# PSYCHOSOCIAL DISABILITY AND DEPRIVATION OF LIBERTY: REVIEWING THE CASE OF QATAR IN THE LIGHT OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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## I. ABSTRACT

This paper analyses the main implications of the prohibition of deprivation of liberty on the basis of disability in the field on mental health under the Convention on the Rights of Persons with Disabilities and its impact in Qatar's legal system. It shows the contradiction between the specific regimes of deprivation of liberty of persons with psychosocial disabilities and Article 14 of the Convention. The paper also proposes some changes in Qatar's system to ensure that persons with psychosocial disabilities enjoy the right to liberty on equal terms with others.

**Key words:** CRPD; Convention on the Rights of Persons with Disabilities; Art 14 Qatar; legal system; liberty; security; Law No.16 of 2016 on Rights of Patients with Mental Illness

## II. INTRODUCTION

The right to liberty and security is recognised in all major universal and regional instruments for the promotion and protection of human rights.[1] The key content of this right is usually identified as the prohibition of arbitrary deprivation of liberty:[2] no one

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[1] See –– article 3 of the Universal Declaration of Human Rights (United Nations [UN]) UN Doc A/810, 71, UN Doc A/RES/217(III) A, GAOR 3rd Session Part I, 71 (UDHR) [Signed] 10 Dec 1948; article 9 of the International Covenant on Civil and Political Rights (United Nations [UN]) 999 UNTS 171, UN Doc A/6316, UN Doc A/RES/2200(XXI), Annex, UN Reg No I-14668 (ICCPR) [Signed] 16 Dec 1966 [Entered Into Force] 23 May 1976; article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe) 213 UNTS 222, ETS No 5, UN Reg No I-2889 (European Convention) [Opened For Signature] 4 Nov 1950 [Entered Into Force] 3 Sep 1953; para 1 of the American Convention on Human Rights "Pact of San José, Costa Rica" (Organization of American States [OAS]) OASTS No 36, 1144 UNTS 123, B-32, OEA/Ser.L.V/II.82 doc.6 rev.1, 25 (American Convention) [Signed and Opened For Signature] 22 Nov 1969 [Entered Into Force] 18 July 1978; article 14 of the Arab Charter on Human Rights (Revised) (Arab League) (2005) 12 IHRR 893 (Arab Charter) [Adopted] 22 May 2004 [Entered Into Force] 15 May 2008; Article 6 of the African Charter on Human and Peoples' Rights "Banjul Charter" (Organization of African Unity (historical) [OAU]) 1520 UNTS 217, OAU Doc CAB/LEG/67/3 rev.5, UN Reg No I-26363 (African Chapter) [Adopted and Opened For Signature] 27 Jun 1981 [Entered Into Force] 21 Oct 1986.

[2] These two dimensions are closely connected and are commonly summarised in the concept of protection of liberty, see European Court of Human Rights (ECtHR), *Altun v. Turkey*, no. 24561/94, June 1, 2004 (unreported at the time of writing).

shall be deprived of their liberty save in the cases established by the law, in accordance with proscribed procedures, and not unless several formal safeguards are respected.[3] Although persons with disabilities are not explicitly mentioned in the right to liberty provisions within these international instruments,[4] in theory they are protected by such provisions.

However, this somewhat oblique recognition of the right to liberty has been considered compatible with extended and deeply-rooted practices that introduce restrictions in the enjoyment of this right within the context of disability. These practices, which imply the establishment of specific regimes of deprivation of liberty singularly applicable to persons labelled as having intellectual and psychosocial disabilities (e.g. with a "mental illness or disorder"), are often justified by reference to the need to protect their life or their health and/or to protect public safety and the rights of others.

Actually, most domestic legal systems allow for the involuntary or non-consensual commitment to hospitals, psychiatric institutions and social care homes of persons with intellectual and psychosocial disabilities, in certain circumstances.[5] Likewise, national laws usually deem such persons *exempt* from *criminal responsibility* and put in place special detention measures based on that consideration. These disability-specific forms of deprivation of liberty have also been legitimised by international human rights protection systems.[6] Indeed, according to the perspective of assistencialism and the medical model of disability[7], depriving the liberty of some persons with disabilities is accepted as necessary, in certain circumstances, and is not considered a *de facto* human rights violation.[8]

[3] Biel, I. and Smith, R.K.M., *Textbook on International Human Rights*, Oxford University Press, New York, 2007.

[4] The sad exception is article 5.1(e) of the European Convention (ECHR) that will be commented upon in n 17 below.

[5] Bariffi, F., *El régimen jurídico internacional de la capacidad jurídica de las personas con discapacidad*, Cinca, Madrid, 2015 – see also; Minkowitz, T., *Why Mental Health Laws Contravene the CRPD – An Application of Article 14 with Implications for the Obligations of States Parties*, 2011. Available at: http://dx.doi.org/10.2139/ssrn.1928600.

[6] Article 5.1(e) of the ECHR explicitly permits the deprivation of the liberty of a person of "unsound of mind." Although other human rights instruments do not include a similar provision, they also seem to accept disability as a valid ground for deprivation of liberty – re the treatment of psychosocial disability in international systems for protection of rights, see; Perlin, M.L., *International Human Rights and Mental Disability Law. When the Silenced are Heard,* (Oxford University Press - New York, 2012).

[7] On the medical model and its diferencies vis-à-vis the social model, see; Palacios, A., *El modelo social de discapacidad, orígenes, caracterización y plasmación en la Convención Internacional sobre los derechos de las personas con discapacidad*, Colección CERMI, Cinca, Madrid, 2008; Oliver, M., *Understanding Disability: From Theory to Practice*, (Palgrave - Malaysia, 1996); and Barnes, C. and Mercer, G., *Disability*, (Polity Press, Cambridge, 2003).

[8] Flynn, E., "Disability, Deprivation of Liberty and Human Rights Norms: Reconciling European and International Approaches," *International Journal of Mental Health and Capacity Law*, 2016, 75–101, [79].

The entry into force of the Convention on the Rights of Persons with Disabilities (hereinafter CRPD[9]) changes this scenario. The CRPD marks a fundamental paradigm shift towards the human rights approach and the social model of disability.[10] From this new perspective, the limitations experienced by persons with disabilities in the participation of social life and the enjoyment of human rights are no longer considered a natural consequence caused by the so called deficiencies of those persons, but rather they are the result of a deeply rooted social construct. In other words, such limitations are consequent upon the design of society (including the design of the legal conditions for the exercise of human rights) structured within a "normalcy" parameter that does not take into account the true situation of persons with disabilities and therefore leads to discriminatory practices.[11]

Assuming this view the CRPD aims to adapt pre-existing general and abstract rights, universally recognised in other international instruments, to the specific necessities of persons with disabilities, thereby ensuring equal recognition, exercise and enjoyment of human rights.[12] Moreover, it also identifies fields where the protection of some human rights must be reinforced for persons with disabilities, taking into account the existence of serious and extended violations in the past.[13]

According to this strategy, Art 14 of the CRPD not only reaffirms the application of the right to liberty and security for persons with disabilities and emphasises the obligation to ensure their protection in equal conditions, but crucially it also reformulates the standard regulation of this right.[14] Indeed, Art 14 specifies the meaning of the right to personal liberty in the context of disability, adding new contents that had not previously been mentioned in general human rights treaties.

The first part of this paper seeks to address the meaning, scope and the main implications of Art 14 of the CRPD regarding the deprivation of liberty of persons with disabilities, especially persons with psychosocial disabilities. The second part will focus on the relevant domestic law regarding the liberty and security of persons with psychosocial disabilities in Qatar and posits recommendations for review.

[9] (United Nations [UN] 2515 UNTS 3, UN Doc A/Res/61/106, Annex, GAOR 61st Session Supp 49, 65. (Adopted) 13 Dec 2006, (Opened for Signature) 30 May 2007, [Entered Into Force] 3 May 2008.

