

# Freedom from exploitation, violence and abuse of persons with disabilities

## Contribution to the Council of Europe Strategy on the Rights of Persons with Disabilities



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# **Freedom from exploitation, violence and abuse of persons with disabilities**

Contribution to the Council of Europe Strategy  
on the Rights of Persons with Disabilities

Marianne Schulze

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# Introduction

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The “effective exercise of the right [of persons with disabilities] to independence, social integration and participation in the life of the community” is specifically referred to in Article 15 of the European Social Charter (Revised) and Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).<sup>1</sup> One of the most egregious violations of this right comes in the form of exploitation, violence, abuse and related phenomena. In order to respond to this infringement, the Committee of Ministers of the Council of Europe has adopted a Disability Strategy 2017-2023 which highlights freedom from exploitation, violence and abuse as one of its five priority areas.<sup>2</sup> The interpretation and implementation of this priority will be done in line with the UNCRPD (freedom from exploitation, violence and abuse is enshrined in its Article 16) and will take into account the work of its committee.<sup>3</sup>

Exploitation, violence and abuse are frequent, yet often overlooked and under-reported. The societal forces that tend to marginalise persons with disabilities exacerbate the likelihood and the impact of exploitation, violence and abuse. This study explores the concepts, causes and impact of the exploitation, violence and abuse experienced by persons with disabilities, with particular attention given to institutional aspects and the impact of hate speech. General measures for prevention and examples of available responses from Council of Europe member States are also referred to. This study does not rely on interviews with persons with disabilities but rather on pertinent reports, some of which are based on qualitative interviews.

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1. European Social Charter (Revised) (1996), Article 15; United Nations Convention on the Rights of Persons with Disabilities (2006) available at: [www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx); UNCRPD Committee, Draft General Comment No. 5, Article 19: Right to independent living (upcoming).
  2. Council of Europe Disability Strategy 2017-2023 – Human rights: a reality for all, available at: [www.coe.int/en/web/disability/strategy-2017-2023](http://www.coe.int/en/web/disability/strategy-2017-2023).
  3. Without prejudice to the monitoring of the implementation of the UNCRPD by the Committee on the Rights of Persons with Disabilities and its parties-specific recommendations, this study aims at identifying ways and means with which to implement Article 16 of the UNCRPD on freedom from exploitation, violence and abuse and the full and equal enjoyment of all human rights and fundamental freedoms for all persons with disabilities.

# Exploitation, violence and abuse

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## **UNCRPD Article 16 – Freedom from exploitation, violence and abuse**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Within the UNCRPD, Article 16 on freedom from exploitation, violence and abuse is placed among other related articles concerning civil and political rights (Article 14 on liberty and security of the person, Article 15 on freedom from torture or cruel, inhuman or degrading treatment or punishment, Article 17 on protecting the integrity of the person). It should be noted that Article 16 is one of the few provisions not termed as a non-discriminatory clause.

## **What does exploitation, violence and abuse mean?**

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The terms exploitation, violence and abuse have no standard definitions. They are varyingly delineated by codes of conduct or criminal codes. While some forms may fall below the threshold of a criminal offence, others may be considered to fall into the scope of Article 15 (torture or cruel, inhuman or degrading treatment or punishment). The 2014 Council of Europe’s recommendation on the promotion of human rights of older persons reiterates the importance of ensuring freedom from discrimination, isolation, violence, neglect and abuse.<sup>4</sup> The recommendation further adds that states should protect older persons from “violence, abuse and intentional or unintentional neglect. Such protection should be granted irrespective of whether this occurs at home, within an institution or elsewhere.”<sup>5</sup> However, the terms are not defined further.

The latest international legally binding instrument to enshrine freedom from exploitation, violence and abuse of persons with disabilities is the UNCRPD. The likelihood to experience exploitation, violence and abuse and its consequences are exacerbated by impairment or perceived impairment. The generalised wording used in Article 16 ensures the protection from all forms of exploitation, violence and abuse. The drafting history shows that the wording covers – at a minimum – “physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual and economic exploitation and abuse, abandonment and harassment”. Indeed, exploitation, violence and abuse may take different forms, arise in various settings and be actively as well as passively committed by a diversity of actors. Additionally, persons with disabilities may face multiple or intersectional

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4. Council of Europe, Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons; see also Council of Europe, Recommendation CM/Rec(2009)6 of the Committee of Ministers to member States on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society.

5. Ibid., p. 16.



discrimination.<sup>6</sup> This can be the reality, in particular but not exclusively, for women, children, older persons and refugees with disabilities as well as persons with multiple, complex and intersecting impairments and/or needs. Article 16 of the UNCRPD specifically mentions the gender-based aspects of exploitation, violence and abuse, reinforcing, among others, Article 3 on the general principles of this convention ((g) equality between men and women) and Article 6 on women and girls with disabilities (of a cross-cutting nature).<sup>7</sup> The UNCRPD Committee focused its General Comment No. 3 on women and girls with disabilities, highlighting their specific experience and the additional barriers they face due to their sex and gender, including harmful gender stereotypes. The General Comment points out their higher risk to experience discrimination, exploitation, violence and abuse, in particular of a sexual nature, compared to women and girls without disabilities and men and boys with disabilities.<sup>8</sup>

The term exploitation is used varyingly to describe forms of abuse and violence, particularly those that involve economic and sexual aspects.<sup>9</sup> The Council of Europe Convention on Action against Trafficking in Human Beings gives examples of types covered by the term exploitation: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>10</sup> The barriers persons with disabilities face in attempting to report their human rights’ violation are frequently exacerbated, especially in cases when support is needed to communicate.

According to the World Health Organization (WHO) global consultation on violence and health, conducted in 1996, violence is “the intentional use of physical force or power, threatened or actual, against oneself, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.”<sup>11</sup>

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6. For definitions of multiple discrimination, see Council of Europe Gender Equality Glossary (2015).

7. See also UN Committee on the Rights of the Child (2011), General Comment No. 13, The right of the child to freedom from all forms of violence, para. 72.

8. UNCRPD Committee (2016), General Comment No. 3, Article 6: Women and girls with disabilities, paras. 31 and 35.

9. Compare also: UN Convention on the Rights of the Child, Article 19.

10. Council of Europe Convention on Action against Trafficking in Human Beings (2005).

11. WHO/UNODC/UNDP (2014), “Global status report on violence prevention”, p. 2.

Some guidance<sup>12</sup> on the definition of violence may also be drawn from other international documents concerning violence targeting specific groups such as the United Nations Declaration on the Elimination of Violence Against Women (Article 2) and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, Article 3).<sup>13</sup> The latter states that “violence against women is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

A definition of abuse can be found in the Appendix to the Council of Europe Committee of Ministers Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse:

In this Resolution abuse is defined as any act, or failure to act, which results in a breach of a vulnerable person’s human rights, civil liberties, physical and mental integrity, dignity or general well-being, whether intended or through negligence, including sexual relationships or financial transactions to which the person does not or cannot validly consent, or which are deliberately exploitative.<sup>14</sup>

The Council of Europe 2003 report on “Safeguarding adults and children with disabilities against abuse” adds that:

Abuse may be perpetrated by any person (including by other people with disabilities) but it is of special concern when it takes place within a relationship of trust characterised by powerful positions based on:

- legal, professional or authority status;
- unequal physical, economic or social power;
- responsibility for the person’s day-to-day care;
- and/or inequalities of gender, race, religion or sexual orientation.

