Dear WNUSP Friends,

The WNUSP releases a statement on the Implications of the CRPD on Forced Treatment. If you individually or as an organisation support the WNUSP statement on the Implications of the CRPD on Forced Treatment, register your support by completing the online form on our website at the following link; WNUSP Position Paper

Position Paper on the Implications of the CRPD

World Network of Users and Survivors of Psychiatry, the global democratic organization representing persons with psychosocial disabilities, contributed actively to the drafting and negotiation of the CRPD. WNUSP contributed proposals of text that were incorporated into the treaty, made extensive comments on major drafts that went into the initial compilation and on the successive drafts of the working text, and provided information and analysis from the perspectives of law, policy, and lived experience. WNUSP provided an expert to the working group of 40 individuals that met to draft the first official text, and represented our global constituency on the steering committee of the International Disability Caucus, which collectively spoke for the community of persons with disabilities and allied NGOs participating in the Convention process.

Since the conclusion of negotiations, WNUSP has continued to contribute to international implementation and monitoring. Two WNUSP members now serve on the Committee on the Rights of Persons with Disabilities. WNUSP experts have spoken on panels at the Conference of States Parties and in the CRPD Day of General Discussion on Article 12. WNUSP, together with other members of the International Disability Alliance, has developed position papers on legal capacity and on the CRPD in relation to other provisions of international law and has contributed to OHCHR consultations. WNUSP has contributed significantly to the development of international law on torture and persons with disabilities, providing expertise to OHCHR, the Special Rapporteur on Torture, and the Subcommittee for Prevention of Torture, and is a member of the OPCAT Contact Group. WNUSP leads a working group on legal capacity that operates list-serves in both English and Spanish.

WNUSP celebrates the CRPD as a revolutionary articulation of our equal rights and dignity as human beings. Users and survivors of psychiatry everywhere are not only discriminated against by communities that see us as cursed or as having defective brains; we are deliberately excluded from equal protection under the law. In many countries we are deemed to lack legal capacity and treated as civilly dead; in other countries we are individually vulnerable to deprivation of legal capacity if a judge believes we are unable to act in our own best interests. Our members are imprisoned in medical hospitals and institutions and in religious temples, cutting short their opportunities to develop a life of their own choosing and perpetuating

segregation that reinforces negative stereotypes, leading to further discrimination. Violent medical practices like forced electroshock, forced drugging, restraint and solitary confinement continue to be practiced, along with violent traditional/religious practices, in people's own homes as well as in institutions, causing trauma that is unacknowledged as such in our communities, since it is done in the name of therapeutic treatment. Many people experience madness or are labeled as mad after being traumatized by serious acts of violence and abuse or other disasters; their needs go unmet and are exacerbated by a mental health system based on diagnostic labeling and subjection of the mind and body to forced interventions.

WNUSP interprets the CRPD as necessarily prohibiting compulsory treatment and detention in psychiatry. The CRPD guarantees to us health care based on free and informed consent, on an equal basis with others, and it is well established that a corollary of the right to free and informed consent is the right to refuse treatment. The right to control our own bodies is an aspect of the right to respect for physical and mental integrity (related to the inherent dignity of the human being), as well as an aspect of the right to health, and both rights are guaranteed on an equal basis with others by the CRPD. Detention based on the existence of a disability is prohibited: we agree with the UN Office of the High Commissioner for Human Rights that this prohibition extends to deprivation of liberty on the grounds of mental illness plus some other factors to which it may be linked in legislation, such as "danger to self or others" or "need for care and treatment". The negotiating history, in which we took part, shows that states rejected proposals to open the door to such linked grounds for detention by prohibiting only detention based "solely" on disability. The Chair conducting negotiations summarized the discussion on Article 14.1(b) by saying "This is a pure non-discrimination provision. Persons with disabilities who threaten others should be dealt with in the same manner as other persons." The CRPD further provides that persons with disabilities have the legal capacity to make decisions in all aspects of life, including decisions about medical treatment and hospitalization, so that substitute decision-makers cannot step in to impose treatment or confinement on a person against his/her will.

The CRPD text on legal capacity is a microcosm of the paradigm shift embodied in the CRPD as a whole. Instead of restricting autonomy of those who need extra support to comfortably participate in all aspects of life, the CRPD requires states to provide access to such support and respect the autonomy of all persons with disabilities. This not only sets out a legal standard, it also stands as a model for mental health services and for supports outside the mental health system that need to be made available to all persons experiencing madness, mental health problems or trauma at any time in their lives.

WNUSP recognizes that controversy has arisen with respect to these interpretations of the CRPD, and that some states have gone so far as to make interpretive declarations to the effect that the CRPD permits substituted decision-making and compulsory treatment. In our opinion, the interpretations we set out are supported by the plain meaning of the text and reinforced by the principles set out in Article 3 to guide interpretation. If the plain meaning of any of these provisions is ambiguous, the first question must be, what reading of the text most supports the respect for individual autonomy, non-discrimination, respect for human diversity and full and effective participation and inclusion?

In the case of Article 12, it must be recognized that legal capacity on an equal basis with others means the same legal capacity as others – not an inferior or partial legal capacity or a presumption of legal capacity that can be rebutted by evidence of lack of sufficient decision-making ability. One person's judgment that another lacks decision-making ability is tantamount to negating the human subjectivity of that person; such judgments if probed are based on an attribution of psychosocial, intellectual or other mental (such as dementia) disability. Support must be provided to the full extent of a person's need, but must never become compulsion; support for the exercise of legal capacity can never subvert legal capacity itself, which is the right to make one's own decisions.

WNUSP and our related networks have developed robust alternative models for a social response to persons experiencing madness, mental health problems and trauma. These models emphasize the primacy of first-person experience, honoring thoughts and feelings, meeting practical needs, taking enough time for resolution or healing, and believing in every person's ability to transform his/her life. Professional psychotherapy, nutrition and other holistic therapies, and psychiatric treatment with drugs, can be a valid part of an individual's healing journey when used with free and informed consent. Free and informed consent practices should be geared to giving individuals the tools to make decisions they are comfortable with now and are not likely to regret later; their primary purpose is not to protect medical personnel from liability. The serious adverse effects associated with psychiatric drugs in particular, including increased potential for metabolic problems and early mortality, indicate that safer alternatives should be researched and developed, and that existing drugs should be carefully scrutinized for safety and efficacy with accountability to users. A consensus is developing in our community that electroshock, in its modified or unmodified forms, as well as any kind of psychosurgery, is too risky and should not be used at all.

Spiritual and traditional healing/therapies may have great value for individuals and communities, affirming their connections to one another and the transformative potential of madness, so long as it is not forced or coerced. Forced or coerced participation in spiritual and traditional practices, like forced medical interventions, can amount to torture or ill-treatment.

The success of alternative models indicates that resistance to the full implications of the CRPD is primarily the result of discrimination that persists despite the advances made in human rights law and in the development of practical knowledge. WNUSP calls on states to develop inclusive processes for implementation of the CRPD in the manner of the drafting and negotiations, with a central role for users and survivors of psychiatry and other persons with disabilities, coming together in good faith to transform society and its laws and practices for our full inclusion and equality. Users and survivors of psychiatry are the primary agents and primary beneficiaries of this transformation but it is one that ultimately involves and benefits everyone.

Moosa Salie,
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