



**COLECTIVO VIDA
INDEPENDIENTE**
Poder con equidad

Guatemala City, Washington D.C., May 7, 2020

Urgent Appeal: Life-Threatening Institutionalization due to COVID 19 infection at the National Mental Health Hospital “Federico Mora” in Guatemala

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Disability Rights International and the *Colectivo Vida Independiente de Guatemala* appeal to request immediate life-saving protections for people detained at the National Mental Health facility “Federico Mora” (Federico Mora) in Guatemala City, Guatemala. People with disabilities detained at the “Federico Mora” face an imminent risk of sickness and death as a result of the authorities’ reckless exposure of detainees to the spread of the virus COVID-19, the failure to provide medical care, and their continued unlawful and unnecessary detention in the facility.

DRI is aware that at least two people who care directly for people at “Federico Mora” have tested positive for COVID-19. Four nurses and 47 patients are in so-called “quarantine.”¹ But what is called “quarantine” may actually provide no protection as all patients are locked in the facility in close quarters. Given the exposure they have already received and lack of opportunity to socially isolate, large numbers of detainees may have already been infected. Sources at the facility say that people are locked in the residential wards and are not allowed out for medical care. Reports from the press also state that the government will be further exposing detainees by sending people with psychosocial disabilities deported from the United States to Federico Mora – even though these individuals are known to have tested positive for COVID-19. These practices pose an imminent danger to the Federico Mora population and must be stopped. **If protective measures are not taken immediately, a large number of people detained at the facility face exposure, sickness, or death in the coming days.**

¹ Diario La Hora. Available at: Twitter: <https://twitter.com/lahoragt/status/1253053492517879809>.

In 2012, the Inter-American Commission on Human Rights (IACHR) granted the precautionary measure MC-370-12 in favor of the people detained at the “Federico Mora” given the dangerous, violent, unhygienic, and degrading conditions, lack of adequate medical care, and widespread abuse at the facility. These conditions and abuses persist to date and the precautionary measures are still in force. Given the new imminent threat that patients are facing at the “Federico Mora” due to the presence of COVID-19 cases at the institution, DRI and the Colectivo have requested the IACHR to extend the precautionary measures and request the government of Guatemala to take urgent actions to protect the life of this population. The request for the extension of precautionary measures is attached to this brief.

Previous to the current crisis, mental health professionals working at Federico Mora have stated that, according to their own assessment, 75% of detainees have no medical or mental health reason to be detained at the facility. They are placed there because they lack housing in the community or anywhere else to go. Procedures for detention of *all* detainees lack protections required by international law. Guatemalan law places all detainees under the absolute guardianship and control of the institution director – creating a dangerous conflict of interest that denies the right of detainees to complain about abuses. These detentions were, therefore, both unnecessary and illegal *before* the immediate crisis. Given the immediate threats to health and life of all detainees, **DRI calls for the end to arbitrary detention and immediate provision of housing and support in the community for Federico Mora detainees.**

Especially in light of Article 11 of the Convention on the Rights of Persons with Disabilities (CRPD) we call on the Special Rapporteur to demand that the Guatemalan government take immediate action to guarantee the life, safety and protection of the “Federico Mora” patients in the current humanitarian crisis that the world, Guatemala, and the Federico Mora in particular are facing due to the COVID-19 pandemic.

We respectfully request the Rapporteur to call on Guatemala to protect Federico Mora patients from further life-threatening exposure to the virus, ensuring social isolation, and guaranteeing the provision of health care and necessary disability support services. Consistent with the recommendation of UN Human High Commissioner on Human Rights that governments “discharge and release persons with disabilities from institutions and promptly ensure provision of support in the community,” we ask that the Commission call on Guatemala to transfer people now detained at Federico Mora out of the facility. They should be moved into a safe and supported community setting; these measures will require the urgent provision of community-based housing the necessary support and health services in the community in order to be able to do so; and the prevention of the further spread of the COVID-19 virus among the patients of “Federico Mora.”

We are grateful for your assistance and are readily available to provide you any additional information or documentation.