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12. Schulze M. (2010), “Understanding the Convention on the Rights of Persons with Disabilities”, p. 105; see also Bartlett P. and Schulze M. “The right to be free from exploitation and abuse: orphan provision of the United Nations Convention on the Rights of Persons with Disabilities?” (forthcoming).

13. Council of Europe Convention on preventing and combating violence against women and domestic violence (2011).

14. Hester M. and Lilley S. (2014), “Preventing violence against women”. As it has been noted in the context of prevention of violence against women, persons are not per se “vulnerable” but are frequently made so by particular circumstances such as social, economic and cultural processes and inequalities.

It may arise out of individual cruelty, inadequate service provision or society's indifference. It requires a proportional response – one which does not cut across valid choices made by individuals with disabilities but one which does recognise vulnerability and exploitation.<sup>15</sup>

While different categorisations can be made, the report mentions the following types:<sup>16</sup>

- ▶ physical violence;
- ▶ sexual abuse and exploitation;
- ▶ psychological threats and harm;
- ▶ interventions which violate the integrity of the person;
- ▶ financial abuse;
- ▶ neglect, abandonment and deprivation.

## **What are the specifics of exploitation, violence and abuse of persons with disabilities?**

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“People with disabilities have been spoken about publicly as being expensive ... that they are drawing all the financial resources from the other areas. ... I think it can lead to hostility and increased stigmatisation as demanding and selfish.”<sup>17</sup>

Persons with disabilities are frequently perceived as “different” and therefore marginalised. In what has been termed the medical model, persons with disabilities are largely framed through health-related parameters and perceived shortcomings and “deficits”. This view of persons with disabilities is often reinforced through a welfarist prism that largely builds on pity and frequently seeks alms. This outdated perception of persons with disabilities is a driving factor in the likelihood of becoming a victim of exploitation, violence or abuse. The understandable fear is that this mindset of persons with disabilities, in a wider and more extreme scope, is used to limit healthcare and justify discriminatory practices vis-à-vis persons with disabilities. “While the development of bio-technology and pre-natal diagnosis might not in itself be considered abusive, it is considered a potential threat by many people with disabilities

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15. Council of Europe (2003), Brown H., “Safeguarding adults and children with disabilities against abuse”, p. 9.

16. Brown (2003), p. 33; see also Bartlett and Schulze (forthcoming).

17. Agency for Fundamental Rights (2015), “Violence against children with disabilities: legislation, policies and programmes in the EU”, p. 61.

and their organisations because it is seen to rest on the untenable assumption that the quality of life of people with disabilities is inevitably poorer than that of [persons without disabilities]. The “expressivity” argument is that the practice of prenatal screening and selective abortion sends out powerful signals to [persons with disabilities] that society does not value them or consider their lives to be worth living (Parens and Asch 2000; Ward 2001). People with disabilities fear, with historical justification, that if held in its most extreme forms, this mindset may lead to discriminatory end-of-life decisions, increased uptake of selective abortion of handicapped foetuses, rationing of healthcare and discriminatory treatment of persons [with disabilities]. People with disabilities and their organisations clearly interpret these developments as contributing to a set of values which are hostile to them and which encourage lack of respect for the worth of their lives. At street level these attitudes are expressed through harassment and intimidation in public places, for example people shouting at a person [with disabilities] ‘You should not have been born!’ or threatening to gas them. The isolation of people with disabilities is exacerbated when they are afraid to go out or to enter public places and spaces for fear of verbal or physical harassment.”<sup>18</sup>

Frequently, persons with disabilities report that they feel overly protected, limiting their opportunities to try something new or do things differently. Inhibiting the possibilities for persons with disabilities to make a mistake, to take a risk, is part of a larger pattern that contributes to a sense of lacking possibilities, of being violated in one’s opportunities. As Pat Deegan observes, “the right to make a mistake” is part of a human being’s dignity; there is something akin to the “dignity of risk”.<sup>19</sup>

The tendency to medicalise every aspect of an individual’s life,<sup>20</sup> minimising or ignoring symptoms<sup>21</sup> or overzealous hygiene<sup>22</sup> point to forms of exploitation, violence and abuse that are both prevalent for persons with disabilities as well as reinforced on account of the – perceived – impairment. As the 2003 Council of Europe report aptly summarises the situation, there are “abusive ideologies” that reinforce and perpetuate the likelihood of persons with disabilities experiencing exploitation, violence and abuse.<sup>23</sup> Among the many

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18. Brown (2003), p. 48.

19. Deegan P. (1996), “Recovery and the conspiracy of hope”.

20. Brown (2003), p. 35.

21. Ibid., p. 35, citing Read (1998).

22. Ibid., p. 37.

23. Ibid., p. 47.

factors contributing to the higher likelihood of persons with disabilities being subjected to exploitation, violence and abuse are the following:

- ▶ public perception and hostility or indifference;
- ▶ perception as “easy targets”;
- ▶ lack of understanding of “disability”;
- ▶ ignorance and poor training of staff, particularly for persons with complex needs or challenging behaviours;
- ▶ lack of accountability;
- ▶ lack of knowledge and inadequate access to discrimination prevention and accountability.<sup>24</sup>

The risk of being subject to exploitation, violence and abuse is significantly higher for persons with disabilities. There is, however, a huge gap in data: prevalence and forms are yet to be adequately represented in figures. Studies on these factors vary accordingly, but based on conservative estimates persons with disabilities are five times more likely to be victims of exploitation, violence and abuse than persons without disabilities.<sup>25</sup>

The likelihood of sexual exploitation, violence and abuse is also reported as significantly higher, particularly for persons with intellectual impairments residing in institutions.<sup>26</sup> Sexual violence and abuse are clearly linked to a perception of persons with disabilities as being non-sexual, starting in childhood.<sup>27</sup> Tied to poor education and lack of reasonable accommodation, there is a lack of, particularly bodily self-awareness, and understanding of basic sexual facts; and minority groups such as LGBTI persons with disabilities may encounter even further difficulties.<sup>28</sup>

The lack of understanding and the corresponding lack of data are exemplified in the WHO latest global status report on violence prevention (2014), which discusses disability solely as a result of violence and ignores the likelihood of persons with disabilities being subjected to exploitation, violence and abuse.

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24. Ibid., p. 10 and p. 25; Agency for Fundamental Rights (2015) “Violence against children with disabilities”, p. 59.

25. Compare, WHO and World Bank (2011), “World report on disability”, p. 59; see also UNICEF (2014), “Hidden in plain sight: a statistical analysis of violence against children”.

