

# Guidelines on Deinstitutionalization from a Reparative Justice Perspective

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# 'Reparative Justice'

- '[Reparative Justice](#) is a way of thinking about justice (a mindset) that centers those who have been harmed, and focuses on repairing past harms, stopping present harm, and preventing the reproduction of harm.'
- Linked to international law obligation to make reparation to victims of human rights violations
- Survivors of psychiatric institutionalization have had since the 1960s/70s:
  - A self-concept as a liberation movement
  - A human rights orientation ('International Conference For Human Rights and Against Psychiatric Oppression')
- Survivors shaped the CRPD into an instrument of reparative justice
- Survivors conceptualized the need for reparations for forced psychiatric interventions and institutionalization, and fought for it

# Redressing psychiatric oppression

- CHRUSP briefing paper: deinstitutionalization must address how institutionalization occurs in the lives of people with psychosocial disabilities
  - Medicalization as tool of domination
  - Practiced deliberately as deprivation of liberty/ authorized by statute

# Redressing psychiatric oppression

- DI Guidelines:

- ‘Individual crisis should not be treated as a medical problem requiring treatment or as a social problem requiring state intervention, forced medication or forced treatment.’ (para 10)
- ‘States parties should immediately provide individuals with opportunities to leave institutions, revoke any detention authorized by legislative provisions that are not in compliance with article 14 of the Convention, whether under mental health acts or otherwise, and prohibit involuntary detention based on disability.’ (para 13)
- ‘Institutionalization of persons with disabilities refers to any detention based on disability alone or in conjunction with other grounds such as “care” or “treatment”. ...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.’ (para 15)
- ‘States parties should ensure that options outside the health-care system, that fully respect the individual’s self-knowledge, will and preferences, are made available as primary services without the need for mental health diagnosis or treatment in the individual’s own community. Such options should meet requirements for support related to distress or unusual perceptions, including crisis support, decision-making support on a long-term, intermittent or emergent basis, support to heal from trauma, and other support needed to live in the community and to enjoy solidarity and companionship.’ (para 76)

# Family/community context

- CHRUSP briefing paper: family members and others in community often play a role in institutionalization
- Much debate in process and consultation papers –
  - Guidelines promote family and community support (and support to families)
  - Do not directly address either the family roles of adults with disabilities (as spouses, parents, extended family) or abuse committed by family members including institutionalization

# Family/community context 2

- DI Guidelines (reparative elements):
  - ‘The involvement of family members of persons with disabilities in deinstitutionalization processes should be allowed only with the express consent of adult persons with disabilities.’ (para 38)
  - ‘State parties should ensure that the choice to return to one’s family home after institutionalization does not disqualify a person from eligibility for permanent independent housing.’ (para 79)
  - ‘Family members of persons who have been institutionalized should be provided with information and guidance, as well as economic and administrative support and dedicated services, to address the harms caused by institutionalization to their relative and prepare to constructively support them when leaving institutions.’ (para 94)
  - ‘Truth commissions should be established to investigate and promote public understanding of all forms of institutionalization, the full scope of harms caused to past and present survivors, and should address the social harms inherent in historic policies that maintained systems of institutionalization of persons with disabilities.’ (para 121)

# Community

- Among the support systems/networks – chosen community
  - ‘Peer support should be self-directed, independent of institutions and medical professionals, and autonomously organized by persons with disabilities. It is especially important for survivors of institutionalization, and in the interest of consciousness-raising, supported decision-making, crisis support and crisis respite, living independently, empowerment, income generation, political participation, and/or participating in social activities.’ (para 73)

# Social/economic stressors

- CHRUSP briefing paper: social and economic stressors are both cause and consequence of institutionalization
- DI Guidelines:
  - ‘States parties should provide persons with disabilities, including children with disabilities leaving institutions, with a comprehensive compensatory package comprising goods for daily living, cash, food vouchers, communication devices and information about services available, immediately upon departure. Such packages should provide basic security, support and confidence to persons with disabilities leaving institutions, in order that they can recover, seek support when they require it, and have an adequate standard of living in the community without risk of homelessness or poverty.’ (para 31)
  - ‘States parties should ensure safe, accessible and affordable housing in the community, through public housing or rental subsidies, for persons leaving institutions. Aggregating persons leaving institutions into communal housing arrangements or in assigned neighbourhoods, or bundling housing with medical or support packages, are incompatible with articles 19 and 18 (1) of the Convention. Persons leaving institutions should enjoy the right to enter into legally binding rental or ownership agreements. Housing should be neither under the control of the mental health system or other service providers that have managed institutions, nor conditioned on the acceptance of medical treatment or specific support services.’ (para 31)



