

Urgent Appeal

to

- Special Rapporteur on the rights of persons with disabilities;
- Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health;
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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I. Information concerning the allegation

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¹ Korean Disability Forum(KDF) is an umbrella organization which has been worked for disability-inclusive SDGs and implementation of UNCRPD since 2012.

² MINBYUN – Lawyers for a Democratic Society is an NGO with special consultative status with the UN ECOSOC which strives to advocate for basic human rights and development of democracy in Korea through litigation, research and various advocacy activities since 1988.

II. Background

1. There are 117 people with learning disabilities living at the Shina Rehabilitation Center (hereinafter "Shinawon") in Songpa-gu, Seoul, Republic of Korea. As of December 29, 2020, 47 residents were confirmed with COVID-19, but only 3 were transferred to hospitals, while 44 residents with COVID-19 are still remain in Shinawon with non-confirmed residents.
2. The Korea Central Disaster and Safety Countermeasures Headquarters (hereinafter "CDSCHQ") is consistent with 'cohort isolation (collective isolation)' as a countermeasure against COVID-19 infections in residential institutions such as Shinawon and nursing homes. The 'cohort isolation' measure is seriously concerning as it not only poses a possibility for further mass cluster infection inside the institution but also lacks medical treatment for the residents with disabilities with COVID-19. In particular, when implemented in the absence of medical professionals, the cohort isolation measure is not in compliance with the government guidelines on COVID-19 while only adding the number of confirmed COVID-19 patients. Though some of the confirmed patients are transferred to hospital, all residents of the institution are in urgent need of moving out of Shinawon immediately where they could isolate themselves individually to prevent further infections, as they have lived in the institution with the confirmed residents.
3. This was a foreseen tragedy. The government previously claimed that it successfully controlled the spread of the novel virus in institutions by implementing the "preventive cohort isolation" measures. The Shinawon case, however, clearly proves that the mass infection is inevitable in institutions with such countermeasures; both 'institution' and 'cohort isolation' are the core factors of mass cluster infection.

III. Mass confinement in Shinawon

A. Mass cluster infection due to 'cohort isolation'

4. As of December 29, 2020, 117 persons with developmental disabilities reside in Shinawon and 47 of them have been confirmed with COVID-19, but remain in the same institution with other non-confirmed residents. In contrast, the Korean government transfers those confirmed with COVID-19 who live in the community to hospitals or other facilities to quarantine themselves, separated from their housemates. Shinawon consists of three buildings, but it is yet to be disclosed how the confirmed and non-confirmed residents are separated.
5. (Omitted)
6. Some of the residents with COVID-19 virus are still quarantined in the Shinawon without adequate medical care, and other residents without the virus are also locked in the Shinawon without sufficient information due to the 'cohort isolation' measure of the government. The number of confirmed cases has been increasing, from five (2 residents and 3 staff) on December 25 to sixty-five on December 31, 2020, according to the report by the Seoul Metropolitan City. There is a serious concern about the spread of additional mass cluster infections in this institution with more than one-hundred residents.

Table 1. Total number of confirmed cases related to Shinawon³

Dec. 27	Dec. 28	Dec. 29	Dec. 30	Dec. 31
40 (+35)	50 (+10)	60 (+9)	61 (+1)	65 (+4)

(Source: Seoul Metropolitan Government, 2020)

B. Disconnection from the outside

7. The residents in Shinawon are blocked from communicating with the outside. EMPATHY-the Women with Disabilities, one of the member organizations of the KDF, has contacted several residents in Shinawon through cell phone or social networks, as the organization has implemented a deinstitutionalization program with them. However, since its press conference on December 29 to publicize the current COVID-19 situation of Shinawon and to urge emergency deinstitutionalization, the DPO has not been able to communicate with the residents until now (January 4, 2021).
8. (Omitted)
9. (Omitted)
10. (Omitted)

C. Closure of information

11. On December 26, 2020, EMPATHY found that COVID-19 confirmed cases occurred at an institution for persons with disabilities located in Songpa-gu, Seoul, Korea. However, this was not learned from the official announcement of the Seoul Metropolitan City Government but through the network of Independent living centers for the disabled in Seoul. EMPATHY demanded clear information to the Seoul Metropolitan Government, fearing that the institution could be Shinawon. EMPATHY was only able to check the status of the COVID-19 in the institution by (unofficial source).
12. Since then, the Seoul Metropolitan Government has not announced clear information including the total number of confirmed cases, the number of the confirmed residents and staff, the status of self-isolation, and the status of hospital transportation, etc. After constant demand and consultation, DPOs were able to identify that 47 of the 117 residents at Shinawon were confirmed with COVID-19 on December 29, 2020. From 27th to 31st December 2020, the Seoul Metropolitan Government has announced the total number of COVID-19 confirmed patients related to Shinawon, but other information such as the number of persons with disabilities out of the total confirmed cases from the institution, the number of people