26. Ibid.

27. UN Committee on the Rights of the Child (2006), General Comment No. 9, The rights of children with disabilities.

28. See also Bartlett and Schulze (forthcoming).

## Forms of exploitation, violence, abuse and exclusion

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The forms of exploitation, violence and abuse against persons with disabilities are numerous. While many of the various practices are justified as professional conduct, and for some, enshrined in policy and laws, they are in essence abusive and violent. For instance, the frequent forms of well-intentioned occupation for persons with disabilities are sheltered workshops. The set-up of such institutions is often akin to a work environment and hence an actual work place. However, without adequate financial and social security compensation this can amount to a form of financial exploitation. Access to and management of financial matters can be limited or non-existent for persons with intellectual impairment and persons with psychosocial impairments. Their desires and wishes, including holidays or goods, are often ignored or overruled due to an assumption of “incapacity” to judge what is important and other forms of overzealous paternalism.

As Brown highlights, the structure of benefits, both their limitation in scope as well as in levels, can contribute to abuse or be abusive on account of their nature.<sup>29</sup> This is particularly so for systems tilted toward the older model of institutional care, where community-based and independent living approaches are not yet or not sufficiently supported. Furthermore, the threat of taking possession of assets to compensate for benefits may curtail a person’s choices and therewith contribute to exploitation, violence and abuse.

The perception of whether something is exploitation, violence and abuse varies generally and particularly in examples such as the ones on financial abuse. It is hard to bridge the idea that well-intended policies are perceived as contributing to abuse. “Persons with disabilities can ... end up doubly disempowered, a result that is in direct opposition to the objectives of the UNCRPD overall.”<sup>30</sup>

A certain complexity is to be expected with the implementation of the UNCRPD. This can be the case when a person appears to be completely content living in circumstances that are perceived as unhealthy or avoiding a medical intervention that appears necessary because someone is scared of the treatment.<sup>31</sup>

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29. Brown, p. 44.

30. Bartlett and Schulze (forthcoming).

31. Ibid.

The complexity of ensuring the freedom of one's own choices (UNCRC, Article 3(a)) and guaranteeing the highest standard of health has already raised some intensive discussions, particularly around the treatment of persons with psychosocial impairments.<sup>32</sup> The challenges and complexities are a given. In no way do they diminish the responsibility of the state to protect, promote and particularly ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities (UNCRC, Article 1).

A potential grey-zone that needs to be noted and carefully discussed is that of persons with challenging behaviour. With increasing frequency, the behaviour of persons is too challenging for established institutions; more often than not it is also labelled as impairment.<sup>33</sup> Both the medicalisation as well as the criminalisation of behaviour is profoundly problematic.

It is rightly perceived as problematic to delineate issues according to certain impairments – the risks of creating groups far outweigh the benefits of shining a light on a specific impairment. That said, there are forms of exploitation, violence and abuse that are specific to certain impairments. For example, the nature of autism, particularly the likelihood of communication problems and unusual behaviour add challenges to identifying signs of abuse in persons with autism spectrum disorder.

Examples of the extent of exploitation, violence and abuse against persons with disabilities can be found in the health and care-related aspects of the lives of persons with disabilities:

- ▶ very high doses of medication or deprivation of medication;
- ▶ ruining or taking away assistive devices; or threat to do so;
- ▶ depriving of care and assistance;
- ▶ refusal to conduct care as instructed;
- ▶ threat not to provide care;
- ▶ use of too hot water;
- ▶ restraining, also in psychiatric context(s);
- ▶ emotional and social deprivation, loneliness;
- ▶ deprivation of fluids;

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32. Compare Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2013).

33. See also UN Committee on the Rights of the Child (2006), General Comment No. 9.

- ▶ seeking consent to procedures under duress (abuse of a dependent relationship);
- ▶ disrespect for privacy;
- ▶ deprivation of independence and autonomy;
- ▶ creating undesired and unwarranted control(s) over a person's life;
- ▶ gossip;
- ▶ blaming a person for their impairment;
- ▶ criticism for being ungrateful or not sufficiently grateful for support provided;
- ▶ negative commentary about impairment;
- ▶ forced intercourse, rape;
- ▶ undesired touching;
- ▶ disrespect for intimacy;
- ▶ encroachments during care: undesired touching;
- ▶ showing/displaying pornographic materials,<sup>34</sup>
- ▶ ableism, misogyny, sexism, LGBTI-phobia, racism.

A scenario that can be complex but is equally an obligation of states to address is the one of multiple discrimination. The overlapping or simultaneous occurrence of various discrimination grounds is increasingly recognised – the UNCRPD refers to “multiple and aggravated forms” of discrimination.<sup>35</sup> General Comment No. 3 of the UNCRPD Committee gives examples of violence, exploitation and/or abuse against women with disabilities which violate Article 16:

the acquisition of a disability as a consequence of violence, physical force; economic coercion; trafficking and deception; misinformation; abandonment; the absence of free and informed consent and legal compulsion; neglect, including the withholding or denial of access to medication; the removal or control of communication aids and the refusal to assist in communicating; the denial of personal mobility and accessibility by, for example, removing or destroying accessibility features such as ramps, assistive devices such as white canes or mobility devices such as wheelchairs; the refusal by caregivers to assist with daily activities such as bathing, menstrual and/or sanitation management, dressing and eating, which hinders enjoyment of the right to live independently and

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34. Austrian CRPD Monitoring Committee, Austria (2011), Violence Against Persons with Disabilities, Recommendation.

35. Compare UNCRPD, Preamble, para. (p); on multiple discrimination see also Brown (2003), p. 48.



to freedom from degrading treatment; the withholding of food or water, or the threat of doing so; the infliction of fear by intimidation through bullying, verbal abuse and ridicule on the grounds of disability; the harming or threat of harming, removing or killing pets or assistance dogs or destroying objects; psychological manipulation; and the exercise of control, for example by restricting face-to-face or virtual access to family, friends or others. ...

Violence against girls with disabilities includes gender-specific neglect, humiliation, concealment, abandonment and abuse, including sexual abuse and sexual exploitation, which increases during puberty.<sup>36</sup>

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36. UNCRPD Committee (2016), General Comment No. 3, paras. 31 and 35.

# Exploitation, violence and abuse in public: hate crimes and hate speech

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“hate speech is to be understood for the purpose of the present General Policy Recommendation as the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of “race”, colour, descent, national or ethnic origin, age, **disability**, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.”

[emphasis added]

*European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 15 on combating hate speech*<sup>37</sup>

“If a person [with disabilities] is continually harassed or is a victim of hate crime, then this will restrict their opportunities to participate in aspects of daily life: to go to their local supermarket, to use public transport, to leave their apartment.”<sup>38</sup> As the European Network on Independent Living (ENIL) highlights in a pertinent report, there is a strong connection between the ability to live independently and hate speech and hate crime.

Equally, the question of school attendance and the likelihood of being subjected to hate speech are strongly connected: the fear of bullying and stigma in mainstream schools may lead children with disabilities to choose special education.<sup>39</sup>

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37. ECRI (2015), General Policy Recommendation No.15 on combating hate speech; see also the No Hate Speech Youth Campaign of the Council of Europe.

38. ENIL (2014), “Disability hate crime: a guide for disabled people’s organisations, law enforcement agencies, national human rights institutions, media and other stakeholders”, p. 15.

