



**World Network of Users
and Survivors of Psychiatry**

www.wnusp.net



Pan African Network of People with Psychosocial Disabilities

email: info@panusp.org
www.panusp.org

Continental solidarity to promote and protect the rights of persons with psychosocial disabilities



**Center for the Human Rights of
Users and Survivors of Psychiatry**

www.chrusp.org

11 December 2012

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

The World Network of Users and Survivors of Psychiatry, as the global self-representative body of persons with psychosocial disabilities (those labeled with any psychiatric diagnosis or experiencing madness, mental health problems or trauma), and as an organization whose expertise was highly influential in the drafting and negotiation of the Convention on the Rights of Persons with Disabilities, joined by other organizations of users and survivors of psychiatry, declares the following:

1. WNUSP is an essential partner in the revision of the Standard Minimum Rules on the Treatment of Prisoners, particularly as the SMR pertain to prisoners with psychosocial disabilities.
2. As the University of Essex expert meeting had no representation from WNUSP, it cannot be considered reliable in matters pertaining to prisoners with psychosocial disabilities.
3. WNUSP therefore submits this commentary to the Intergovernmental Expert Group Meeting to be held in Buenos Aires from 11-13 December 2012, as an essential supplement to the University of Essex document, which should be taken as superseding that document in matters pertaining to prisoners with psychosocial disabilities, including the revision of Rules 82 and 83.
4. While it recognizes that the CRPD is the appropriate source for the rights of prisoners with disabilities, and incorporates some of WNUSP's

recommendations, the Essex document fails in some respects to adhere to the actual standards of the CRPD. We take this opportunity to review those standards.

5. The CRPD recognizes that prisoners with psychosocial disabilities are entitled to the same guarantees as other prisoners, and are entitled to be treated in compliance with the objectives and principles of the CRPD, including the provision of reasonable accommodation.¹
 - a. The purpose of the CRPD is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.²
 - b. The principles of the CRPD include, inter alia:
 - i. Respect for individual autonomy, including the freedom to make one's own choices
 - ii. Non-discrimination
 - iii. Full and effective participation and inclusion in society
 - iv. Respect for difference, and acceptance of persons with disabilities as part of human diversity and humanity
 - v. Equality of opportunities.³
 - c. Other key provisions related to core objectives of the treaty include Articles 12, 17 and 19.
 - i. Article 12 provides that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and that states must provide access to support for the exercise of legal capacity, while respecting the rights, will and preferences of the person concerned.⁴
 - ii. Article 17 provides that persons with disabilities have the right to respect for their physical and mental integrity on an equal basis with others.

¹ CRPD Article 14.2.

² CRPD Article 1.

³ CRPD Article 3.

⁴ The CRPD Committee has consistently maintained in its Concluding Observations that Article 12 requires replacement of substituted decision-making regimes by supported decision-making, which respects the person's autonomy, will and preferences. The most detailed guidance is found in the Concluding Observations on China issued in 2012, CRPD/C/CHN/CO/1, paragraph 22.

- iii. Article 19 provides that persons with disabilities are entitled to have equal opportunities as others to choose where and with whom to live, and cannot be compelled to live in a particular living arrangement. It further provides that a wide range of supports must be made available to support living in the community and to prevent isolation, and that services for the general population must be available on an equal basis to persons with disabilities and respond to their needs.
 - d. Amplifying on the right to respect for integrity, CRPD Article 25(d) requires that health care be provided to persons with disabilities on the basis of their free and informed consent. Furthermore, CRPD Article 14.1(b) provides that any deprivation of liberty shall in no case be based on disability. The Committee on the Rights of Persons with Disabilities has consistently interpreted these provisions to require that mental health services must be based on free and informed consent of the person concerned, and that legal provisions authorizing detention on the basis of psychosocial disability must be repealed.⁵
- 6. The implications of the CRPD for prisoners with psychosocial disabilities are threefold:
 - a. First, any mental health services provided to them must be based on free and informed consent of the person concerned. There can be no involuntary transfer to mental health units inside or outside the prison, no medical authorization of restraint or solitary confinement, and no forcible or nonconsensual use of medication or other therapies. The coercive nature of incarceration leaves prisoners with psychosocial disabilities especially vulnerable to industrial provision of mental health treatment through limited information for obtaining consent, therefore if mental health interventions occur there must be extensive and critical information provided for obtaining consent to treatment.
 - b. Second, prisoners with psychosocial disabilities are entitled to be eligible for all programs and services within the prison, including parole and work release, and to be housed in general population, with supports and reasonable accommodation made available to them. The rights and privileges of prisoners with disabilities must be determined on an equal basis with others, and not subject to the judgment of any physician or mental health professional. While reasonable accommodation can entail modification of rules and procedures, where necessary to ensure to a particular individual the

