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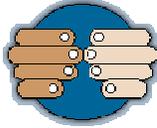
Item 5 of the agenda

**Submission to Second Intergovernmental Expert Group Meeting on the Review of
the Standard Minimum Rules on the Treatment of Prisoners¹**

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Submission to Second Intergovernmental Expert Group Meeting on the Review of the Standard Minimum Rules on the Treatment of Prisoners*

General comment on scope:

1. The SMR addresses primarily penal detention. If Member States decide to create a more comprehensive document, it should be recalled that the Convention on the Rights of Persons with Disabilities prohibits disability-based forms of detention such as involuntary confinement in a psychiatric institution. As disability-based detention is inherently unlawful, it must be prohibited and not regulated.

Recommendation:

A revised SMR should ensure that detention in psychiatric institutions or on grounds of mental illness or disorder is prohibited as discriminatory detention based on disability, which violates international law.

- a) Respect for prisoners' inherent value as human beings
 1. All prisoners, including those with psychosocial disabilities, have the right to be free from nonconsensual psychiatric interventions, which are a form of torture and ill-treatment as recognized by the Special Rapporteur on Torture, the Committee on the Rights of Persons with Disabilities and the Human Rights Committee.¹ Mental health services must be provided based on free

* The section headings (a), (b), (c) etc. follow the designated areas for review from the Provisional agenda and designated programme of work for the Second Intergovernmental Expert Group Meeting.

¹ Special Rapporteur on Torture (SRT), A/63/175 paras 40, 41, 47, 61-65. Committee on the Rights of Persons with Disabilities (CRPD), Concluding Observations on Peru and China, CRPD/C/PER/CO/1 and CRPD/C/CHN/CO/1.

and informed consent by the person concerned.² All individuals must be recognized as having the legal capacity to give or refuse consent; and have a right to accommodations and supports that respect the person's autonomy, will and preferences, when necessary in exercising their legal capacity.³

2. Prisoners with psychosocial disabilities have the right to be treated without discrimination in all matters and in all phases of arrest, trial and detention.⁴ They are entitled to accommodations in legal proceedings to ensure equal and effective access to justice, and to accommodations with regard to conditions of detention to enable equal access to all programs and services available to detainees and to ensure equal and effective enjoyment of the right to humane treatment.⁵ The right to humane treatment of persons with disabilities includes a right to be treated in compliance with the objectives and principles of the Convention on the Rights of Persons with Disabilities, including by provision of reasonable accommodation.⁶ Reasonable accommodation is defined as:

Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.⁷

3. Respect for prisoners' inherent value as human beings implies respect for their autonomy, agency and integrity. Prisoners should be given every opportunity to use their time constructively in activities freely chosen by the individual, making available programs for education, work, creative expression, sports, recreation and culture, religion and spirituality, and peer support. The life experiences of prisoners should be honored and they should be given access to supports and services allowing them to heal from traumatic experiences and to make amends to any persons they have harmed. Restorative justice principles should be incorporated in law, policy and practices regarding crime and punishment (or alternatives to

Human Rights Committee, views on communication No. 110/1981, *Viana Acosta v. Uruguay* (CCPR/C/21/D/110/1981).

² CRPD Articles 12, 14, 17, 25. ComRPD Concluding Observations on Spain, Peru, Hungary, Argentina and China, CRPD/C/ESP/CO/1, CRPD/C/PER/CO/1, CRPD/C/HUN/1, CRPD/C/ARG/CO/1 and CRPD/C/CHN/CO/1. Committee against Torture, Concluding Observations on Czech Republic, CAT/C/CZE/CO/4.

³ CRPD Article 12. ComRPD Concluding Observations on China.

⁴ CRPD Articles 13 and 14.

⁵ *Id.*

⁶ CRPD Article 14.

