



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

June 11, 2013

Dear Senator,

The undersigned organizations and individual experts object to the reservations, understandings and declarations attached to the United States' proposed ratification of the Convention on the Rights of Persons with Disabilities by the Administration and by the Senate Committee on Foreign Relations.¹ The package as a whole represents a failure to meaningfully accept the obligations essential to ratification of a human rights treaty, in particular the obligation to conform domestic law to universal standards. Certain RUDs have a discriminatory impact against persons labeled with psychiatric disabilities, and purport to limit the obligations of the United States with respect to core elements of the treaty, in particular the right to legal capacity and the principles of respect for individual autonomy, and equality and non-discrimination. These particular RUDs, and the package as a whole, contravene Article 46 of the CRPD, which prohibits reservations that are incompatible with the object and purpose of the treaty.

Of particular concern are the federalism reservation and the declaration that U.S. law fulfills or exceeds its obligations under the treaty. These provisions contravene the core requirement in Article 4.1(a) and (b) of the CRPD to conform U.S. law to the treaty, at both the federal and state levels, which entails the obligation to leave open the possibility that its laws may not comply in some respects, rather than making a sweeping and pre-emptive declaration that disavows the need for further examination.

The obligation to conform domestic law to the treaty is not merely one of many procedural requirements of the CRPD itself. It is an inherent principle of international human rights law that human rights are universal, and that no state can declare its own law to be the measure of compliance with the treaty.² Broad reservations to the CRPD referencing national law have been widely denounced by other States Parties.³ The reservation and declaration violate Article 46 of the CRPD and the corresponding tenet of customary international law under which reservations incompatible with the object and

¹ See record for treaty number 112-7 at <http://thomas.loc.gov/cgi-bin/thomas>.

² Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>.

³ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en.

purpose of a treaty are impermissible; declarations are treated as reservations to the extent that they exclude the legal effects of certain provisions of the Convention.⁴

Furthermore, the substantive impact of the federalism reservation and the declaration that U.S. law fulfills the requirements of the treaty discriminates against people labeled with psychiatric disabilities and others who are subjected to legal incapacitation, substituted decision-making, and involuntary institutionalization under the color of law. As the Administration's own memorandum acknowledges, state laws on guardianship violate Article 12 of the CRPD on the right to legal capacity, and mental health laws authorizing compulsory treatment and detention violate Article 14 on the right to liberty.⁵ The memorandum misstates the actual standards, and the scope of violations is much wider than acknowledged; in fact all legal provisions that authorize detention or compulsory treatment on mental health grounds, and all legal provisions that authorize legal incapacitation or substituted decision-making, violate the CRPD.⁶ Mental health detention and compulsory treatment violate several provisions in addition to Article 14, in particular Articles 12, 15, 17, 19 and 25. The discriminatory impact against a particular sector of the disability community contravenes the purpose stated in CRPD Article 1, which specifies the aim of the treaty to "promote, protect and ensure the full and equal enjoyment of **all** human rights and fundamental freedoms by **all** persons with disabilities" [emphasis added].

An international legal opinion is on record with the view that reservations against Article 12 are incompatible with the object and purpose of the Convention, because it contravenes fundamental principles articulated in Article 3 and because legal capacity is necessary to the enjoyment of other rights. Legal capacity is the right not only to have rights but also to exercise them; any restriction in legal capacity is a restriction in the exercise of underlying substantive rights guaranteed by the treaty. The reasoning of the experts applies fully to the reservation and declaration denying the obligation to change state laws that allow guardianship, compulsory hospitalization or institutionalization, and compulsory treatment.

Equality and non discrimination along with respect for dignity, individual autonomy and freedom to make one's own choices have been recognized as the general principles of CRPD. The general principles were included to render the

⁴ Note that one of the reservations to the CRPD (by the Islamic Republic of Iran) that has met with condemnation is styled as a declaration. In addition, it is worth noting that the Legal Opinion on Article 12, referenced below, was prompted by an interpretive declaration interposed by Mexico, since withdrawn, which experts viewed as amounting to a reservation. See Gerard Quinn, "The UN Convention on the Rights of Persons with Disabilities: National Institutions as Key Catalysts for Change," delivered in Mexico City, 25, 26 October 2007.

