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**NGOs information to the United Nations Committee against Torture**

**For consideration when compiling the List of Issues Prior to Reporting (LOIPR)**

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Submitted by:

Mental Disability Advocacy Centre (MDAC)

Forum for Human Rights (FORUM)

SOCIA – Social Reform Foundation (SOCIA)

Social Work Advisory Board (RPSP)

12 September 2017

## I. OVERVIEW

1. This written submission provides an outline of issues of concern with regard to the Slovak Republic's compliance with the provisions of the UN Convention Against Torture (hereinafter "the CAT"), with particular focus on the enjoyment of those rights by persons with disabilities. The purpose of the submission is to assist the UN Committee against Torture (hereinafter the "Committee") with its consideration, in this initial stage, of the compilation of the list of issues prior to reporting.
2. The submission has been written by the Mental Disability Advocacy Centre (MDAC)<sup>1</sup>, Forum for Human Rights (FORUM)<sup>2</sup>, SOCIA – Social Reform Foundation<sup>3</sup> and Social Work Advisory Board (RPSP)<sup>4</sup>.

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<sup>1</sup> MDAC is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. MDAC has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit [www.mdac.org](http://www.mdac.org).

<sup>2</sup> FORUM is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored number of reports and information with the UN and Council of Europe bodies on situation in the Central European region, especially Slovakia and the Czech Republic. For more information, please visit [www.forumhr.eu](http://www.forumhr.eu).

<sup>3</sup> SOCIA – Social Reform Foundation wishes to bring about changes in the social system through financial support and its own activities for the benefit of the social groups that are most at risk. Vision of SOCIA Foundation is a tolerant civic society with disadvantaged and endangered people as their integral part. The collaboration of "weaker and stronger" should result in building quality and accessible social services - services that would meet the individual needs of their beneficiaries in their natural environment. SOCIA providing grants for non-profit organisations and individuals to improve the quality of life of socially, physically and mentally disadvantaged groups. SOCIA has also own projects supporting community based services. SOCIA collaborate with NGOs and the public administration forming policies and legislative proposals to reform the social system, please visit [www.socia.sk](http://www.socia.sk).

<sup>4</sup> Social Work Advisory Board (RPSP) (Rada pre poradenstvo v sociálnej práci) was created in 1990 and main goal is to provide help for people in need, so they can be included to community and live Independent life. RPSP fulfils its goals by providing advisory, supervision and education to people with special needs, especially people with severe degrees of disability and elderly people, providers of social services, state and nongovernmental organisations, municipalities and other educationers. The main strategic vision of RPSP is to support process of changing quality of social services in society, realisation of transformation, deinstitutionalisation and decentralisation of social services, and community services development. RPSP realised first deinstitutionalisation projects in social services in Slovakia since 1999. RPSP is one of the leaders in this area in Slovakia and realised several monitoring of human rights in social services as independent organisation and also in cooperation with Slovak Helsinki Committee and World Health Organisation. For more information, please visit [www.rpsp.sk](http://www.rpsp.sk).

## II. SPECIFIC COMMENTS

### (a) Definition of torture

3. Slovakia has failed to properly implement obligation to criminalise torture, as required especially by Article 4 CAT. The State Party still doesn't have in its domestic criminal law adequate provisions that criminalise torture and cruel, inhuman and degrading treatment and punishment (hereinafter "CIDT") which would ensure the effective investigation, prosecution and punishment, where appropriate, of perpetrators of torture and CIDT.
4. The wording in the existing definition of the crime provided for under Article 420 Act no. 300/2005 (Criminal Code) mixes up torture and CIDT and fails to provide for elements of torture, as required under CAT. Especially, the law does not define specific purposes, including discrimination. In addition, it fails to distinguish acts of torture from CIDT on grounds of *mens rea*. Thus, an intent is required even for cases of degrading treatment, which substantively limits the provision's applicability in the practice. This situation has resulted in de facto impunity for acts of torture, cruel, inhuman and degrading treatment.