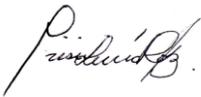
Respectfully,



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THE UNDERSIGNED ORGANIZATIONS AND INDIVIDUALS SUPPORT THIS URGENT APPEAL:

1. Asociación Cuates
2. Asociación de Ciegos para la Cultura y el Deporte – ACCD
3. Asociación de Personas con Discapacidad Productivas – ASODISPRO
4. Alianza Política Sector de Mujeres
5. Asociación de Mujeres Trans en Acción – AMTA
6. Asociación de Sordos de Guatemala – ASORGUA
7. Asociación de Sordos de Suchitepéquez – ASORSUCHI
8. Asociación de Padres y Familias de Personas con Discapacidad de San Lucas Tolimpán – ASOPADIS
9. Asociación en Pro de Niños con Trastorno de Crecimiento y Enfermedades Raras – PROCRECE
10. Asociación para el Avance de las Ciencias Sociales en Guatemala - AVANCSO
11. Asociación para el Desarrollo Legislativo y la Democracia – LEGIS
12. Asociación Somos
13. Asociación Vida
14. Asociación VISIBLES
15. Centro para la Acción Legal en Derechos Humanos – CALDH
16. Colectiva Actoras de Cambio
17. Colectiva ArteSana
18. Colectiva Mujeres Pintando el Mundo
19. Colectivo por los derechos humanos de la diversidad sexual - CODHDISEX
20. Comisión Internacional de Juristas - CIJ
21. Comité Prociegos y Sordos de Guatemala
22. Comunidad Sordos LGBTIQ

23. Disability Action Guatemala
24. Disability Rights Unit, Centre for Human Rights South Africa
25. En-señas Guatemala
26. European Network for Independent Living
27. Fundación Guillermo Toriello
28. Fundación para el Bienestar y el Desarrollo – FUNBIDE
29. Instituto de Estudios Comparados en Ciencias Penales de Guatemala – IECCPG
30. Instituto Inter-Americano Sobre Discapacidad y Desarrollo Inclusivo – IIDDI
31. It gets Better Guatemala
32. Movimiento Cívico por la Inclusión
33. Mujeres con Capacidad de Soñar a Colores
34. Mujeres con Valor Construyendo un Futuro Mejor – MUVACOFUM
35. Mujeres Transformando el Mundo - MTM
36. Organización de Niñez y Grupos Vulnerables – ODISOG
37. Organización de Mujeres Trans - OTRANS
38. Organización para la Diversidad Sexual, la Educación, la Cultura y las Artes - ODISEA
39. Organización Rompiendo Límites Chiquimula
40. Prensa Comunitaria
41. Red de Organizaciones de Personas con Discapacidad de Centroamérica y El Caribe – REDODICEC
42. Red Latinoamericana de Organizaciones No Gubernamentales de Personas con Discapacidad y sus Familias – RIADIS
43. Trickle-Up Guatemala
44. U.S. International Council on Disabilities
45. Validity
46. Maria Alejanra Grotewold, Guatemala
47. Hilda Morales, Guatemala
48. Claudia Estrada, Guatemala
49. Mirna Ramírez, Guatemala

URGENT APPEAL: Life-Threatening Institutionalization due to COVID 19 infection at the National Mental Health Hospital “Federico Mora” in Guatemala

I. FACTS THAT JUSTIFY THE URGENT APPEAL REQUEST

A. QUICK SPREAD OF COVID-19 AND HIGH MORTALITY RATE IN RESIDENTIAL INSTITUTIONS

According to the World Health Organization (WHO), the virus called COVID-19 is an infectious disease that “causes respiratory infections ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).”² The WHO has noted that “[p]eople with disabilities may be at greater

² WHO, “Q&A on coronaviruses (COVID-19)”. Available at: <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

risk of contracting COVID-19.”³ Persons with disabilities detained in residential institutions are at an even greater risk of contracting the virus. In this regard, the UN special rapporteur on the rights of persons with disabilities, Catalina Devandas, has stated that:

“The situation of people with disabilities who are in institutions, psychiatric facilities, and prisons is particularly serious, due to the risk of contamination and the absence of external supervision, a situation that is aggravated by the use of states of emergency due to the health crisis.”⁴