⁵ <http://www.gpo.gov/fdsys/pkg/CDOC-112tdoc7/pdf/CDOC-112tdoc7.pdf>.

⁶ Significant Concluding Observations by the CRPD Committee relevant to users and survivors of psychiatry are highlighted in a summary available at <http://wgwnusp2013.wordpress.com/convention-on-the-rights-of-people-with-disabilities/>.

object and purpose of the Convention explicit. A reservation on article 12 is antithetical to each of these principles and hence not permissible by article 46 of the Convention.

Further if a reservation is entered to either circumscribe the meaning of legal capacity or to limit the persons with disabilities included under the provision the limitation will not be confined to article 12 alone but will also extend to the other rights guaranteed under CRPD be it: the right to education or the right to work or freedom of speech and expression or political participation. Such a consequence would be destructive of both the letter and spirit of the CRPD and hence unimaginable.⁷

United Nations Special Rapporteur on Torture Juan Méndez has underscored the non-derogable nature of the right to be free from nonconsensual psychiatric interventions, calling for an absolute ban and affirming that forced interventions constitute at least inhuman and degrading treatment and may amount to torture.⁸ Reservations that deny the obligation to repeal domestic laws authorizing practices that amount to torture and ill-treatment is contrary to the universal prohibition of torture and ill-treatment that is fundamental to international human rights law.

We call on the United States Senate to ratify the CRPD only under conditions that demonstrate a commitment to its meaningful implementation for all persons with disabilities. The package of RUDs fails in this respect. We ask the Senate to reject all RUDs, especially the federalism reservation and the declaration that U.S. law fulfills or exceeds its obligations under the treaty. The Senate should invite international and national experts on the human rights of persons with disabilities, particularly experts with disabilities, to provide testimony as to the measures needed for full implementation of this treaty by the United States, so that a properly meaningful ratification commitment can be made without RUDs.

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⁷ <http://disability-studies.leeds.ac.uk/files/library/legal-opinion-LegalOpinion-Art12-FINAL.pdf>.

⁸ Report of the Special Rapporteur on Torture, paragraphs 89(b) and 81, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf; see also paragraph 85 and the remainder of paragraph 89. Note that the Rapporteur elaborated on detention in his statement made to the Human Rights Council on 4 March 2013: “Deprivation of liberty on grounds of mental illness is unjustified... I believe that the severity of the mental illness cannot justify detention nor can it be justified by a motivation to protect the safety of the person or others.”

Endorsers:*

ADC Michigan

Bapu Trust for Research on Mind & Discourse, Pune (India)

Campaign to Repeal Mental Health Laws

Center for the Human Rights of Users and Survivors of Psychiatry

Coalition on the Rights of Persons with Disabilities (Jordan)

Committee to Boycott the DSM-V: Jack Carney, DSW, Coordinator, Brooklyn, N.Y.; Jode Freyholtz-London, St. Paul, Minnesota; Karla Helbert, MS, Richmond, Va.; Gerald D. Otis, Ph.D, Las Cruces, New Mexico; Jennifer Soos, LMFT, San Antonio, Texas; The Rev. Sue Wintz MDiv., Mesa, Arizona.

Disabled Peoples International

IMPERO (Irish Mental Patients' Educational and Representative Organisation)

Ithaca Mental Patients Advocacy Coalition

Law Project for Psychiatric Rights (PsychRights)

MindFreedom Central Alaska

Programa de Acción por la Igualdad y la Inclusión Social (PAIIS)
Facultad de Derecho - Universidad de los Andes
Bogotá, Colombia

PANUSP - Pan African Network of People with Psychosocial Disabilities

REDI - Red por los Derechos de las Personas con Discapacidad
Argentina

Sociedad y Discapacidad (Sodis) (Peru)

Takafo (Equality) Advocacy Campaign of the Rights of Persons with Disabilities
(Jordan)

Vermont Workers Center

The Woodhull Sexual Freedom Alliance

We Shall Overcome (WSO) (Norway)

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