



Excerpts from international law related to psychiatric treatment

UN Convention on the Rights of Persons with Disabilities

Article 3 – General principles

- a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

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.

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.

Article 16 – Freedom exploitation, violence and abuse

- 1) States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
- 3) In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
- 4) States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of



protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5) States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

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.

Article 25 – Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall: [...]

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...

UN Committee on the Rights of Persons with Disabilities – Concluding Observations on the Initial Report of Australia (24 Oct 2013)

Liberty and security of the person (art. 14)

33. The Committee is further concerned that under Australian law a person can be subjected to medical intervention against his or her will, if the person is deemed to be incapable of making or communicating a decision about treatment.

34. The Committee recommends that the State party repeal all legislation that authorizes medical intervention without the free and informed consent of the persons with disabilities concerned, committal of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community, by means of Community Treatment Orders.

Freedom from torture and cruel, inhuman or degrading treatment or punishment (art.15)

35. The Committee is concerned that persons with disabilities, particularly those with intellectual impairment or psychosocial disability, are subjected to unregulated behaviour modification or

restrictive practices such as chemical, mechanical and physical restraints and seclusion, in various environments, including schools, mental health facilities and hospitals.

36. The Committee recommends that the State party take immediate steps to end such practices, including by establishing an independent national preventive mechanism to monitor places of detention — such as mental health facilities, special schools, hospitals, disability justice centres and prisons —, in order to ensure that persons with disabilities, including psychosocial disabilities, are not subjected to intrusive medical interventions.

Committee on the Rights of Persons with Disabilities – Concluding Observations on the Initial Report of Austria (30 Sept 2013)

Freedom from torture and cruel, inhuman or degrading treatment or punishment (art.15)

32. The Committee notes with concern the continued use of net beds and other forms of non-consensual practices in the State party's psychiatric hospitals and institutions where people with intellectual, mental and psychosocial disabilities are confined.

33. The Committee recommends that the State party abolish the use of net beds, restraints and other non-consensual practices with regard to persons with intellectual, mental and psychosocial disabilities in psychiatric hospitals and institutions. It further recommends that the State party continue to provide training to medical professionals and personnel in care and other similar institutions on the prevention of torture, cruel, inhuman or degrading treatment or punishment, as provided for under the Convention.

Committee on the Rights of Persons with Disabilities – Draft General Comment on Article 12 (25 Nov 2013)

7. States must holistically examine all areas of law to ensure that the right of persons with disabilities to legal capacity is not restricted on an unequal basis with others. Historically, persons with disabilities have been denied their right to legal capacity in many areas in a discriminatory manner under substitute decision-making regimes such as guardianship, conservatorship and mental health laws that permit forced treatment. These practices must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others.

IV. Relationship with other provisions of the Convention

Articles 15, 16 and 17: Respect for personal integrity and freedom from torture, violence, exploitation and abuse

38. As has been stated in several concluding observations, forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (art. 17), freedom from torture (art. 15), and freedom from violence, exploitation and abuse (art. 16). This practice denies the legal capacity of a person to choose medical treatment and is therefore a violation of article 12 of the



Convention. States parties have an obligation to provide access to support for decisions regarding psychiatric and other medical treatment. Forced treatment is a particular problem for persons with psychosocial, intellectual and other cognitive disabilities. States must abolish policies and legislative provisions that allow or perpetrate forced treatment, as it is an ongoing violation of mental health laws across the globe, despite empirical evidence indicating its lack of effectiveness and the views of people using mental health systems who have experienced deep pain and trauma as a result of forced treatment. The Committee recommends that State parties ensure that decisions relating to a person's physical or mental integrity can only be taken with the free and informed consent of the person concerned.

UN Report of the Special Rapporteur on Torture, Manfred, Nowak (A/63/175) (28 July 2008)

62. The use of psychiatry as a means of torture or ill-treatment for the purpose of political repression, in the context of the fight against terrorism and, to a lesser extent, in treatment inflicted in order to attempt to suppress, control and modify the sexual orientation of individuals has been well documented. However, the Special Rapporteur notes that abuse of psychiatry and forcing it upon persons with disabilities, and primarily upon persons with mental or intellectual disabilities, warrants greater attention.

63. Inside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment. The administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence, has been recognized as a form of torture. In *Viana Acosta v. Uruguay*, the Human Rights Committee concluded that the treatment of the complainant, which included psychiatric experiments and forced injection of tranquillizers against his will, constituted inhuman treatment. The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment.

UN Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (A/HRC/22/53) (1 Feb 2013)

III. Applying the torture and ill-treatment protection framework in healthcare settings

C. Interpretive and guiding principles

2. Powerlessness and the doctrine of “medical necessity”

31. Patients in health-care settings are reliant on health-care workers who provide them services. As the previous Special Rapporteur stated: “Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person.” Deprivation of legal capacity, when a person’s exercise of decision-making is taken away and given to others, is one such circumstance, along with deprivation of liberty in prisons or other places (A/63/175, para. 50).

32. The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned (*ibid.*, paras. 40, 47). This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of “good intentions” by medical professionals (*ibid.*, paras. 47, 48).

D. Persons with psychosocial disabilities

3. Domestic legislation allowing forced interventions

64. The mandate continues to receive reports of the systematic use of forced interventions worldwide. Both this mandate and United Nations treaty bodies have established that involuntary treatment and other psychiatric interventions in health-care facilities are forms of torture and ill-treatment. Forced interventions, often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged “best interest” of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment (A/63/175, paras. 38, 40, 41). Concern for the autonomy and dignity of persons with disabilities leads the Special Rapporteur to urge revision of domestic legislation allowing for forced interventions.

5. Involuntary commitment in psychiatric institutions

69. ...As detention in a psychiatric context may lead to non-consensual psychiatric treatment, the mandate has stated that deprivation of liberty that is based on the grounds of a disability and that inflicts severe pain or suffering could fall under the scope of the Convention against Torture (A/63/175, para. 65). In making such an assessment, factors such as fear and anxiety produced by indefinite detention, the infliction of forced medication or electroshock, the use of restraints and seclusion, the segregation from family and community, etc., should be taken into account.

V. Conclusions and recommendations

B. Recommendations



4. Persons with psychosocial disabilities

89. The Special Rapporteur calls on all States to:

(b) Impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs such as neuroleptics, the use of restraint and solitary confinement, for both long- and short-term application. The obligation to end forced psychiatric interventions based solely on grounds of disability is of immediate application and scarce financial resources cannot justify postponement of its implementation

(c) Replace forced treatment and commitment by services in the community. Such services must meet needs expressed by persons with disabilities and respect the autonomy, choices, dignity and privacy of the person concerned, with an emphasis on alternatives to the medical model of mental health, including peer support, awareness-raising and training of mental health-care and law enforcement personnel and others

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The Mental Disability Advocacy Center is an international human rights organisation which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities. Our vision is a world of equality – where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form.