[10] On the CRPD generally, see –– Lawson A., "The United Nations Convention on the Rights of Persons with Disabilities", *Syracuse Journal of International Law and Commerce*, 34 (2), 2007, 563–619; Mackay, D., "The United Nations Convention on the Rights of Persons with Disabilities," *Syracuse Journal of International Law and Commerce*, 34 (2), 2007, [323–331]; and Palacios, A., *El modelo social de discapacidad* cited above n 6.

[11] Cuenca Gómez, P., *Los derechos fundamentales de las personas con discapacidad. Un análisis a la luz de la Convención de la ONU,* Universidad de Alcalá de Henares, Madrid, 2012, [151].

[12] See –– Bartlett, P., "The United Nations Convention on the Rights of Persons with Disabilities and Mental Health Law," *The Modern Law Review*, 75 (5), 2012, [752–778].

[13] Palacios, A., *El modelo social de discapacidad,* 270 and Lord, J.E. and Stein, M., "The Domestic Incorporation of Humans Rights Law and the United Nations Convention on the Rights of Persons with Disabilities," *Washington Law Review;* 83, (4), 2008, [449–479, particularly 461].

[14] Article 14 combines the three strategies mentioned by Megret, F., "The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?," *Human Rights Quartely,* no. 30, 2008, [494–516].

## III. LIBERTY AND SECURITY OF PERSONS WITH PSYCHOSOCIAL DISABILITIES (ARTICLE 14 CRPD)

As explained above, article 14 ensures the effective and equal application of the right to liberty and security for persons with disabilities. It does so by incorporating new standards into international human rights law that have not previously been included in most pieces of domestic legislation. In particular, these relatively new standards challenge the conventional wisdom of mental health practices.

Article 14.1(a) requires States Parties to ensure; "that persons with disabilities, on an equal basis with others, enjoy the right to liberty and security of person." And article 14.1(b) clarifies that this obligation not only implies guaranteeing (according to the traditional formulation of this right in other international instruments) that persons with disabilities; "are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law," but also "that the existence of a disability shall in no case justify a deprivation of liberty." Hence, article 14 must be approached "from a dual perspective."[15]

Firstly, article 14, in connection with article 13 (on the right to access to justice[16]) includes the guarantee that no person with a disability can be deprived of her liberty without a legal procedure whereby minimum obligations of due process are respected. At this point, international jurisprudence has made considerable progress in recent years.[17]

The second perspective included by article 14 is the guarantee that "the existence of a disability shall in no case justify a deprivation of liberty." This perspective, where article 14 is in close interrelation with the right to equality and non-discrimination (Art 5 CRPD),[18] implies a revolution from the previous treatment of this issue in national and international law.

[15] Bariffi, F., *El régimen jurídico internacional*, [223].

[16] According to this provision effective access to justice on an equal basis with others includes the provision of procedural and age-appropriate accommodations and appropriate training; "for those working in the field of administration of justice, including police and prison staff".

[17] E.g. – in the European context (before the entry into force of the CRPD), the case law of the European Court of Human Rights (ECtHR) had already required some formal safeguards to be put into place in order to guarantee that the deprivation of liberty of a person of "unsound of mind," allowed by Article 5.1(e) of the ECHR, e.g. it must not be arbitrary. The first landmark court decision on Article 5.1(e) of was *Winterwerp v The Netherlands* (A/33) (1979-80) 2 E.H.R.R. 387. After the adoption of the CRPD it is worth mentioning the decision in *Shtukaturov v Russia* (no. 44009/05) (2012) 54 E.H.R.R. 27; (2008) 11 C.C.L. Rep. 440; [2008] M.H.L.R. 238, and after its entry into force the cases *Stanev v Bulgaria* (no. 36760/06) (2012) 55 E.H.R.R. 22; [2012] M.H.L.R. 23, and *DD v Lithuania* (no. 13469/06 [2012] M.H.L.R. 209 that reinforced the procedural safeguards in the application of Article 5.1(e).

[18] Article 5.1 of the CRPD prohibits "all discrimination on the basis of disability" as defined in Article 2 as: "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation".

Prior to the CRPD coming into force, existence of a psychosocial disability represented a lawful ground for deprivation of liberty and detention under international human rights law.[19] The Convention radically departs from this approach by forbidding deprivation of liberty based on disability, including psychosocial disability.

The new approach means that disability cannot serve in any circumstances as a valid ground for deprivation of liberty. According to the *Guidelines* on Article 14 of the Convention[20], (approved by the UN Committee on the Rights of Persons with Disabilities —hereinafter the CRPD Committee), this provision implies "the absolute prohibition of detention on the basis of disability"[21] and does not permit any exceptions. Thus, national laws that provide instances in which persons may be detained on the grounds of their actual or perceived disability, are incompatible with article 14.[22]

Resolutely, the Committee maintains, and recalling the debate on the wording of Art 14 during the negotiation of the CRPD,[23] that this provision prohibits the deprivation of liberty on the basis of actual or perceived impairment even if additional factors or criteria are used to "justify the deprivation of liberty."[24] — for example; risk or danger to self or others, alleged need of care or treatment, or other reasons tied to impairment or health diagnosis. According to this position, already exposited in the CRPD Committee *Concluding Observations* on States initial reports, the existing domestic laws and human rights instruments that permit involuntary commitment of persons with psychosocial disabilities need to be questioned. However, the opinion of the CRPD Committee is not shared by all UN Human Rights Committees or indeed by all the Special Procedures of the Human Rights Council.[25]

[19] See –– Thematic Study by the Office of the United Nations High Commissioner for Human Rights on Enhancing Awareness and Understanding of the Convention on the Rights of Persons with Disabilities, A/HRC/10/48, January 26, 2009, paras (48) and (49). Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf

[20] The right to liberty and security of persons with disabilities (Geneva: Committee on the Rights of Persons with Disabilities, Adopted during the Committee's 14th session, held in September 2015). The *Guidelines* replaces the *Statement* on Article 14 approved in 2014. The *Guidelines* do not have the status of a General Comment, but represent the most recent expression of the Committee's interpretation of Article 14.

[21] Ibid, paras (6–9). As noted by Flynn, E., "Disability, Deprivation of Liberty and Human Rights Norms,", [84] – The Committee's guidelines go further than previous interpretations of article 14, for example: "that put forward by the UN High Commissioner for Human Rights, who had suggested in 2009 that it would be in conformity with the CRPD to have disability-neutral laws on preventative detention."

[22] CRPD Committee, *Guidelines on Article 14,* para (6).

[23] Ibid, para (7). During the negotiations of article 14 of the CRPD, states and civil society debated in the Ad Hoc Committee whether this provision should be framed to ensure that disability could not be the "sole" or "exclusive" basis for a deprivation of liberty. Ultimately this qualifier was not included.

[24] Ibid, paras (7) and (13).

[25] Flynn, E., "Disability, Deprivation of Liberty and Human Rights Norms," [84]. For an exhaustive explanation on the position of the UN Treaty Bodies and Special Procedures on the deprivation of liberty of persons with disabilities, see –– the *Background Note,* paras (24-33); elaborated by the Office of the High Commissioner for Human Rights during the expert meeting on "International standards on the right to liberty and security of persons with disabilities", on 8-9 September 2015. Available at: http://www.ohchr.org/Documents/Issues/Disability/DeprivationLiberty/BackgroundNote.doc

On the one hand; the Human Rights Committee, the Committee against Torture and the current Special Rapporteur on Torture have not fully adopted (or even contradict) the CRPD standard on Art 14.1, developed by the CRPD Committee. These bodies have accepted the possibility of lawful involuntary committal of persons with disabilities as a measure of last resort in qualified situations – in general for the purpose of protecting the individual in question or third parties and with robust and appropriate legal safeguards.[26] At the regional level, the European Court of Human Rights have adopted a similar position[27].

