

## **Call for input: Report on the use of lethal force by law enforcement officials on persons with psychosocial, intellectual or developmental disabilities**

\*\*\*

### **I - Introduction**

Pursuant to Human Rights Council (“Council”) Resolution 35/15, the Special Rapporteur on extrajudicial, summary or arbitrary executions (“Special Rapporteur”), Dr. Agnes Callamard, has initiated the preparation of her next thematic report to the Council.

The report will consider questions arising in the context of the use of force by law enforcement and other state officials against persons with psychosocial and/or intellectual disabilities, including in places of detention. The report will be presented to the 41<sup>st</sup> regular session of the Council, scheduled to take place in June 2019.

### **II - Rationale**

How police officers and law enforcement officials, as well as those operating in the administration of justice, including prison personnel, interact with persons with psychosocial, intellectual, or developmental (including autistic persons) disabilities is a topic of growing concern and international debate. Persons with such disabilities are entitled to specific measures of protection so as to ensure their effective enjoyment of the right to life on equal basis with others. These shall include measures designed to prevent unwarranted use of force by law enforcement ([CCPR/C/GC/36, para. 24](#)).

An emerging body of evidence points to disturbingly high numbers of law enforcement-inflicted fatalities involving persons with psychosocial, intellectual or developmental disabilities. Anecdotal evidence also highlights a seemingly disproportionate rate by which communities of colour are affected by this practice. Research on such fatalities, however, as well as on other forms of law enforcement-inflicted violence, remains limited. Data collection mechanisms, and available data on related reports, investigations and prosecutions, are not easily available. As a result, incidents related to the excessive use of force by law enforcement against persons with this kind of disabilities often remain invisible. When data exist, on the other hand, they may confuse terms in most cases and inaccurately conflate all disabilities together.

Limitations on data or inadequate data not only prevent developing awareness on the specific needs of people with psychosocial, intellectual or developmental disabilities when interacting with law enforcement and other state officials. They also make it difficult to inform policy making and legislation, establish accountability and oversight controls, designate responsibility and provide effective remedies for victims.

The objective of the report is to broaden understanding of the scale of the problem with a view to identifying best practices, particularly in the prevention of fatalities associated with law enforcement intervention, and contributing to standard-setting efforts at the international level.

Accordingly, the Special Rapporteur is particularly interested in laws, regulations, protocols, policies, guidelines, as well as educational, training and outreach programs which have shown to have positively contributed to improving practices regarding the interactions between law enforcement and persons with psychosocial, intellectual or developmental disabilities.

The ultimate goal is to identify steps and standards that may contribute to the elimination or decrease of violent incidents between law enforcement and persons with psychosocial, intellectual or developmental disabilities, and the elimination or decrease of fatalities.

The report will also seek to identify methodological gaps in terms of data collection and analysis, particularly in terms of assessing victims' profiles, and tools that may be helpful to fill such gaps.

Funding permitting, the Special rapporteur will seek to organise one or two expert meetings on the topic, in cooperation with Special Rapporteurs whose mandate are most relevant to the themes covered.

### **III - Input sought**

Within this context, the Special Rapporteur welcomes inputs from Member States, civil society actors and all other interested stakeholders, on the following questions:

#### **1 - Policies**

- 1) Legislation, policies and practices, regarding the use of force, including lethal use of force, by law enforcement officials
- 2) Legislation or policies in place regarding the use of force, including lethal force, against people with psychosocial, intellectual or developmental disabilities
- 3) De-escalation policies if any
- 4) Legal framework regarding the treatment of people with mental, psychosocial, or intellectual disability in places of custody. These would include:
  - a. Restraint,
  - b. Seclusion,
  - c. Diversion from the criminal system, e.g. general public policies (cross sectoral), even at the municipal level that focus on diversion to avoid entanglement with law enforcement apparatus altogether.
  - d. involuntary treatment
- 5) Mental health legislation in place, including definition of persons with psychosocial, intellectual or developmental disabilities (or alternative concepts in legislation) and definitions of, or threshold for, "legal capacity"
- 6) Official policies in place that define what is meant by "danger to oneself or others"
- 7) Current Status of integration of the UN Convention on the Rights of Persons with Disabilities (CRPD) for mental health legislation in national policies, including regarding the police and access to justice