The Inter-American Commission on Human Rights (IACHR), in its Press Release 71/20 noted that people with disabilities who are deprived of liberty in psychiatric hospitals “face a situation of special risk of contagion from COVID-19.”⁵ The Commission stressed that:

“based on the information documented through its various monitoring mechanisms, the Commission has observed that these centers of deprivation of liberty would be characterized by overcrowding, lack of adequate hygiene, negligent medical care, and inadequate food. In this regard, the Commission recalls that States have a special duty to protect persons with disabilities who are deprived of liberty.”⁶

Available information on the spread of COVID-19 confirms that people in residential institutions, and particularly institutionalized people with disabilities, are at increased risk of contracting the virus and dying. In the United States, the country with the highest number of confirmed cases in the region and the world, it’s been confirmed that persons with disabilities in residential institutions have a much higher death rate than the general population. A recent study found that “residents of group homes and similar facilities in New York City and surrounding areas were 5.34 times more likely than the general population to develop Covid-19 and 4.86 times more likely to die from it.”⁷

The simple fact of living in a congregated environment puts anyone at risk. In Europe, a study carried out by International Long-term Care Policy Network (ILPN) and Care Policy and Evaluation Centre (CPEC) at the London School of Economics, and Political Science (LSE)⁸ found that about half of the deaths that occurred in the European Union from the coronavirus happened in the context of residential institutions. According to this study, “[s]napshot data from varying official sources shows that in Italy, Spain, France, Ireland and Belgium between

³ WHO, “Disability considerations during the COVID-19 outbreak”, p. 1. Available at: <https://www.who.int/who-documents-detail/disability-considerations-during-the-covid-19-outbreak>.

⁴ UN News, “Las personas con discapacidad, en riesgo por el coronavirus”. Available at: <https://news.un.org/es/story/2020/03/1471282>.

⁵ IACHR, “En el contexto de la pandemia COVID-19, la CIDH llama a los Estados a garantizar los derechos de las personas con discapacidad”. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2020/071.asp>. See also, IACHR, *Pandemia y Derechos Humanos en las Américas*, p. 7. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/Resolucion-1-20-es.pdf>.

⁶ IACHR, *supra* note 5.

⁷ Danny Hakim, “It’s Hit Our Front Door’: Homes for the Disabled See a Surge of Covid-19”. The New York Times (April 8, 2020). Available at: <https://www.nytimes.com/2020/04/08/nyregion/coronavirus-disabilities-group-homes.html?referringSource=articleShare>.

⁸ LTC, “Mortality associated with COVID-19 outbreaks in care homes: early international evidence”. Available at: https://tccovid.org/2020/04/12/mortality-associated-with-covid-19-outbreaks-in-care-homes-early-international-evidence/?subscribe=success#blog_subscription-3.

42% and 57% of deaths from the virus have been happening in [residential] homes.”⁹ In France, the percentage of deaths among residents of care homes have ranged from 39.2% to 49.4%. In Belgium, as of April 16, there were 4,857 people killed by COVID-19, of whom 69.3% had died from COVID-19 in care homes. In the case of Spain, it was found that COVID-19 infections “affects all the care residences for older people, but also other institutionalized groups with some disability.”¹⁰ In the US, “the number of people living in or connected to nursing homes who have died of the coronavirus to be at least 7,000, far higher than previously known.”¹¹

B. IMMINENT RISK OF DEATH THAT PATIENTS AT THE FEDERICO MORA FACE

All patients at the “Federico Mora” are at imminent risk of contracting COVID-19 due to the inherent characteristics of institutionalization referred to in the previous section. Psychiatric hospitals in particular have been found to be “potential incubators for the virus.”¹² A staff member of the “Federico Mora” told DRI that he is “concerned about the level of risk that staff and patients are at.”¹³

The “Federico Mora” is the only public psychiatric hospital in Guatemala. The hospital employs around 450 people including operational, administrative, medical, and nursing staff. There are 321 patients detained in the institution who are separated into six wards based on their gender, age and clinical profile.¹⁴ The IACHR has noted that at least 75% of the patients do not need to be at the hospital for medical, reasons but they remain there because they have nowhere else to go.¹⁵

DRI is aware that at least two people who work at the “Federico Mora” have tested positive for COVID-19, and that at least four nurses and 47 patients are in quarantine¹⁶. All the patients at the Federico Mora are at imminent risk of contracting COVID-19 and dying given the unsanitary conditions that persist in the hospital; the absence of any adequate medical treatment to deal with the health crisis; the lack of community services to care for

⁹ The Guardian, “Half of coronavirus deaths happen in care homes, data from EU suggests”. The Guardian. Available at: <https://www.theguardian.com/world/2020/apr/13/half-of-coronavirus-deaths-happen-in-care-homes-data-from-eu-suggests>.