On the other hand; the Committee on the Elimination of Discrimination against Women[28] the Committee on Economic, Social and Cultural Rights[29], the UN Working Group on Arbitrary Detention[30] and the UN Special Rapporteur on Disability[31] have

[26] See –– Human Rights Committee, *General Comment No. 35 – Article 9: Liberty and Security of Person*, CCPR/C/GC/35, December 16, 2014, para (19).
UN Committee Against Torture has already accepted the possibility of lawful involuntary committal and involuntary medical treatment and has recommended ensuring effective supervision and monitoring, appropriate legal safeguards, proper training for medical and non-medical staff, and the use of de-institutionalization strategies and outpatient/community-based services. See e.g. – CAT/C/NLD/CO/5-6, para, (21); CAT/C/LTU/CO/3, para, (23); CAT/C/SWE/CO/6-7, para, (13); and CAT/C/HRV/CO/4-5, para (17). As explained the *Background Note* of the Office of the High Commissioner for Human Rights, para (28), the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has questioned only forced hospitalization or solitary confinement when not based on medical grounds. See e.g. – CAT/OP/PRY/1, paras (219-224); CAT/OP/ARG/1, paras (94-102); CAT/OP/KGZ/1, paras (111-120); CAT/OP/MLI/1, paras (68-69). While the former Special Rapporteur on Torture, Manfred Novak, supported the absolute ban on deprivation of liberty on the basis of impairments, including in combination with other factors - *Interim Report* of July 28, 2008, A/63/175, para (64) (available at http://www.un.org/disabilities/images/A.63.175.doc (last consulted June 3, 2017), - the current Special Rapporteur, Juan Méndez, has accepted involuntary commitment as an exceptional measure in "emergency cases" or "to protect the safety of the person or of others" - *Report* of February 1, 2013, A/HRC/22/53, paras (67–70). Available at:
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf (last accessed August 23, 2017).

[27] See –– Cuenca Gómez, P. "Revisando el tratamiento de la capacidad jurídica de las personas con discapacidad a la luz de la Convención de la ONU", *Revista Europea de Derechos Fundamenatles*, 20, 2012, 213–246 and Flynn, E., "Disability, Deprivation of Liberty and Human Rights Norms", [76–79].

[28] See –– CEDAW/C/IND/CO/4-5, para (37), and CEDAW/C/MDA/CO/4-5, para (38)(d)).

[29] The Committee on Economic, Social and Cultural Rights has recommended the incorporation into the law "the abolition of violent and discriminatory practices against children and adults with disabilities in the medical setting, including deprivation of liberty, the use of restraint and the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs and electroconvulsive therapy". See –– E/C.12/MDA/CO/2, para (24).

[30] UN Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court, May 4, 2015, WGAD/CRP.1/2015, para (56).

[31] See — the opinion of the former UN Special Rapporteur on Disability, Shuaib Chalklen in the *Urgent Request to Amend the Human Rights Committee's Draft Version of General Comment No. 35 (CCPR/C/107/R.3) on Article 9 (Right to Liberty and Security of Person) Bringing it in Line with the UN Convention on the Rights of Persons with Disabilities*," May 27, 2014. Available at:
http://www.ohchr.org/Documents/HRBodies/CCPR/GConArticle9/Submissions/SRDisability.doc - For her report to the Human Rights Council, 40th session, the current UN Special Rapporteur on Disability, Catalina Devandas, intends to focus on the right to liberty and security for persons with disabilities

endorsed the absolute ban on the deprivation of liberty on the basis of disabilities in line with the interpretation of the CRPD Committee.

Equally, scholars do not have a unified approach about the interpretation of the prohibition on detention on the basis of disability under Art 14 CRPD. As Elionoor Flynn explains[32], while some scholars consider that Art 14 must be read to prohibit all deprivations of liberty where the existence of disability is a factor used to justify detention[33], other scholars disagree with this interpretation and some of them argue that an assessment of decision-making capacity can serve as the basis for detention if it is undertaken in a disability-neutral manner[34].

Regarding this debate, we consider, in unity with the CRPD Committee's position, that article 14 prohibits any disability-specific form of deprivation of liberty, even when it is purported to be justified by reference to the need to protect the safety of the person with disability and or that of others. In our opinion is not coherent to reject the "dangerousness criteria" for the person or third parties in case of general population[35] and instead accepting these criteria in case of people with intellectual and psychosocial disabilities. Indeed the difference between people with and without disabilities regarding the application of these criteria does not have an objective and reasonable justification[36] and reflects prejudices and stereotypes attached to the normative design of the law, which in the context of disability (actual or perceived) the Convention seeks to remedy. Moreover, the specific arguments – within the general idea of the protection of the person – that support the deprivation of liberty of persons with disabilities in the need of care or medical treatment contradicts other rights recognised in the CRPD which are closely linked, as we analyse below, with the right to liberty.

In our view, legislation authorising the civil commitment of persons with intellectual and psychosocial disabilities should be replaced by new comprehensive enactments within the health-care system governing all non-consensual treatment.[37] According to the CRPD model, this legislation could not be based on a functional test that relies on the assessment of decision-making capacity because, among other reasons, this assessment is not objective and disability neutral.[38] In any case – and depending on

[32] Flynn, E., "Disability, Deprivation of Liberty and Human Rights Norms", [82].

[33] Particularly some of the scholars who were actively involved in the negotiations as Minkowitz, T., *Why Mental Health Laws Contravene the CRPD – An Application of Article 14 with Implications for the Obligations of States Parties* - already cited above, n 5.

[34] See — Szmukler, G. Daw, R. and Callard, F., "Mental health law and the UN Convention on the Rights of Persons with Disabilities", *International Journal of Law and Psychiatry*, 37 (3), 2014, 245–252; and Dawson, J., "A realistic approach to assessing mental health laws' compliance with the UNCRPD", *International Journal of Law and Psychiatry*, 40, 2015, [70–79].

[35] Bartlett, P., "The United Nations Convention on the Rights of Persons with Disabilities and Mental Health Law2, *Modern Law Review*, 75 (5), 2012, [752-778].

[36] Nilsson, A., "Objective and Reasonable? Scrutinising Compulsory Mental Health Interventions from a Non-discrimination Perspective", *Human Rights Law Review*, 14(3), 2014, [459-485].

[37] This view is also maintained by Szmukler, Daw, and Callard and by Dawson in the works previously cited, n 34.

[38] *Comment No. 1: Article 12, Equal Recognition before the Law*, CRPD/C/GC/1, April 2014, para (15). www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx

the way in which national legislation solves the conflicts between liberty and other rights – some non-consensual interventions could be permissible – ie. in cases of life-threatening emergency – but with true parity between persons with and without disabilities. Cases of harm to others should be addressed through the criminal justice system, which should involve the application of robust safeguards and the adoption of procedural accommodations to ensure the effective participation of persons with psychosocial disabilities in the judicial proceedings.[39]

In the criminal context, the prohibition of deprivation of liberty on the grounds of disability also challenges the detention of persons with disabilities (mainly against persons with intellectual or psychosocial disabilities) who are considered unfit to plead or who are not imputable by domestic legislation. As maintained by the CRPD Committee:

> [d]eclarations of unfitness to stand trial or incapacity to be found criminally responsible in criminal justice systems and the detention of persons based on those declarations, are contrary to article 14 of the Convention.[40]

Equally, they also violate Article 13 since:

> [i]t deprives the person of his or her right to due process and safeguards that are applicable to every defendant.[41]

In line with this approach, the Committee has recommended the elimination of security measures imposed upon persons with disabilities considered *exempt* from *criminal liability*, including those subject to coercive medical and psychiatric treatment in institutions. A special concern about measures involving indefinite deprivation of liberty has been also expressed by the CRPD Committee.[42] These kinds of provisions deprive individuals of a clear determination of their responsibility and relegate persons with psychosocial disabilities to further segregation and marginalization; "as well as to indefinite detention in psychiatric institutions under the harshest conditions and often for extremely long duration."[43]

It is important to clarify that Art 14.1 of the CRPD does not exempt persons with disabilities, including persons with psychosocial disabilities, from general legislation regarding detention or arrest for violations of criminal law or other reasons not linked, directly or indirectly, to the existence of a disability. Paragraph 2 of article 14 requires non-discrimination when persons with disabilities are subjected to lawful deprivation of liberty, setting out the obligation to ensure that they are:

> [o]n an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

[39] Cuenca Gómez, P., "Discapacidad y privación de la libertad", *Derechos y libertades*, 32, 2015, [163–203] see – [192]; and Flynn, E., "Disability, Deprivation of Liberty and Human Rights Norms", [85], [100].
[40] CRPD Committee, *Guidelines on Article 14*, para (16).
[41] Ibid.
[42] Ibid, para (20). See also — UN Special Rapporteur on Disability, *Urgent Request to Amend the Human Rights Committee's Draft Version of General Comment No. 35*.
[43] Minkowitz, T., *Why Mental Health Laws Contravene the CRPD*, cited at above, n 5.

