⁸ CRPD Committee, [Guidelines on deinstitutionalization including in emergencies](#) (2022) (CRPD/C/5), para 4.

⁹ UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General comment No. 1 (2024) on article 4 of the Optional Protocol (places of deprivation of liberty), 4 July 2024, CAT/OP/GC/1, para 58.

¹⁰ Ibid. para 57. Cf. CRPD/C/5, para 15.

¹¹ CRPD Committee, ‘[Guidelines on the right to liberty and security of persons with disabilities](#)’ (A/72/55, Annex), para 6.

¹² CRPD Committee, General Comment No. 1 on Article 12: Equal recognition before the law, 2014, CRPD/C/GC/1, para 40.

¹³ CRPD/C/5, para 15.

¹⁴ Ibid. Para 28.

14. Validity has consistently pointed to institutionalisation and coercion in mental health services as a persistent source of human rights violations and urged through its advocacy and litigation activities to eliminate these practices in favour of community-based services based on consent and ensure the right of people with disabilities to live independently in the community, as set out in Article 19 of the CRPD. In line with this mission, Validity has represented many cases highlighting such violations at national and international courts, including the European Court of Human Rights.¹⁵
15. We would like to strongly emphasise that institutionalisation constitutes detention and deprivation of liberty based on impairment, contrary to Article 14 of the CRPD.¹⁶ Institutionalization is not only a discriminatory practice, contrary to Article 5 of the CRPD, but is a form of violence against persons with disabilities that must be recognised as such by the State Parties.¹⁷ Institutionalisation exposes persons with disabilities (a) to forced medical intervention with psychotropic medications, such as sedatives, mood stabilizers, electro-convulsive treatment, and conversion therapy, and (b) to the administration of drugs and other interventions without their free, prior and informed consent.¹⁸
16. In line with the above paragraph, State parties, as laid down in the Guidelines on deinstitutionalization including in emergencies, “should abolish all forms of institutionalization, end new placements in institutions and refrain from investing in institutions. Institutionalization must never be considered a form of protection of persons with disabilities, or a “choice”.”¹⁹
17. We would like to also stress that repealing and/or amending national legislation is – in itself – still not sufficient in order to ensure compliance with the CRPD, with special regard to the prohibition of institutionalisation and the right to live independently in the community. In that regard, the Guidelines on deinstitutionalization including in emergencies, explicitly state that “States parties should (...) modify or abolish customs and practices that prevent persons with disabilities from living independently and being included in the community.”²⁰
18. We would also like to point out that States must commit themselves, in accordance with their international obligations, to provide redress and reparations to persons with disabilities for their institutionalisation and its consequential harm.²¹
19. **We call upon the Special Rapporteur on Torture to give urgent and focused attention to the persistent use of seclusion, restraints, and institutionalisation of persons with intellectual and psychosocial disabilities and recognise these practices as torture and ill-treatment under international law.**

¹⁵ See, for example, *Shtukurov v. Russia* (Application No. 44009/05, judgment of 27 March 2008), *Stanev v. Bulgaria* (GC, Application No. 36760/08, judgment of 17 January 2012), *V.I. v. The Republic of Moldova* (Application no. 38963/18, judgment of 26 March 2024).

¹⁶ CRPD/C/5, para 6.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*, para 8.

²⁰ *Ibid.*, para 53.

²¹ *Ibid.*, paras 115-123.

20. We call on the Special Rapporteur to call for immediate redress and reparations to persons with disabilities detained in institutions and survivors of institutionalisation.

4. FINAL COMMENT

21. We confirm that this submission can be posted on the Special Rapporteur's website for public information purposes.