#### *Proposed questions*

**Please provide information about legal prohibition of torture and criminalisation of acts of torture and other forms of ill-treatment, including number of charges and indictments brought against alleged perpetrators under Article 420 of the Criminal Code.**

**Please explain how is the definition of torture and other forms of ill-treatment being interpreted in the relevant legislation and judicial practice? Can an act committed for any purpose, including discrimination of any kind be seen as ill-treatment? Does the the law distinguishes between torture and CDIT in terms of *mens rea*?**

### (b) Use of cage-beds and other forms of restraints against persons with disabilities

5. In Slovakia, the use of mechanical restraints in psychiatry is governed by a methodological ordinance of the Ministry of Health no. 13787/2009 – OZS, adopted on 27/5/2009. Net-beds<sup>5</sup> are listed under Article III as one of the allowed restraints. Even though data on the number of net-beds in Slovak hospitals and its use are not available, as the Government has

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<sup>5</sup> Information about the net-bed, its construction and how it looks like can is available here: [http://www.zdravzar.sk/index.php?option=com\\_k2&view=item&id=6:postel-pre-mentalne-postihnutych&Itemid=200&lang=en](http://www.zdravzar.sk/index.php?option=com_k2&view=item&id=6:postel-pre-mentalne-postihnutych&Itemid=200&lang=en)

not been collecting this information, the authors of this report have been told of their frequent use by residents.

6. According to the applicable norms of international law, all persons with disability have the right not to be subjected to specific coercive practices during hospitalisation. This right is translated into an obligation of the state to ensure that persons with disabilities should not be subjected to the use of restraints, especially net-beds, and such coercive practices should be subject to an absolute ban.
7. In 2012 the Committee and in 2013 the Human Rights Committee (hereinafter "CCPR") addressed the use of netted cage beds when assessing the Czech Republic, where the situation is identical.<sup>6</sup> In relation to Slovakia, the CCPR recently noted its concern that many persons with disabilities continue to live in large institutions separated from the rest of the society and that the practice of physical and mechanical restraints, in netted cage beds, continues and called on the Slovak Republic to take measures to, *inter alia*, "**abolish the use of netted cage beds and other forms of restraint in psychiatric and related institutions**".<sup>7</sup> The use of restraints and netted cage beds, in particular, have been also criticised by other UN treaty bodies. The UN CRPD Committee called on Slovakia with reference to Article 15 (prohibition of ill-treatment) of the UN Convention on the Rights of Persons with Disabilities to ban and prohibit the practice of the use of netted cage beds.<sup>8</sup> Similarly, the CAT Committee recommended the Czech Republic to amend the law "**to include the prohibition of the use of net-beds since their effects are similar to those of cage-beds**".<sup>9</sup>

#### *Proposed question*

**What measures have the Government been planning to abolish the use of net-beds and other forms of restraint in psychiatric and related institutions?**

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<sup>6</sup> Human Rights Committee, Concluding Observations on the Third Periodic Report of the Czech Republic, 22 August 2013, para. 14, CCPR/C/CZE/CO/3, available here [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CZE/CO/3](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CZE/CO/3)

<sup>7</sup> Human Rights Committee, Concluding Observations on the Fourth Periodic Report of the Slovak Republic, 22 November 2016, paras. 20-21, CCPR/C/SVK/CO/4, available here: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en)

<sup>8</sup> Committee on the Rights of Persons with Disabilities, Concluding Observations to the Initial Report of Slovakia, 17 May 2016, para. 46, CRPD/C/SVK/CO/1 available here [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SVK/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SVK/CO/1&Lang=En).

<sup>9</sup> Committee against Torture, Concluding Observations of the Committee: Czech Republic, 13 July 2012, para. 21(c), CAT/C/CZE/CO/4-5 available here [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CZE/CO/4-5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/CZE/CO/4-5&Lang=En)