Regarding guarantees of international human rights law, it is important to note the lack of specific attention paid by the general international instruments to the rights of persons deprived of liberty who have psychosocial disabilities. Moreover, disability is not explicitly considered a prohibited ground for discrimination in these general human rights instruments.

The revised Standard Minimum Rules on the Treatment of Prisoners[44] (adopted by the UN General Assembly in 2015[45]) have recently incorporated the provision of reasonable accommodation for persons with disabilities who are in detention (Rule 5.2). However, in contradiction with the inclusive purpose of the CRPD, the Rules 109 and 110 (former rules 82 and 83) establish that persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, should be transferred to mental health facilities and provided with compulsory psychiatric treatment.[46]

The CRPD Committee has insisted on the right of persons with disabilities deprived of their liberty to be treated according to the objectives and principles of the Convention.[47] In its jurisprudence under the Optional Protocol to the Convention, the CRPD Committee analysed the scope of the obligation to ensure accessibility and to provide reasonable accommodation in the case of a prisoner with reduced mobility.[48] In its *Guidelines on Article 14* the Committee also remembered its concerns for the poor living conditions in some places of detention, particularly in prisons, and insisted on the need to promote training mechanisms for justice and prison officials in accordance with the Convention's legal paradigm.[49]

To conclude this section, it is worth mentioning the strong link between Article 14 and other Articles of the CRPD (besides the relationship with Art 5 and 13 highlighted above). As noted by the CRPD Committee, the right to liberty in article 14.1 is closely connected with article 12 (on equal recognition before the law)[50] which states that persons with disabilities have legal capacity on an equal basis with others in all aspects

[44] Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) (United Nations [UN]) UN Doc E/CN.15/2015/L.6, Annex. Available at:
www.penalreform.org/resource/standard-minimum-rules-treatment-prisoners-smr/.
However, this version also does not include disability as a prohibited ground of discrimination in Rule 2.

[45] [UNGA] UN Doc A/RES/70/175.

[46] The UN Special Rapporteur on Torture, Interim Report, October 7, 2013, focused on the revision of these Rules, A/68/295, para (72) called for the replacement of rules 82 and 83 with a provision articulating specific guarantees of equality and non-discrimination for all persons with disabilities. Available at:
www.unodc.org/documents/justice-and-prison-reform/SPECIAL_RAPPORTEUR_EN.pdf

[47] CRPD Committee, *Guidelines on Article 14*, para (18).

[48] CRPD Committee Communication No. 8/2012, CRPD/C/11/D/8/2012.
Available at: http://juris.ohchr.org/search/results

[49] Ibid, para (17).

[50] Ibid, para (18).

of life, including in the health domain.[51] According to the CRPD Committee's *General Comment No. 1*:

> The denial of the legal capacity of persons with disabilities and their detention in institutions against their will, either without their consent or with the consent of a substitute decision-maker .... constitutes arbitrary deprivation of liberty and violates articles 12 and 14 of the Convention.[52]

It is equally important to note that, regarding denial of legal capacity, the CRPD Committee rejects the "status approach" (based on the diagnosis of an impairment), the "outcome approach" (based on the assumption of the negative consequences of a decision), and the "the functional approach" (based on the deficits in decision making skill)[53]. The refusal of the "status approach" means that legal provisions that allow involuntary hospitalization in cases of "suffering" from a "mental disorder" or a "mental illness" does not meet the requirements of the CRP. Indeed, these are cases in which the "disability itself" justifies involuntary commitment .

As we explained above, the rejection of "functional approach" implies leaving out the positions that ground deprivations of liberty in the assessments of decision-making capacity. Finally, the refusal of the "outcome approach" strengthens the arguments against the "dangerousness criteria", rejecting predictions of future harm or risk "as valid grounds for denying the legal capacity of persons with disabilities to refuse involuntary hospitalization or institutionalization"[54].

Article 14 of the CRPD also has a strong relationship with both Art 17 (protection of physical and mental integrity) and Art 25 (principle of free and informed consent to their health care of the person concerned) which, again in connection with Art 12, require that every case of deprivation of liberty concerning persons with disabilities, including persons with psychosocial disabilities, should be protected from non-consensual medical treatment.[55]

Furthermore, the CRPD Committee has remarked that some extended practices during the detention of persons with disabilities — including some kinds of forced medical treatment, isolation and methods of restraint in medical facilities, including physical, chemical and mechanic restrains — "are not consistent with the prohibition of torture

[51] Regarding article 12, see –– Dhanda, A., "Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?," *Syracuse Journal of International Law and Commerce,* 34, 2006–2007, 438–456 and Quinn, G., "An Ideas Paper on Legal Capacity," Consortium on Human Rights and Disability, European Foundation Centre, Brussels, 2009. Available at: http://www.inclusionireland.ie/sites/default/files/attach/basicpage/846/anideaspaperbygerardquinnjune2009.pdf

[52] CRPD Committee, General Comment No. 1: Article 12, para (40).

[53] Ibid, para (15).

[54] *Bakground Note*, para (94).

[55] In its General Comment No. 1, Article 12, paras (21) and (42), the CRPD Committee stated that decisions about medical and psychiatric treatment must be based on the free and informed consent of the person concerned and respect the person's autonomy, will and preferences. The CRPD Committee's *Guidelines on Article 14*, para (10), stated that "Involuntary commitment in mental health facilities carries with it the denial of the person's legal capacity to decide about care, treatment, and admission to a hospital or institution, and therefore violates article 12 in conjunction with article 14".

and other cruel, inhumane or degrading treatment or punishment against persons with disabilities"[56] included within Article 15 of the CRPD. In the opinion of the CRPD Committee:

> [l]ack of accessibility and reasonable accommodation places persons with disabilities in sub-standard conditions of detention [which] are incompatible also with article 17 of the Convention and may constitute a breach of article 15(2).[57]

The CRPD Committee has also stressed the necessity of implementing monitoring and review mechanisms in relation to persons with disabilities deprived of their liberty, in connection with Article 16.3 of the CRPD, so as to prevent all forms of exploitation, violence and abuse.[58]

The CRPD Committee has also underlined the link between article 14 and article 19, which recognizes the right to live independently and be included in the community.[59] In order to realise the full protection of the right to liberty in the context of disability, a policy shift is required – moving away from traditional methods of treating mental health conditions, which legitimise schemes of detention for persons with disabilities, to a public community-based services approach[60] integrated through the design and implementation of de-institutionalisation strategies.[61]

Finally, compliance with the framework of the CRPD requires, according to articles 4.3 and 33.3, the involvement of persons with disabilities and their representative organisations in monitoring the implementation of Art 14.

