

# Our Rights - issue 34, June 2011



**The International Disability  
and Human Rights Network**

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This newsletter can be also be downloaded from the DAA website as text  
(RTF) and PDF versions.



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## **FINAL EDITORIAL COMMENT**

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### **Message from Director of DAA**

Dear Friends,

I am extremely sad to have to tell you that this is our last newsletter. Funding for the Disability Lib project has come to an end, and DAA is finally closing as a working organisation. However, we will be keeping our website going and updating it regularly with news items. This will be done on a voluntary basis and you can use any of the material and resources on it that you find useful.

DAA was started in 1992 because disabled people had little or no information on disability and rights and we knew that information was power and very important in our struggles for equality. It was in 1992 that we produced our first monthly newsletter - in print in those days and sent out to disabled people in 146 countries. An expensive and laborious business. But we have flourished on your communication with us, on exchanging news and experiences, on keeping in touch with each other. Now the internet has made it possible for us to communicate quickly and easily, far more disabled people know about their rights and know how to fight for them. Above all we now have our own Convention.

However, there are still a lot of people - disabled people in particular - who cannot participate in the internet revolution. So we do ask you, if you think any of our information is useful - pass it on to your colleagues who cannot access it, for whatever reason.

I would like to take this opportunity of thanking all those who have worked for DAA in the last three years: Bill Albert for making such a wonderful job of collecting the news items together and editing the newsletter, Eleanor Lisney for managing our website, Face Book and Twitter, Svetlana Kotova for co-training on our Human Rights and Disability courses and my great trustees for all their support and advice. And, above all, I would like to thank you, our readers. We are in this freedom struggle together. It is only through sharing experience, informing each other and networking that we can get justice.

### **Strength in Unity!**

Rachel Hurst Director and Co-founder of DAA

## **Convention**

### **Sign ups - June 2011**

#### **Convention**

- 149 signatories
- 101 ratifications

#### **Optional Protocol**

- 90 signatories
- 61 ratifications

### **Ratifications 101 and 102 and signature 149**

On June 2<sup>nd</sup>, Belize became the 101<sup>st</sup> state to ratify the CRPD. 4 days later Pakistan followed suit.

Also, on June 2<sup>nd</sup>, Papua New Guinea became the 149<sup>th</sup> state to sign the Convention

<http://www.un.org/disabilities/countries.asp?id=166>

[http://ftpapp.app.com.pk/en /index.php?option=com\\_content&task=view&id=141346&Itemid=2](http://ftpapp.app.com.pk/en /index.php?option=com_content&task=view&id=141346&Itemid=2)

## UK

### Reframing Disability



Since mid-February, the Royal College of Physicians has been hosting an exhibition exploring historical portraits of disabled people. The exhibition also includes the voices of 27 disabled participants from across the UK, who came together to discuss the portraits and their own identities and lives.

The exhibition closes on July 8<sup>th</sup> and will then move (July 28<sup>th</sup> to September 29<sup>th</sup>) to Shape, a disabled-person-led arts organization in Kentish Town,

London.

Many of the portraits and the reactions of disabled people to the exhibition can be viewed on line at:

<http://www.rcplondon.ac.uk/museum-and-garden/whats/reframing-disability>

### Police apologise after Pilkington inquiry

Four police officers will face misconduct proceedings over their force's failure to help the family of Fiona Pilkington, who killed herself and her severely disabled daughter in 2007 after years of torment by youths.

An Independent Police Complaints Commission (IPCC) report into the Leicestershire force's dealings with the Pilkington family concluded that the main failure was in not identifying the family as vulnerable, which meant police did not provide a structured,

cohesive response to the prolonged antisocial behaviour they endured.

The IPCC commissioner, Amerdeep Somal, said, "Fiona, her mother, her neighbours and MP had all contacted the police to inform them that she had repeated and justifiable concerns about her family's predicament. Yet, no one person gripped these reports and took charge to strategically manage and oversee what should have been a targeted police response."