¹⁰ Oriol Güell, “Residencias y hospitales concentran los nuevos contagios por coronavirus”. El País (April 11, 2020). Available at: <https://elpais.com/sociedad/2020-04-10/residencias-de-mayores-y-hospitales-acaparan-la-mayoria-de-nuevos-contagios-del-coronavirus.html>.

¹¹ Farah Stockman y others, “*They’re Death Pits’: Virus Claims at Least 7,000 Lives in U.S. Nursing Homes*”. The New York Times (April 17, 2020). Available at: <https://www.nytimes.com/2020/04/17/us/coronavirus-nursing-homes.html>.

¹² Judge David L. Bazelon Center for Mental Health Law, “During the Pandemic, States and Localities Must Decrease the Number of Individuals In Psychiatric Hospitals, By Reducing Admissions and Accelerating Discharges”. Available at: <http://www.bazelon.org/wp-content/uploads/2020/04/4-15-20-BC-psych-hospitals-statement-FINAL.pdf>.

¹³ Quimy de León, “En peligro pacientes y trabajadores del Hospital de Salud Mental “Carlos Federico Mora”. Medium (April 23, 2020). Available at: <https://medium.com/@PrensaComunitar/en-peligro-pacientes-y-trabajadores-del-hospital-de-salud-mental-carlos-federico-mora-f06d5925715e>.

¹⁴ Pía Flores, “Casos positivos en el San Juan de Dios y el Federico Mora: el miedo del personal al COVID-19 (y a cuestionar a sus jefes)”. Nómada GT (April 23, 2020). Available at: <https://nomada.gt/pais/actualidad/casos-positivos-en-el-san-juan-de-dios-y-el-federico-mora-el-miedo-de-los-doctores-al-covid-19-y-a-cuestionar-a-sus-jefes/>.

¹⁵ IACHR, “Situation os Human Rights in Guatemala” (2017), para. 468. Available at: <https://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf>.

¹⁶ Diario La Hora. *Supra* note 1.

patients in a community setting on an equal basis with others; and the inaction of the health authorities in the face of the crisis even though the State has “a heightened responsibility towards this population due to the structural discrimination they experience.”¹⁷ **Given experiences in other countries, it is possible that, if the necessary actions are not taken, a large number of patients detained at the “Federico Mora” will die in the following weeks.**

1. Inadequate and unhygienic conditions persist at the Federico Mora

The IACHR has called on the States to “adapt the conditions of detention of persons deprived of liberty, particularly concerning food, health, sanitation, and quarantine measures to prevent intramural contagion of COVID-19, guaranteeing in particular that all units have medical attention.”¹⁸ However, since 2012, DRI has found inhumane and degrading conditions at the “Federico Mora”, such as overcrowding, unhygienic conditions, lack of medical care and inadequate food. All of these are factors that persist to date at the institution and aggravate the risks of contracting COVID-19.¹⁹

The spread of infectious diseases within the “Federico Mora” is an issue that DRI had already warned about in 2012, when DRI requested precautionary measures to the IACHR -which were granted in November 2012. In this petition, DRI referred to the high number of deaths in the institution due to contagious infections, mainly diarrhea and pneumonia. DRI also warned about negligence and lack of medical care that was reflected in a) the lack of separation between patients with infectious diseases and the rest of the population, leaving the latter at unnecessary risk of contracting these diseases, and b) a large number of patients with dirty clothes covered with their own urine or feces. Regarding presence of feces at the hospital, the WHO has indicated that there have not been reports of fecal-oral transmission of COVID-19. However, “initial investigations suggest the virus may be present in feces in some cases.”²⁰

In 2017, in the report “The situation of human rights in Guatemala”, the IACHR reiterated that the prevailing situation at the “Federico Mora” “reflects the lack of protection of persons with disabilities in Guatemala,”²¹ and mentioned the unsanitary and unhealthy conditions that prevail at the institution, “fostering infectious diseases and posing an immediate threat to the health and lives of the patients.”²² (emphasis added).