## IV. LIBERTY AND SECURITY OF PERSONS WITH PSYCHOSOCIAL DISABILITIES IN QATAR

Qatar is an independent sovereign Arab State with a legal system based on a mixture of civil law and Shari'a law – the latter being recognised in Article 12 of the Qatari Constitution[62] as the principal source of legislation. A modernisation strategy, Qatar National Vision 2030, is aimed at renewing and developing the country.[63] Qatar's presence in the international system of human rights protection is relatively recent and the State is still awaiting the ratification of very relevant instruments, among them, the

[56] CRPD Committee's *Guidelines on Article 14*, para (12). The UN Special Rapporteur on Torture in its Reports of 2008 and 2013 also considered that these coercive and non-consensual measures may be deemed torture or ill-treatment.
[57] CRPD Committee, *Guidelines on Article 14*, para (18).
[58] Ibid, para (19).
[59] Ibid, para (9).
[60] Ibid, UN Special Rapporteur on Disability, *Urgent Request to Amend the Human Rights Committee's Draft Version of General Comment No. 35*.
[61] United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court by UN Working Group on Arbitrary Detention [UN Doc A/HRC/30/37], principle 20.
[62] Adopted on June 8, 2004.
[63] General Secretariat for Development Planning, Qatar National Vision 2030. Available at: http://www.mdps.gov.qa/en/qnv/Documents/QNV2030_English_v2.pdf

ICCPR.[64] However, as part of its reform strategy, Qatar signed in 2007, and ratified in 2008, the CRPD without entering any reservations or interpretative declarations.[65] In virtue of this ratification, the CRPD became part of national law in Qatar[66]. Qatar submitted its initial report regarding the application of the CRPD to the Committee on June 2012 and completed its review in September 2015.[67]

As noted by the CRPD Committee, Qatar still views disability from the *perspective of assistencialism* and the medical model, which is a polarizing contrast to the human rights-based approach and the social model advanced by the CRPD.[68] This perspective is enshrined in Qatar's legal system as a whole, and particularly in *Law (Act) No. 2 of 2004 in Respect of People with Special Needs*, [69] and it also inspires the regulation of the right to liberty of persons with disabilities.

The Qatari Constitution in its Article 36 states:

> Personal freedom shall be guaranteed and no person may be arrested, detained, searched, neither may his freedom of residence and mobility be restricted save under the provisions of the law; and no person may be subjected to torture, or any degrading treatment; and torture shall be considered a crime punishable by law.

Though this general Article protects all citizens, including persons with disabilities, some disability-specific deprivations of liberty are permitted in Qatar.

### *(a) Involuntary commitment of persons with psychosocial disabilities in Qatar*

The CRPD Committee, in its Concluding Observations on Qatar's initial Report, expressed concern about "involuntary detention of persons in specialised institutions

[64] Qatar has signaled its intention to ratify this particular covenant and the International Covenant on Economic, Social and Cultural Rights, Report of the Working Group on the Universal Periodic Review: Qatar, June 27, 2014, A/HRC/27/15, para (16). Available at: http://dag.un.org/handle/11176/307320

[65] Qatar also signed the Optional Protocol but it is yet to be ratified.

[66] Article 6 of the Constitution provides that the State shall respect all international charters and conventions to which it is party and strive to implement them all.

[67] All documents pertaining to this process are available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRPD.

[68] CRPD Committee, Observations Concluding on the Initial Report of Qatar, September 2015, CRPD/C/QAT/CO/1, para (7). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fQAT%2fCO%2f1&Lang=en For a general analysis on the challenges faced by Qatar in the implementation of the CRPD, see — Rodríguez del Pozo, P. (et. aliii), "The Convention on the Rights of Persons with Disabilities and Qatar´s domestic legislation", *The Age of Human Rights Journal*, 9, 2017, [1–17].

[69] In this law, persons with disabilities are defined as: "any person with a permanent total or partial disability in any of the senses or in his or her physical ability or in his or her psychological or mental ability to such an extent that his or her opportunity to learn or to undergo rehabilitation or to earn a living is limited" (Article 1). The perspective of specialty, according to the medical model, is also present in other definitions, such as "Special education," "Rehabilitation," and "Special Education Institutes."

on the basis of their impairment as well as the deprivation of liberty based on disability, including intellectual and/or psychosocial disabilities.[70]

The Qatari Government reported that the State "does not have specialised institutions for involuntary detention of persons with disabilities."[71] Despite this comment (although at the time of the CRPD Committee Review Qatar's authorities had not yet drafted legislation regarding the conditions and the formal proceedings for involuntary admission), persons with psychosocial disabilities were in fact involuntarily hospitalised in mental health facilities, without legal basis.

In 2013, Qatar's National Mental Health Strategy 2013–2018 was approved.[72] This Strategy aims to reform the mental health system in order to achieve two main objectives: firstly, to raise public awareness and reduce the stigma associated with mental illness, and secondly to provide the best possible inclusive mental health services for the people.[73] The Strategy requires a shift from the model of care "from patient hospitalised in psychiatric departments" to the model of care lived through community services, and includes among its pledges the drafting of a Mental Health Law to safeguard the human rights of persons with a mental illness.

The 2015 Annual Report of the National Human Rights Committee (hereafter NHRC) on the Situation of Human Rights in the State of Qatar and the Committee Activities stated that "mental disability constitutes the main challenge, as this group is facing social exclusion"[74] and included some specific observations about mental patient conditions. These observations denounced some bad practices with regards to involuntary commitments noting a lack of resources, a scarcity of community services and an absence of a legal framework to address the rights of persons with mental disability. The NHRC's Report also recommended "promptly issuing a law .. [regulating] .. the mental patient`s rights."[75]

This new law, which according to Qatar's National Mental Health Strategy, was to be enacted in December 2015, was finally approved more than a year later. Law No.16 of 2016 on Rights of Patients with Mental Illness[76] (hereafter the Mental Health Law) gives "psychiatric patients" — defined as persons who "suffer from mental or psychosocial

[70] CRPD Committee, Concluding Observations on the Initial Report of Qatar, para (27). Available at: http://www.refworld.org/docid/55eed9fb4.html

[71] Comments Received from the Competent Authorities of the State of Qatar Regarding the Committee's Concluding Observations. Available at: http://disabilitycouncilinternational.org/documents/ConcObv/Qatarcomments.doc

[72] General Secretariat, Supreme Council of Health, 2013, *Qatar's National Mental Health Strategy. Changing Minds, Changing Lives*, 2013–2018. Available at http://nhsq.info/app/media/1166

[73] Sharkey, T., "Mental Health Strategy and Impact Evaluation in Qatar", *BJPsych International*, Volume 14, no. 1, February 2017, [18–21].

[74] *2015 Annual Report of the National Human Rights Committee* (hereafter NHRC) *on the Situation of Human Rights in the State of Qatar and the Committee Activities*, [73].
Available at:
http://www.nhrc-qa.org/wp-content/uploads/2014/01/93621-National-Human-Rights-English.pdf

[75] Ibid, [58].

[76] Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=105416&p_country=QAT

disorders" — specific rights related to being informed about their health condition and their rights;[77] treatment environment,[78] medical treatment[79] and their independence and privacy.[80] And, for the first time, it regulates "involuntary admission" in a mental health institution.

As we explained above, before this legal regulation – and according to Sharia law and Islamic traditions[81] – the involuntary commitment and the involuntary medical treatment of persons with psychosocial disabilities with the approval of their relatives were accepted practices in Qatar. At this point, it is important to note that Quranic and Islamic practice emphasise the provision of care and protection for persons with disabilities as a collective responsibility that extends to all members of family. This view and the usual collaboration of patients' families in the commitment of persons with psychosocial – not perceived as involuntary since the consent of the family existed – had obviated the need for elaborate mental health legislation.

The formal regulation in the Mental Health Law, in many aspects similar to other national laws, is an advancement in comparison to the previous lack of legislation. Indeed, the Law represents a first step towards recognising the human rights implications of the detention of persons with disabilities and an attempt to satisfy due process requirements, fixing criteria for deprivation of liberty and providing some safeguards. However, it has serious deficiencies in the light of the CRPD.

The Mental Health Law provides that "involuntary admission" shall only be permissible where a) the patient presents clear symptoms indicative of a psychiatric disease requiring institutional treatment, and its appears that deterioration of health including psychological condition is probable and imminent b) the symptoms of a psychiatric disease represent a serious and imminent danger to the safety and health of the patient or other people.[82] In both cases, involuntary admission requires the approval of the consultant psychiatrist — a psychiatrist "who is duly licensed by the competent body" to act in this capacity — and notification to be sent to the patient's guardian, the director of the treatment institution and also to the Ministry of Public Health's competent administrative body within 24 hours of admission.

[77] For example, the right to receive an in-depth explanation, in an understandable way, of all rights set out in the Law immediately after being admitted, including the right to file a complaint in accordance with the applicable procedures.

