

UN Convention on the Rights of Persons with Disabilities & Mental Health

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Stichting Mind Rights - www.mindrighs.nl

European Network of (Ex) Users and Survivors of
Psychiatry - www.enusp.org

World Network of Users and Survivors of Psychiatry –
www.wnusp.net

Coercion (1994-1996 Netherlands)



I survived because of respect,
not because of coercion

Universal Human Rights

UN- Convention on the Rights of Persons with Disabilities

- 2006: UN-CRPD adopted by UN GA
- Part of Universal Human Rights framework
- Same fundamental rights and freedoms as other people
- Specialized UN Conventions explain implications for specific marginalized groups (children, women, persons with disabilities)

CRPD and mental health care

- **Art 12.** Legal Capacity
- **Art 14.** Liberty and security of person
- **Art 15.** Freedom from torture and other cruel, inhuman or degrading treatment or punishment
- **Art 17.** Physical and mental integrity
- **Art 19.** Inclusion in the community
- **Art 25.** Free and informed consent to health care (incl. right to refuse treatment)
- **Art. 28.** Adequate standard of living and social protection

CRPD art 12

- **Article 12 - Equal recognition before the law**
- 1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
- 2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
- 3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

CRPD art 12.4 - Equal recognition before the law

- 4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

* General Comment art 12

- **Articles 14 and 25: Liberty, security and consent**
- 40. Respecting the right to legal capacity of persons with disabilities on an equal basis with others includes respecting the right of persons with disabilities to liberty and security of the person. The denial of the legal capacity of persons with disabilities and their detention in institutions against their will, either without their consent or with the consent of a substitute decision-maker, is an ongoing problem. This practice constitutes arbitrary deprivation of liberty and violates articles 12 and 14 of the Convention. States parties must refrain from such practices and establish a mechanism to review cases whereby persons with disabilities have been placed in a residential setting without their specific consent.

* General Comment art 12

- 41. The right to enjoyment of the highest attainable standard of health (art. 25) includes the right to health care on the basis of free and informed consent. States parties have an obligation to require all health and medical professionals (including psychiatric professionals) **to obtain the free and informed consent of persons with disabilities prior to any treatment.** In conjunction with the right to legal capacity on an equal basis with others, **States parties have an obligation not to permit substitute decision-makers to provide consent on behalf of persons with disabilities.** All health and medical personnel should ensure appropriate consultation that directly engages the person with disabilities. They should also ensure, to the best of their ability, that assistants or support persons do not substitute or have undue influence over the decisions of persons with disabilities.

Supported Decision Making

The universal right to decide and act for yourself - personhood

- Family Group-conferencing
- Circles of support
- Open Dialogue
- Crisis-card / advance directives
- Chosen representative

CRPD art 14.1

- **Article 14 - Liberty and security of the person**
- 1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - (a) Enjoy the right to liberty and security of person;
 - (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

CRPD art 14.2 - Liberty and security of the person

- 2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

* Guidelines on art 14 (EU)

- **III. The absolute prohibition of detention on the basis of impairment**
- 6. There are still practices in which States parties allow for the deprivation of liberty on the grounds of actual or perceived impairment. In this regard the Committee has established that article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment. However, legislation of several States parties, including mental health laws, still provide instances in which persons may be detained on the grounds of their actual or perceived impairment, provided there are other reasons for their detention, including that they are deemed dangerous to themselves or others. This practice is incompatible with article 14; it is discriminatory in nature and amounts to arbitrary deprivation of liberty.

* Guidelines on art 14 (EU)

- 7. During the negotiations of the Ad Hoc Committee leading up to the adoption of the Convention there were extensive discussions on the need to include a qualifier, such as “solely” or “exclusively”, in the prohibition of deprivation of liberty due to the existence of an actual or perceived impairment in the draft text of article 14(1)(b). States opposed it, arguing that it could lead to misinterpretation and allow deprivation of liberty on the basis of their actual or perceived impairment in conjunction with other conditions, like danger to self or others. Furthermore, discussions were held on whether to include a provision for periodic review of the deprivation of liberty in the text of draft article 14(2). Civil society also opposed the use of qualifiers and the periodic review approach. **Consequently, article 14(1)(b) prohibits the deprivation of liberty on the basis of actual or perceived impairment even if additional factors or criteria are also used to justify the deprivation of liberty.** The issue was settled in the seventh meeting of the Ad Hoc Committee.

No deprivation of liberty

- Support de-linked from location

→ Not transpose institution to community!

CRPD art 15

- **Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment**
- 1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
- 2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Is coercion torture? Yes

- Communication of UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment (Juan Mendez)
- Report A/HRC/22/53 “Torture in Health care settings”
- CRPD General comments
- Torture is absolutely prohibited and can never be justified by excuses.

CRPD art 17

- **Article 17 - Protecting the integrity of the person**
- Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

CRPD CO on EU (2015)

- **Protecting the integrity of the person (art. 17)**
- The Committee is concerned that persons with disabilities are exposed to involuntary treatment in European Union Member States, including forced sterilisation and abortion.
- The Committee recommends that the European Union **take possible measures to ensure the individual right to free and informed consent to treatment is upheld and supporting decision-making mechanisms are provided in EU Member States.**

Right to integrity:

NO

**involuntary
medication!**

CRPD art 19

- **Article 19 - Living independently and being included in the community**
- 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;

CRPD art 19.b,c - Living independently and being included in the community

- (b) Persons with disabilities have access to a range of in-home, 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.

CRPD CO on EU art 19

- 50. The Committee is concerned that across the European Union persons with disabilities, **especially persons with intellectual and/or psychosocial disabilities still live in institutions rather than in local communities.** It further notes that in spite of changes in regulations, in different Member States the ESI Funds continue being used for maintenance of residential institutions rather than for development of support services for persons with disabilities in local communities.

CRPD CO on EU art 19 (2)

- 51. The Committee recommends that the European Union develop an approach to guide and **foster deinstitutionalisation**, to strengthen the monitoring of the use of ESI Funds - to ensure they are being used strictly for the **development of support services for persons with disabilities in local communities and not the re-development or expansion of institutions**. It further recommends that the European Union suspend, withdraw and recover payments if the obligation to respect fundamental rights is breached.

Inclusion in the community

- Support at home / in the community
- Access to mainstream-services
- Equality and non-discrimination

CRPD art 25.d - Health

- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

CRPD art 28

- **Adequate standard of living and social protection**
- Link to all other articles

A new Era for mental health care

- Take the challenge:
- Abolish coercion
- Establish Real mental health care
- **No “business as usual”, but change:
really hear and respect the person**

Protest against Draft Additional Protocol to Oviedo Convention

- On “involuntary treatment and placement of persons with mental disorder “unable to consent”
- In violation of CRPD in spirit and letter.
- **SPEAK OUT AGAINST THIS DRAFT!**
- See the European Campaign by EDF, ENUSP, MHE and many others.

- Time for questions