³ Press releases of Seoul Metropolitan Government (*in Korean*), Dec. 27, https://www.seoul.go.kr/news/news_report.do#view/330791; Dec. 28, https://www.seoul.go.kr/news/news_report.do#view/330827; Dec. 29, https://www.seoul.go.kr/news/news_report.do#view/330894; Dec. 30, https://www.seoul.go.kr/news/news_report.do#view/330978; Dec. 31, https://www.seoul.go.kr/news/news_report.do#view/331074 (last visited on January 4, 2021).

transferred to outside quarantine facilities for having close contact with confirmed patients, and plans for the persons still inside the institution has not been transparently released nor updated since December 29, 2020.

13. What is worse is that the information is not only closed for the DPOs outside, but also for the residents inside the institution. Persons with disabilities in Shinawon are locked up without sufficient information or explanation about the situation they are in. (Omitted)

IV. Relevant laws and alleged violations

A. Violation of right to health

14. The Republic of Korea is a member of the UN Human Rights Council and a party to most of the core international human rights treaties including the International Covenant on Economic, Social and Cultural Rights (ICESCR, ratified in 1990) and the Convention on the Rights of Persons with Disabilities (CRPD, ratified in 2008). Article 12(2)(c) of the ICESCR stipulates the States Parties' obligation to prevent, treat and control epidemic, endemic, occupational and other diseases. Also, article 12(2)(d) requires the States Parties to create "conditions which would assure to all medical service and medical attention in the event of sickness." Furthermore, in its general comment no. 14 on article 12 (E/C.12/2000/4), the Committee on Economic, Social and Cultural Rights stated that States Parties "must guarantee that health-related goods and health care services and facilities meet four basic elements: availability, accessibility, acceptability and quality" (para. 8). Article 25 of the CRPD sets out the States Parties' obligation to "take all appropriate measures to ensure access for persons with disabilities to health services based on the recognition that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability."
15. The South Korean government has been implementing a 'cohort isolation' measure, a complete lockdown of the entire institution of residents and staff with or without symptoms, whenever a COVID-19 infection occurs in residential institutions for persons with disabilities as well as nursing homes for the elderly. Such policy not only puts the institution's residents with disabilities, who are classified as high-risk groups of COVID-19, at serious risk of being infected with the virus but also restricts their right to access health and medical services due to the fact that they live in institutions. Ten months after the start of the pandemic, and having experienced several mass infection clusters from residential institutions and hospitals including the Cheongdo Daenam Hospital incident in February 2020 where all 102 residents of the closed psychiatric ward were infected with eight deaths,⁴ the only response measure by the government is still a 'cohort isolation' of the entire institution. Such 'cohort isolation' as a response measure for infections in institutions by the government severely violates the right to health of persons with disabilities as prescribed in article 12 of the ICESCR and article 25 of the CRPD.

⁴ J. Strother, Korea's institutionalization of disabled people during the COVID-19 era (Part 1), Hankyoreh, December 3, 2020, http://www.hani.co.kr/arti/english_edition/e_national/972680.html (last visited on January 4, 2021).

B. Violation of the right to independent living of persons with disabilities and the CRPD's spirit of deinstitutionalization

16. The need for deinstitutionalization of persons with disabilities living in institutions has long been emphasized since before the outbreak of the COVID-19 pandemic. The pandemic has highlighted its importance particularly in designing the COVID-19 response measures to minimize the risks of infection. Article 19 of CRPD stipulates that persons with disabilities have the equal right to live in the community, with choices equal to others, and that States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right. General comment no. 5 on article 19 of CRPD states that the States Parties shall include the active participation of persons with disabilities in the design and implementation of deinstitutionalization strategies, as well as in the transition to support services in the community (CRPD/C/GC/5, para. 97 (g) (i)). In particular, the Committee on the Rights of Persons with Disabilities stressed in its general comment no. 1 on article 12 of equal recognition before the law that deinstitutionalization must be achieved and legal capacity must be restored to all persons with disabilities in order to comply with the CRPD and to respect the human rights of persons with disabilities (para. 46). In this respect, the government's 'cohort isolation' measure toward residential institutions of persons with disabilities violates article 19 of CRPD by furthering the disconnection and exclusion of persons with disabilities from the community for the purpose of public health. It is also contrary to the CRPD's spirit which calls for deinstitutionalization.