[78] The law establishes, for example, that the patient's individual rights shall be observed by way of providing a health and humanitarian setting that preserves his or her dignity and meets his or her medical and personal rights.

[79] According to the law, the patient shall access the required treatment according to the widely recognized medical standards, shall be provided with the opportunity to be effectively and continuously involved in the treatment process and shall be consulted in all matters related to his or her treatment.

[80] Including the right to be protected from commercial and sexual exploitation, physical and psychological abuse and humiliating treatment in any way.

[81] On Islamic tradition and people with disabilities, see –– GHALY, M., *Islam and Disability. Perspectives in Theory and jurisprudence,* (Routledge, 2010).

[82] Article 6 of *Law No.16 of 2016 on Mental Health*.

This Law also lays down the circumstances in which voluntarily admitted patients can be made to remain in the hospital.[83] In this situation, the treating psychiatrist — the psychiatrist who is in charge of treating and monitoring a psychiatric patient at the institution – can refuse to discharge a patient if they cannot look after themselves due to the nature or degree of their mental disorder, or if the discharge may involve a "serious possibility of immediate or imminent harm to his/her safety, health, life or the safety, health or lives of others".

It is worth mentioning that the admission of legally incompetent patients is considered "voluntary admission" if an application for examination and treatment at the institution is submitted by their guardian.[84] Regarding this issue, Qatar's Civil Code permits the restriction or deprivation of the legal capacity of persons with psychosocial and intellectual disabilities and it establishes a model of substituted decision-making in order to protect their best interests.[85]

Article 7 of the Law on Mental Health establishes that the period of involuntary admission shall be three months, renewable by another similar period in accordance with the requirements of the treatment. According to article 12, the patient or their guardian may complain about decisions regarding involuntary admission to the competent administrative body who shall then mandate a consultant psychiatrist from outside the institution to examine the patient's case. The decision made by the competent body on the complaint shall be deemed a "final" decision.

Chapter VI of the Law on Mental Health (Psychiatric Patient Treatment and Care) seems to assume that voluntarily admitted psychiatric patients can be forced to receive medical treatment.[86] These patients or their guardian, if they are legally incompetent,

[83] Ibid, Article 5.

[84] Ibid, Article 4.

[85] Article 49 of *Law No. 22 of 2004 Promulgating the Civil Code*. As laid down in Article 52 of the *Civil Code* and in Article 190 of the *Law No. 22 of 2006 on Family Law* "persons of no or defective capacity" shall be governed by the provisions of natural or legal guardianship or curatorship as provided for by special laws. The special legal provision governing this matter is *Law No. 40 of 2004 on the Guardianship over Minors' Funds*. Article 33 of this Law is worded as follows: "no person above the age of majority who is subject to a habitual state of madness or insanity, or is unconscious, mentally deranged or an imbecile ... shall be allowed to take charge of his own affairs or to administer his estate." This Law considers "incapacitated" to mean an incompetent minor or an insane, unconscious, or idiotic person. In its general provisions, the Law defines the meaning of "the insane," "the unconscious," "the idiotic," and "the imbecile" and identifies them as persons with psychosocial or intellectual impairments. In Qatar, persons who are incapacitated are subject to a special system of guardianship (Curation or *Qawama*) pursuant to which a third person is appointed to manage the incapacitated person's property and affairs. On the regulation of legal capacity in Qatar, see — Cuenca Gómez, P. (et aliii), "The impact of Article 12 of the Convention on the Rights of Persons with Disabilities in Qatar-s Private Law", *The Age of Human Rights Journal*, 9, 2017, [81-104]. All these civil provisions are also inspired in Shari'a law and medieval Islamic thought and practices. For discussion about legal capacity in Islam Law see; Ali Altaf, M., "Mental Disability in Medieval Hanafī Legalism," *Islamic Studies*, vol. 51(3), 2012, [247-262].

[86] According to Article 19 of *Law No.16 of 2016 on Mental Health*, in cases of voluntarily admitted psychiatric patients, to administer treatment without the approval of the patient shall be permissible if it is necessary "to prevent an imminent deterioration of the physical or psychological condition of the patient, or to prevent a significant danger threatening the life or health of the psychiatric patient or others." The period within which that treatment is taken should not exceed seventy-two hours.

must receive information on any treatment "in terms of medical, psychological, behavioral or electroconvulsive therapy." But if they refrain from taking the prescribed treatment, "the treatment psychiatrist shall be entitled to oblige him/her to take the treatment." In this case, the law provides some safeguards: the revision of treatment once per thirty days at least; the reconsideration of such treatment when the attending psychiatrist makes a fundamental change in the authorised treatment plan; and the necessity of an independent medical assessment if the treatment period exceeds ninety days.[87]

The Law allows the placement of a "psychiatric patient" in an isolation room when it is determined necessary by the attending psychiatrist.[88] It also establishes that the patient may be subject to scientific research, with his or her written approval; or the approval of the guardian, or the competent bodies of the State (if the patient does not have a guardian).[89] Electroconvulsive therapy is permitted, "under general anesthesia" and using a muscle relaxant. Written consent must be obtained from the patients or their guardians, if they are legally incompetent, after providing information about the nature of the treatment, its purpose and its negative effects. The law adds that in cases where an involuntarily admitted "psychiatric patient" or their guardian refuses this treatment, even though it is deemed necessary for their condition, he/she can be forced to receive it after an independent medical evaluation.[90]

The regulation of involuntary admission in the Mental Health Law is contrary to the CRPD Committee's interpretation of the Art 14 since it implies a special regime of deprivation of liberty based on psychosocial disability linked to additional factors (such as the need for treatment or care; protection of the safety, the right to life or the right to health of the patient or of other persons; or the risk of harm to self or others[91]). These justifications for special detention of persons with psychosocial disabilities should be questioned.

In cases where protection of the individual's life or health is required (danger to the person), treatment and support should be provided through less restrictive and more effective means than deprivation of liberty in psychiatric facilities , within the framework of community-based mental health services in line with the requirements of Article 19 of the CRPD.[92]At this point, it is important to note that in Qatar, Hamad Medical Corporation (HMC) has recently launched services to implement the National Strategy

[87] Article 20 of *Law No.16 of 2016 on Mental Health.*
[88] Article 3 *Law No.16 of 2016 on Mental Health.*
[89] Ibid.
[90] Ibid, Article 21.
[91] Ibid, Articles 5 and 6.
[92] Although in Qatar there are several services and programs for persons with disabilities, they are designed from the point of view of assistencialism rather than the perspective of independent living, and they are not enough to ensure that persons with disabilities can choose where and with whom they wish to live. The CRPD Committee in its *Concluding Observations on the Initial Report of Qatar*, para (37) expressed its concern "about the absence of a strategy to promote the rights of persons with disabilities to live independently and be included in the community and the lack of systematic provision of information by the State party to persons with disabilities and their families on how to claim support services and assistance to which they are entitled".

on Mental Health,[93] focused on in-home, residential and community support. The next stage, involving the creation of a network of community-based specialised mental health centers and the implementation of a new policy of mental health home care, also aims to improve community mental health care facilities.

As we explained above, cases involving potential danger to others should be addressed through the criminal justice system which implies the application of stronger safeguards. Moreover, according to the CRPD procedural accommodations should be adopted in order to ensure the effective participation of persons with psychosocial disabilities during judicial proceedings. Obviously, if the standard of "danger to others" is accepted as a valid ground for imposing preemptive detention — something problematic from the point of view of the principles of the rule of law — it should be applied to all persons with and without disabilities in equal measure.

