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The Mental Disability Advocacy Center is an international human rights organisation which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities.

MDAC uses law to promote equality and social inclusion through strategic litigation, advocacy, capacity-building and research.

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Article 19: Choices in the Community

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Article 19: Choices in the Community

Living independently in the community is a right that all persons, without discrimination, should be free to enjoy, a principle that can only be fully achieved through deinstitutionalization. Article 19 of the UN Convention on the Rights of Persons with Disabilities (CRPD) guarantees the right of people with disabilities ‘the equal right to live in the community, with choices equal to others.’ Institutions represent the most obvious instance of people not living in communities, but are not the only setting in which these rights are violated. Persons with intellectual disabilities or psychosocial disabilities who are isolated from society through the inability to go out in public or participate in community activities are equally denied the right to live in the community. Article 19 is an issue in sub-Saharan Africa where there are few institutions, as it is in central and eastern Europe where there are many.

Article 19, therefore, outlines three guidelines on how State Parties can ensure this right for persons with disabilities: free choice of residence including where and with whom, access to residential and community support services and non-discrimination of such services.

Statistics and data gathering (Article 31)

The transition to community-based living can be achieved if Article 19 is addressed together with a range of other CRPD provisions. As a starting point, States Parties need to know who is currently in institutions; what their disabilities are, if any; how they came to be there; how long they have been there; and whether there is any reason other than the existence of a disability for them to be there. A 2007 European study on deinstitutionalization and community living demonstrated a shocking lack of data regarding who is in institutions and why.¹ Under Article 31, States Parties are obligated both to collect and to disseminate such data for the purpose of implementing the Convention.

Deprivation of liberty on the basis of a disability (Article 14)

Under Article 14(2), ‘the existence of a disability shall in no case justify a deprivation of liberty.’ The reality still is that in all parts of the world, people are detained in and kept in institutions for no other reason than that they have a disability. Under the CRPD, such deprivation of liberty is unlawful and States Parties must immediately end such practices.

Deprivation of legal capacity (Article 12)

Thousands of people with intellectual and psycho-social disabilities worldwide are denied access to community living because they have been deprived of legal capacity or had their legal capacity restricted and thus have no say in their detention and often no legal means to challenge it.² MDAC has litigated numerous cases in which persons with intellectual or disabilities or psychosocial disabilities have been placed in mental health or social care institutions. They have no way to legally challenge their deprivation of liberty because they are under full or partial guardianship and their guardians have sole authority to decide where they live.³

Denial of access to justice (Article 13)

In many instances, those placed under guardianship are not allowed to access a court to challenge either the deprivation of legal capacity or their deprivation of liberty. States should immediately abolish laws and practices which prevent people with disabilities – who may be detained in law – from bringing their cases to court. States must ensure that people are not prevented from living in the community because they have no legal means to seek their discharge from mental health or social care institutions, as well as other institutional or isolated settings.

Article 13 recognizes the rights of both adults and children with disabilities to ‘effective access to justice ... on an equal basis with others, including through the provision of procedural and age-appropriate accommodations.’ States should not deny access to justice to any person with a disability regardless of disability, age or legal capacity status.

¹ Mansell J, Knapp M, Beadle-Brown J and Beecham, J (2007) Deinstitutionalisation and community living – outcomes and costs: report of a European Study. Volume 2: Main Report. Canterbury: Tizard Centre, University of Kent/Under.

² Human Rights Watch Report on Croatia: “In Croatia, an overwhelming majority of persons with intellectual disabilities and long-term mental health difficulties living in institutions are placed there by their guardians; institutions Human Rights Watch visited in December 2009 reported that between 70 and 100 percent of their residents were under guardianship. And, according to official statistics, as of the end of 2008 approximately 25 percent of those who had been deprived of legal capacity lived in institutions.

³ See, e.g. *Shtukaturov v. Russia*, *Stanev v. Bulgaria*, etc.

Rights of children (Article 7)

With regard to children with disabilities, Article 7(3) requires States Parties to ensure they ‘have the right to express their views freely on all matters affecting them ... on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.’ States must ensure that children in institutions or otherwise isolated have mechanisms for adults to represent them in court, and States must ensure that institutions for children with disabilities are closed as a matter of urgency.

Monitoring institutions and services (Article 16)

Article 16 requires States to ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities. MDAC’s work on detention monitoring work has linked the issues of inspectorates and community living by advocating that any inspectorates include recommendations regarding community living for people with intellectual disabilities and psychosocial disabilities in their monitoring reports. MDAC continues to assess the effectiveness of and strengthen the capacity of inspectorates of mental health and social care institutions in a number of States.

Segregation as discrimination (Articles 2 and 5)

Isolating and excluding people on the basis of a disability falls squarely within the CRPD’s definition of discrimination as ‘any distinction, exclusion or restriction on the basis of a disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms...’ (Article 2). Placing and keeping people with disabilities in isolated and segregated settings on the basis of a disability violates Article 5’s prohibition against discrimination.

Both Article 2 and Article 5 specify that failure to provide a reasonable accommodation constitutes discrimination on the basis of disability. The CRPD defines reasonable accommodation as ‘necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden’ to ensure human rights. A reasonable accommodation in regard to community living could be as simple as providing a person with a psychosocial disability whose independent living skills have been lost from years of institutionalization help with shopping, cooking, and getting to appointments. States have an immediate obligation to provide any appropriate adjustments and to make whatever services are available in the community accessible to people with disabilities.

Immediate Obligations

Article 4(2) allows progressive realization of economic, social and cultural rights, albeit without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law. This provision cannot serve as an excuse to maintain people with intellectual disabilities and psychosocial disabilities in institutions. States Parties must take immediate affirmative steps to end the extreme discrimination experienced by people with disabilities in the form of segregation and isolation from the community.

Monitoring and Accountability

The CRPD and its Optional Protocol provide various mechanisms to ensure that States Parties effectively implement the Convention. MDAC is utilizing both the individual complaints avenue under the Optional protocol and advancing the domestic monitoring mechanisms set up in Article 33 to monitor reality and hold States to account.

MDAC is developing guidelines for governments and civil society on effective implementation of Article 33 and will be monitoring the effectiveness of implementation and making recommendations to States Parties and the UN Committee on the Rights of Persons with Disabilities. MDAC’s litigation utilises the complaints mechanism under the CRPD Optional Protocol to seek remedies at the UN level for violations of the CRPD in cases where domestic legal system has not provided an effective remedy. MDAC continues to pursue litigation in mainstream human rights mechanisms such as the European Convention on Human Rights.