The chief constable of Leicestershire police, Simon Cole, said the force "offer our unreserved apologies for whatever extent the force's actions contributed to Fiona's mindset at the time that she and Francecca died. We acknowledge, as we did following the inquest in 2009, that our actions failed to meet the family's needs and in retrospect we would have done things differently."

No one was convicted of a crime, or even arrested before her death, although the identities of the main culprits were known to police and council officials.

<http://www.guardian.co.uk/uk/2011/may/24/fiona-pilkington-police-misconduct-proceedings>

For a disturbing account of social isolation and disability hate crime in the UK, see:

<http://www.guardian.co.uk/society/2011/jun/01/disability-hate-crime-keith-philpott>

## **Disabled people face hostility on public transport.**



Some disabled people have become so terrified of travelling that they are confined to their home, according to Alice Maynard, chair of the leading disability charity Scope.

Alice, a wheelchair user, said commuters shout and swear at her and a personal assistant once or twice a week because they have to give up their seats.

She said: 'I think it is increasing because of the pressures on people, the overcrowding on trains and the general economic climate. If I reminded myself about everything that has been said, I would shut myself inside.'

She revealed that in one case, a commuting father with his daughter who appeared to be five years old, screamed at her: 'Get the f\*\*\* out of here.'

New data from Scope reveals that almost 50 per cent of disabled people face discrimination on their way to and from work.

<http://www.dailymail.co.uk/news/article-2002437/Disabled-terrified-travel-public-transport-rising-abuse-commuters.html>

**Editorial comment.** This article appeared in the Daily Mail, one of the tabloid newspapers whose hostile reporting on disability benefits has contributed to the apparent growing public animosity towards disabled people.

<http://www.daa.org.uk/index.php?mact=Blogs.cntnt01,showentry,0&cntnt01entryid=405&cntnt01returnid=98>

A particularly nasty example appears in the comment section on the Daily Mail website. Mr. Mark B writes: "On trains and the tube I find disabled people a nuisance, they can't help being how they are but it does cause inconvenience on a crowded train or tube having someone in a wheelchair get on and causes delays to people with busy lives, they should get taxis or have carers buy their items or do online shopping and have everything delivered."

## **BBC programme exposes criminal abuse at care home**

On May 31<sup>st</sup>, the BBC screened an extremely disturbing documentary showing the violent abuse suffered by people with learning difficulties at Winterbourne View, a residential institution near Bristol run by Castlebeck. The latter is owned by an off-shore company backed by a group of rich Irish investors

who also own, through another company, 200 additional care homes.

The film showed how staff pinned residents to the floor and forced one into the shower fully dressed and then outside until she shook from cold.

Residents were slapped and taunted, and one was teased about a suicide attempt. Experts told the programme what they had seen amounted to "torture". Four of the staff were arrested after the broadcast.

The Care Quality Commission, that has admitted it did not respond to complaints about what was going on at Winterbourne View, says that unannounced checks would now be carried out at 150 care homes.

<http://www.guardian.co.uk/society/2011/jun/01/panorama-care-home-investigation-inspectors>

The programme can be seen at

<http://www.youtube.com/watch?v=8yuPvUHsx1Y&feature=related>

**Editorial comment:** It is curious that this story has caused shock in the media, when such abuse, and worse, has been evidenced again and again in 'care' institutions in the UK and throughout the world. This is one reason the disability movement has for many years called for such places to be closed down and for people to be supported to live in the community.

An open letter to the Minister for Disabled People from Julie Newman, the acting chair of the United Kingdom Disabled People's Council (UKDPC), asks some searching questions about the current scandal and sets out in full the case why change is urgently needed.

<http://www.ukdpc.net/index.asp?GetPress=TRUE&id=155&sid=76&ssid=0&sssid=0>



## **People with mental health problems hit by changes to welfare system**

In a letter published in the Guardian newspaper on June 1<sup>st</sup>, mental health charities and a senior consultant from the Royal College of Psychiatrists warn that the nature and rapid pace of incapacity benefit cuts is having a devastating and potentially fatal impact on those with mental health problems.