From our exposition of the Mental Health Law it is quite clear that some of its provisions violate Articles 12 (equal legal capacity), 17 (protection of physical and mental integrity) and 25 (principle of free and informed consent of the person concerned for health care) as they allow substituted decision-making and do not adequately protect the interests of persons with psychosocial disabilities surrounding non-consensual medical treatment. Qatar should also review this regulation in order to ensure that persons with psychosocial disabilities can make their own decisions — with whatever support they may require — concerning their health and care. With respect to this issue, some current policies of the Hamad Medical Corporation, such as the Policy on Informed Consent (CL 7226) and the Policy on the Care of the Vulnerable Patient Population (Policy CL 7221), that refer explicitly to "patients with emotional or mental illness," may be interpreted in the light of the CRPD, incorporating assistance mechanisms in mental health decision-making until the necessary (and complex) legal reform — that requires the modification of the general framework on legal capacity — has been undertaken.

The coercive measures included in the Mental Health Law regarding involuntary admission are incompatible with Art 17 of the CRPD. Nonconsensual electroconvulsive therapy and scientific research represent a breach of article 15 which prohibits torture and inhuman or degrading treatments. These practices should be prohibited in order to respect the dignity of persons with psychosocial disabilities.

As discussed above, the Mental Health Law imposes procedural safeguards on involuntary commitment and forced medical treatment, eg the authorisation and supervision of the competent administrative body and compulsory expert medical assessment. However, judicial control and independent monitoring are not mentioned. Regarding the first issue, it is fundamentally important to stress that should decisions on involuntary admission be judicially appealed, persons with psychosocial disabilities would face barriers to accessing the justice system given the requirement of possessing

[93] Available at: https://www.hamad.qa/EN/hospitals-and-services/Rumailah-Hospital/Hospital-Services/Clinical%20Departments/Pages/Department-of-Psychiatry.aspx.

legal capacity to take part in judicial proceedings[94] and the lack of accessibility measures and reasonable accommodations.[95]

With regard to independent monitoring, according to Law No. 10 of 2002 on the Public Prosecution, in theory in Qatar prosecutors have competence to monitor mental health facilities by conducting periodic and random visits as well as receiving complaints. The NHRC also conducts field visits to mental health facilities to monitor human rights compliance. However, these mechanisms seem insufficient, as found by the Committee against Torture who has expressed its concern about the lack of systematic and effective monitoring of all places of deprivation of liberty in Qatar by national and international bodies. Thus, it has recommended: ensuring that fully independent monitoring of all places used for deprivation of liberty, including psychiatric facilities, as well as unannounced visits, takes place on a regular basis; enabling effective follow-up on the outcome of such systematic monitoring in order to prevent torture and other cruel, inhuman or degrading treatment or punishment; strengthening the mandate and resources of the NHRC and other national monitoring mechanisms; accepting monitoring of places of detention by non-governmental organizations and relevant international mechanisms; and the ratification of the Optional Protocol to the Convention against Torture as soon as possible.[96]

The implementation of these observations is crucial to complying with the requirements of Article 16.3 of the CRPD. On a positive note, with regards to the content of Article 16 of the CRPD, the Mental Health Law introduces some penalties surrounding abuse or neglect by medical staff and establishing four separate new crimes prohibiting the mistreatment of patients with "mental illness."[97]

Another deficiency of the Qatari framework regarding the right to liberty and security of persons with disabilities, including persons with psychosocial disabilities, is the lack of sectorial legislation regulating psychiatric care institutions and residential facilities (conditions to admission, rights of the users and monitoring, among other issues).[98]

*(b) Deprivation of liberty of persons with psychosocial disabilities in Qatar's criminal justice system*

In the criminal context, the Qatari justice system, as in the case of other frameworks, deems psychosocial and intellectual disabilities to be justification for total or partial

[94] *Law No. 13 of 1990 Civil and Commercial Procedure Law.*

[95] The CRPD Committee in its *Concluding Observations on the Initial Report of Qatar*, para (25) expressed its concern "about the lack of accessibility to the Qatari justice system, including legal aid and assistance, sign language interpreters in court rooms, as well as procedural accommodations and programmes specifically designed to provide assistance to persons with disabilities in the justice sector".

[96] Committee against Torture*, Concluding Observations on Second Periodical Report of Qatar*, 2012, CAT/C/QAT/CO/2, para (15). Available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsvozOgiFOpniYolYH2kyd5sA%2FJDRmUyncxHFfiqcb0XKKsBfp0Oi3ELvjS%2FsU%2B%2FYgjLv5EaHG9GZZH%2F87V0y4OpEzVDIvMT8Xs9mqErmWIM1 (last accessed June 3, 2017).

[97] Articles 27 and 28 of *Law No.16 of 2016 on Mental Health.*

[98] Just recently, Qatar has approved a Law regulating childcare services (*Law No. 1 of 2014 on regulating nurseries, day care centers, play schools and similar facilities*).

exemption from criminal liability. Article 54 of Law No. 11 of 2004 Issuing the Penal Code states that:

> Nothing is an offence which is done by a person who, at the time of committing the offence, in a state of unconsciousness or loss of reason or volition due to insanity or infirmity of mind or because he is in a state of intoxication or under the influence of drugs resulting from the consumption of intoxicating or narcotic substances given to him against his will or without his knowledge or due to any other reason which leads one to believe that he has lost his reason or volition is not criminally liable.

According to this law, if "madness" or "mental defect" leads to "only deficiency or weakness in consciousness or in capacity when the offence is committed, it shall be considered an extenuating excuse."

This regulation should be reviewed to define in general, neutral and contemporary terms, in relation to disability and impairments, the circumstances in which a person cannot understand the unlawfulness of his or her actions and act according this understanding.

Section 7 of Law No. 23 of 2004 Regarding Promulgating Criminal Procedure Code refers to "Mentally Disabled Suspects" and the Law on Mental Health also includes some provisions referring to this categorization of suspects.
Article 209 of the Criminal Procedure Code sets out that if it is necessary to examine the condition of the suspect who is suffering from "mental disability or serious mental illness," the public prosecution, or the court considering the case, "may order to place" the accused under observation "in a specialized therapeutic facility, for successive periods."[99] Article 16 of the Mental Health Law provides that the institution shall examine the person's mental and psychological condition and should draft a report including the following points: the mental and psychological state of the person at the time of the crime in terms of awareness and choice; the mental and psychological state of the person at the time of examination; the proposed treatment plan and any other elements the institution considers important.

If it is proved that the "suspect is unable to defend himself/herself because of mental disability, or serious mental illness" occurring after the crime, Article 210 of the Criminal Procedure Code establishes that the case against him/her or the continuation of the trial "shall be suspended until the reason no longer exists, and the suspect shall, in this case, be placed in a specialised therapeutic facility". Article 211 states that the time spent by the suspect in the therapeutic facility, in accordance with Articles 209 and 210, "shall be deducted from the term of penalty or measures of which he may be adjudged."

These articles permit involuntary transfer to mental health facilities of accused individuals with intellectual and psychological disabilities without determining their participation in the offence and without the requirements that Qatari legislation establishes in case of precautionary detention. Therefore, they represent discrimination on the basis of disability in the context of arrest and detention.

[99] According to the Law, each of these periods must not exceed fifteen days and the total number of days of all periods combined must not exceed forty-five days.

Finally, Article 212 of the Criminal Procedure Code regulates the application of security measures in the Qatari criminal justice system. It provides that, "if an order that there is insufficient evidence to proceed in the criminal case or an acquittal of the suspect is issued" because of "a mental disability or serious mental illness", the authority that issued the order or the judgment "shall order to place the suspect in a therapeutic facility" until it decides to release him on the basis of medical reports. As a result of this article, in the case of suspects with psychosocial and intellectual disabilities, their deprivation of liberty through incarceration in a "therapeutic facility" can be ordered, without proving the participation of the suspect, regardless of the seriousness of the crime or offence and the kind of penalty that would be applicable in the case of criminally responsible suspects. The decision can be made by the judge or by the public prosecution before the trial and the duration of detention in a mental institution is not fixed. The Mental Health Law states that in these cases termination of the placement and home leave shall not be permissible prior to the approval of the judicial body that ordered the measure, and that the placement shall be reconsidered at least once a year.[100] The "psychiatric patients" placed in a mental institution by virtue of a judicial decision shall have all the rights ascribed to other patients in the Mental Health Law.