In recent years, DRI has found that the conditions in the “Federico Mora” have changed very little. The main recommendations to prevent the spread of the COVID-19 virus are constant hand and surface washing. However, in February 2020, the DRI research team visited the “Federico Mora,” and found that many of the unsanitary conditions prevail. DRI observed barefoot patients inside and outside the wards, with dirty and inadequate clothing, there were also people having breakfast on the floor. DRI visited very early in the morning and

¹⁷ UN, “COVID-19: Who is protecting the people with disabilities? – UN rights expert”. Available at: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725&LangID=S>.

¹⁸ IACHR, *supra* note 5, para. 47.

¹⁹ IACHR, *supra* note 5.

²⁰ WHO, *supra* note 2.

²¹ IACHR, *supra* note 15.

²² *Ibidem*.

noted that people were not wearing sweaters or anything to cover themselves, which can also lead to respiratory illness. DRI observed two patients defecating in the yards of the Hospital. We saw piles of clothing in the corners of the wards. DRI will shortly be submitting a report of findings from our February 2020 visit supported by video documentation.

Furthermore, as a result of the health crisis the hospital is facing, and even though cases of COVID-19 have been confirmed in the “Federico Mora,”²³ “according to the workers, they do not receive gloves or have any other protection measure.”²⁴ “We do not have N-95 masks, we do not have adequate lenses, what we wear we buy it from our pocket,” said one of the nurses.²⁵ According to the Guatemalan Ombudsman for Persons with Disabilities, “at the moment there is no specific protocol for people with [psycho]social disabilities, deprived of liberty, as well as children who are under the protection of the State.”²⁶

2. Complete lack of medical treatment and actions to contain the health crisis that the hospital is facing

DRI has received information about a complete lack of medical treatment at the “Federico Mora” despite the health crisis it’s facing. The responses that the hospital has taken to address the situation have put more patients at risk, and include isolating staff infected with COVID-19 with patients without symptoms. Currently, the men’s Acute Ward A is isolated from the rest because two nurses in this ward contracted COVID-19. According to internal hospital sources:

“There is a ward that’s been quarantined, the intensive ward B (sic), with 60 patients, a graduate nurse, two assistants, and one cleaner. They were locked up in overcrowded conditions and without a doctor; staff that’s been infected with COVID-19 is isolated and caring for about 60 psychiatric patients. They were not transferred to another unit; [...] They should have been evacuated. Apparently, they are treating [the information] as confidential.”²⁷

The patients who have been isolated with the staff that has contracted COVID-19 are at immediate risk of contracting the virus and dying given that they are overcrowded and without adequate medical treatment. On April 24 a congressman announced that that “51 people from the Hospital of Mental Health Federico Mora were given the test to detect the coronavirus COVID-19.”²⁸ These people are presumably the patients and staff isolated in the

²³ PDH, “VERIFICAN ESTRATEGIAS INSTITUCIONALES PARA EVITAR CONTAGIOS DE COVID 19 EN HOSPITAL FEDERICO MORA”. Available at: <https://www.pdh.org.gt/verifican-estrategias-institucionales-para-evitar-contagios-de-covid-19-en-hospital-federico-mora/> y PDH, “VERIFICAN PROTOCOLO DE SEGURIDAD Y PREVENCIÓN EN HOSPITAL DE SALUD MENTAL FEDERICO MORA”. Available at: <https://www.pdh.org.gt/verifican-protocolo-de-seguridad-y-prevencion-en-hospital-de-salud-mental-federico-mora/>.

²⁴ Quimy de León, *supra* note 13.

²⁵ Lucero Sapalú, “Ministerio de Salud sin pronunciarse sobre supuesto incidente en el hospital del Parque La Industria”. El Periódico (April 24, 2020). Available at: <https://elperiodico.com.gt/nacion/2020/04/24/ministerio-de-salud-sin-pronunciarse-sobre-supuesto-incidente-en-el-hospital-del-parque-la-industria2/>.

