29.06.2022

To, 

*Sub: Written Submission on Draft Guidelines on Deinstitutionalization, including in emergencies*

We welcome the OHCHR initiative to frame draft guidelines on deinstitutionalization to support the right of persons with disabilities to live independently and be included in the community. As a Coalition of Preventive Mental Health Organizations composed of over 140 CBOs and NGOs across the country, we are submitting a few suggested changes/comments on some of the key paragraphs of the draft guidelines.

Kindly note that, our suggested changes/comments are reflected in bold in our submission.

Yours Sincerely,

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**Written Submission on Draft Guidelines on Deinstitutionalization, including in emergencies**

***Note: The suggested changes/comments are reflected in bold as an addition to the specific paragraphs.***

*II. Duty to end institutionalization*

Paragraph 8. States parties should abolish all forms of institutionalization, end new placements in institutions, and refrain from investments in institutions. Institutionalization shall never be considered as a form of protection of persons with disabilities, it should never be considered as a “choice”. The exercise of rights enshrined under article 19 cannot be suspended in situations of emergencies, including in public health emergencies.

Paragraph 13. States Parties should take immediate action by providing individuals with opportunities to leave institutions, revoking any detention authorized by legislative provisions that are not in line with article 14 of the Convention, whether under mental health acts or otherwise, and prohibit involuntary detention based on disability.[[1]](#footnote-1) States Parties should immediately stop new placements in institutions, by adopting a moratorium on new admissions and on the building of new institutions, wards, and refrain from repair or maintenance.

**There is no justification for purported research in investing institutionalization neither does it contribute to reduction of stigma or enhance communities’ cohesion and thriving. (Govt of Kenya should be sued for the recent ground braking ceremony of building a new facility) State parties should conduct a survey based aimed at formulating schemes and programs to provide immediate physical, mental and economic support to all individuals with disabilities who have been institutionalized. For this purpose, State Parties shall also provide an open and transparent consultative forum through which persons with disabilities, their representative organizations, and other interested parties (such as civil society, researchers, promotive and preventive organizations) can meaningfully participate in the formulation of schemes and programs.**

*III. Understanding and implementing key elements of deinstitutionalization process*

*Deinstitutionalization processes*

Paragraph 16. All institutions, including those run and controlled by non-State actors, should be included in deinstitutionalization reforms. The absence, reform, or removal of one or more institutional elements cannot be used to characterise a setting as community based; for example, settings where adults with disabilities are subjected to substituted decision-making or to compulsory treatment, or where they have shared assistants; settings located “in the community” where service providers set a routine and deny autonomy, or “homes” where the same service provider packages housing and support together. **State should be intentional to do mapping of institutions especially those run by non-state actors and incorporated into the deinstitutionalization process, receive state funds , with strict guidance on how to implement a human rights based approach.**

Para 17. Deinstitutionalization comprises interconnected processes that should focus on restoring autonomy, choice and control to persons with disabilities about how, where and with whom they decide to live.

**State should cautious of preconceived societal biases and Sanism. Autonomous and non-paternalistic decision-making assistance should be sought from the courts. Especially when it comes to women, girls and people from marginalised and vulnerable communities with disabilities because they are at a greater risk of facing violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation.**

Para 18. Processes of deinstitutionalization should not be led by management or those involved in the maintenance of institutions, and should prevent common errors that violate Article 19, such as renovating settings, adding more beds, legislating standards such as “least restrictive alternative” into mental health legislation, which perpetuate human rights violations.

**State Parties should mandatorily amend existing criminal legislations on protection of persons with disabilities to include strict punishment for those found guilty of forcefully institutionalizing persons with disabilities depriving them the opportunity and the freedom to make their own choices.**

*Community-based support*

21. States Parties should priorities the development of a range of individualized supports and inclusive mainstream services in the community without delay

**State parties should support community based non- residential voluntary settings, where skills in different trades are taught and acts as a hub for work opportunities, treatment centres can be incorporated in the design or excluded while adhering to strict compliances and assessment by relevant authorities.**

*Allocation of funding and resources*

Paragraph 27. States Parties should stop using public funds for building and renovating institutions and should immediately ensure investments from public funds in compliance with the Convention.

**State Parties should mandatorily amend existing criminal legislations on protection of persons with disabilities to include strict punishment for those found guilty of investing into institutions, including renovations.**

Paragraph 29. States Parties should allocate adequate public funds, including those from international cooperation, to ensure the sustainability of inclusive community support systems and inclusive mainstream services, including successfully piloted new services, support systems and professions

Paragraph 30. States Parties should provide a comprehensive compensatory package comprised of goods for daily living, cash vouchers, communication devices and information about services immediately upon departure to persons with disabilities leaving institutions. Such packages should provide basic security, support and confidence to persons with disabilities leaving institutions to recover, seek support when they require it, and to have an adequate standard of living in the community without fear of homelessness or poverty.

