



## DIGNITY AND JUSTICE FOR DETAINEES WEEK

Information Note No. 4

### Persons with Disabilities

Persons with disabilities face unique forms of discrimination in the enjoyment of their right to liberty and security of the person.

In violation of international human rights standards, women, men and children with different types of disabilities can be deprived of their liberty not for having committed a crime or for having violated the law, but for having a disability. In many national legal systems a disability, in particular of the mental or intellectual kind, is lawful grounds for the deprivation of liberty.

International human rights law and standards are very clear: persons with disabilities have the right to liberty and security of the person on an equal basis with others. **The existence of a disability can in no case justify a deprivation of liberty.**

Persons with disabilities may be lawfully deprived of their liberty for having committed a crime or violated the law. In such cases, prisoners with disabilities can suffer from direct or indirect forms of discrimination as a result of conditions or treatment in detention, and can be denied the enjoyment of their human rights on an equal basis with other detainees.

Besides sometimes allowing for deprivation of liberty on the basis of a disability, discriminatory laws, policies and practices may also lead to the deprivation or limitation of the legal capacity of persons with disabilities. In such cases a person with disabilities is unable to access justice and participate in legal proceedings except through a guardian.

Furthermore, once deprived of their liberty, persons with disabilities face violations of other human rights, including to their dignity and to humane treatment.

**The human rights of persons with disabilities will be a particular focus of the Dignity and Justice for Detainees Week (6 – 12 October 2008) proposed by the Office of the High Commissioner for Human Rights.** The initiative is part of the commemoration of the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights.

This information note is directed at National Human Rights Institutions (NHRIs), governments, OHCHR field presences, United Nations organizations and UN country teams, civil society bodies, non-governmental organizations (NGOs) specializing in issues related to detention, police forces, judicial systems and the media.

All partners are invited to participate in the Detention Initiative in a manner they deem appropriate in light of their expertise and conditions in the country of operations. The aim is to prevent the unlawful and arbitrary detention of persons with disabilities and safeguard the rights of those who are deprived of their liberty.

Key human rights standards on the detention of persons with disabilities state that:

- **The existence of a disability shall in no case justify a deprivation of liberty.**
- **Persons with disabilities have the right to live in the community**
- **Persons with disabilities are recognized to have legal capacity on an equal basis with others in all aspects of life.**
- **Those with disabilities who are detained have the right to be treated humanely.**

**The existence of a disability shall in no case justify a deprivation of liberty.**

Persons with disabilities have the right to live in the community. In violation of relevant international standards, in many legal systems persons with disabilities, and especially persons with mental and intellectual disabilities, are deprived of their liberty simply on the grounds of their disability. Such disability is sometimes used to justify preventive detention measures on the grounds that the person with a disability might cause harm to himself or to others.

In other cases, persons with disabilities are deprived of their liberty for their care and treatment. All such practices, policies and laws are in contravention of existing international standards.

The Convention on the Rights of Persons with Disabilities (CRPD) states clearly that deprivation of liberty based on the existence of a disability is contrary to international human rights law, is intrinsically discriminatory, and is therefore unlawful. Such unlawfulness also extends to situations where additional grounds—such as the need for care, treatment and the safety of the person or the community—are used to justify deprivation of liberty,

Under international human rights law, persons with disabilities are entitled to enjoy their rights to liberty and security on an equal basis with others, and can be lawfully deprived of their liberty only for the reasons, and in accordance with the procedures, that are applicable to other persons in the same jurisdiction. *Articles 2, 3 and 9, Universal Declaration of Human Rights (UDHR); Article 9, International Covenant on Civil and Political Rights (ICCPR); Article 14, CRPD; and the Human Rights Council (HRC), General Comment No. 8.*

**Persons with disabilities are recognized to have legal capacity on an equal basis with others in all aspects of life.**

All too often persons with disabilities have their legal capacity lifted or restricted because of their disability, in violation of international law. In many of today's legal systems, a diagnosis of mental disability automatically deprives a person of decision-making autonomy and leads to the appointment of a legal guardian to make and express legally binding decisions for that person. The incapacitated person can access justice only through an action initiated by the guardian.

The recognition of the legal capacity of persons with disabilities enshrined in Article 12 of the CRPD is a prerequisite to the full enjoyment by them of all human rights, including the right to liberty and security of the person.