39. WHO and World Bank (2011), p. 216; see also on education Agency for Fundamental Rights (2015), “Violence against children with disabilities”.

The phenomenon of hate speech towards persons with disabilities is long-standing but has only recently started to receive attention. Accordingly, there is a gap in reporting of such crimes as well as the understanding of its scope. The lack of reporting is exemplified in the 2014 Report of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE). Only a handful of states shared pertinent incidents. The OSCE emphasised an important contributor to the under-reporting: the fear of persons with disabilities that they and their request will not be taken seriously by authorities.<sup>40</sup>

This minimalist reporting on hate crimes against persons with disabilities is also disturbing in that a landmark ruling by the European Court of Human Rights (“the Court”) in 2012 should have provided more than ample evidence of the problems and its impact. Dalibor Dordevic’s ordeal started with name-calling, followed by graffiti in front of his family’s apartment and physical and verbal harassment. The Court found a violation of Article 3 of the European Convention on Human Rights (ECHR) (prohibition of inhuman or degrading treatment) as the state failed to respond to put an end to the harassment.<sup>41</sup>

Not surprisingly, the fear of hate crimes and hate speech causes persons with disabilities to adopt avoidance behaviour. The isolation that many persons with disabilities experience is increased when they are scared of public spaces due to fear of verbal and physical harassment.<sup>42</sup>

In a focus paper, the European Union Agency for Fundamental Rights (FRA) notes as key facts that “people with disabilities face discrimination, stigmatisation and isolation every day”, impeding their inclusion and participation in communities. In addition to “disability” not being specifically mentioned in the EU’s hate crime legislation, there are other noteworthy barriers: the reluctance of persons with disabilities to report their experiences and the fact that “If incidents of disability hate crime are reported, the bias motivation is seldom recorded, making investigation and prosecution less likely.”<sup>43</sup>

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40. OSCE (2015), Hate Crime Reporting; see also OSCE-ODIHR (2017), “Factsheet on hate crime against people with disabilities”.

41. European Court of Human Rights, *Dordevic v. Croatia* (2012), Application No. 41526/10.

42. Brown (2003), p. 48.

43. Agency for Fundamental Rights (2015), “Equal protection for all victims of hate crime: the case of people with disabilities”, FRA Focus.

# Exploitation, violence and abuse in institutional settings

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To respond to the needs of persons with disabilities, many countries sought to accommodate them in specialised institutions where expert care could be provided. These good intentions are often met with the shortcomings that an organisation culture frequently produces: privileging low-cost practices over care for individual needs; reluctance to change routines and to critically look at their impacts on persons with disabilities; outward appearances over acknowledgement of problems and disconnecting resource shortages (particularly personnel) from difficulties in meeting clients' needs.

Violence and abuse in care-related settings falls squarely into the complicated social construction of the intricacies of caring for persons with disabilities. Such care is largely framed through a welfare's prism, and the well-meaning of that perception often gets in the way of seeing potential abuse, or encourages the excusing of it when it is seen to occur. It may be perceived as unthinkable that a family member or similar carer would abuse a person with disabilities, and the abuse is therefore not identified, not challenged, or even excused.<sup>44</sup>

As the Common European Guidelines on the Transition from Institutional to Community-Based Care note:<sup>45</sup> "The Explanatory Note to Rec(2004)10<sup>46</sup> on the protection of human rights and dignity of people with mental health problems raised concerns about the continuing failure to provide adequate care to people in psychiatric institutions, highlighting the absence of 'fundamental means necessary to support life (food, warmth, shelter) ... as a result of which patients have been reported to have died from malnutrition and hypothermia."<sup>47</sup>

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44. Bartlett and Schulze (forthcoming), with further references.

45. European Expert Group (2012), Common European Guidelines on the Transition from Institutional to Community-Based Care, p. 44.

46. Explanatory Note, CM/Rec(2004)10.

47. OHCHR (2010) Forgotten Europeans – Forgotten Rights: the human rights of persons placed in institutions, Chapter VI, p. 26.

### **Good practice: Republic of Moldova**

Children with disabilities in residential institutions were transferred as part of a multipronged project, which tackled the lack of community-based services and the needs of parents of children with disabilities, among others. In addition to awareness-raising campaigns, a significant push for social services was made, enabling the placement of children in local schools according to age – rather than impairment. Importantly, the assessment of needs was scaled up to be multidisciplinary. In line with the UNCRPD, the participation of children with disabilities was ensured in all stages of the process.<sup>48</sup>

A FRA report from 2012 on involuntary treatment and involuntary placement into psychiatric facilities of persons with mental health problems pointed to the extent to which persons with mental health problems in the EU are exposed to this practice. The report revealed the trauma and fear that they may experience.<sup>49</sup>

An institution is not defined merely by its size but by its characteristics as well as the degree of control each individual has over her/his daily lives and day-to-day decisions.<sup>50</sup> In other words: “various dimensions must be examined beyond the actual walls of the place of residence”.<sup>51</sup>

Importantly, the attitude and qualifications of the providers and staff have to be weighed as much as the actual access to community life – outside the institution and the enjoyment of all rights based on personal preferences, supported by adequate assistance.

“Good order” being praised above all, the rigidity, which frequently comes with larger institutions, is key to increasing the likelihood of exploitation, violence and abuse. Differently put: “institutionalisation itself can be a form of abuse”.<sup>52</sup> The detrimental nature of institutional settings, particularly the increased prevalence of exploitation, violence and abuse has been well documented in recent years.

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48. World Vision (2012), “The right to inclusive education for children with disabilities, good practices in the CEEIS region”, p. 42.

49. Agency for Fundamental Rights (2012), “Involuntary placement and involuntary treatment of persons with mental health problems”, p. 7.

50. Commissioner for Human Rights (2012), “The right of people with disabilities to live independently and be included in the community”, p. 18, citing the European Coalition for Community Living.

51. Council of Europe Commissioner for Human Rights (2012), *ibid.*, pp. 18-19.

52. Bartlett with further references.

It is important to note that structural violence is not limited to institutional settings – the structural aspects may emerge from habits, customs and practices; hence structural violence may occur even in the smallest settings.<sup>53</sup> Correspondingly, the UNCRPD obliges states to “modify or abolish existing laws, regulations, customs and practices”.<sup>54</sup>

Frequently, institutions are established and run by government or government agencies but there are also instances where such institutions are established and maintained by private entities. Because they are largely funded by public money but even more due to the states’ obligation to ensure that the UNCRPD is applied by “organizations and private enterprises” (UNCRPD, Article 4(1)(e)), this convention has to be implemented regardless of an institution’s ownership.

The right to live in the community applies to all persons equally. It may be based on the right to liberty and security (ECHR, Article 5; the Court, *Stanev v. Bulgaria*) – as well as the right to respect for private and family life (ECHR, Article 8, the Court, *Botta v. Italy*).<sup>55</sup> It may also be based on the general principle to independence (UNCRPD, Article 3(a)) as well as the right to living independently and being included in the community (UNCRPD, Article 19).