They write that, "We've found that the prospect of incapacity benefit reassessment is causing huge amounts of distress and tragically there have already been cases where people have taken their own life following problems with changes to their benefits."

The test used to assess eligibility for benefit has been shown too crude to identify the challenges faced by people with mental health problems. The process is increasing the pressure on those already suffering high levels of anxiety and stress.

For example, Liz Woollard, 48, who lives with depression and anxiety, failed the test despite two GPs, a psychiatrist and a senior nurse stating she was unable to work.

Following a 54-minute assessment, she was turned down for employment support allowance. The subsequent report stated she "did not appear to be trembling ... sweating ... or making rocking movements".

"It was a couple of weeks before Christmas and I had been out for a Christmas lunch with some friends and they made a lot of that ... They did not have any sympathy or understanding of mental health issues. In that fortnight I had a major depressive episode that left me in bed for three days [but] they virtually brushed over that ... In the written report they didn't mention that – they focused instead on the Christmas lunch I had managed to attend."

She appealed but had to wait 11 months for her case to be heard and the decision overturned. She has now been told that she will have to be reassessed again.

Julie Tipping, from the charity Disability Solutions, said, "It is a constant reassessment process which is just absolutely

relentless. It is almost like they want to assess you to death or reassess you until you can't face it any longer and drop out of the system altogether. It is like a deliberate grinding down process. It is devastating to see."

<http://www.guardian.co.uk/society/2011/may/31/incapacity-benefit-cuts-mental-health>

For the letter see:

<http://www.guardian.co.uk/society/2011/may/31/consequences-benefit-changes-mental-health>

For an account of how ATOS, the company with the government contract for carrying out medical assessments, operates, see:

<http://www.guardian.co.uk/society/2011/may/31/renewed-concern-atos-medical-assessments?intcmp=239>

**Editorial comment:** Liz Wollard's experience points to the casual rough treatment meted out by the new assessment system, as well as its apparent total lack of understanding of the complexity of mental health issues. Is whether you are able to go out for Christmas lunch now going to be a standard test for the state of someone's mental health?

As more first-hand accounts emerge of the impact of the new welfare regime, its punitive nature is being clearly exposed. By any measure, the Kafkaesque assessment process amounts to 'cruel and unusual punishment' of people who need support, not administrative brutality.

## **Protest by disabled people and pensioners stop traffic in London**



On May 26<sup>th</sup>, pensioners and wheelchair users held up London traffic for almost an hour protesting at government cuts to benefits.

Wheelchair users Sam Brackenbury and Daniel Estermann handcuffed themselves

to the back of a double-decker bus in Oxford Circus, while members of the Greater London Pensioners' Association stood in front of the bus holding placards.

The eight demonstrators were eventually moved on by police, but not before drawing a supportive crowd of passers-by and causing a tailback of about 20 buses.

Protesters said they had been brought together by communicating on social media.

A spokesperson for the Department for Work and Pensions said, "We are reforming welfare to make sure that the billions we spend on benefits goes to those who need it and severely disabled people who need support will always get it."

<http://www.bbc.co.uk/news/uk-england-london-13565111>

## **Cuts to housing benefits to hit disabled people**

Last year the government agreed that disabled people could receive the two-bedroom rate of housing benefit to pay for a room to be used by carers.

However, this move has now been nullified as many councils have cut the allowance rate for two-bedroom homes by at least £50-£70 a week, making the situation considerably worse for some disabled people.

It seems areas that are facing the biggest cuts in local housing allowances are major cities, where many disabled people choose to live due to better hospitals, transport and facilities. With the Chancellor of the Exchequer, George Osborne, clawing back £1,765m a year from housing benefit, it is no wonder cities are lowering their local housing allowances.

<http://www.guardian.co.uk/commentisfree/2011/may/27/housing-benefit-cuts-disability>

## **Update: Birmingham social care cuts**

As previously reported, at the end of April, 2011, Birmingham City Council, was told by Mr. Justice Walker, a High Court judge, that it had acted unlawfully when implementing cuts to social care.

