EXTENSIVE VIOLENCE INSTEAD OF INSTITUTIVE PROTECTION

On Police Brutality against Mentally Challenged Individuals

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

The inability of States to effectively protect persons with disabilities can jeopardize their very survival, as a recent incident from the U.S. shows. In September, Linden, a 13 year old boy with Asperger’s Syndrome, was severely injured by police officers. Linden’s mother had called for help in taking him to hospital for a mental anxiety crisis. When the unarmed boy tried to flee, an officer fired eleven shots. Far from being an isolated incident, this occurrence highlights the inaptitude of US-American law enforcement officers in confronting mentally challenging individuals is a severe global problem. Similarly marginalized cases have, among others, occurred in the recent past in South Africa, Israel and Mexico. Although the exact extent of this long neglected problem cannot be determined, the little available data is alarming: 1/500 people with a mental illness were shot dead by US police officer before the courts, such a total of 22% of all people killed in the U.S. in such contexts. In the U.S., such incidents represented the right to life at 42%. Since approximately 10% of the global population live with a mental health disorder and less than 1% with a mental disability, such disproportionately high numbers hint at a structural problem and add to the picture of comprehensive socio-economic discrimination and lack of effective protection measures (see here for a piece on the lack of protection of people with disabilities in the context of the current pandemic).

The Convention on the Rights of Persons with Disabilities (CRPD) was created to eliminate the “profound social disadvantages of persons with disabilities” (Preamble) with the purpose to “promote, protect and ensure the full and equal enjoyment of all human rights and freedoms by all persons with disabilities” (Article 1 CRPD). In order to close existing protection gaps caused by inadequate and long-standing structural discrimination and social disadvantage, drawing up special protective obligations adapted to the needs of persons with disabilities to enable their effective and equal enjoyment of all human rights. It thereby conclusively combats the disabilities, so that the human rights obligations arising under existing treaties do not apply, or they are not applied, or provide a similar protection standard. This is illustrated by the right to life. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to life of every human being. This entails several obligations for law enforcement officers concerning the use of force. As mentally challenged persons are more likely to encounter excessive police force, i.e. because of communication barriers, behavioural patterns deviating from social norms, increased emotional extremes in quantity and intensity and higher vulnerability to forcible measures, States are under an obligation to counterbalance this increased risk by means of special protective measures. This obligation to take appropriate measures is based on Article 6 ICCPR, when it recognized that States parties are under obligation to ensure everyone’s inherent right to life and obliges States parties to take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others. The Human Rights Committee (HRC) connected both instruments in its General Comment 32 on Article 6 ICCPR and Article 10 CRPD, when it recognized that States parties are under an obligation to ensure everyone’s inherent right to equal and effective protection of rights and obligations in civil, political and social and economic realms, including psychological and intellectual disabilities, are entitled to “specific measures of protection so as to ensure their effective enjoyment of the right to life on equal basis with others”, including specific measures “designed to prevent unwanted use of force by law enforcement officers against them” (para. 24). For this end, States parties must ensure that law enforcement officers are capable to engage adequately with mentally challenged persons as provided for in Article 6 ICCPR in conjunction with Article 10 CRPD, specialized awareness and de-escalation training is needed. This obligation is generally foreseen in Article 5(3) CRPD. The concrete implementation of this obligation differs from State to State. While the majority of States do not offer any special training at all and thus clearly neglect their obligations, other States mandate that police officers must undergo specialized training at least on an annual basis. In practice, this means that law enforcement officers must undergo specialized training at least on an annual basis. In practice, this means that law enforcement officers must undergo specialized training at least on an annual basis. In practice, this means that law enforcement officers must undergo specialized training at least on an annual basis.

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Whereas the IPGs provide options that States can adopt to enable victims of unjustified use of force by law enforcement to seek justice, the lack of legal options to identify the use of force in exceptional cases, as well as to provide guidance on the protection rights of law enforcement officers, in Article 6 (ICCP) but above all provides assistance to States in complying with human rights. Such guidance needs to build on and concrete existing legal rules, such as how States should best train their law enforcement officers to prevent unjustified use of force towards mentally challenged individuals. It could also focus on pushing for additional legislation (e.g. restricted right of self-defense) to protect people with disabilities and on how the institutional framework for protection should be strengthened. The shortcomings in the implementation of protective measures vis-à-vis law enforcement officers are not a new phenomenon. Instead, they highlight the structural discrimination and disadvantages persons with disabilities face. The CRPD is the most comprehensive human rights instrument aiming to eliminate inequality, but success and implementation, which is not forthcoming. Further fleshing out the framework of protection for persons with disabilities through formally non-binding instruments appears the most promising solution in garnering state commitment. The recently published Principles on Access to Justice for Persons with Disabilities promises to be an important step in this regard and give hope that more attention will be paid to remedying structural disadvantages persons with disabilities suffer in the sector of justice.

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