### (c) Institutionalisation of persons with mental disabilities

8. As of 1<sup>st</sup> January 2016, the population of Slovakia was 5,487,308.<sup>10</sup> There are no data on the number of persons with disabilities living in Slovakia due to the absence of systematic data collection disaggregated by disability, sex, and age across all sectors.<sup>11</sup> Nevertheless, the most recent figures available on the numbers of people living in institutions are from 2014 and are set out in Table 1 below. This shows the high number of people placed in institutions, namely people with disabilities, elderly people and children.
9. In the Slovak Republic, social care services for persons with disabilities are predominantly provided in institutional settings and community services are rare. In December 2015, there were 355 institutions for elderly people with 17,137 persons in their care; 288 social care homes housing 14,243 adults with disabilities; and 140 specialised institutions with 5,761 adult residents. With regard to children, there were 30 social care homes with 867 children. In total, there were 40,518 persons living in institutions, which is approximately 0.74% of the whole population of Slovakia. Institutionalisation also affects children living in foster care group homes. In December 2015, there were 91 children's homes with 4,622 children, out of which 450 were children with disabilities.
10. Therefore many persons with disabilities face lifelong isolation in Slovakia. They are often forced to live in large artificial and segregated institutions, e.g. castles or monasteries, which resemble warehouses for human beings. It has been argued that large-scale institutionalisation and warehousing of human beings raises very serious issues under prohibition of torture and CIDT.<sup>12</sup> Also, the CRPD Committee has addressed the issue of institutionalisation under Article 15 of the CRPD, which prohibits ill-treatment.<sup>13</sup>

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<sup>10</sup> Available at Eurostat [ec.europa.eu](http://ec.europa.eu).

<sup>11</sup> Committee on the Rights of Persons with Disabilities, Concluding Observations to the Initial Report of Slovakia, 17 May 2016, para. 83, CRPD/C/SVK/CO/1 available here [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SVK/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SVK/CO/1&Lang=En).

<sup>12</sup> Gerard Quinn and Theresa Degener, *Human rights and disability. The current use and future potential of United Nations human rights instruments in the context of disability*. (New York and Geneva, United Nations, OHCHR, 2002), p. 55.  
Document is available online at: <http://www.ohchr.org/documents/publications/hrdisabilityen.pdf>.

<sup>13</sup> Committee on the Rights of Persons with Disabilities, Concluding Observations to the Initial Report of Paraguay, 15 May 2013, para. 38, CRPD/C/PRY/CO/1; Concluding Observations on the Initial Report of Azerbaijan, 11 May 2014, para. 28-29 CRPD/C/AZE/CO/1 available here [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/PRY/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/PRY/CO/1&Lang=En) and here [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AZE/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AZE/CO/1&Lang=En).

	Number of Institutions	Total Number of Residents	Deprived legal capacity	Antipsychotic treatment
Homes for elderly people	355	17,137	427	8,288
Social care homes for people with disabilities (adults)	288	14,243	6,233	9,918
Specialised institutions (adults)	140	5,761	1,341	4,114
Social care homes (children)	30	867	312	194
Children's homes	91	4,622	-	-
<b>Total</b>	<b>904</b>	<b>42,630</b>	<b>8,313</b>	<b>22,514</b>

Source: Based on data from sources including the Statistical Office of the Slovak Republic.<sup>14</sup>

11. Slovakia committed itself to deinstitutionalisation (hereinafter “DI”) and transformation of residential services for persons with disabilities in its *Strategy on Deinstitutionalisation*<sup>15</sup> and *National Action Plan on Transformation of Residential Social Services*.<sup>16</sup> This was followed in December 2014 with further proclamations in *National priorities of development of social services in 2015 - 2020*. Although these are positive steps, the practical realisation of the DI process has faced several difficulties and has been significantly delayed. The national DI policy was adopted at the end of 2011, nearly 6 years later, but according to available information, not a single institution has been ‘transformed’ and not a single person has moved out of an institution into a community-based setting. In addition, the planned activities under the revised National Project for the period up to 2020 (which has not been adopted yet) includes less than 10% of the 861 institutions in the country. The tremendously slow pace of reform and the low number of institutions involved are of considerable concern.

12. Enormous delays and lack of effective implementation have recently been criticised by the CRPD Committee which recommended that Slovakia adopt a timetable to ensure that the implementation of the

<sup>14</sup> Information on 2013 is available from Statistical Office of the Slovak Republic (2014) Social Service Facilities in the Slovak Republic. Available at: <https://slovak.statistics.sk/PortalTraffic/fileServlet?Dokument=92c5d6eb-e79f-493c-8981-bd2bd2e48a05>

<sup>15</sup> Available in Slovak online at: <https://www.employment.gov.sk/sk/rodina-socialna-pomoc/socialne-sluzby/deinstitucionalizacia-socialnych-sluzieb.html>.