⁵ See for example Concluding Observations on China CRPD/C/CHN/CO/1, paragraph 36, and Concluding Observations on Spain CRPD/C/ESP/CO/1, paragraph 36.

equal enjoyment or exercise of human rights and fundamental freedoms, reasonable accommodation has to be accepted by the individual and cannot be used to justify differential treatment that individual refuses to accept.⁶

- c. Third, the imposition of criminal responsibility itself, and the imposition of a sentence and/or security measures, must not discriminate based on disability. Persons with psychosocial disabilities are entitled to be included as members of the community capable of accepting responsibility for their actions. When persons with psychosocial disabilities are instead subjected to security measures based on their disability, the CRPD is doubly violated.⁷

7. WNUSP accordingly makes the following amendments to the Essex document:

- a. On the proposal for a new Preamble:
The “Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care” should not be cited as a relevant standard for the rights of detainees, as it has been discredited and superseded in essential respects by the CRPD.⁸ The CRPD itself omitted any mention of this declaration in its own Preamble, and WNUSP rejects any use of the MI Principles as it promotes a medical model of disability, sets standards that derogate our human rights and authorizes the practice of human rights violations.⁹
Recommendation: Omit “UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care” from any Preamble.
- b. On the proposal for revision to Rule 6:
Steps taken to minimize the risk of self-harm and to prevent suicide can do more harm than good when they entail physical or chemical restraint or similar measures infringing on a person’s dignity or autonomy.¹⁰

⁶ CRPD Article 3(a).

⁷ CRPD Articles 12.2 and 14.1(b); OHCHR Thematic study to raise awareness and understanding of the CRPD A/HRC/10/48, paragraph 47. See additional materials at www.chrusp.org.

⁸ UN Special Rapporteur on Torture, Report on torture and persons with disabilities A/63/175, paragraph 44; OHCHR Thematic Study A/HRC/10/48, paragraphs 48-49.

⁹ WNUSP Statement for Meeting of Experts in Mexico City on an International Convention (2002), available at www.chrusp.org/home/flyers; WNUSP Position paper on the principles for the protection of persons with mental illness (2001), available at www.wnusp.net.

¹⁰ David Webb, *Thinking About Suicide*; see www.thinkingaboutsuicide.com.

Recommendation: Reword proposed paragraph 5 to read:
“States shall ensure the safety and personal security of prisoners from exploitation, abuse and violence, including inter-prisoner violence, and shall offer prisoners support that respects the individual’s autonomy, choices, dignity and privacy,¹¹ for the purpose of minimizing self-harm and preventing suicide.”

c. On the proposal for revision of Rule 22:

The exercise of free and informed consent is not merely a matter of professional ethics, it is a requirement of international law.¹²

Recommendation: Reword paragraph 4 and add a new paragraph 4bis, as follows:

“The health-care services shall operate in full clinical independence and according to internationally accepted professional, ethical and human rights standards, in particular with regard to the autonomy, informed consent and confidentiality of prisoners in all matters.

(4bis) All prisoners have the right to personally exercise free and informed consent with respect to all aspects of health-care, including mental health services and including transfer to any hospital or community health service.”

d. On the proposal for revision of Rule 23:

Mental health needs cannot be met adequately if only medical model services (e.g. those based on psychiatric diagnoses, medications etc.) are provided. The CRPD Committee has called for the development of a wide range of supports and services including peer support and other alternatives to the medical model of mental health.¹³

The London Prison Project being run by the Hearing Voices Network is an example of good practice:¹⁴

“In April 2010, we launched an innovative London-wide 3 year project to develop peer support groups for people in prisons who hear, see or sense things others don’t (Hearing Voices Groups). We are currently developing partnerships with a range of both statutory and voluntary

¹¹ CRPD Committee Concluding Observations on China C/CRPD/CHN/CO/1, paragraph 36.

¹² CRPD Article 25(d); CRPD Committee Concluding Observations on China C/CRPD/CHN/CO/1, paragraph 36; CESCR General Comment No. 14 paragraph 8.

¹³ CRPD Committee Concluding Observations on China C/CRPD/CHN/CO/1, paragraph 36.