²⁶ Quimy de León, *supra* note 13.

²⁷ Hospital staff testimony provided to DRI on April 22, 2020. See also Quimy de León, *supra* note 13.

²⁸ Hedy Quino Tzoc, “Les realizan prueba por COVID-19 a 51 personas en el Federico Mora”. La hora (April 24, 2020). Available at: <https://lahora.gt/les-realizan-prueba-por-covid-19-a-51-personas-en-el-federico-mora/>.

Acute Ward A. However, sources at the hospital affirm that “the director does not have any plan to carry out any measure to treat the confirmed cases of COVID-19 [once they are confirmed].”²⁹

The rest of the patients in the “Federico Mora” are also at risk of contracting the virus. Even though patients in the Acute Ward A are theoretically isolated, the “Federico Mora” does not have the capacity to entirely isolate a Ward from the rest of the population. DRI received reports that staff was sent to their homes for having had contact with the nurses infected with COVID-19. This staff is from all other areas of the hospital, including a social worker, and they had contact with the rest of the hospital patients after having had contact with the infected nurses.³⁰

The hospital also faces a crisis due to a lack of staff. As the IACHR has been repeatedly informed, there was already a lack of staff in the hospital to adequately care for the patients living in overcrowded conditions. On its visit to the hospital in February 2020, the DRI research team observed that the number of patients in the wards varied from 29 people in the geriatric ward to 59 people in one of the men’s acute wards. DRI also observed that in each of the wards there were only two to four staff ‘caring’ for all the patients. Hospital staff repeatedly told DRI about the need to have more medical staff, “as the current numbers were not sufficient to serve all patients.”³¹

Sources from inside the hospital have told DRI that 25 members of staff have been quarantined and sent home. This number can increase rapidly, leaving patients without staff to attend to their most basic needs. Sources have told DRI that they are already experiencing a lack of staff at the “Federico Mora” which may lead to more negligent practices and further abuses.³²

3. New transfers to the Federico Mora of people infected with COVID-19

Another major concern that has arisen as a result of the COVID-19 pandemic is the imminent transfer of new patients to the “Federico Mora.” Federico Mora staff have expressed their deep concern that “the Ministry of Health [will] transfer four patients with psychiatric problems with COVID-19 to that hospital, since they do not have the resources to care for them. These four cases are migrants deported [from USA] who are in the shelter that was set up in the sports center in zone 13, Ramiro de León Carpio.”³³ Staff also fears “the transfer of prisoners with psychiatric conditions, who may be carriers of the new coronavirus.”³⁴

4. Failure to provide community services to care for the Federico Mora patients

In the midst of the pandemic, the UN High Commissioner for Human Rights has determined that, in the case of people with disabilities living in institutions, the first action that States must carry out is to “[d]ischarge and release persons with disabilities from institutions and

²⁹ Interview with Silvia Quan, April 2020.

³⁰ Quimy de León, *supra* note 13.

³¹ Interview with a nurse from the Federico Mora, February 2020.

³² Interview with Silvia Quan, April 2020.

³³ Hedy Quino Tzoc, *supra* note 28.

³⁴ *Ibidem*.

promptly ensure provision of support in the community through family and/or informal networks, and fund support services by public or private service providers.”³⁵

In its Press Release 71/20, the IACHR established that:

“Regarding persons with disabilities detained in psychiatric institutions and social assistance centers, States must intensify efforts to develop the creation and establishment of community services that meet the needs of patients in the community, and with it, avoid institutionalizing these people.”³⁶

Specifically, in the case of the “Federico Mora” in Guatemala, the IACHR observed that, in order to fully guarantee the life and integrity of the patients detained in this institution, the measures that the State takes should be aimed at creating services in the community:

“The IACHR welcomes actions aimed at improving the living conditions of the patients of the Federico Mora Hospital; however, it does not find that these conditions are adequate to protect their lives and integrity. In particular, the IACHR regrets that the measures adopted have not been focused on the creation of community-based services and that despite the notable increased hospital budget, these resources have not been used to create alternatives in the community.”³⁷

The IACHR emphasized that “[t]his situation is particularly worrisome considering that most of them continue living at the institution because no support is available to them in the community.”³⁸ In its report the IACHR pointed out that “according to the evaluation conducted in 2013 by independent psychiatric and medical staff of the hospital itself, approximately 75% of the patients [...], did not need to remain at the institutions “for psychiatric reasons,” and could “easily” become integrated into the community, if there were outpatient services available to them.”³⁹ These outpatient services consist of basic supports that include housing, food and medical treatment.