Gender-related aspects of violence have been well documented. Women and girls with disabilities are no exception to the increased likelihood of becoming a victim of exploitation, violence or abuse on account of their sex and gender. Indeed, women with disabilities “are at a greater risk of experiencing additional types of abuse at the hands of people who are supposed to ‘care’ for them, such as personal assistants, parents, healthcare workers and staff of residential settings”.<sup>56</sup> The dependency on the support of these people can severely jeopardise seeking redress for exploitation, violence and abuse as the disclosure may result in the loss of essential support.

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53. See also Brown (2003), p. 46.

54. UNCRPD, Article 4(1)(b).

55. Compare Council of Europe Commissioner for Human Rights (2012), p. 22.

56. Shah S., Balderston S. and Woodin S. (2015), “Access to support services and protection for disabled women who have experienced violence: results and recommendations for service providers and policy makers”.

### **Good practice: Germany**

Persons with mental health impairments frequently have bad experiences with treatments and often adopt avoidance behaviour out of fear of further violence and abuse. The “Weglaufhaus” provides a refuge for persons in need of support who want to be sure that no force will be used against them.<sup>57</sup>

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<sup>57</sup>. Weglaufhaus, available at: [www.weglaufhaus.de](http://www.weglaufhaus.de).

# Exploitation, violence and abuse in private settings

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Domestic violence studies highlight the prevalence of exploitation, violence and abuse in private settings.<sup>58</sup> Family and friends are often relied on for largely informal support to persons with disabilities. This can work very well but “many children and adults [with disabilities] find themselves more informally ‘contained’ or managed within their families.”<sup>59</sup> Shortage of resources is prevalent in such settings and various forms of stress are likely to occur and spill into the relationship and over personal boundaries.

It can prove hard and overpowering to delineate between the needs, wishes and rights of the family member with disabilities and the interests of the family and individual members, respectively.<sup>60</sup> This is particularly true for the question of legal capacity: the usual conflicts of coming of age become intertwined with real practical needs for representation. There is an abundance of interests and constraints to manage, frequently with limited scrutiny and judicial review.

Trying to assist a family member with disabilities can be incredibly difficult and a feeling of helplessness can occur. Starting with childhood, the delineation between age-related behavioural issues and those related to the impairment can be laborious. Finding adequate support in terms of guidance is often complicated. Particularly in more remote and rural areas, it can be almost impossible to access adequate explanations and information on the implications of an impairment and how to provide appropriate support. Finding external support to take care of persons with disabilities, including children with disabilities, can also prove very challenging: child care institutions, including kindergartens, may at best be reluctant but often outright refuse to provide support. Equally, private support such as a babysitter may be hard to come by if a child has support needs, leaving aside potential financial implications. Other stress factors are difficult access to assistive devices; protracted applications may be as much a factor as the sheer availability of such mobility aids or other equipment.

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58. As one example of many see Agency for Fundamental Rights Agency (2014), “Violence against women”.

59. Brown, p. 36.

60. Brown, p. 38.



Avoiding contact with friends due to shame or being overburdened may contribute to a sense of isolation as much as the shunning from neighbours and others in the community. A sense of being left alone is frequently described by those taking care of a family member with disabilities.

The accumulation of these factors significantly increases the likelihood of some form of violence and abuse; not necessarily through intentional harm being inflicted but also by neglect and denial of support.

While the crucial nature of support by family members is acknowledged in the preamble of the UNCRPD (x); the fact that not all families are able to provide for the best support for their family member with disabilities, among others, led to the rather minimal reference to families of persons with disabilities in the convention. In addition to a broader and more modern term, the challenge of how to extend the protection from discrimination also to those around persons with disabilities could not be resolved.<sup>61</sup>

#### **Good practice: Portugal**

The UNCRPD Committee commended Portugal, among others, for:

“6. (e) The provision of a direct line by the National Institute for Rehabilitation to provide tailored support to persons with disabilities, their families, and organizations and services active in this area, in connection with their rights, duties and benefits, and to refer them to the available resources.”<sup>62</sup>

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61. Schulze (2010), p. 33.

62. UNCRPD Committee, Concluding observations on the initial report of Portugal, para. 6(e).

# Prevention of exploitation, violence and abuse

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Due to the complex nature of exploitation, violence and abuse, a comprehensive prevention approach requires a wide range of measures. As the UNCRPD repeatedly noted, addressing the needs of persons with disabilities requires a so-called twin-track approach which will promote equal rights and opportunities for all persons with disabilities. This approach entails:

- ▶ mainstreaming the UNCRPD principles, particularly accessibility and inclusion, into all general measures, policies, programmes and services to ensure accessibility and support;
- ▶ adopting and supporting specific measures and initiatives aimed at empowering persons with disabilities and strengthening their inclusion and ability to live independently within the community.

Along the lines of the cross-cutting issues of the Council of Europe Disability Strategy 2017-2023, the following measures for the prevention of exploitation, violence and abuse try to address both general and specific measures.

## Participation

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Persons with disabilities have the right to participate in decision making at all levels (UNCRPD, Article 4(3)). This requires changes to current policy-development processes and decision making. Following the concept of universal design (UNCRPD, Articles 2 and 4) this entails improving accessibility to ensure that persons with disabilities can contribute on an equal basis with others. Frequently, the capacity of persons with disabilities to contribute adequately to discussions is questioned and consequently undermined but the lived experience of persons with disabilities and their informed self-representation must replace the paternalist way of knowing and deciding what is “good for them”.

It is paramount that the capacity of persons with disabilities is recognised and strengthened and that opportunities are provided to have persons with disabilities speak for themselves on their own terms. Participation implies empowered, informed and involved persons with disabilities. These factors contribute to a better awareness and understanding of one's rights and ways to report their potential violation.

In the Council of Europe report on "Safeguarding adults and children with disabilities against abuse", "capacity and consent [are considered] as key issues in determining whether acts [against persons with disabilities] are abusive or whether they represent valid choices made by people [with disabilities] whose rights to make decisions and take risks are equal to those of other citizens".<sup>63</sup> A decade later, the importance of affording persons with disabilities legal capacity on an equal basis with others<sup>64</sup> and revisiting questions of consent in an accessible fashion is reinforced through the implementation of the UNCRPD.

## Capacity

Persons with disabilities must enjoy legal capacity on an equal basis with others, including by receiving appropriate support to exercise it when required (UNCRPD, Article 12(2)).<sup>65</sup> Freedom to make one's own choices is a paramount principle of the rights of persons with disabilities (UNCRPD, Article 3(a)). While support measures vary greatly, states have a high standard to meet; and the provision of reasonable accommodation has to be "ensured" (UNCRPD, Article 5(3)).<sup>66</sup>

Facilitated communication as part of alternative modes and means as well as formats of communication,<sup>67</sup> alternative script, Braille, and orientation and mobility skills are among a plethora of assistive means to enable persons with disabilities to enact their right to legal capacity. Adapted communication methods and information will enable persons with disabilities to understand their rights and report violence.

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63. Brown, p. 8.

64. See also Council of Europe Commissioner for Human Rights (2012), "Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities".