He has now (May 20<sup>th</sup>) issued his final judgment, in which he says councils had to take account of people's disabilities, even where that involved treating disabled persons more favourably than others.

Walker said there had been a failure to take proper account of the duty to promote equality under laws on disability and discrimination. He found that, when setting its budget and altering its eligibility policy, Birmingham had not given proper consideration to the impact on disabled people and had failed to adequately consult on its proposals.

The council said it would rerun the consultation and make fresh decisions on adult social care in accordance with the ruling.

Karen Ashton, who represented three of the four families in the case, said, "In cash-strapped times such as these, the public sector must do more to avoid the consequences of cuts falling on those who are least able to bear them. What this case demonstrates is that this may be not only a moral obligation but also a legal one. Local councils, and all other public authorities, must learn this lesson and learn it fast – otherwise there will be many more of these cases coming before the courts."

<http://www.guardian.co.uk/society/2011/may/19/birmingham-council-cut-disabled-care-unlawful>

## **International**

### **China: Government plans to improve education and other services for disabled people**

The State Council unveiled (May 8, 2011) details of a five-year development plan. Over this period the government plans to

offer the country's 83 million disabled citizens 12 years of free education, bolster public services, and offer more benefits to improve their quality of life.

Currently, the government is making efforts to ensure all students have nine years of free education - six years of primary school and three years of junior high.

According to the plan, the government will provide disabled students more financial subsidies to meet their particular needs and gradually institute free education from primary school to high school.

[http://www.chinadaily.com.cn/china/2011-06/08/content\\_12660823.htm](http://www.chinadaily.com.cn/china/2011-06/08/content_12660823.htm)

## **Europe: Institutional imprisonment of disabled people condemned**

The European Disability Forum (EDF) has reasserted its opposition to the institutionalisation of disabled people. This follows the BBC's revelations about the abuse of disabled people in Winterbourne View care home near Bristol in the UK.

Erik Olsen, EDF Executive Member, says: "The institutionalisation of persons with disabilities is not only a problem limited to the UK's care system, this case was merely one example. Our figures suggest that hundreds of thousands of people across the EU are housed in institutions. Further, we have identified that it is in fact a problem to which the EU still contributes financially via the Structural Funds when they are used to refurbish and create new institutions. Mainstreaming the UN Convention is the only way forward ."

The EDF is calling on Member States to stop using EU money to finance institutions. They want the European Commission to ensure that no money is invested in projects aimed at restoring such facilities.

[http://www.edf-feph.org/Page\\_Generale.asp?DocID=13855&thebloc=27505](http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=27505)

**Editorial comment:** The EDF statement, the shocking evidence from the BBC investigative report, the New York Times' story about the rampant abuse found at state-run institutions add to the many similar stories DAA has covered about how institutional care brutalises disabled people. What all these incidents show, beyond argument, is that in a great many instances institutional care leads to gross violations of human rights of the most vulnerable disabled people.

Article 19 of the CRPD is explicit on what needs to be done. It reads:

“States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

Using this provision of the UN Convention, as well as domestic laws against assault and other forms of physical and psychological abuse, disabled people and their allies must shout out against what amounts to the incarceration and torture of people whose only 'crime' is that they are disabled.

## **Ghana: Threat of protests over failure to implement disability law**

Disability rights groups are threatening to march to the Osu Castle and Parliament House in Accra to protest the government's failure to bring in the necessary legislative instrument to implement the 2004 Disability Law. The Law provides for access to public places and equal employment opportunities.

Because the Law is not being used, many disabled people are forced to drop out of school due to lack of physical access to high schools and higher educational institutions.

According to Kofi Asamoah Nti, president of Empowering Ghanaians with Disability, government inaction is helping to create a society of beggars. He says, "I think the only option left now is for us to mobilize ourselves and demonstrate against government's foot dragging on the issue."

<http://news.myjoyonline.com/news/201105/66314.asp>

## **India: Disabled children excluded from school despite legislation**

Although there is the Right to Education Act, which aims to make schooling more inclusive, a survey has found that nearly 150 government and private schools in the state of Andhra Pradesh to be inaccessible.