¹⁴ [http://www.parlaconlevoci.it/pdf/savona2011/Waddingham_\(prison_project\)_-_Savona_2011.pdf](http://www.parlaconlevoci.it/pdf/savona2011/Waddingham_(prison_project)_-_Savona_2011.pdf).

organisations currently supporting prisoners, offering free training to enhance this.”¹⁵

Recommendation: Reword paragraph 2 as follows:

“The health-care service shall provide for the promotion, protection and care of the mental health needs of the prisoners through the availability of a sufficient number of psychiatrists, psychologists, social workers, counselors, peer specialists and nurses with adequate psychiatric training, and shall develop the capacity to make available peer support, trauma-informed services¹⁶ and other alternatives to the medical model of mental health. All steps should be taken to ensure that voluntary supports and services are accessible and appropriate to prisoners of different ages, genders and cultural, racial and linguistic backgrounds.”

- e. On the proposal for revision of Rule 24:
Assessment of mental health-care needs is especially dependent on interpersonal factors and requires a process that departs from the medical model of mental health and that takes account of the duty of reasonable accommodation for disability and the duty to provide access to supports and services as understood within a social model of disability.

Recommendation: Paragraph (2)(f) should be deleted and a new paragraph 2(bis) should be added, as follows:

“Every prisoner should be given the opportunity, as soon as possible after admission, to discuss with appropriately trained health-care personnel his or her mental health challenges and needs, including those related to a history of trauma, as well as needs relating to suicidality or self-harm, and to be provided with reasonable accommodation, supports and services that respond to the individual’s expressed needs and that respect his or her autonomy, choices, dignity and privacy.”¹⁷

- f. On the proposal for revision of Rule 31:

¹⁵ <http://www.mindincamden.org.uk/hearingvoicesproject.htm>.

¹⁶ See 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>.

¹⁷ CRPD Committee Concluding Observations on China C/CRPD/CHN/CO/1, paragraph 36.

Solitary confinement always causes harm¹⁸ and should be banned, irrespective of the time period involved or the persons to whom it may be applied. It is not sufficient to prohibit solitary confinement of persons known to be currently experiencing a high level of mental/emotional distress. Furthermore the language “persons with mental illnesses” reflects an outdated medical model of disability and is dependent on controversial diagnoses.¹⁹

Recommendation: Remove paragraphs (2) and (3) and change paragraph 1 as follows:

“Corporal punishment, solitary confinement, punishment by placing in a dark cell, the suspension or restriction of water or food, the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs,²⁰ and all other cruel, inhuman or degrading treatment or punishments shall be completely prohibited.”

Wherever the terminology “persons with mental illnesses” may be found, “persons with psychosocial disabilities” should be substituted.

g. On the proposal for revision of Rule 33:

It is correct to eliminate restraint on medical grounds, as there is no therapeutic justification for restraint.²¹ However, use of instruments of restraint to prevent self-injury is problematic for similar reasons. Self-injury relates to issues of trauma and psychic pain, and use of restraints can augment the problem by creating a situation of powerlessness and revictimization.²² Furthermore, the use of drugs as a form of chemical restraint is a form of ill-treatment and torture,

¹⁸ See Jolijn Santegoeds, *Breaking the Cells Down* (2007), available at www.mindrighs.org.

¹⁹ WNUSP, “Psychosocial Disability” available at www.chrusp.org/flyers; 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.

²⁰ CESCR Concluding Observations on Moldova, E/C.12/MDA/CO/2, paragraph 24; CRPD Concluding Observations on Peru CRPD/C/PER/CO/1, paragraph 31-32; Human Rights Committee, views on communication No. 110/1981, *Viana Acosta v. Uruguay*, adopted on 29 March 1984 (CCPR/C/21/D/110/1981), paragraphs 2.7, 14 and 15; Special Rapporteur on Torture A/63/175, paragraphs 40 and 47; Special Rapporteur on Torture E/CN.4/1986/15, paragraphs 118, 119; OHCHR Thematic study on the issue of violence against women and girls with disability, A/HRC/20/5, para 53(d), (e).

²¹ Special Rapporteur on Torture A/63/175, paragraph 55.