The Initial Report submitted by Qatar to the CRPD Committee considered that the section of the Criminal Procedure Code on "Mental Suspects" put in place "special guarantees for persons with mental and intellectual disabilities, [stating that] such persons may not be subjected to criminal proceedings or trial."[101] However, and in fact, these provisions provide fewer safeguards and are in breach of Articles 5, 13 and 14 of the CRPD. As noted by the CRPD Committee, they imply disability-specific forms of deprivation of liberty in unequal conditions since persons with intellectual and/or psychosocial disabilities "accused of an offence are declared unfit to stand trial and not given due process."[102] Hence, Qatar should review and amend this regulation in line with the CRPD Committee recommendation:

> [t]hat persons with disabilities accused of an offence are entitled to the provision of procedural accommodations and a fair trial and due process guarantees on an equal basis with others, including the presumption of innocence.[103]

Moreover, the primary response to persons with psychosocial disabilities suspected of committing a crime should not involve deprivation of liberty in therapeutic facilities, but rather the provision of social and community mechanisms and services to promote their inclusion into the community in accordance with Article 19 of the CRPD.

[100] Article 17 of the *Criminal Procedure Code.* In the cases of minor offenses and infractions—that despite their lack of seriousness also imply the deprivation of liberty of the accused —the court or the public prosecution may authorize the competent body to terminate the placement or give home leave without consulting the judicial body.

[101] *Qatar´s Initial Report*, CRPD/QAT/1, July 9, 2014, paras (138), (139) and (140). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FQAT%2F1&Lang=en

[102] CRPD Committee, *Concluding Observations on the Initial Report of Qatar*, para (27).

[103] Ibid, para (28).

Qatari criminal law also provides for the deprivation of liberty of victims of crime with intellectual and psychosocial disabilities in some cases. According to the section of the Criminal Procedure Code (Protection of Minor and Mentally Disabled Victims), public prosecution or the court considering the case, may order that the victims of crime "with mental disabilities" be put in a therapeutic facility while their case is being resolved. Although, again, Qatar's initial Report considered this provision to be a special guarantee for persons with disabilities,[104] the CRPD Committee also expressed its concern about it.[105] Indeed, though this measure has a protective aim, it is not compliant with the CRPD, given that it may imply a disproportionate response that deprives persons of their liberty on the basis of disability. In cases of risk of harm to the victim, the response should focus on the perpetrator [106] and, within the CRPD framework when special measures of protection are needed, the will of the victim should be taken into account and support for the expression of their preferences should be provided. Official assistance should be available for these victims and, if in some circumstances the placement in an institution is necessary, the approval of the person concerned must be required. The institution should not have a therapeutic nature, but a protection purpose, in the same way as Qatari Law provides such protection for minors who are victims of crime.

The CRPD does not exempt persons with psychosocial disabilities from the generally applicable powers of the state to arrest and detain persons for violations of criminal law.[107] In these situations, the requirements of paragraph 2 of Article 14 of the CRPD must be followed. According to Law No. 3 of 2009 on the Regulation of Penal and Correctional Institutions, in Qatar all prisons have a health unit that provides special healthcare for inmates with disabilities and attends to various needs in certain circumstances.[108]

Although in Qatar prisoners with disabilities have the same rights as other prisoners, there are no legal measures or binding protocols to ensure the accessibility of facilities, educational programs and services, or the provision of reasonable accommodation and support. It is worth noting that, according to the CRPD, prisoners with psychosocial disabilities retain the right not be medicated against their will. This right is not ensured in Qatar's criminal justice system.[109] As in the case of psychiatric facilities, the monitoring and review of prison conditions must be improved according to the observations of the Committee against Torture, as discussed earlier.

The CRPD Committee in its Concluding Observations on Qatar did not express concerns regarding the detention conditions for persons with disabilities in prisons, however it

[104] *Qatar´s Initial Report*, para (109).
[105] CRPD Committee, *Concluding Observations on the Initial Report of Qatar,* para (27).
[106] Flynn, E.,"Disability, Deprivation of Liberty and Human Rights Norms", [85].
[107] Minkowitz, T., *Why Mental Health Laws Contravene the CRPD*.
[108] *Qatar's Initial Report,* para (117).
[109] For example, Article 355 of the *Criminal Procedure Code* considers the situation of a person serving a custodial sentence who is later affected by a mental disability. In this case, the enforcement of the penalty shall be postponed until recovery, and persons shall be admitted to a hospital, provided that the period they spend in the hospital be deducted from the adjudged penalty term.

focused on the conditions surrounding the deprivation of liberty in deportation and detention centers.[110]

## V. CONCLUSIONS

Article 14 of the CRPD and in particular its requirement that; "the existence of a disability shall in no case justify a deprivation of liberty" represents a big challenge that demands profound changes not only in law and policies, but also in professional practices and in social perceptions.

In Qatar, as with most of the States Parties of the CRPD, persons with psychosocial disabilities are subject to specific instances of deprivation of liberty — in worse conditions and with fewer safeguards in comparison with the general regime applicable to all citizens — which constitute disability-based discrimination prohibited by the CRPD.

As in other States, Qatari regulation of involuntary commitment and security measures reflects the traditional medical model of psychosocial disability that — with beneficial intent — seeks to justify segregation, confinement and compulsion of those labeled as "mentally ill"[111] and promotes prejudice and stereotypes. Indeed, in this approach, persons with psychosocial disabilities are deemed to be either, individuals in need of special protection – largely because of a presumption that they are unable to make informed decisions as to matters regarding their life and health; or dangerous persons who represent such a threat to society, and to the rights of others, that they must be controlled, at time in the extreme – as being the case of detention.

This approach should be replaced by a new and holistic view based on the social model of disability and a human-rights perspective that accords with the CRPD's paradigm. This paradigm requires a shift towards public community-based mental health services. In line with this shift, laws and policies should guarantee that all mental health services provided are based on the free and informed consent of the person concerned; they should ensure access to the necessary support in decision-making; and they should not condone coercive practices and compulsory detention in the field of mental health.

While Qatar's National Mental Health Strategy is fully in accordance with this new approach, the Mental Health Law, the Criminal Procedural Code and other pieces of legislation — in particular laws on legal capacity — need to be reviewed. This review and the full implementation of the paradigm shift in the mental health domain need to be tackled taking into account Qatar's context and culture and with broad public engagement and collaboration.[112] Specifically, the participation of persons with

[110] *Concluding Observations on the Initial Report of Qatar*, paras (35) and (36). The NHRC also denounced the fact that deportation centers are extremely crowded, which affects hygiene and safety standards. See; National Human Rights Committee, *Report of the National Human Rights Committee on the Situation of Human Rights in the State of Qatar and the Committee's Activities during the Year 2014,* [17]. Available at: http://www.nhrc-qa.org/wp-content/uploads/2014/01/en_2014-NHRC-report_finalss2.pdf

[111] Minkowitz, T., *Why Mental Health Laws Contravene the CRPD*, cited at n 5 above.

[112] As promoted by *Qatar's National Mental Health Strategy.*

disabilities should be ensured in coherence with the framework of the CRPD. In order to comply with this obligation, Qatar should, and is invited to, promote, strengthen and empower associations representing the interests of persons with disabilities, including organizations of persons with psychosocial disabilities.[113]

This policy shift will contribute to a culture of change, overcoming the stigma associated with psychosocial disability, as desired by Qatar's National Mental Health Strategy. In any case, raising awareness among key professionals within the mental health domain, and the awareness of society as a whole, is essential to ensure that persons with psychosocial disabilities enjoy their human rights, including their right to liberty, on equal terms.

[113] The CRPD Committee, *Concluding Observations*, para (9), pointed out that in the past there was a lack of consultation both with individuals with disabilities and with independent organizations regarding disability-related policies and the process of implementation of the CRPD. The NHRC has remarked on the lack of a sufficient number of civil society organizations that are concerned with disability issues and the non-existence of specialized associations for certain types of mental disabilities. In particular, it has expressed its concern about the absence of civil society organisations in the mental health field, see –– the 2015 NHRC *Report on the Situation of Human Rights in the State of Qatar,* [75] and [57].