Though not many government schools refuse admissions, they lack the required facilities. Private schools, on the other hand, refuse admission saying that they cannot take responsibility for disabled children.

<http://www.hindu.com/2011/05/31/stories/2011053159320200.htm>

**Editorial comment:** India ratified the CRDP in 2007.

## **International: WHO's World Report on Disability**

The World Report on Disability, published jointly by the World Health Organization (WHO) and the World Bank on June 9<sup>th</sup>, addresses the need for better research and data on disability. It includes the first update of WHO's disability prevalence estimates for more than thirty years.

The estimate shows that there are over a billion disabled people, about 15% of the world's population. This represents a considerable increase over previous figure of around 10%.

The report also explores current evidence about disability, including on discrimination and barriers, identifies needs and provides an analysis of what works to improve the lives of disabled people in the areas of health, rehabilitation, support services, information, infrastructure, transportation, education and employment.

[http://www.who.int/disabilities/world\\_report/2011/en/index.html](http://www.who.int/disabilities/world_report/2011/en/index.html)

## **Ireland: Little help for disabled parents who have children taken into care**

In the majority of cases brought by Ireland's Health Services Executive against parents with learning difficulties, their children have been removed and taken into care.

Deirdre Carroll, chief executive of Inclusion Ireland, says, "We understand social workers will err on the side of caution if they feel the child may be at risk, but we also know there are very little supports for parents with mild learning difficulties, and often the decision to remove their children is based solely on the fact that they have this mild disability. The system seems to be totally stacked against them."

According to Prof Gerard Quinn, director of the Centre for Disability Law and Policy at the NUI Galway School of Law, "I would argue that to take children from a person with an



intellectual disability, because they have an intellectual disability, is a violation of their human rights. The obligation of the State is to intervene to support a person with disability in achieving their rights, not to intervene to deny them....”

<http://www.irishtimes.com/newspaper/ireland/2011/0601/1224298206233.html>

Editorial comment: Ireland has not ratified the CRPD, although it did sign it in 2007.

### **Jamaica: Long-delayed Disability Act may finally be passed**

More than eleven years since it was first discussed and six years since it was ordered to be drafted, the national Disabilities Act could finally see the light of day by December, with Parliament expected to pass it into law by March next year.

"The purpose of the law will be to promote, protect and facilitate the full and equal employment of all fundamental rights and freedoms for persons with disabilities in the areas of education and training, employment, political office and public life, health care, housing and public transportation," said Labour and Social Security Minister Parnell Charles.

[http://www.jamaicaobserver.com/news/Disabilities-bill-crawls-towards-enactment\\_8905128#ixzz1NwFs4h63](http://www.jamaicaobserver.com/news/Disabilities-bill-crawls-towards-enactment_8905128#ixzz1NwFs4h63)

**Editorial comment:** Jamaica ratified the CRPD in March 2007.

### **The Netherlands: Personal budgets decimated by cuts**

Citing the need to reduce spending, the government is removing personal budgets from 90% of disabled people (117,000) who have been organising their own support.

From 2014, only people classified as needing residential care will be eligible for a personal care budget, which is used to help them live independently.

'We have to limit the personal care budget to those who really need it. The system cannot continue as it is,' said prime minister Mark Rutte.

According to Agnes Wolbert, an opposition Labour member of parliament, 'The cabinet is destroying in a couple of years something which has taken 20 years to build up ... (this is) turning the clock back to the time that people went to a nursing home when they reached 65.'

The cuts have been agreed between the minority government and alliance partner PVV, which supports efforts to cut spending in return for tougher immigration controls.

<http://enil.eu/>

## **Somalia: People with mental health problems held in chains**

Partly because of the impact of two decades of war, the World Health Organization (WHO) estimates that one in three Somalis have suffered from some kind of mental illness, a rate that is among the highest in the world.