**State Parties shall provide an open and transparent consultative engagement through which persons with disabilities, their representative organizations and other interested parties can meaningfully participate in the formulation of schemes and programs that allow persons with disabilities to access housing, support and service options that ensures their full and effective participation in society on an equal basis with others.**

*Involvement of persons with disabilities through their representative organizations in deinstitutionalization processes*

Paragraph 33. States Parties should closely involve persons with disabilities through their representative organizations, and especially people leaving institutions and survivors of institutionalization, and their representative organizations, in all stages of deinstitutionalization processes, in line with articles 4(3)

**States Parties shall closely involve persons with disabilities through their representative organizations, and especially people leaving institutions and survivors of institutionalization, and their representative organizations, and other interested parties – Clubhouse model**

*Intersectionality*

Paragraph 38. States Parties should adopt an intersectional approach to tackle discrimination, segregation, isolation, and other forms of ill-treatment of persons with disabilities living in and leaving institutions. The personal identities of persons with disabilities are multifaceted and disability will likely only be one characteristic. Other characteristics include race, sex, gender identity, sexual orientation, gender expression, intersex variation, language, religion, ethnic, indigenous or social origin, migrant or refugee status, age, or impairment group, or other status, and these may intersect to shape a person’s individual identity. Intersectionality plays an important role in the lived experiences of all persons with disabilities.

**State Parties shall take effective measures in the promotion of activities such as the employment of persons with disabilities in the open labour market, and in education, tax subsidies to private employers who hire persons with disabilities, rebates for architectural and construction of adequate accommodation. These steps will help in mainstreaming disability issues as an integral part of relevant strategies of sustainable development and in identifying and overcoming varied stigma against persons with disabilities and help them in their participation as equal members of society.**

*V. Enabling legal and policy frameworks*

1. *Creating an enabling legal environment*

### *Right to access to justice*

Paragraph 54. The right to live independently and be included in the community is closely connected to the right to access to justice for all persons with disabilities, particularly for women and girls living in or leaving institutions who experience gender-based violence. Environmental, attitudinal, legal, and procedural barriers to access justice for persons with disabilities, including those placed in institutions, should be removed, across all legal domains. Procedural accommodations, such as Easy Read materials and plain language, should be made available. States Parties should ensure legal standing in courts and tribunals and provision of legal representation for persons with disabilities in the justice system. States Parties should ensure law and judicial procedures recognizing the right of persons with disabilities to provide testimony and stand as witnesses, and ensure persons in institutions have an effective right to call police and file criminal charges while inside an institution.

**State parties should establish mental health courts and therapeutic Jurisprudence, all court duty bearers should be trained on basic psychosocial skills and be trauma informed. The court process trial should be in such a manner that seeks to be restorative and not retributive especially to persons with mental health challenges who come into conflict with the law.**

**In Conclusion**

Kenya ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 19th May 2008 creating an obligation upon Kenya to respect, protect and fulfil the provisions in the Convention. Pursuant to article 2 (6) of the Constitution of Kenya, the Convention forms part of Kenyan law.

Article 33(2) of the Convention outlines the responsibilities of State Parties including Kenya to designate an independent mechanism to promote, protect and monitor implementation of the Convention. Article 33(2) further requires the state party to take into account when designating an independent mechanism the principles relating to the status of national institutions.

Article 33(3) requires that civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

The monitoring mandate was then vested in the National Gender and Equality Commission in 2014. On 9th June 2017, the Attorney General re-designated the Commission as the monitoring agency under the Convention on the Rights of Persons with Disabilities (CRPD). The designation of the Commission is important towards monitoring and advising the state on its obligations under the CRPD and the Constitution of Kenya, 2010. The Commission is expected to work with the National Gender and Equality Commission in its role as the monitoring agency.

The designation of KNCHR as the monitoring agency under Article 33 of the Convention has been made pursuant to the Concluding Observations of the Committee on the Rights of Persons with Disabilities upon Kenya’s review on its implementation of the Convention in 2015. The Committee in expressing its concern that the Commission did not form part of the national mechanism for monitoring the Convention, specifically recommended that ‘…the state party establish a national mechanism to monitor the implementation of the Convention with the participation of the Commission as an institution in compliance with the Paris Principles.’

**The facility will offer mental health treatment, host a specialist university to train mental health workers and will be the focal point in organizing the new national mental care model in the country. setting up the facility on behalf of the Kenyan Government while officials from San Raffaele Research Hospital signed on behalf of the top private hospital in Italy. The new facility with a 600-bed capacity named the National Teaching and Referral Neuropsychiatric Centre will be built on an 80-hectare piece of land in Karen/Ngong to ensure the country is better positioned to deal with emerging mental health challenges. The facility will offer mental health treatment, host a specialist university to train mental health workers and will be the focal point in organizing the new national mental care model in the country. In our view, this is going against the provisions of CRPD mainly as pertains deinstitutionalization and this is part of the basis of our recommendations on state parties and deinstitutionalization of disabilities**

**https://educationnews.co.ke/2022/06/17/president-uhuru-launches-construction-of-mental-wellness-hospital-in-ngong/**

1. [↑](#footnote-ref-1)