<sup>16</sup> Available in English online at: <https://www.employment.gov.sk/sk/rodina-socialna-pomoc/socialne-sluzby/deinstitucionalizacia-socialnych-sluzieb.html>.

deinstitutionalisation process is expedited, including by putting in place specific additional measures to ensure that community-based services are strengthened for all persons with disabilities and that resources, both coming from European funds and national budget, are spent in conformity with the right of all persons with disabilities to live independently.<sup>17</sup> Indeed, institutions are places where severe human rights violations happen frequently, including torture and CIDT. Deinstitutionalisation is thus an important aspect in the prevention of torture or other instances of ill-treatment against persons with disabilities. Moreover, the sole fact of warehousing persons with disabilities should properly be understood as inhuman and degrading treatment. Therefore, under these circumstances, and considering the current situation, combined with the slow progress of deinstitutionalisation and the low number of institutions involved in the DI plans, situation of persons with disabilities living in institutions in Slovakia raises serious issues under CAT.

#### *Proposed questions*

**Please provide information on what measures does the Government plan to take to ensure adequate implementation of its deinstitutionalisation policies. Please inform the Committee about the planned timelines of the deinstitutionalisation process, about the number of people to be transferred to community settings in the next 3 years and on whether in Slovakia there is a moratorium on institutionalisation.**

**Please provide information on the availability and accessibility of community-based services for persons with disabilities, including housing, social services and community mental health care, explaining whether the number of such services is sufficient and what measures are to be taken to ensure they will continue/start being adequate and sufficient.**

**In addition, please provide information on actual and planned reallocation of resources aimed at the transformation of large residential institutions and the development of community-based services.**

#### **(d) Sterilisation of women with disabilities**

13. Another issue of concern is the sterilisation of women with disabilities under guardianship on the basis of consent given by their guardian. The

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<sup>17</sup> Committee on the Rights of Persons with Disabilities, Concluding Observations to the Initial Report of Slovakia, 17 May 2016, para. 56, CRPD/C/SVK/CO/1 available here [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SVK/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/SVK/CO/1&Lang=En).

**sterilisation** is regulated under Article 40 of the Act on Health Services (Act no. 576/2004). The intervention can generally be performed only on a written request and after signing a written informed consent of the person concerned. The informed consent must include information on alternative methods of contraception, possible change of living situation leading to sterilisation, medical consequences of sterilisation and possible failure of sterilisation. The content of the informed consent is regulated by the Ministry of Health and is translated into the languages of national minorities. The request for sterilisation is considered by the doctor and the intervention can be performed only 30 days after the written consent has been signed.

14. However, in cases of persons with disabilities, the law allows that legal representatives, including guardians of those persons who have been deprived of legal capacity or whose legal capacity have been restricted under Article 10 of the Civil Code<sup>18</sup>, can give informed consent in their stead; a court approval is not required. In such situations, it is evident that sterilisation does not depend on the will of the person to be sterilised.<sup>19</sup> and can be forced upon persons with disabilities. Such legislation should be repealed as forced sterilisation, as has been clarified by the UN Special Rapporteur on Torture, may amount to torture.<sup>20</sup> The UN Rapporteurs expressly stated that *“forced interventions [including involuntary sterilisation], often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged “best interest” of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment.”*

*Proposed question*

**Please provide information how the law protects women with disabilities, and especially those put under guardianship, from involuntary sterilisations.**

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<sup>18</sup> A person deprived of legal capacity cannot validly exercise any legal act and is automatically stripped of various fundamental rights and freedoms, such as the right to enter into marriage or the right to vote or stand for elections (see below). Alternatively, if a person’s legal capacity has been *restricted*, the court delineates those legal actions that he or she cannot validly perform. In both cases, legal actions of a person deprived or restricted of legal capacity are performed by his or her guardian who is understood as a legal representative and substitute decision-maker.

<sup>19</sup> According to Article 6(6)(b) of the Act No. 576/2004 on Health Services (*zákon o zdravotnej starostlivosti*), the person unable to give an informed consent shall participate on the decision making to the greatest possible extent, considering her abilities.

<sup>20</sup> See Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53 and Nowak, M. (2008) UN Doc. A/HRC/7/3.

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