A WHO report found that the country has only three psychiatrists and no psychologists working at its five main mental health facilities. As a result, some Somalis have been chained up in mental wards for as long as eight years. At one

mental health facility, almost 50 percent of patients were chained. At other clinics, doctors recite the Quran to patients, hoping it will improve their condition.

<http://www.sify.com/news/kept-in-chains-mental-illness-rampant-in-somalia-news-health-lfvq4sfedic.html>

## **USA: 'Shock school' director forced out**

Matthew Israel (78), founder and director of the Judge Rotenberg Center, where disabled youngsters are punished with electric shocks, has been forced to quit the centre and to serve five years' probation.

These moves were the result of a plea bargain he made after being charged with misleading a grand jury and destroying evidence in relation to an incident in 2007 in which two disabled children were subjected to dozens of electrical shocks for no reason. One of the children was given 77 shocks over three hours.

The terms of the deal struck between Israel and the prosecutors require the school to introduce additional monitoring to prevent a similar lapse of security happening again. But the shocks themselves can continue.

Laurie Ahern, of Disability Rights International, which has been a persistent critic of the school, said that without an end to the shocks Israel's departure would be irrelevant. "I don't see any radical change at the moment."

Despite the negative publicity directed at him, Israel managed to keep operating for 40 years partly because he had the vociferous support of parents of children with autism at the school.

<http://www.guardian.co.uk/world/2011/may/25/electric-shock-autism-treatment-school>

For other in-depth reports on the Judge Rotenberg Center, see: [http://www.daa.org.uk/index.php?mact=Blogs,cntnt01,showentry\\_0&cntnt01entryid=147&cntnt01returnid=98](http://www.daa.org.uk/index.php?mact=Blogs,cntnt01,showentry_0&cntnt01entryid=147&cntnt01returnid=98)

## **USA: Cruel but usual treatment at New York residential institutions**



In March, 2011, the New York Times published a devastating exposé of conditions in the state's residential institutions for disabled people. Now they have written a related story about the 2007 death of 13-year-old disabled boy, Jonathan Cary. He was slowly asphyxiated in the back of a van by an employee of the Oswald D. Heck Developmental Center near Albany. A fellow worker watched from the driver's seat, but did not intervene.

The man convicted of Jonathan's manslaughter had a criminal conviction for selling drugs and had worked 15 days without a break. The driver had been fired from four different private providers of services for people with learning difficulties before the state hired him.

Unfortunately, such circumstances seem to be common throughout the state's system. According to the Times, those managing the homes, '...have tolerated physical and psychological abuse, knowingly hired unqualified workers, ignored complaints by whistle-blowers and failed to credibly investigate cases of abuse and neglect...'

Furthermore, many complaints have been made that the agency charged with regulating the 'homes', the Office for People With Developmental Disabilities, does not take complaints seriously or curtail the abuse of residents.

Despite 40 years of trying to end institutional care, officials have argued that they need a place to house the most frail or physically unruly residents. The Times points out there is also big money at stake. \$1.8m per year is provided by the federal and state government for each of the 1300 residents housed in the New York's nine large institutions for people with learning difficulties

The present state administration forced the removal of the director of the Commission on Quality of Care and Advocacy for Persons With Disabilities, has said it is moving to further de-emphasize institutional care and will close some of the nine facilities.

<http://www.nytimes.com/2011/06/06/nyregion/boys-death-highlights-crisis-in-homes-for-disabled.html?pagewanted=1&r=4&hp>

The original report is available at:

<http://www.nytimes.com/2011/03/13/nyregion/13homes.html>

## **USA: Worker at residential institution arrested for sexual abuse**

Orlando Baez, a care worker, admitted to the sexual abuse of a 26-year-old woman with mental health problems living at Hillandale, a residential facility in Pasco County, Florida. This marks the second time an employee has been arrested for sexually molesting vulnerable residents under their care.

The arrest was the latest in a series of abuse cases at the facility, where caretakers have been caught forcing residents into locked closets, doping them with powerful tranquilizers and physically restraining them using violent techniques.