65. For more information, see the Council of Europe study on equal recognition before the law of persons with disabilities (2017); see also, UNCRPD Committee (2014), General Comment No. 1, Article 12: Equal recognition before the law.

66. For a definition of reasonable accommodation, see UNCRPD, Article 2.

67. For a definition of communication, see UNCRPD, Article 2.

## Consent

Circumventing the consent of persons with disabilities is a frequent practice but ignoring the will and preferences of a person is in itself a form of abuse which denies the entitlement to the full enjoyment of a person's rights. Ensuring that persons with disabilities give their free and informed consent to all actions that may potentially have an impact on their physical and/or mental integrity is a human rights obligation. Free and informed consent is a requirement in particular for medical and scientific experimentation (UNCRC, Article 15) and healthcare (UNCRC, Article 25(d)).

### **Good practice: Austria**

The NGO "Selbstlaut" provides trainings on various aspects of violence prevention, also for teachers and other educational staff. One of its trainings involves persons with disabilities as experts in their own right, enabling them to report on their experiences and contributing actively to prevention strategies. In addition, some training materials have been made available in easy-to-understand format.

## Co-operation and co-ordination

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### Peer support

Everyone learns differently and frequently more meaningfully from persons who share a certain aspect of their identity. Peer support is thus paramount to "attain and maintain maximum independence" (UNCRC, Article 26(1)) and is seen as crucial in learning skills to live equally in the community (UNCRC, Article 24(3 (a))). Peer support can also help persons with disabilities to open up about personal experience and to identify potentially abusive conduct or situation.

It is essential to ensure that sustainable funding is allocated to establish and maintain services that are user- and peer-led.

### **Good practice: Austria and Germany**

The organisation "NUEVA" ("users evaluate") provides a platform that trains persons with disabilities to undertake, as experts in their own right, assessments of the adequacy of institutions and their compliance with principles of autonomy and independent living, largely through qualitative methods. The findings are shared online.

## Data

The obligation to collect data and statistics for the formulation of appropriate policies particularly applies in the realm of prevention of exploitation, violence and abuse (UNCRC, Article 31).<sup>68</sup> It is important that the collection of such information be co-ordinated; the police need to register and take note of the disability-related nature of complaints, indictments and convictions.

### **Good practice: Ireland**

The National Disability Survey tackles the challenging question of how to “measure” impairment and disability. It includes data that provide a solid starting point to look into key issues that can help to decrease the likelihood of becoming a victim of exploitation, violence and abuse, particularly in the realm of education, health and social services.

## Monitoring

Independent authorities are to be set up to prevent the occurrence of all forms of exploitation, violence and abuse (UNCRC, Article 16(3)); this is in addition to the monitoring body to be set up under Article 33(2) of the UNCRC. Regular checks by independent authorities are a key aspect in preventing violence in its manifold forms, as is showcased in the work of the European Committee for the Prevention of Torture (CPT).

The focus of the authority to be set up under the UNCRC is related to any facilities or programmes designed to serve persons with disabilities. It may therefore not only necessitate the monitoring of residences of persons with disabilities or psychiatric wards but also special institutions such as sheltered workshops or special education institutions.

The mandate of such an authority will very likely overlap with that of the National Preventive Mechanism under the Optional Protocol of the Convention Against Torture, Inhuman or Degrading Treatment or Punishment (OP-CAT) but is distinctive.

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68. Compare also Brown, p. 83.

### **Good practice: Austria**

Since 2012, the Austrian Ombudsman Board is tasked with torture prevention as foreseen in the OP-CAT. In addition it must effectively monitor that the occurrence of exploitation, violence and abuse is prevented in all facilities and programmes designed for persons with disabilities (obligation under the UNCRPD).

## **Universal design**

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Universal design takes on an important role in preventing exploitation, violence and abuse, particularly when it comes to the design of information and programmes. Multiple angles of accessibility, particularly the accessibility of information, are key to ensuring that persons with disabilities can protect themselves against potential exploitation, violence and abuse and seek redress if they become victims.<sup>69</sup>

Repeated experience reduces the likelihood of persons with disabilities making a complaint for fear of not being taken seriously. The social accessibility – making sure that persons feel respected and safe to make a complaint – is therefore important. In addition to increasing the awareness of police and other institutions likely to be approached with complaints, it is important that judges are sensitive to the needs and specificities of persons with disabilities.

### **Good practice: Britain**

As the Equal Treatment Bench Book states clearly: “all witnesses are presumed competent”.<sup>70</sup>

The justice system needs to show a certain flexibility to adjust to established shortcomings of its workings. The stress of being in a courtroom is an additional barrier to communication and overall performance of witnesses who may be vulnerable. Suggestions for reasonable accommodation include:

- ▶ letting witnesses write and draw to clarify their responses;

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69. For more information, see the Council of Europe study on accessibility of information, technologies and communication for persons with disabilities (2017); see also, UNCRPD Committee (2014), General Comment No. 2, Article 9: Accessibility.

70. Judicial College [England and Wales] (2013), Equal Treatment Bench Book, p. 47.

- ▶ allocating a female judge and counsel to a trial with a witness who refused to speak to a man about the alleged offence;
- ▶ letting a man with autism spectrum disorder give evidence wearing a lion's tail, his comfort object in daily life.

Information materials need to be provided in accessible formats, including for persons with intellectual impairment or sensory impairments. This entails easy-to-read formats, Braille as well as sign-language videos. The design and outline of websites has to incorporate accessibility guidelines that take into account these angles as well.

Services designed for victims of exploitation, violence and abuse need to be designed to be accessible for persons with disabilities. In addition to physical access, the layout of such an institution, as well as the information provided about it, need to adhere to accessibility guidelines, including for the design of shelters.

Furthermore, access to information about sexual and reproductive health and rights as well as sexual and reproductive health services needs to be ensured (UNCRPD, Articles 23 and 25).<sup>71</sup>

## **Reasonable accommodation**

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To enable persons with disabilities to contribute on an equal basis with others, reasonable accommodation has to be ensured. As a first step, anti-discrimination measures have to include the provision of reasonable accommodation. This means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. (UNCRPD, Article 2). According to Article 5(3) of the UNCRPD, “States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided”.<sup>72</sup>

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71. See also UNCRPD Committee (2016), General Comment No. 3.

72. For more information, see the Council of Europe study on promoting equality and non-discrimination for persons with disabilities (2017).

## Assistance paradigm

As the International Classification of Functioning, Disability and Health (ICF) by the WHO clearly states: the support and assistance needs of persons with disabilities are at least as important as an assessment of potential medical aspects of an impairment. Therefore, multidisciplinary assessments (UNCRPD, Article 26(1)(a)) are paramount to ensure that the focus shifts to assessing assistance that enables living in the community on an equal basis with others.

### **Good practice: Germany**

The ICF is perceived as an overwhelming technical tool. While the importance of measuring exclusion, particularly barriers to participation, is theoretically acknowledged, the practical breakdown is challenging. It is, however, inherently important to overcome the medicalisation of disability and to shift the emphasis to assistance and support measures. The Mini-ICF was developed in Germany primarily for persons with psychosocial impairments. It is a helpful tool to make the ICF practical. It has also been validated in English.