The Commission thus recommended that the State to “guarantee community living for these persons, by creating and establishing community-based services. For this purpose, the Commission urges the State to adopt, among other ones, the following measures: a) expeditiously define a strategy for the de-institutionalization of persons with disabilities, with a timeline, sufficient resources and specific evaluation measures.”⁴⁰

³⁵ UN, “COVID-19 AND THE RIGHTS OF PERSONS WITH DISABILITIES: GUIDANCE”, p. 3. Available at: https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf.

³⁶ IACHR, *supra* note 5.

³⁷ IACHR, *supra* note 5, para. 468.

³⁸ “The IACHR notes that according to the evaluation conducted in 2013 by independent psychiatric and medical staff of the hospital itself, approximately 75% of the patients (without including those in conflict with the law), did not need to remain at the institutions “for psychiatric reasons,” and could “easily” become integrated into the community, if there were outpatient services available to them.” IACHR, *supra* note 15, para. 469.

³⁹ IACHR, *supra* note 15, para. 468

⁴⁰ *Ibidem*.

Almost three years after the IACHR determined that the State must create services in the community so that institutionalized persons can be reintegrated into the community, the State has not taken the necessary actions. **The result is that, during this health crisis, there are hundreds of people who are detained for the simple fact of having a disability and having nowhere to go due to the lack of alternatives in the community. This fact, which in itself is a violation of their human rights and puts their integrity at risk, at this time also represents a mortal risk. By being detained with patients and staff who have contracted COVID-19, the entire Federico Mora population is at risk of acquiring this virus and die.**

It is not enough that the State isolates patients and infected staff. In order to protect the life of people detained at the Federico Mora, the State must establish “community services that meet the needs of patients in the community”⁴¹ and guarantee that the people who are currently detained in the “Federico Mora” have immediate access to these services, including medical care, outside of the institution. In this regard, expert organizations on disability and mental health issues have recommended that to cope with the pandemic, and “to facilitate a decrease in the psychiatric inpatient population, the federal government, states, and localities should increase their support of community providers of outpatient mental health treatment.”⁴²

5. Denial of the legal capacity of the “Federico Mora” patients

Article 308 of the Civil Code states that the Director of social assistance centers is automatically considered as the guardian of all the people under his custody, from the moment of their admission. In other words, their guardianship is exercised *ipso facto* without the need for prior judicial discernment. This *de jure* discrimination entails the loss of the right to legal capacity for all the people who are -arbitrarily- detained in psychiatric facilities such as the “Federico Mora.”

Patients are detained at the “Federico Mora” for a variety of reasons including placement under so-called “security measures;” abandonment by their families and for living on the streets and in poverty. Patients automatically lose the exercise of their legal capacity, which will be exercised by the Director from the moment they enter the “Federico Mora,” regardless of the reason for their admission. This loss of legal capacity implies civil death for patients so that it is a third party that governs the most fundamental aspects of their lives, including whether they are allowed to leave the institution.

6. Inaction on the part of the authorities to deal with the “Federico Mora” health crisis

Despite the health crisis at the Federico Mora, the health authorities have largely ignored to address it publicly. According to the Guatemalan press, a day after the infections were alerted in the hospital, “the Ministry of Health, which has handled total secrecy during the health emergency, did not comment on the case. Nor did President Alejandro Giammattei in his usual

⁴¹ IACHR, *supra* note 5.

