



BOFAXE

EXTENSIVE VIOLENCE INSTEAD OF INTENSIVE PROTECTION

On Police Brutality against Mentally Challenged Individuals

“All human beings are born free and equal in dignity and rights” (Article 1 [Universal Declaration of Human Rights](#)). Even though the concept of universal human rights is more than 70 years old, the reality indicates that the equal enjoyment of rights for everyone still only exists on paper. This piece scrutinizes the state of protection under international human rights law of a group of persons among those left behind furthest from the promise of the universal enjoyment of human rights: persons with disabilities. Recently, unjustified use of force in law enforcement contexts has highlighted how frequently they remain affected from structural discrimination. Alongside a legal contextualization of these events, the piece also provides suggestions to close protection gaps.

The inability of States to effectively protect persons with disabilities can jeopardize their very survival, as a recent incident from the US shows: [In September](#), Linden, a 13 year old boy with Asperger's Syndrome, a special form of autism, was severely injured by police officers. Linden's mother had called for help in taking him to hospital for a mental anxiety crisis. When the unarmed boy tried to flee, an officer fired eleven shots. Far from being an isolated incident, this occurrence highlights the inaptitude of US-American police officers in confronting mentally challenged individuals. [In 2013](#), a man with Down syndrome was killed by off-duty officers when he refused to leave a cinema after the final credits of a movie had rolled. [In 2017](#), an unarmed young man was killed by law enforcement officers in his own home while showering to calm himself during a schizophrenic episode. Excessive use of force by law enforcement officers against mentally challenged persons is a severe global problem. Similarly mediated cases have, among others, occurred in the recent past in [South Africa](#), [Israel](#) and [Mexico](#). Although the exact extent of this long neglected problem cannot be determined, the little available data is alarming: [1254 people](#) with a mental illness were shot dead by US police officers since early 2015, representing a total of 22% of all people killed police in the US. In Australia the proportion is [as high as 42 %](#). Since [approximately 10 %](#) of the global population live with a mental health disorder and less than [3 %](#) with a mental disability, such disproportionately high numbers hint at a structural problem and add to the picture of comprehensive socio-structural discrimination and lack of effective protection measures (see [here for a piece](#) on the lack of protection of people with disabilities in the context of the current pandemic).

The [Convention on the Rights of Persons with Disabilities \(CRPD\)](#) was created to eliminate the “profound social disadvantages of persons with disabilities” (Preamble) with the purpose to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities” (Article 1). It is an effective tool to close existing protection gaps caused by intensive and long-standing structural discrimination and social disadvantage, drawing up special protective obligations adapted to the needs of persons with disabilities to enable their effective and equal enjoyment of all human rights. It thereby concretizes human rights obligations arising under existing treaties, so that States that are not party to the CRPD – as the US – are obliged to provide a similar protection standard. This is illustrated by the right to life. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to life of every human being. This entails several obligations for law enforcement officers concerning the use of force. As mentally challenged persons are more likely to encounter excessive police force, i.a. because of communication barriers, behavioural patterns deviating from social norms, increased emotional extremes in quantity and intensity and higher vulnerability to forcible measures, States are under an obligation to counterbalance this increased risk by implementing special protection measures. This obligation is recognized and concretized in Article 10 CRPD, which reaffirms everyone's inherent right to life and obliges States parties to take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others. The Human Rights Committee (HCR) connected both instruments in its [General comment No. 36](#) on Article 6 ICCPR, when it recognized based on Article 10 CRPD that persons with disabilities, including psychological and intellectual 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”, including specific measures “designed to prevent unwarranted use of force by law enforcement agents against” them (para. 24). To this end, States must comply with three core obligations:

First, in order to ensure that law enforcement officers are capable to engage adequately with mentally challenged persons as required by Article 6 ICCPR in conjunction with Article 10 CRPD, specialized [awareness and de-escalation training is needed](#). This obligation is generally foreseen in Article 8(2d) CRPD. The concrete implementation of this obligation differs from State to State. While the majority of States do not offer any special training at all and thus clearly neglect their obligations, [some States](#) already mandate comprehensive de-escalation training in dealing with mentally challenged individuals. Second, persons with disabilities must have access to justice to challenge abusive and arbitrary use of force by law enforcement officials (Article 13 CRPD, Article 2(3a) ICCPR). To ensure that they can exercise their rights on an equal basis with others, States must fulfil additional obligations as concretized in the recently published [International Principles and Guidelines on Access to Justice for Persons with Disabilities \(IPGs\)](#), jointly adopted by the UN Special Rapporteur on the rights of persons with disabilities, the Committee on the Rights of Persons with Disabilities, and the Special Envoy of the UN Secretary-General on Disability and Accessibility. Such additional obligations include removing social barriers (adequate training of justice personnel as required in Article 13(2) CRPD, Principle 10 IPGs) and procedural barriers (inclusive access to information, legal advice and legal aid, Principles 4 and 6 IPGs). The family of the man killed in a cinema, [received compensation under civil law](#), but under criminal law, the chamber followed one of the [attorney's arguments](#) that the incident was just “[an unfortunate set of circumstances](#)” as the officers did what their training dictated them to do. Here, the structural dimension of the problem becomes apparent: Lack of training and educational structures can not only lead to unjustified, and even deadly, use of force but also prevent effective prosecution and criminal justice. Third, assessing the scope of and devising solutions to effectively address this structural problem and assess which measures States must take to fulfill their obligations under the CRPD (Article 4(1) CRPD) requires a comprehensive picture of its dimension and its nature. Although Article 31 CRPD mandates States to collect and provide access to data relevant for the implementation of the Convention, no comprehensive state-collected statistics on the use of lethal force by law enforcement officials against people with mental disabilities are currently available in the [majority of States](#).

Whereas the IPGs provide options that States can adopt to enable victims of unjustified use of force by law enforcement to seek justice before the courts, such guidance is completely lacking as regards prevention of such force, as identified by the Special Rapporteur on extrajudicial, summary or arbitrary executions, [Agnes Callamard](#). International guidance not only helps to concretize existing State obligations (as e.g. the HRC in its General Comment No. 36 refers to the UN Code of Conduct for law enforcement officials to interpret Article 6 ICCPR), but above all provides assistance to States in complying with human rights. Such guidance needs to build on and concretize existing legal rules, such as how States should best train their law enforcement officers to prevent unjustified use of force towards mentally challenged individuals. It could also focus on pushing for additional legislation (e.g. restricted right of self-defence) to protect people with disabilities and on how the institutional framework for protection should be designed. The shortcomings in the implementation of protective measures vis-à-vis law enforcement are not a new phenomenon. Instead, they highlight the structural discrimination and disadvantages persons with disabilities face. The CRPD is the most comprehensive legal tool to eliminate inequality, but success depends on State compliance and implementation, which is not forthcoming. Further fleshing out the framework of protection for persons with disabilities through formally non-binding instruments appears the most promising solution in garnering state commitment. The recently published [Principles on Access to Justice](#) are a positive example in this regard and give hope that more attention will be paid to remedying structural disadvantages persons with disabilities suffer in the sector of justice.

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