# Social/economic stressors 2

- ‘Persons with disabilities should receive individualized and direct funding that provides for basic income security, coverage of health-care and disability-related costs, including components related to repairing the harm caused by institutionalization, in accordance with their will and preferences.’ (para 86)
- ‘States parties should recognize that the risk of homelessness and poverty is very high for persons leaving institutions. A robust social protection package should be provided to all persons with disabilities leaving institutions to cover immediate and mid-term needs for resettlement. Long-term economic and social support should also be made available across the lifecycle.’ (para 105)
- Persons leaving institutions should have access to inclusive education without discrimination, including opportunities to participate in lifelong learning, complete schooling and access to apprenticeships or higher education, to promote their social and economic empowerment and prevent segregation and institutionalization.’ (para 106)

# Reparations mechanisms and processes

- CHRUSP briefing paper: need accountability process for psychiatric violence (and later argued for reparations approach, joined by others)
- DI Guidelines:
  - ‘States parties should recognize institutionalization in all its forms as a multiple violation of the rights enshrined in the Convention. Aggravating factors may include the denial of effective redress, length of stay, infliction of forced medical interventions or other violence or abuse, and inhuman and degrading conditions.’ (para 115)
  - ‘States parties should commit to identifying and redressing institutionalization and its consequential harms in accordance with their international obligations, in particular the Convention, [and other instruments]’ (para 116)
  - ‘Authorities and experts implicated in institutionalization should not have a role in creating or implementing mechanisms for redress and reparations, but should be invited to accept accountability.’ (para 117)

# Other elements

- Preventing future harm, e.g.
  - ‘Processes of deinstitutionalization should be led by persons with disabilities, including those affected by institutionalization, and not by those involved in managing or perpetuating institutions. They should avoid practices that violate article 19 of the Convention, including renovation of settings, adding more beds, replacing large institutions with smaller ones, renaming institutions, or applying standards such as the ‘principle of least restriction’ in mental health legislation.’ (para 20)
  - ‘Definitions of community-based support services, including in-home, and other support services, and personal assistance, should prevent the emergence of new segregated services, group housing – including ‘small group homes’ – sheltered workshops, institutions for the provision of ‘respite care’, transit homes, day-care centres, or coercive measures such as community treatment orders are not community-based services.’ (para 28)
  - ‘To prevent forced mental health treatment, affirmative, free and informed expression of consent by the person concerned is required.’ (para 55)

# Other elements 2

- Survivor participation and leadership in all aspects of planning and implementation, recognition of survivor identity – throughout, and including:
  - ‘States parties should closely involve persons with disabilities, and their representative organizations – and give priority to the views of persons leaving institutions, survivors of institutionalization, and their representative organizations – in all stages of deinstitutionalization processes, in accordance with articles 4 (3) and 33 of the Convention. Service providers, charities, professional and religious groups, trade unions and those with financial or other interests in keeping institutions open should be prevented from influencing decision-making processes related to deinstitutionalization.’ (para 34)
  - ‘Persons leaving institutions should ... be respected as survivors to whom reparations are due and be provided with information and opportunities to participate fully in the planning and implementation of deinstitutionalization, truth commissions and reparations’ (para 95(d))

# Resources

- Contact: [tminkowitz@earthlink.net](mailto:tminkowitz@earthlink.net)
- CHRUSP website (many resources): [www.chrusp.org](http://www.chrusp.org)
- DI Guidelines <https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpd5-guidelines-deinstitutionalization-including>
- Webinar on reparation for institutionalization:  
<https://www.youtube.com/watch?v=UOSp7I9z0Nk&list=PLUNZ98VHvVKT5IRJY9yjjJlRCCcSWCQzZ>
- Blog post on reparations approach to deinstitutionalization:  
<https://www.madinamerica.com/2021/02/crpd-reparations-approach/>
- Other papers: <https://uio.academia.edu/TinaMinkowitz>