In the case of persons with disabilities who are detained, recognition of their legal capacity enables them to access justice and enjoy their rights in the administration of justice, such as the right to be informed about the reasons for detention, to challenge the lawfulness of detention, to periodic review in the case of administrative detention, and to a fair trial.

Article 12 of the CRPD also recognizes that persons with disabilities might require appropriate support to exercise their legal capacity. Supported decision making might take many forms, including access to counsel in detention-related procedures.

The concept of legal capacity recognizes that (1) persons can be the bearers of rights, as discussed above; and (2) that persons are the bearers of obligations and responsibilities. It must be noted here that the recognition of the legal capacity of persons with disabilities on an equal basis with others in all aspects of life has a bearing on the issue of criminal responsibility and the insanity defence clauses in many legal systems. *Articles 2, 6, 7, 8 and 10, UDHR; Articles 14 and 16, ICCPR; Articles 12 and 13, CRPD; HRC, General Comment No. 32; Working Group on Arbitrary Detention, Deliberation No. 7.*

### **Persons with disabilities who are detained have the right to be treated humanely.**

States and their officials have the obligation to respect the right of all persons who are detained to be treated with humanity and respect for their inherent dignity. This obligation entails not only the duty to refrain from violating such rights, but also to ensure that persons in detention are protected from acts or omissions by third parties.

In the case of persons with disabilities who are detained in prisons or other facilities, protection from serious forms of neglect and physical, mental and sexual violence and abuse are key priorities.

The fulfilment of the right of persons with disabilities in detention to be treated humanely may require States and their officials to take additional steps to realise such rights. Measures might be necessary to ensure that the rights of persons with disabilities are taken into consideration, and that discrimination on the grounds of their disability does not occur. This might require changes to the detention environment and provision of special equipment where necessary (*Articles 1 and 5, UDHR; Articles 7 and 10, ICCPR; Articles 5, 14, 15 and 16, CRPD; and the HRC, General Comment No. 9*).

The recently adopted **Convention on the Rights of Persons with Disabilities** and other human rights instruments recognize the rights of persons with disabilities to:

- **Liberty and security of person:** to be free from unlawful or arbitrary deprivation of liberty. The Convention states that “the existence of a disability shall in no case justify a deprivation of liberty” (*Article 14, CRPD*). Children with disabilities have the right not to be separated from their parents based on the existence of a disability (*Article 23, CRPD*). Persons with disabilities have the right to live in the community, to choose where and with whom to live and to receive the support needed where required (*Article 19, CRPD*).

- **Access to justice** on an equal basis with others (*Article 13, CRPD*).
- **Recognition as a person** before the law: to enjoy legal capacity in all areas of life and receive support where needed (*Article 12, CRPD*).
- **To equal treatment** before the law (*Article 5, CRPD; and Article 26, ICCPR*).
- **To health**, including the right to receive medical care based on free and informed consent (*Article 25, CRPD*).
- **To be free from torture and ill-treatment**, and to have the rights to physical and mental integrity respected (*Articles 15 and 17, CRPD*).
- **To live independently and be included in the community** (*Article 19, CRPD*), including in order to be able to enjoy their **right to education** (*Article 24, CRPD; Article 13, ICESCR*); to **participate in public and political life** (*Article 29, CRPD; Article 25, ICCPR*); the **right to work** (*Article 27, CRPD; and Article 6, ICESCR*); and the right to an **adequate standard of living** (*Article 28, CRPD and Article 11, CESCR*).

#### ABOUT OHCHR

The Office of the United Nations High Commissioner for Human Rights (OHCHR), a part of the United Nations Secretariat, has been given a unique mandate to promote and protect all human rights. Headquartered in Geneva, the Office is also present in some 50 countries. Headed by the High Commissioner for Human Rights, a position established by the General Assembly in 1993 to spearhead the United Nations' human rights efforts, OHCHR takes action based on the unique mandate given it by the international community to guard and advocate for international human rights law. For more information please visit [www.ohchr.org](http://www.ohchr.org).

On Human Rights Day 2007, the United Nations and OHCHR launched a year-long UN system-wide advocacy campaign to mark the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights (UDHR), under the theme: "**Dignity and justice for all of us**".