⁴² Judge David L. Bazelon Center for Mental Health Law, *supra* note 12. *See also*, International Disability Alliance, “Toward a Disability-Inclusive COVID19 Response: 10 recommendations from the International Disability Alliance”. Available at:

http://www.internationaldisabilityalliance.org/sites/default/files/ida_recommendations_for_disability-inclusive_covid19_response_final.pdf.

address to the nation on national TV.”⁴³ Staff who have alerted DRI and the press about the cases have done so anonymously, due to fear of reprisals. A day after the cases were confirmed, sources inside the hospital indicated their concern “because they did not receive information from the hospital authorities to confirm the situation. Nor were they told how the crisis would be managed.”⁴⁴

The Ombudsman for Persons with Disabilities, Jonatan Natareno, told the Guatemalan press that the authorities’ disregard for this population is regrettable. “The COVID-19 pandemic is very worrying given that, effectively, people with disabilities have been confined to structural exclusion and discrimination.”⁴⁵ The Ombudsman added that “so far there is no specific protocol [to deal with] for people with [psycho]social disabilities, deprived of liberty, as well as children who are under the protection of the State.”⁴⁶ According to information provided to the petitioners, the PDH is the only authority that is monitoring the situation of the “Federico Mora,” however, the Ombudsman for Persons with Disabilities has been denied access to the hospital and is only in contact with the director via telephone.

After the news broke out of people at the Federico Mora testing positive for COVID-19, the National Council for Disabilities (CONADI) expressed its concern about lack of “comprehensive protection for people with disabilities because institutionalization persists,”⁴⁷ and it called “for the implementation of a process of deinstitutionalization and promotion of community life in inclusive contexts for adults with disabilities.”⁴⁸

In a letter addressed to the Minister of Health, on April 29, DRI urged the Guatemalan State to guarantee the right to life of the population detained in the “Federico Mora” and guarantee their right to receive medical attention in a community setting. Despite these calls, the State of Guatemala has not carried out the necessary measures to prevent the spread of COVID-19 and the death of the people detained in the hospital.

IV. APPEAL REQUESTS

The Guatemalan government should be called on to comply with its human rights obligations under the UN Convention on the Rights of Persons with Disabilities. It is imperative that urgent action be taken to ensure the safety of these aforementioned individuals and others in institutions in Guatemala, and that community-based services be developed to promote the immediate and long-term welfare and human rights of persons with disabilities in Guatemala.

For the reasons described below, we respectfully request that the Rapporteur review this situation under the Urgent Appeal procedure and urge the Guatemalan government to:

1. **Do not involuntarily lock anyone at Federico Mora.** Anyone who is not criminally committed and who wishes to leave the facility should be allowed to do so.

⁴³ Pía Flores, *supra* note 14.

⁴⁴ Pía Flores, *supra* note 14. *See also* Quimy de León, *supra* note 13.

⁴⁵ Pía Flores, *supra* note 14.

⁴⁶ Quimy de León, *supra* note 13.

⁴⁷ CONADI, “Comunicado 16-2020”. Available at: <http://conadi.gob.gt/web/2020/04/24/comunicado-16-2020/>.

⁴⁸ CONADI, “Comunicado 16-2020”. Available at: <http://conadi.gob.gt/web/2020/04/24/comunicado-16-2020/>.

2. **Every person leaving the facility should be immediately provided place to live in the community** where they will be safe and will receive the basic living support they need to take care of themselves. People should be provided food, medical care, and in home personal assistant services necessary to live independently.
3. **Create an emergency plan to create support services for the entire population of Federico Mora patients so that they can live safely and independently in the community.**
4. **Guarantee immediate access to medical care.** This should include social isolation, testing of patients and staff, effective quarantining, removal of residents or staff who test positive to COVID-19, and having full access to the necessary medical services in a community setting.
5. **Provide accessible Information about safety, access to medical care, and advocacy support in the community.** Individual support and advocacy to obtain protection, care, and support services is also essential. The UN Special Rapporteur on Disability, Catalina Devandas, states that:

“[p]ublic advice campaigns and information from national health authorities must be made available to the public in sign language and accessible means, modes and formats, including accessible digital technology, captioning, relay services, text messages, easy-to-read and plain language.”
6. **Include the petitioners, persons with disabilities** and the organizations they represent in all aspects of planning and implementing emergency protection, medical care and support programs.
7. **Promote the means of defense. Ensure immediate independent supervision of the situation in the hospital.** Face-to-face observation by independent authorities should, as far as possible, be supplemented by means such as video cameras, complaints mailbox, telephones and online complaints mechanisms.