⁷ CRPD Article 2. SRT, para 54.

punishment),⁸ taking account of gender and disability perspectives.⁹ Compulsory rehabilitation or correctional therapies and compulsory participation in mental health services or treatments are antithetical to the principle of respect for the dignity of detainees and contrary to the Convention on the Rights of Persons with Disabilities.¹⁰ In particular, enforced compliance with mental health services is not a legitimate alternative to incarceration, especially when it involves intrusive treatments such as psychiatric drugs, which can amount to torture or ill-treatment when not freely consented to by the individual concerned.¹¹

Recommendation:

A revised SMR should

- 1) specifically incorporate obligations to prevent torture and ill-treatment and to respect the physical and mental integrity of detainees,
- 2) prohibit disability-based and gender-based forms of violence, including forced psychiatric interventions and experimentation,
- 3) include an obligation of non-discrimination based on disability, including by provision of reasonable accommodation,
- 4) incorporate relevant obligations towards detainees from all human rights treaties, including the obligation to treat detainees with disabilities in compliance with objectives and principles of the CRPD,
- 5) derogate Rules CHECK,
- 6) ensure that prisoners are not subjected to compulsory rehabilitation measures and that they have a wide range of opportunities available for constructive activity including programs they may create themselves, and
- 7) incorporate restorative justice principles emphasizing respect for the autonomy and needs of all concerned in a situation of harm, taking account of gender and disability perspectives.

b) Medical and health services

1. Prisoners, including those experiencing psychosocial disability, have a right to have made available to them a wide range of mental health services, as well as peer support and other alternatives to the medical model of mental

⁸ Kay Pranis, "Restorative Values," in *Handbook of Restorative Justice*, Gerry Johnstone and Daniel W. Van Ness, eds. (2007).

⁹ Kathleen Daly and Julie Stubbs, "Feminist Engagement with Restorative Justice," in *Theoretical Criminology* 10(1): 9-28 (2005); Daniel Hazen and Tina Minkowitz, *WNUSP Discussion Paper on Policy Issues at the Intersection of the Mental Health System and the Prison System* (2012), available at www.chrusp.org/home/resources.

¹⁰ ComRPD Concluding Observations on China and Peru.

¹¹ SRT, paras 40, 41, 47, 61-65.

health.¹² All such services must be based on the free and informed consent of the person concerned.¹³ The services must ensure confidentiality¹⁴ and a person's use of mental health services must not give rise to any adverse treatment (such as ineligibility for certain programs, or being placed in a segregated or more secure unit).¹⁵

2. Physical health care and services must be made available to prisoners with psychosocial disabilities on an equal basis with others.¹⁶ Medical personnel should be trained to avoid discrimination such as treating prisoners with disabilities as if their lives and well-being are worth less than others, or failing to properly investigate the physical basis for complaints of ill-health by prisoners experiencing or alleged to have a psychosocial disability.¹⁷

Recommendation:

A revised SMR should

- 1) ensure that all medical and health services, including mental health services and housing in a mental health unit, are confidential and based on free and informed consent by the person concerned,
- 2) ensure that no adverse consequences follow from a prisoner's utilization of any health service,
- 3) ensure that prisoners with disabilities are afforded the same range, quality and standard of services as others, and
- 4) ensure that mental health services are accountable only to the person being served and not to authorities or any third parties.

- c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet
 1. Solitary confinement and other harsh punishments and security measures should be banned as they amount to ill-treatment and torture, and must never be used on a person already experiencing serious distress.¹⁸ Conditions of detention should be modified when necessary as a reasonable accommodation for a prisoner's disability, and humanitarian release should be considered when required modifications are not feasible or there is no

¹² CRPD Articles 25 and 26. ComRPD, Concluding Observations on China.

¹³ CRPD Articles 12, 14, 17, 25. ComRPD, Concluding Observations on Spain, Peru, Hungary, Argentina and China. Committee against Torture, Concluding Observations on Czech Republic.

¹⁴ CRPD Article 22.

¹⁵ CRPD Articles 5 and 14.

¹⁶ CRPD Articles 14 and 25.