#### **2 - Data collection and availability**

- 8) Legal or policy requirement for cities, local, regional, state, or federal law enforcement agencies to collect data on use of force by law enforcement officials, including lethal use of force; template/questionnaires used;
- 9) Legal or policy requirement for cities, local, regional, state, or federal law enforcement agencies to collect data on use of force, including lethal use of force, by security officials, against persons with intellectual, psychosocial or developmental disabilities

- 10) Legal or policy requirements regarding data collection related to the age, gender, race or ethnicity of the victims of police use of force, including legal force
- 11) Data on incidents, investigations and prosecution regarding the use of force and lethal use of force by law enforcement officials
- 12) Data on fatalities of persons with intellectual, psychosocial or developmental disabilities in the context of law enforcement interventions
- 13) incidents, investigations and prosecution regarding the use of force and lethal use of force by law enforcement officials against persons with intellectual, psychosocial or developmental disabilities
- 14) Data on police fatalities, resulting from the interventions involving persons with intellectual, psychosocial or developmental disabilities; investigations and prosecutions
- 15) Recommendations or best practices in terms of data collection (policies and practices) that could be emulated elsewhere

### **3 - Investigation and prosecution**

- 16) Examples of investigations and prosecution of excessive or lethal use of force involving a victim with psychosocial, intellectual or developmental disabilities
- 17) Recommendations regarding the investigation and prosecution of excessive use of force involving people with mental, intellectual or psychosocial disability
- 18) Measures in place to ensure the safety and dignity of persons with psychosocial and/or intellectual disabilities in prison or in other ways deprived of their liberty, particularly against the risk of exposure to neglect, violence, including sexual violence, abuse, ill-treatment and torture
- 19) Recommendations or “best” practices which could be emulated elsewhere

### **4 – Diversion**

- 20) Examples of diversion provisions, processes and initiatives
- 21) Any best practices and models for use elsewhere

### **5 - Trainings of Law Enforcement Officials**

- 22) Types of trainings (police academy, and on-the-job trainings) regarding:
  - a. The use of force, including use of force;
  - b. De-escalation
  - c. Others
- 23) Specific trainings for dealing with people with mental, psychosocial and/or intellectual disabilities,
- 24) Policies in place regarding trainings (systematic, ongoing, etc)?
- 25) Role of communities of people with disabilities as a means to support trainings and build tolerance

### **6 - Access to remedies**

- 26) Remedies in place to facilitate access to justice for persons with mental, psychosocial and/or intellectual disabilities in cases of incidents associated with the excessive use of force by police or law enforcement officials, or their families in cases of lethal use of force?

- 27) Provision of procedural and age-appropriate accommodations to guarantee the effective and direct participation of persons with psychosocial and/or intellectual disabilities and/or autistic persons in all legal proceedings?
- 28) Recommendations, lessons learned and/or best practices that could that could strengthen access to justice and accountability for people with mental, intellectual or psychosocial disability?

#### **7 - Intersectionality – Race, Ethnicity, indigenous People, Gender**

- 29) Statistics and incidents of excessive use of force, including lethal use of force, against people with intellectual, psychosocial or developmental disability who are members of racial, ethnic, indigenous communities?
- 30) In your opinion how is age, gender, race, ethnicity or other identity markers affecting the aforementioned questions (policy and legal framework, data collections, investigation and prosecution, access to remedies, etc.)
- 31) Specific policies, trainings, or other measures in place to decrease or address excessive use of force and lethal force against people with people with intellectual, psychosocial or developmental disability who are young and/or members of racial, ethnic, indigenous communities?

#### **IV - Deadline**

Kindly submit your contribution for the consideration of the Special Rapporteur, indicating 'Disabilities report 2019' in the subject heading to: [eje@ohchr.org](mailto:eje@ohchr.org).

Submissions should be concise and focused. You are encouraged to submit your input by 1 February 2019.

\*\*\*