²² ENUSP Press Release “Czech Republic Must Stop Caging Human Beings,” available at <http://www.enusp.org/index.php/news/85-czech-republic-must-stop-caging-human-beings>.

and must be prohibited,²³ and straitjackets too are degrading. Concerns have also been raised about electronic (GPS) tagging of individuals in forensic units, both pre-trial and as a condition for temporary release in the community; these electronic ankle straps are uncomfortable and degrading.²⁴

User/survivor experts like Louise Pembroke have developed good practice standards and harm minimization training, including in forensic settings, that aim to limit the damage related to self-injury while fully respecting the rights and dignity of the person concerned.²⁵

Recommendation: Paragraphs (1), (3) and (4) should be revised as follows:

(1) “Force and instruments of restraints may only be used as specified by law, in exceptional circumstances when strictly necessary to prevent the detainee from inflicting injury to others or serious destruction of property. Force and restraints must not cause humiliation or degradation, and shall be used in observance of the principle of proportionality, where all other control mechanisms have been exhausted and failed and for the shortest possible period of time.” [Deleting “inflicting self-injury”]

(3) “Inherently inhuman, degrading or painful instruments such as chains or irons, straitjackets, body-worn electro-shock devices, electronic (GPS) tagging, and the use of drugs as a chemical restraint, shall be prohibited. Other instruments of restraint, such as handcuffs,²⁶ shall never be applied as a punishment and shall not be used except in the following circumstances:”

(a) AS IS

(b) “By order of the director, if other methods of control fail, in order to present a prisoner from injuring others or from damaging property; in such instances the director shall at once report to the higher authority.” [Deleting “himself or” and “consult the medical officer”]

²³ CRPD Committee Concluding Observations on Peru CRPD/C/PER/CO/1, paragraph 15; CESCR Concluding Observations on Moldova, E/C.12/MDA/CO/2, paragraph 24; Human Rights Committee, views on communication No. 110/1981, *Viana Acosta v. Uruguay*, adopted on 29 March 1984 (CCPR/C/21/D/110/1981), paragraphs 2.7, 14 and 15; Special Rapporteur on Torture A/63/175, paragraphs 40, 41, 63; Special Rapporteur on Torture E/CN.4/1986/15, paragraphs 118, 119;

²⁴ <http://www.bbc.co.uk/news/uk-11076674>.

²⁵ See <http://studymore.org.uk/harmmin.htm> and <http://www.harm-ed.com/>.

²⁶ Note that “chains and irons” appears to have been included by mistake in the second sentence of the paragraph.

(4) “Prisoners undergoing medical treatment, or childbirth, should not be restrained unless they are an immediate threat to others.”
[Deleting “themselves or”]

- h. On the proposal for revision of Rule 55:
Inspection mechanisms should include persons with disabilities, including persons with psychosocial disabilities, with expertise in requirements related to accessibility, accommodations and supports for persons with all types of disabilities.
Recommendation: Paragraph (3) should be modified as follows:
“The members of such inspection shall have proven professional experience in the field of administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty, and shall include medical personnel and specialists in accessibility, accommodation and support required by persons with disabilities, including persons with psychosocial disabilities. Due consideration shall be given to balanced gender representation on the basis of the principles of equality and non-discrimination, and to the participation of members with disabilities, including psychosocial disabilities.”²⁷
- i. On the proposal for revision of Rule 82:
WNUSP welcomes the substitution of a section of the SMR titled “Insane and mentally abnormal prisoners” with one entitled “Persons with Disabilities.” However, the content needs to be substantially modified to comply with requirements of the CRPD. As disability is a social issue and not a medical one, it is improper to rely on physicians in determining the needs of prisoners with disabilities. Providing for a disability services officer, independent and bound by duties of confidentiality, shifts the institutional framework to a social model of disability and implements the CRPD requirement of independent monitoring of facilities and services designed to serve persons with disabilities.²⁸ Furthermore, only the individual concerned can determine his or her needs related to a disability, and the manner in which those needs can be met in the context of detention is a matter for negotiation with the assistance of legal counsel. Psychosocial disability as well as other types of disability has to be addressed in the light of the objectives and principles of the CRPD, including equality and non-discrimination, accessibility, reasonable accommodation, and the right to be included and participate in the community. (See above paragraphs 5 and 6 for details of the CRPD requirements.)

²⁷ CRPD Article 34.4.

²⁸ CRPD Article 16.3. The figure of a disability service officer has been used in educational institutions; see <http://syr.edu/academics/associate-provost-academic-programs/reporting/office-of-disability-services.html>.

Furthermore, in light of findings made by the UN Special Rapporteur on Torture, particular forms of disability-based torture and ill-treatment should be prohibited from being applied to prisoners with disabilities.

Recommendation: Rule 82 should be modified to read:

B. Prisoners with Disabilities

82. (1) Prisoners with disabilities include, inter alia, those who have physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society, or in prison life, on an equal basis with others.²⁹ No individual shall be discriminated against based on disability, including on the basis of perceived disability.³⁰ The principles of this Rule apply to prisoners who have existing disabilities or who develop disabilities while imprisoned.

