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PRESS RELEASE

Human Rights Committee Disappoints Disability Community; Still Tolerates Mental Health Detention

This Tuesday, as expected, the Human Rights Committee (UN body that monitors the International Covenant on Civil and Political Rights) reaffirmed a discriminatory approach to liberty and security of persons with disabilities, which permits mental health detention even while recognizing that it is harmful. Ms Zonke Majodina, Committee member from South Africa, holds out hope that this represents “progress towards prohibition, rather than toleration, of mental health detention.”

The Human Rights Committee adopted the following text for paragraph 19 of a draft General Comment on liberty and security of the person:

States parties should revise outdated laws and practices in the field of mental health in order to avoid arbitrary detention. The Committee emphasizes the harm inherent in any deprivation of liberty and also the particular harms that may result in situations of involuntary hospitalization. States Parties should make available adequate community based or alternative social care services for persons with psychosocial disabilities in order to provide less restrictive alternatives to confinement. The existence of a disability shall not in itself justify a deprivation of liberty but rather any deprivation of liberty must be necessary and proportionate, for the purpose of protecting the individual in question from serious harm or preventing injury to others. It must be applied only as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law. The procedures should ensure respect for the views of the individual, and should ensure that any representative genuinely represents and defends the wishes and interests of the individual. States parties must offer to institutionalized persons programmes of treatment and rehabilitation that serve the purposes that are asserted to justify the detention. Deprivation of liberty must be reevaluated at appropriate intervals with regard to its continuing necessity. Individuals should be assisted in obtaining access to effective remedies for the vindication of their rights, including initial and periodic judicial review of the lawfulness of the detention, and to prevent conditions of detention incompatible with the Covenant.

The Human Rights Committee alluded to CRPD Article 14 in this text, but changed the wording to reflect their own outdated standard, so that their version reads, “the existence of a disability shall not *in itself* justify a deprivation of liberty.” Committee members acknowledged that such wording (the equivalent term “solely”) had been rejected during the CRPD negotiations, but nevertheless rejected the CRPD text, which reads, “the existence of a disability shall *in no case* justify a deprivation of liberty.”

The treaty body similarly rejected the authoritative interpretation of the CRPD by the Committee on the Rights of Persons with Disabilities – not only that Committee’s Concluding Observations under Article 14 on liberty and security of the person which directly prohibit mental health detention, but also the CRPD’s General Comment No. 1 on legal capacity, which prohibits institutionalization or mental health treatment without the free and informed consent of the person concerned.

The Human Rights Committee's divergence from the CRPD is not merely one of higher or lower levels of rights protection but actual contradiction. It reflects a failure to internalize the substantive contribution of the CRPD to international human rights law, centering the perspective of persons with disabilities, who were absent from earlier standard-setting processes. The CRPD shifts from a social welfare/medical/individual defect model of disability, which treats persons with disabilities as objects of care and control by others, to a human rights/non-discrimination model, which guarantees respect for individual autonomy in decision-making and affirms both rights and duties of persons with disabilities on a basis of equality.

To literally add insult to the injury done to our rights under the ICCPR, some Human Rights Committee members characterized persons with disabilities as "these people" and as "individuals afflicted by mental challenges that may lead them to require help to ensure that they're not presenting serious harm to themselves or to others and will not in the future." Another member doubted that people with disabilities could hold "views," saying, "It's better to speak about his wishes and not his view because at the end he is a person suffering from mental health." Such statements were heard often in the early stages of the CRPD negotiations but as time went on delegations came to appreciate the new paradigm of support that respects individual autonomy. It is disappointing coming from members of an expert body that had ample information made available by disabled people's organizations as well as the Committee on the Rights of Persons with Disabilities and the Special Rapporteur on Disability.

We do not believe that the standard expressed in paragraph 19 represents a substantive improvement over the Human Rights Committee's earlier jurisprudence. Paragraph 19 endorses mental health detention and specifies conditions under which the Committee considers it to be warranted. It incorporates the pejorative view that persons with psychosocial disabilities are uniquely capable of harm to oneself and others, and perpetuates discriminatory denial of the right to free and informed consent as to hospitalization and treatment.

We join Ms Majodina in our belief that the evolution of law in this area from a disability non-discrimination perspective will eventually result in the Human Rights Committee adopting a prohibition standard. However, the standard adopted this week will continue to do untold harm to persons with psychosocial disabilities until it is reversed. We remind all stakeholders that the obligation to abolish a discriminatory regime of detention is of immediate application and that progressive realization is not acceptable.

Moreover, States are obligated to follow the highest standard of human rights protection that is applicable to them, thus, a State that has ratified both ICCPR and CRPD must prohibit mental health detention and cannot use the contrary standard in ICCPR as an excuse for its failure to do so. The CRPD is close to 150 ratifications; the more States join the CRPD the less relevant will be the Human Rights Committee's outdated standard. The Human Rights Committee should deepen its understanding of psychosocial disability within an equality framework and should in particular seek to learn from experts with lived experience of psychosocial disability who have developed relevant legal approaches that informed the CRPD text and its authoritative interpretation.

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World Network of Users and Survivors of Psychiatry (WNUSP) www.wnusp.net
International Disability Alliance (IDA) www.internationaldisabilityalliance.org