¹⁷ CRPD Articles 5, 14 and 25.

¹⁸ SRT para 56.

modification that would prevent the conditions from amounting to ill-treatment or torture for that individual.¹⁹

2. Placement in a disability-specific secure unit under medical supervision (such as a mental health unit) is not a viable alternative to solitary confinement, as it amounts to segregation based on disability contrary to the CRPD.²⁰ Prisoners with psychosocial disabilities are entitled to remain in general population or other housing options within the detention setting on an equal basis with other prisoners.²¹ The CRPD rejects a medical model of disability, particularly psychosocial disability, and rejects the premise that medical knowledge is necessary or desirable to interact constructively with persons with psychosocial disabilities.²²
3. Medical and mental health personnel have no legitimate role in certifying a prisoner's fitness for harsh punishment, or in imposing or carrying out security measures. Security measures, including restraint and solitary confinement, can never be justified as therapeutic interventions by medical or mental health personnel.²³

Recommendations:

A revised SMR should

- 1) derogate rules 32 and 33(b),
- 2) ensure that the functions of medical and health personnel, including mental health personnel are entirely separate from security functions,
- 3) ban solitary confinement, and explicitly provide that neither solitary confinement nor restraint of any kind is a justifiable therapeutic intervention,
- 4) ensure that reasonable accommodation for psychosocial disability is made in all housing units and services, and in disciplinary measures.

- d) Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading punishment of prisoners

Recommendation:

A revised SMR should ensure that all deaths and all forms of torture and inhuman and degrading treatment or punishment of prisoners, including in healthcare settings within prison and including those practiced on persons with disabilities, are recognized as such in law and are properly investigated

¹⁹ SRT para 54.

²⁰ CRPD Articles 14 and 19.

²¹ Id.

²² CRPD Preamble para , Articles 1 and 3. ComRPD, Concluding Observations on China Article 25. SRT paras 49, 57.

²³ SRT paras 54 and 56.

and prosecuted, and that prisoners and staff who disclose human rights violations are protected against retaliation.

- e) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances
1. The Convention on the Rights of Persons with Disabilities provides authoritative guidance as to the rights of prisoners with disabilities, including those with psychosocial disabilities.²⁴ Mental health services are among the services provided to persons with disabilities for disability-related needs, and as such must be examined for consistency with the CRPD. In particular, such services must be provided based on free and informed consent by the concerned, and alternatives to the medical model of mental health, including peer support, must be made available.²⁵ These alternatives need to be allowed to function independently of medical model services and should not require use of diagnostic categories, which many individuals have found to be harmful.²⁶
 2. The core requirement of the CRPD with respect to treatment of prisoners with disabilities, including those with psychosocial disabilities, is non-discrimination, including provision of reasonable accommodation.²⁷ Principles of the CRPD, such as respect for individual autonomy, respect for difference and acceptance of diversity, and full and equal participation and inclusion,²⁸ serve as a guide to the creation of disability-friendly policies and practices. Issues of concern to prisoners with psychosocial disabilities include non-discrimination in eligibility for programs such as work release, availability of services to support healing from trauma, and prevention of torture and ill-treatment including solitary confinement, harassment and forced psychiatric interventions.²⁹ Reasonable accommodation in the sense of modification to rules and policies³⁰ needs to be put in place where an individual has particular difficulty conforming to institutional policies. Rather than punishing the individual or placing him/her under security

²⁴ SRT para 44.

²⁵ ComRPD Concluding Observations on China.

²⁶ Paula J. Caplan, "Psychiatry's bible, the DSM, is doing more harm than good," Washington Post (April 27, 2012); A Sampler of Personal Stories of Harm, http://www.psychdiagnosis.net/psychiatric_stories.html.

²⁷ CRPD Article 14.2.

²⁸ CRPD Article 3.

²⁹ Daniel Hazen and Tina Minkowitz, WNUSP Discussion Paper on Policy Issues at the Intersection of the Mental Health System and the Prison System (2012), available at www.chrusp.org/home/resources.