[Deleting “long term” from first sentence]³¹

(2) All Rules apply to all prisoners with disabilities on an equal basis with others, without discrimination of any kind.³² All prisoners with disabilities are entitled to the equal protection and benefit of all rights, programs, services and facilities pertaining to prisoners as established under international and domestic law, as well as those of the correctional system or institution where the person is being held.³³

(3) Discrimination against any prisoner based on disability, including denial of reasonable accommodation, shall be prohibited.³⁴ Prisoners with disabilities are entitled to remain in general population and to be eligible for, and participate in, all programs and services available to other detainees, including parole and work-release programs.³⁵

(4) Prison staff must include a disability services officer trained in international human rights standards and good practices for non-discrimination, accessibility and reasonable accommodation for all persons with disabilities, who is responsible for assisting individual prisoners in obtaining needed accommodations, supports and services related to a disability, and for making recommendations.

²⁹ CRPD Article 1.

³⁰ Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, Article 1; CRPD Concluding Observations on Spain CRPD/C/ESP/CO/1 paragraph 20; CRPD Concluding Observations on China paragraphs 25-26.

³¹ CRPD Concluding Observations on Spain CRPD/C/ESP/CO/1 paragraph 12.

³² CRPD Articles 1 and 4.

³³ CRPD Articles 4 and 5.1.

³⁴ CRPD Articles 2 and 5.2.

³⁵ CRPD Articles 3(c), 4, 5 and 19. WNUSP Discussion Paper on Policy Issues at the Intersection of the Mental Health System and the Prison System, available at www.chrusp.org/home/resources.

Such officer must be independent from prison authorities, must not participate in security or control measures, and must be bound by the duty of confidentiality to prisoners requesting assistance.³⁶

(5) Prisoners with disabilities may only be held in conditions where they can meet their needs and enjoy and exercise human rights and fundamental freedoms on an equal basis with other prisoners. A prisoner is entitled to express his or her needs related to a disability, and to request reasonable accommodation, without experiencing repercussions of any kind, and to have the assistance of legal counsel in obtaining the requested accommodations, supports and services. If agreement cannot be reached, the individual must have recourse to a court for resolution. In this regard, the state is obligated to ensure that facilities, programmes and services are accessible and that the individual's needs are addressed in consultation with that individual, in line with the principle of reasonable accommodation and that the individual is able to participate fully in prison life. The state must also take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment against prisoners with disabilities, including forcible medication and correctional therapies.³⁷

(6) Persons who are found to have committed a criminal act but lacked the subjective mental state necessary to attract criminal responsibility³⁸ shall not be detained or subjected to security measures of any kind on the basis of such status. Such individuals shall be offered supports and services on the basis of their free and informed consent.

(7) Prisoners experiencing extreme mental states such as those commonly labeled as psychosis shall be offered appropriate services in the community, including peer support and other alternatives to the medical model of mental health, and shall be promptly assisted in obtaining those services, based on the free and informed consent of the person concerned.

(8) Prisoners whose disabilities cannot be effectively accommodated in detention, including those experiencing long-term mental and emotional difficulties and those experiencing deleterious effects of confinement for other reasons, shall be offered humanitarian release

³⁶ CRPD Article 16.3.

³⁷ CRPD Concluding Observations on Peru CRPD/C/PER/CO/1, paragraph 31-32; CRPD Concluding Observations on China CRPD/C/CHN/CO/1, paragraphs 27-28; Human Rights Committee, views on communication No. 110/1981, *Viana Acosta v. Uruguay*, adopted on 29 March 1984 (CCPR/C/21/D/110/1981), paragraphs 2.7, 14 and 15; Special Rapporteur on Torture A/63/175 paragraphs 38-41, 47, 62-63; Special Rapporteur on Torture E/CN.4/1986/15, paragraphs 118, 119; OHCHR Thematic study on the issue of violence against women and girls with disability, A/HRC/20/5, para 53(d), (e).

³⁸ OHCHR Thematic study A/HRC/10/48 paragraph 47.

and assisted in obtaining desired supports and services in the community. In no case shall these persons be subjected to forced mental health treatment in the community.³⁹

(9) States shall ensure effective access to justice for persons with disabilities on an equal basis with other detainees as set out in Rules 35, 36, 37 and 93 through the provision of procedural and other accommodations appropriate to the age and disability of the individual prisoner.

[Deleting paragraph 7 of the Essex document proposal for Rule 82, as it is covered earlier.]

8. WNUSP incorporates by reference its earlier submission to this process and the positions stated therein.

³⁹ CRPD 12, 15, 17, 25; SRT A/63/175 paragraph 63.