### **Good practice: Portugal<sup>73</sup>**

The Support Programme for Persons with Disabilities designed to prevent discrimination, neglect, abuse and ill-treatment of persons with disabilities was commended by the UNCRPD Committee.

## Personal assistance schemes

In its provision on independent living, the UNCRPD explicitly refers to the concept of “personal assistance” (Article 19 (b)). The choice of and control over individualised support enables persons with disabilities to lead independent lives that are in fact on an equal basis with others. Various pilot projects prove time and again that the overall life satisfaction increases and the perceived vulnerability is reduced. Consequently, such individualised measures are a factor in reducing the incidences of exploitation, violence and abuse.

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73. UNCRPD Committee, Concluding observations on the initial report of Portugal.



### **Good practice: Sweden**

The personal assistance policy in Sweden is highly regarded both for its pioneering nature and its broad application. It should be noted that personal assistance is not only possible for persons with mobility impairments but also, for example, for persons with intellectual impairment or mental health issues.

## **Gender equality**

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The increased likelihood of women and girls with disabilities becoming victims of exploitation, violence and abuse necessitates a specific focus and targeted interventions. Existing awareness-raising campaigns around violence prevention for women should be broadened to specifically refer to women and girls with disabilities – based on a broad consultation of women and girls with disabilities.

### **Good practice: Germany**

Increasing co-operation of interest groups of women/persons with disabilities with victim support services for women and their networking agencies can also be regarded as advancement and an example of good practice. This leads to an active integration of women with disabilities and those persons who represent their interests as political actors in each step of the improvements in practice and policy.

It is recommended that such networking and co-operation on a federal level be increased regionally to improve support for women with disabilities who have experienced violence.<sup>74</sup>

Strengthening the independence of women and girls with disabilities, enabling them and empowering them are the most promising and sustainable ways to increase the prevention from exploitation, violence and abuse. Accordingly, access to mainstream quality education and employment as well as independent living opportunities should be seen as a parallel and equally important goal in violence prevention efforts.

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74. Schröttle M. and Vogt K. (2013), "Access to specialised victim support services for women with disabilities who have experienced violence", JUST/2011/DAP/AG/3293, p. 127.

## Multiple discrimination

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The combination of various characteristics of one person may increase the risk of experiencing exploitation, violence and abuse. The preamble of the UNCRPD refers to “race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status”.<sup>75</sup> As respondents to the FRA report on children with disabilities noted, it is crucial to be aware of and recognise the “multiple layers of risk”.<sup>76</sup> A holistic approach to prevention should place particular emphasis on the exclusion and marginalisation due to socio-economic factors. Indeed, the report notes that poverty is “one of the major factors increasing children with disabilities’ vulnerability to violence.”<sup>77</sup>

## Education and training

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Education is key to self-awareness, to the ability to know one’s boundaries and set them for others in manifold ways. Education thus plays an important role in enabling persons with disabilities to protect themselves against potential exploitation, violence and abuse as well as responding to the violation of their rights. Furthermore, education is also crucial for persons with disabilities in obtaining knowledge of sexual and reproductive health.

The role of education in combating exploitation, violence and abuse, including bullying, harassment and hate crimes, cannot be overstated for both persons with disabilities as well as those entrusted with supporting and assisting them. The curricula for training and continued training for professionals, caretakers and assistants should include a component on the prevalence and risk factors of exploitation, violence and abuse.

Importantly, support measures for family members should provide for information on causes as well as responses to exploitation, violence and abuse.

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75. UNCRPD, Preamble, para. (p); see also UN Committee on the Elimination of Discrimination Against Women (CEDAW) (1991), General Recommendation No. 18 on women with disabilities. The committee, recognising the particular situation of women with disabilities, recommends to states parties to include information in their reports to the committee.

76. Agency for Fundamental Rights (2015), “Violence against children with disabilities”, p. 80.  
77. *Ibid.*, p. 80.

## Changing practices

In line with the obligation to change practices and customs that are discriminatory (UNCRPD, Article 4(1)(b)), the paradigm shift to the social model needs to be ensured. In addition to the awareness-raising measures that the UNCRPD foresees in its Articles 8 and 24 on education, there is an obligation to provide training to increase the knowledge of the rights of persons with disabilities based on their own lived experience.<sup>78</sup>

This also means changing the narrative of and about persons with disabilities by moving from an ableist-welfarist framing to the accessibility paradigm. This includes removing barriers of a social-societal attitude, discriminatory frame and behaviour as well as physical and communicative barriers.

### **Good practice: Croatia**

Following the transition from the former Yugoslavia, the rate of institutionalisation of children, including children with disabilities, increased significantly in Croatia. In response, a National Plan of Deinstitutionalisation and Transformation of Social Welfare Homes and Other Types of Legal Entities Providing Social Welfare Services in the Republic of Croatia (2011-2016) was adopted.<sup>79</sup>

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78. For more information, see the Council of Europe study on awareness raising on the rights of persons with disabilities (2017).

79. UNICEF (2011), "Situation analysis of children's and women's rights in Croatia".

# Responding to exploitation, violence and abuse: Article 16(4)

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Persons with disabilities are entitled to legal protection, access to justice and redress on an equal basis with others, and perpetrators of exploitation, violence and abuse must be held accountable. Persons with disabilities face legal, socio-economic and cultural barriers when accessing justice, even more so in cases of multiple discrimination. Victims may also be silenced or scared, in particular of losing care and support, which contribute to the invisibility of violence and its consequences and foster under-reporting. Therefore states must ensure effective accessibility, reasonable accommodation and provide necessary assistance (UNCRC, Article 13).

The finding that someone is a victim of exploitation, violence and abuse may be a surprise, even a revelation, to those around the person, entailing rehabilitation needs for the victim as well as support to relatives. It should be noted that the UNCRC contains some distinctive guidance on providing support to those who have become victims of exploitation, violence and abuse in Article 16(4). Note should also be taken that the UNCRC enshrines a stand-alone provision on rehabilitation (Article 26).

# Checklist

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**The following checklist provides a series of questions to assess the progress made towards a comprehensive response to exploitation, violence and abuse experienced by persons with disabilities.**

Is the scope of abuse, violence and exploitation of persons with disabilities understood at all policy levels?

Is the specific nature of abuse, violence and exploitation of persons with disabilities clear, including in cases of multiple discrimination?

Does the (existing) Action Plan on violence specify actions for the prevention of abuse, violence and exploitation of persons with disabilities?

Does the (existing) Action Plan on persons with disabilities break down actions on prevention of abuse, violence and exploitation?

Has specific research on the nature and extent of abuse, violence and exploitation of persons with disabilities, including through peer participation, been encouraged?

Are there training tools on prevention of abuse, violence and exploitation of persons with disabilities readily available?

Are trainings, particularly but not limited to the professions obliged by the UNCRPD (Articles 4(1)(i), 8(2)(d), 9(2)(c), 13(2), 20(c), 24(4), 24(5), 25(d), 26(2), 28(2)(c)) being offered on an ongoing basis?