³⁰ CRPD Article 2; Americans with Disabilities Act 42 USC § 12111 paragraph 9(B), § 12115 paragraph 2.

measures under medical control, means should be devised to satisfy legitimate institutional needs as well as those of the individual. These policies, required in relation to prisoners with disabilities, are also in keeping with a trauma-informed approach to detention that is good practice in general.³¹

Recommendations:

A revised SMR should

- 1) ensure that the rights of prisoners with disabilities, including those with psychosocial disabilities, are mainstreamed throughout the text where relevant, in addition to including a new provision detailing that:
 - prisoners with disabilities are entitled to non-discrimination and equal guarantees in all aspects of arrest and detention, and
 - prisoners with disabilities are entitled to be treated in compliance with the most up to date binding standards of international law on the rights of persons with disabilities, including by provision of reasonable accommodation, defined as in CRPD Article 2.
- 2) ensure that mental health services comply with the CRPD in all respects, including that they are based on free and informed consent by the person concerned and that peer support and other alternatives to the medical model of mental health are made available.
- 3) ensure that reasonable accommodation is provided to prisoners with psychosocial disabilities by modifying rules and policies where necessary and devising alternative means to satisfy legitimate needs of the institution as well as those of the individual.

In addition, the SMR revision process should conduct a through review from a disability perspective and ensure that any existing provisions which contravene provisions of the CRPD are derogated, including those dealing with mental health services and prisoners with psychosocial disabilities.

f) The right of access to legal representation

Recommendation:

A revised SMR should ensure that prisoners with disabilities, including those with psychosocial disabilities, have equal and effective access to legal representation, including procedural accommodations where needed and including access to support in exercising legal capacity and decision-making that respects the person's autonomy, will and preferences.³²

³¹ Lauren Spiro, "Escaping the Trap: Women Caught in the Mental Health System," available at <http://ncmhr.org/downloads/escaping-the-trap.pdf>; Shery Mead, David Hilton and Laurie Curtis, Peer Support: A Theoretical Perspective, available at <http://www.intentionalpeersupport.org/documents/peersupport.pdf>.

³² CRPD Articles 12.3 and 13.

g) Complaints and independent inspection

Recommendations:

A revised SMR should ensure that

- 1) complaints mechanisms are accessible to prisoners with disabilities including those with psychosocial disabilities, and provide procedural accommodations where needed, and
- 2) independent inspection bodies include persons with disabilities, are knowledgeable about the rights of persons with disabilities and communicate with prisoners with disabilities to ascertain their perspectives; in all cases “persons with disabilities” includes those with psychosocial disabilities.

h) The replacement of outdated terminology

1. Rules 82 and 83, on “Insane and mentally abnormal prisoners,” are outdated in both terminology and concept, and contravene provisions of the CRPD. CRPD Article 12 provides that all persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Legal capacity to make decisions entails responsibility for one’s actions, which can give rise to criminal liability. Thus, a finding of “insanity” or “unimputability” as a defense to criminal liability is inconsistent with the equal responsibilities of persons with disabilities as members of society who owe duties to others. Instead of an excuse that negates liability, non-discriminatory fairness doctrines such as the subjective element of a crime (e.g. intent) must be applied, taking into account the individual’s circumstances which may include disability.
2. Furthermore, CRPD Article 14.2 provides that prisoners with disabilities are entitled to equal guarantees as others who are deprived of their liberty, and to be treated in compliance with the objectives and principles of the CRPD. Removal to a mental institution, segregation in specialized institutions under medical management, and supervision by a medical officer, as called for under Rule 82(1), (2) and (3), impose additional hardships and restriction of liberty, in violation of the right to equal guarantees in detention settings, and amount to deprivation of liberty based on disability, which is prohibited under Article 14.1(b). Disability-based segregation is also prohibited under Article 19, which provides that persons with disabilities have a right to live in community and to choose where and with whom to live on an equal basis with others. This applies in the prison setting to the opportunity to live in general population and other non-segregated housing options. Instead of segregation, the CRPD requires provision of reasonable accommodation, supports and services in accordance with the person’s expressed wishes, and

availability of services for the population that welcome persons with disabilities.

