

Geneva, 25 November 2015

Oral statement at the eighth session of the Forum on Minority Issues ("Minorities in the Criminal Justice System") of the United Nations Human Rights Council

## **THE CRIMINALIZATION OF AUTISTIC BEHAVIOURS**

Thank you, Mister Chair.

Autistic persons continue to be deprived of liberty based solely on disability because autism is not accepted as what it actually is, namely a lifelong neurological difference that is equally valid. We autistic self-advocates view autism as a distinct culture and identity, and the autistic minority is estimated at seventy million people, one percent of the world's population. Increase autism acceptance, and you will decrease deprivation of liberty of autistic persons. Along with misperceptions about autism and frequent misdiagnosis and a lack of inclusive education, all of which may lead to involuntary mental health detention, the increasing criminalization of autistic behaviours is of particular concern as a reason why autistic persons get caught up in the criminal justice system and subsequently are deprived of liberty in prisons or mental health institutions.

In all those cases, deprivation of liberty is due to autistic persons being judged by non-autistic standards. Autistic behaviours may be misinterpreted as aggressive or threatening, and lead to the criminal prosecution and deprivation of liberty of autistic persons, whether diagnosed, undiagnosed, or misdiagnosed. For instance, an autistic person may not understand what is expected of them during a police control and fail to follow orders. They may dislike being touched and resist arrest and during a subsequent trial avoid eye contact and demonstrate unusual facial expressions, body language, tone of voice, and communication patterns, thus giving the impression of guilt to non-autistic police officers, prosecutors, and judges. This, as well as sensory overload, anxiety, and an apparent lack of empathy may lead to their imprisonment or institutionalization on the basis of their disability, which was not sufficiently recognized by law enforcement authorities.

Autistic detainees may find the legal and bureaucratic obstacles and hurdles involved in challenging their arrest or detention insurmountable. They may struggle to follow judicial proceedings and defend themselves effectively. Mostly, they will not be able to afford resourceful lawyers. In many countries, mental health laws deprive us of legal capacity altogether and thus restrict our access to justice even further. This is not compatible with the Convention on the Rights of Persons with Disabilities and other UN standards. Ours is an often invisible disability. Nevertheless, we require support and reasonable accommodations to exercise our rights before court. Also, disability-related adjustments must be made to account for our particular vulnerability whilst being held in a place of detention.

Action must be taken to ensure that autistic persons are not disadvantaged in interactions with police and court proceedings and that we are not treated unfairly or more harshly because of prevailing prejudice.

Thank you.

Erich Kofmel, President  
Autistic Minority International

## **Background information**

Our NGO, Autistic Minority International, headquartered in Geneva, is the first and only autism self-advocacy organization – run by and for autistic persons – active at the global political level. Autistic Minority International is an associate member of the Conference of NGOs in Consultative Relationship with the United Nations (CoNGO), a member of the NGO Forum for Health, a Geneva-based consortium of organizations committed to promoting human rights and quality care in global health, and a member of UNICEF's Global Partnership on Children with Disabilities (GPcwd) and its Task Force on Child Protection.

In 2007, the United Nations General Assembly declared 2 April World Autism Awareness Day. On that day in 2013, UN Secretary-General Ban Ki-moon wrote: "This international attention is essential to address stigma, lack of awareness and inadequate support structures. Now is the time to work for a more inclusive society, highlight the talents of affected people and ensure opportunities for them to realize their potential."

In 2012, the United Nations General Assembly unanimously adopted resolution 67/82 "Addressing the socioeconomic needs of individuals, families and societies affected by autism spectrum disorders, developmental disorders and associated disabilities". In this resolution, the UN member states recognize "that the full enjoyment by persons with autism spectrum disorders [...] of their human rights and their full participation will result in significant advances in the social and economic development of societies and communities" and stress "the important contribution that non-governmental organizations and other civil society actors can make in promoting human rights for [...] all individuals with autism spectrum disorders [...] and their integration in societies". The GA voices its concern "that persons with autism spectrum disorders [...] continue to face barriers in their participation as equal members of society" and calls this "discrimination" and "a violation of the inherent dignity and worth of the human person".

Autistic Minority International welcomes contact from and is open to collaboration with UN member states, the UN system, the wider NGO community, autism charities run by non-autistics, researchers particularly in the social sciences and international law, the private sector, and individuals. We look forward to interacting with participants in the forum as well as other minority rights stakeholders in the near future.