Hillandale was profiled in a Miami Herald series in May, showing how state regulators have allowed scores of troubled homes to remain open, despite dangerous and decrepit conditions.

For example, Hillandale was among 418 homes cited since 2002 for failing to watch over their residents properly. In addition, the home was among 1,107 institutions caught by regulators resorting to illegal restraints to control residents during the same period.

<http://www.miamiherald.com/2011/05/27/2239248/caretaker-charged-with-sex-abuse.html>

For the full Miami Herald report, 'Neglected to Death', on care homes, see:

<http://www.miamiherald.com/2011/05/04/2201715/at-homes-for-the-mentally-ill.html>

## **USA: Judge rejects government case against residential institution for people with learning difficulties**

District Court Judge Leon Holmes has dismissed most of the claims made by the U.S. Department of Justice that the 500 disabled residents of the Conway Human Development Center (CHDC) in Arkansas were subjected to abuse and neglect, poor medical care, inadequate schooling and were not given the option to live in the community, all in violation of federal law.

The federal government alleged that, “Hundreds of individuals are needlessly institutionalized at CHDC. The vast majority of these individuals were first admitted to CHDC as children several decades ago. ....Once admitted to CHDC, residents are likely to die at a very young age compared to residents in similar institutions. In fact, a CHDC resident is more likely to die than be discharged to a more integrated setting. The evidence also shows that CHDC fails to properly administer and monitor powerful psychotropic medications. There is also substantial evidence that CHDC inappropriately and excessively relies on severely restrictive, outdated types of restraints to control its residents.”

One of the more disturbing issues raised was the growing number of children being housed at CHDC, together with the state’s plans to increase the capacity at its institutional facilities. It is also noted that Arkansas ranks second to last among the fifty states and the District of Columbia for supporting community-inclusive lives for individuals with learning difficulties who receive Medicaid- funded services.

Although the case presented by the Department of Justice appears to be very strong, the judge said that evidence presented at trial did not support the department’s claims. There is no indication whether the Department will appeal the decision.

It is significant, with respect to the outcome of the case, that at the beginning of his judgement Holmes pointed out, “Most lawsuits are brought by persons who believe that their rights have been violated. Not this one. Thus, the United States is in the odd position of asserting that certain persons’ rights have

been and are being violated while those persons — through their parents and guardians — disagree.”

<http://www.todaysthv.com/news/story.aspx?storyid=160442>

For the case presented by the Department of Justice, see:  
<http://showtime.arkansasonline.com/e2/news/documents/2010/03/09/memoformotion.pdf>

For the final judgement see:  
[http://www.are.uscourts.gov/pdfdocs/PublicNotice/4\\_09\\_cv\\_00033Order.pdf](http://www.are.uscourts.gov/pdfdocs/PublicNotice/4_09_cv_00033Order.pdf)

**Editorial comment:** The Arkansas case is but one of many brought by the US Justice Department to protect people in these institutions throughout the country and to force states, in line with the Americans with Disabilities Act, to support people to live in the community. This is encouraging. What is not so encouraging, although not surprising, is the strong opposition to this move by parents and guardians, who apparently feel that their sons, daughters or wards are safer living in an institution such as CHDC.

Finally, although there is no suggestion that he has acted improperly in this case, the judge, nominated by George W. Bush, does hold extremely controversial views. For example, he has said that wives should be subordinate to their husbands, that pro choice Americans are the moral equivalent of Nazis, and that the woman’s movement is to blame for abortion, artificial contraception and gay rights. More significantly in the case against the state-run CHDC, Judge Holmes appears to support state rights against ‘intrusion’ by the federal government. For example, he has previously argued that the federal government lacked the authority to desegregate public schools by judicial fiat as they famously did in Little Rock in 1957, following the landmark Supreme Court decision in Brown vs. Board of Education.

<http://friendsofjustice.wordpress.com/2008/05/13/alvin-clay-5-who-judges-the-judges/>

**USA: Law suit to stop cuts to in-home support for disabled people**

In North Carolina advocates have filed a federal class-action lawsuit seeking to block the state from cutting in-home care services to 4,000 disabled people who need extensive assistance to remain at home and out of an institution.