Recommendations:

A revised SMR should

- 1) derogate Rules 82 and 83,
- 2) provide for mental health services to be made available to all prisoners on the basis of free and informed consent by the person concerned, and that such services must be confidential and accountable to the person concerned and must include peer support, trauma-informed counseling and programs, and other alternatives to the medical model of mental health,
- 3) ensure that services and supports are made available to persons expressing a high need for support,
- 4) ensure that prisoners are free to express mental health needs and to use mental health services without incurring adverse consequences or discrimination of any kind, and
- 5) ensure that prisoners with psychosocial disabilities, including those expressing a high need for support, are included in all measures pertaining to prisoners with disabilities, including being entitled to non-discrimination, reasonable accommodation and to be treated in accordance with the highest standards of international law on the rights of persons with disabilities at all times.

i) Training of relevant staff to implement the Standard Minimum Rules

Recommendation:

A revised SMR should

- 1) ensure that training of all staff includes respect for the rights, dignity, capabilities and expressed needs of persons with disabilities, including those with psychosocial disabilities,
- 2) ensure that training of staff includes designation of disability focal points who receive additional training in working with persons with disabilities to devise reasonable accommodation and to meet their expressed needs for supports and services, and
- 3) ensure that mental health staff
 - are hired with a range of capabilities and qualifications so as to provide a wide range of services including peer support and other alternatives to the medical model of mental health, and
 - are trained to implement the requirements of international law in relation to free and informed consent by the person concerned.

The World Network of Users and Survivors of Psychiatry is a democratic organization of users and survivors of psychiatry that represents this constituency at the global level. In our Statutes, "users and survivors of psychiatry" are self-defined as people who have experienced madness and/or mental health problems, or who have used or survived mental health services.

WNUSP had its beginnings in 1991 and became a full-fledged organization with a democratic global structure on adopting its statutes in 2001. Currently we have members in over 50 countries, spanning every region of the world.

WNUSP is a member of the International Disability Alliance (IDA), and is represented on the Panel of Experts of the UN Special Rapporteur on Disability.

WNUSP was involved in the work on the Convention on the Rights of Persons with Disabilities (CRPD) since the inter-regional expert meeting convened by the Mexican government before the 1st session of the Ad Hoc Committee (the UN forum in which the CRPD was negotiated), and has been active and successful in achieving our aims for the Convention, especially with regard to legal capacity, liberty, integrity and free and informed consent, as well as principles of autonomy, human diversity and equality reflected not only in article 3 but throughout the Convention.

WNUSP brought over 20 users and survivors of psychiatry to the UN, from every region of the world, in addition to representatives of other user/survivor organizations that worked closely with us, such as Mind Freedom International and People Who.

WNUSP was among the organizations that created the International Disability Caucus, and served on its steering committee; it is also currently on the steering committee of the IDA CRPD Forum. WNUSP was also one of the organizations represented in the 2004 working group that produced the first official draft text of the CRPD, and was represented as one of two civil society speakers at the adoption of the CRPD by the General Assembly.

Since the adoption of the CRPD, WNUSP has produced an Implementation Manual from a user/survivor perspective (available on our website), and continues to work with the rest of the international disability community, especially through the Legal Capacity Task Force, a working group of the IDA CRPD Forum.

WNUSP has Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC).

Please see our website www.wnusp.net for more information.

The Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP) provides strategic leadership in human rights advocacy, implementation and monitoring relevant to people experiencing madness, mental health problems or trauma.

In particular, CHRUSP works for full legal capacity for all, an end to forced drugging, forced electroshock and psychiatric incarceration, and for support that respects individual integrity and free will.