C. Violation of right to access information, right to liberty and security, etc.

17. In its publication in March 2020, the World Health Organization (WHO) recommended reducing crowding to the maximum extent possible and reducing the number of people in psychiatric hospitals by implementing schemes of early discharge, together with provision of adequate support for living in the community.⁵ It also recommended that residents should be able to access information about COVID-19. In this Shinawon case, the government has not provided adequate information on infection status to its residents, their families and disability organizations. Furthermore, it seems that the institution is interrupting the residents' communication with the outside world. 'Cohort isolating' persons with disabilities in residential institutions regardless of having the virus and blocking the residents' communication with the outside world go against the WHO's recommendations and may infringe persons with disabilities' right to access information (article 21), right to access medical facilities (article 9), right to liberty and security of person (article 14), right to adequate standard of living (article 28), among others, as prescribed in CRPD.⁶

V. Response of the Government and its limitation

18. As mentioned above, Seoul Solidarity against Disability Discrimination, Seoul Council of Centers for Independent Living, EMPATHY-Women with Disabilities and other DPOs held a press conference in front of Seoul City Hall on December 29, 2020, urging 'Emergency

⁵ World Health Organization, Disability considerations during the COVID-19 outbreak (WHO/2019-nCoV/Disability/2020.1), March 26, 2020, <https://www.who.int/publications-detail/disability-considerations-during-the-covid-19-outbreak> (last visited on January 4, 2021).

⁶ See AL GTM 7/2020

Deinstitutionalization’ of persons with disabilities in Shinawon⁷. Emphasizing that residents at Shinawon should be evacuated, DPOs demanded the government to (1) abolition of the ‘cohort isolation’ as a COVID-19 response measure for institutions and implement ‘emergency evacuation’ of institutions where COVID-19 confirmed cases occur; (2) establish ‘Emergency Deinstitutionalization’ plan so that the residents who are transferred to facilities or hospitals outside of institutions would not have to go back and be exposed to further risk of infection in the group living setting.

19. Seoul city has publicly promised evacuation of Shinawon and provision of housing for the confirmed/non-confirmed residents, yet only under the permission of CDSCHQ.
20. DPOs have asked the Prime Minister Chung Sye-kyun, as well as the chief of the CDSCHQ, to meet and discuss the abolishment of ‘cohort isolation’ measure and establishment of Emergency deinstitutionalization plan.
21. On December 31, 2020, the Ministry of Health and Welfare announced that “20 of 63 people confirmed with COVID-19 (total number of residents and staff who tested positive for COVID-19 at Shinawon) were transferred to nearby hospitals and the other 43 will be transferred soon.” However, there was no mentioning about a plan for complete evacuation of Shinawon⁸. It means that the residents with disabilities without COVID-19 will continue to remain in the institution under ‘cohort isolation’.
22. Resisting against the government’s COVID-19 response policy which sticks to the ‘cohort isolation’ in spite of the serious concerns over mass-infection, DPOs have held a sit-in protest since December 31, 2020, at Gwanghwamun subway station in Seoul, where the Central Government Complex is located nearby.

VI. Conclusion

23. With regard to above, we request the Special Rapporteurs to pay close attention to the situation of persons with disabilities living in institutions in Korea and around the world, and to swiftly publish a press release or letter to the government considering the urgency of the matter before January 8, 2021.⁹ We specifically ask the Special Rapporteurs to make the following recommendations to the government of the Republic of Korea that the government should:
 - a. abolish ‘cohort isolation’ as a COVID-19 response measure in relation to the virus outbreak in residential institutions and nursing homes

⁷ H. Huh, 45 tents in front of the Seoul City Hall urges emergency deinstitutionalization of Shinawon cluster infection (*in Korean*), BeMinor, December 29, 2020, <https://www.beminor.com/news/articleView.html?idxno=20517> (last visited on January 4, 2021).

⁸ G. Lee, 45 tents again calls for ‘stop cohort isolation of Shinawon’ toward the KCDSCH (*in Korean*), BeMinor, December 31, 2020, <https://www.beminor.com/news/articleView.html?idxno=20527> (last visited on January 4, 2021).

⁹ January 8, 2021 will be the 14th day after the first day of breakout of confirmed cases from Shinawon (December 25, 2020).

- b. implement 'emergency evacuation' measure as a precautionary COVID-19 response measure which provides persons with disabilities in institutions with housing, personal assistance, medical care and other assistance necessary for independent living in the community

24. In order to establish a preventive response of COVID-19 that 'leaves no one behind' in the process of 'building back better', group living setting itself should be reconsidered. Thus, we request the Special Rapporteurs to recommend the Korean government to set out a concrete deinstitutionalization plan so that the residents in institutions would not have to re-enter the institutions, a clear human rights violation setting of living.