Do trainings on prevention of abuse, violence and exploitation against persons with disabilities include self-advocates as experts in their own right?

Is prevention of violence, exploitation and abuse of persons with disabilities part of the core curriculum for future teachers, medical professionals, judges and police officers?

Are support services for victims of violence, including hotlines, accessible for persons with disabilities?

Do support services for victims of violence receive specific training on prevention of violence for persons with disabilities, with the support of self-advocates?

Is support, including peer-support, provided for persons with disabilities who become victims of exploitation, violence or abuse?

Is support, including peer-support, provided for persons with disabilities who witness exploitation, violence or abuse?

Have the mainstream support services for victims and witnesses of violence been discussed with self-advocates as experts in their own right?

Has a monitoring mechanism been set up in accordance with Article 16(3) of the UNCRPD?

Is disability or impairment, respectively, included in the definition of the Criminal Code's hate crime provision?

Is disability or impairment, respectively, included in the data collection related to hate crimes?

Is the obligation to ensure participation of persons with disabilities in all relevant policy discussions implemented (UNCRPD, Article 4(3))?

Is a plan for deinstitutionalisation for all levels of governance (federal, provincial, communal) in place?

Is there specific support (financial, legal, policy) for associations which provide peer support and peer learning?

Is the legal capacity and the right to act this capacity recognised for all persons with disabilities?

Is supported decision making ensured for those persons who require assistance in enacting their legal capacity?

Is personal assistance offered (UNCRPD, Article 19) also for children and youth with disabilities?

Are community-based services in place, including for children and youth with disabilities?

Are health services, including sexual and reproductive health services, accessible?

Is the right to vote and the right to stand for election recognised for persons with disabilities?

Are persons with disabilities representing themselves at various levels of government (federal, provincial, municipal)?

Are persons with disabilities members of trade unions and associations (UNCRPD, Article 29)?

# Key resources

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All URLs referenced in this document were checked on 26 April 2017.

## General resources

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### Council of Europe

Council of Europe (2003), Brown. H., “Safeguarding adults and children with disabilities against abuse”, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016805a297e>

Council of Europe Commissioner for Human Rights (2012), “Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities”, Issue Paper, available at: [www.coe.int/t/commissioner/source/prems/IP\\_LegalCapacity\\_GBR.pdf](http://www.coe.int/t/commissioner/source/prems/IP_LegalCapacity_GBR.pdf)

Council of Europe Commissioner for Human Rights (2012), “The right of people with disabilities to live independently and be included in the community”, Issue Paper, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016806da8a9>

Council of Europe Convention on Action against Trafficking in Human (2005), available at: [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197)

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011) (the Istanbul Convention), available at: [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210)

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007), available at: [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201)

Council of Europe Disability Strategy 2017-2023 – Human rights: a reality for all, available at: [www.coe.int/en/web/disability/strategy-2017-2023](http://www.coe.int/en/web/disability/strategy-2017-2023)

Council of Europe Disability Action Plan 2006-2015 – Promoting the rights of people with disabilities, available at: [www.coe.int/en/web/disability/action-plan-2006-2015](http://www.coe.int/en/web/disability/action-plan-2006-2015)

Council of Europe Gender Equality Glossary (2015), available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805a1cb6>

Council of Europe, Ginnerup S., in co-operation with the Committee of Experts on Universal Design (2009), "Achieving full participation through Universal Design", available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805a2a1e>

Council of Europe Parliamentary Assembly, Report 13650 and Resolution 2039 on equality and inclusion for people with disabilities (2015), available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21553&lang=EN>

Council of Europe Parliamentary Assembly, Report 14268 and Resolution 2155 on the political rights of persons with disabilities: a democratic issue (2017), available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=23519&lang=EN>

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## **European Commission**

European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, which includes equality, employment, education and training as key priority areas, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>

## **Useful resources on monitoring, peer support, deinstitutionalisation, and community-based services**

### **ITHACA Toolkit**

[www.ithacastudy.eu](http://www.ithacastudy.eu)

ITHACA is a European project on human rights and mental health in psychiatric and social care institutions. It provides a thorough overview of the human rights standards that need to be upheld in institutions and provides a detailed list of aspects that need to be taken into account in such institutions. A wide-ranging overview of monitoring such places includes a set of prompt questions, which covers independent living, family and privacy rights, participation rights, correspondence as well as other contact outside an institution and the realm of education, training, work and employment.

### **Checklist from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806fc22b>

The CPT provides a checklist for visits to social care institutions where persons may be deprived of their liberty. It highlights the importance of upholding human rights standards in living conditions (ranging from physical set-up to provision of clothes and quality of food), healthcare measures (including level as well as frequency of care) and includes guidance on acceptable means of restraint.

## Mental Health First Aid

[www.mentalhealthfirstaid.org/cs/](http://www.mentalhealthfirstaid.org/cs/)

Mental Health First Aid provides training to respond to a developing or existing mental health problem, enabling members of the public to provide initial support until professional assistance becomes available – just as traditional first-aid. Courses provide skills on how to recognise the signs and symptoms of mental health problems, including information on potential causes or risk factors for such mental health problems. A focus is skills training on appropriate initial help and support for someone experiencing a mental health problem. This includes responding to suicidal behaviour, panic attacks, stress reaction to trauma or threatening psychotic behaviour.

## Peer-supported evaluations

NUEVA Network: [www.nueva-network.eu/de/Ueber-uns/About-nueva](http://www.nueva-network.eu/de/Ueber-uns/About-nueva)

The aim of peer-supported evaluations is to make users of services for persons with learning difficulties and disabilities informed partners with authorities and service providers. Persons with disabilities are empowered to act as informed consumers in the social services market. They should get valid and relevant information to make their own choices where and how they would like to live and work. Looking at the quality of services, authorities and management often focus on structural quality. The focus of peer-supported evaluations is different: how would persons with learning difficulties and disabilities define quality of services from their perspective?

## Community-based rehabilitation

[www.who.int/disabilities/cbr/guidelines/en/](http://www.who.int/disabilities/cbr/guidelines/en/)

While written also for a development context, WHO's guidelines on community-based rehabilitation show how to break down the realms of education, employment, social and health services to ensure accessibility for and inclusion of persons with disabilities. Enabling support at the community level is seen

as key to fostering independent living for persons with disabilities and reducing the risk of experiencing exploitation, violence and abuse.

## Deinstitutionalisation

Common European Guidelines on the Transition from Institutional to Community-based Care (2012):

[www.deinstitutionalisationguide.eu/wp-content/uploads/2016/04/GUIDELINES-Final-English.pdf](http://www.deinstitutionalisationguide.eu/wp-content/uploads/2016/04/GUIDELINES-Final-English.pdf)

The report of the European Expert Group on the Transition from Institutional to Community-based Care provides an overview of the key challenges of such process, outlines common basic principles as well as a set of recommendations. It makes the case for the transition process and why community-based services are preferable to institutions of various forms and sizes. Approaches to assessing the status quo are provided as are ways to develop a strategy and action plan for the transition process. Importantly, guidance on the legal framework for community-based services is provided as well as the development of such services in practice.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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