"People with disabilities have a legal right to live in the community when that placement can be reasonably accommodated," said Vicki Smith, the executive director of Disability Rights North Carolina. "The state is violating federal law by deciding to pay for a service for people with disabilities living in institutional settings and not pay for the same service for people with disabilities living in the community."

The Americans With Disabilities Act and the 1990 U.S. Supreme Court decision in *Olmstead v. L.C.* mandate that long-term care be provided in the setting most appropriate to the needs of disabled people.

<http://www.newsobserver.com/2011/06/01/1239663/suit-seeks-to-stop-cuts-in-home.html#ixzz1O9u7VDZJ>

## **USA: Disabled mother fights for custody of her child**

Patti Flynn, a disabled mother of two from St. Louis, is engaged in a court battle over the custody of her second child. The father is seeking exclusive control on the grounds that she will not be able to deal with the child's emotional and educational needs.

Flynn's lawyer says she has had psychological and physiological testing by experts to prove she is a capable mother. They will present their evidence in court because it looks like the case is headed to trial. He says it's a civil rights issue, that if she is assessed to be a competent and loving parent, she should not have to miss out on raising her child simply because she is disabled.

The Missouri Legislature has passed a new law protecting the rights of disabled parents from state child protective services. It states that children cannot be removed from their parent's home solely because they are disabled unless there is a direct threat



to the safety and welfare of the child.

The legislation arose after a case in Kansas City where a newborn was temporarily removed from the custody of two blind parents.

<http://www.newsobserver.com/2011/05/23/1218274/dirty-laundry-disabled-mom-fights.html>

## **USA: Budget cuts unfairly target disabled people**

The state of Illinois is planning deep cuts to independent living support for disabled people. This is being done to help balance the state's \$13 billion deficit.

The governor's proposal, one of three possible budgets being considered (from the governor, the state's senate and house of representatives), would spend \$30 million on state institutions and cut community-based services by \$76.3 million. This could happen despite the numerous studies that show community services are safer, more effective and efficient. For example, four people can be served in a community setting for every one person in an institution.

All three competing budgets deepen the already weakened services for disabled people and do nothing to address the 21,000 people on the waiting list.

**Editorial comment:** Similar cuts are being imposed throughout the USA, mirroring what is happening in the UK and Ireland, as well as the rest of Europe.

It is obscene that the while those working in the taxpayer-bailed-out financial sector, directly responsible for the deep and ongoing economic crises, are seeing their profits and incomes rising sharply, disabled and older people, as well as many others, are being left to pick up the bill.

An illustrative cartoon would show a picture window of an exclusive restaurant. Inside are tuxedoed fat cats lounging around a table loaded with food and wine. Outside in the nighttime rain and looking in is a crowd of people dressed in rags being presented with the check for the meal by a disdainful

headwaiter. That headwaiter is the state.

[http://www.chicagotribune.com/news/opinion/letters/chic-110526paulauski\\_briefs,0,4468351.story](http://www.chicagotribune.com/news/opinion/letters/chic-110526paulauski_briefs,0,4468351.story)

## Final editorial comment



As our reports have shown, activism by disabled people has led to many dramatic changes, including most significantly, the UN Convention, now being used by DPOs throughout the world to focus and support our demands for full and meaningful human rights.

Unfortunately, as our reports have also shown, those rights are still widely violated. For example, too many disabled people remain imprisoned in institutions and genetic determinism and eugenic thinking as well as disability hate crime are on the rise.

Furthermore, poverty and social marginalisation remain the lot of most disabled people and many of our gains, such as the right to independent living, are being eroded by governments' floundering responses to the global financial crisis.

The information gathered in Our Rights has demonstrated that the UN Convention is but a first step on the long and difficult road ahead before we, as disabled people, are genuinely embraced as '... human beings born free and equal in dignity and rights'.

**“Disability is not about being brave, it’s about being organised.” Ian Dury**



Bill Albert, Editor

