



Center for the Human Rights of  
Users and Survivors of Psychiatry 1

## **Proposals for Text to be Incorporated into an International Instrument on the Rights of Older Persons**

July 26, 2013

The World Network of Users and Survivors of Psychiatry is an NGO in consultative status with ECOSOC and worked intensively on the development of the Convention on the Rights of Persons with Disabilities. WNUSP offers the following suggestions for text to address the rights of older persons with disabilities and to ensure that the new instrument benefits from the jurisprudence developed from a disability perspective, which should be mainstreamed throughout.

### **1. Resource equity and adequate standard of living**

Older persons shall, as individuals, be entitled to an equitable share of resources to meet their needs and enable their full and equal enjoyment of all human rights and fundamental freedoms.<sup>2</sup>

States Parties recognize the right of older persons, on an equal basis with others, to enjoy an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of age, gender, disability or other status.<sup>3</sup>

Older persons are entitled to social security and social assistance when they are not employed or are otherwise in need, irrespective of whether they worked at paid employment in the past.

### **2. Right to live independently and be included in the community**

Older persons, including those with disabilities, shall be entitled to choose where and with whom to live on an equal basis with others, and shall not be compelled to

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<sup>1</sup> For information about submitting organizations, see Annex I.

<sup>2</sup> UDHR Article 22; ICESCR Articles 2.2 and 11; CRPD Article 28.

<sup>3</sup> Id.

live in an institution or in any particular living arrangement.<sup>4</sup> States Parties shall undertake to promote and facilitate housing options that meet needs expressed by older persons and that respect the individual's autonomy, dignity, choices and privacy.<sup>5</sup> Supports and services shall be made available to older persons, including personal assistance, to enable them to remain in their own homes and be included in their communities as desired by the individual.<sup>6</sup> A wide array of such supports and services shall be developed in consultation with older persons and their organisations.<sup>7</sup> Community services and facilities for the general population shall be available on an equal basis to older persons and be responsive to their needs.<sup>8</sup>

Older persons have the right to liberty and security of the person on an equal basis with others, and shall be free from detention that is unlawful, arbitrary or based on age or disability.<sup>9</sup>

### 3. Equal recognition before the law

Older persons, including those with disabilities, have the right to equal recognition as persons before the law, with full legal capacity in all aspects of life.<sup>10</sup> States Parties shall provide access to support and accommodations that older persons may need in exercising their legal capacity.<sup>11</sup> States Parties shall take measures to ensure that such support respects the person's autonomy, will and preferences, and shall provide for feedback mechanisms to ascertain if support is meeting individuals' expressed needs.<sup>12</sup> States Parties shall in particular safeguard the rights of older persons to enjoy and administer their property and finances, to freely choose their place of residence, and to exercise free and informed consent with respect to health care and services, including in the field of mental health.<sup>13</sup>

### 4. Access to justice

States Parties shall ensure effective access to justice for older persons on an equal basis with others, including through the provision of procedural, age- and disability-appropriate accommodations, and including measures to reduce delay and formalities while maintaining due guarantees and a high quality of justice. These

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<sup>4</sup> CRPD Article 19(a). See also CRPD/C/CHN/CO/1 para 32.

<sup>5</sup> CRPD/C/CHN/CO/1 paras 32 and 38.

<sup>6</sup> CRPD Article 19(b).

<sup>7</sup> CRPD Articles 19(b) and 4.3.

<sup>8</sup> CRPD Article 19(c).

<sup>9</sup> CRPD Article 14.1.

<sup>10</sup> ICCPR Article 16; CEDAW Article 15; CRPD Article 12.1 and 12.2.

<sup>11</sup> CRPD Articles 12.3, 13 and 5.3; (see CRPD Article 2 for definition of reasonable accommodation).

<sup>12</sup> CRPD/C/CHN/CO/1 para 22.

<sup>13</sup> CRPD/C/HUN/CO/1 para 26.

measures shall include the promotion of affirmative action, public policies and the implementation of good judicial practices that guarantee access to justice.

States Parties shall take into account the cultural, organizational and management changes necessary to make access to justice effective for older persons.

## 5. Equality and non-discrimination

Older persons are entitled to equal protection of the law.<sup>14</sup> States Parties shall prohibit discrimination of any kind against older persons, including multiple and intersectional discrimination based on gender, ethnicity, religion, disability or sexual orientation, and including denial of reasonable accommodation.<sup>15</sup>

Older persons with disabilities are entitled to full and equal enjoyment of all human rights and fundamental freedoms, including those expressly recognized in this Convention, on an equal basis with others.<sup>16</sup> States Parties shall ensure that older persons with disabilities are provided with age- and disability-appropriate accommodation and support for the exercise of their rights and freedoms.

## 6. Freedom from violence, exploitation and abuse

States Parties shall take measures to prevent forms of violence, exploitation and abuse that target older persons on the basis of their age, including on the basis of intersectional discrimination of age plus gender, disability or other factors.<sup>17</sup> Such measures shall address violence, exploitation and abuse wherever they occur, including in family settings, communities and in programs and facilities designed to serve older persons.<sup>18</sup> States Parties shall provide information and education to older persons, their family members and service providers about how to identify and avoid violence, exploitation and abuse;<sup>19</sup> provide for independent monitoring of programs and services designed to serve older persons;<sup>20</sup> prosecute violations where warranted;<sup>21</sup> and take measures to promote the recovery and reintegration of victims.<sup>22</sup>

States Parties shall ensure that older persons have recourse to effective access to justice, with procedural age- and disability-appropriate accommodations as desired,

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<sup>14</sup> ICCPR Article 26; CEDAW Article 2; CRPD Article 5.1.

<sup>15</sup> ICCPR Article 26; CRPD Article 5.2.

<sup>16</sup> ICCPR Article 2.1; CRPD Article 4.1.

<sup>17</sup> CRPD Article 16.1.

<sup>18</sup> CRPD Article 16.1 and 16.3.

<sup>19</sup> CRPD Article 16.2.

<sup>20</sup> CRPD Article 16.3.

<sup>21</sup> CRPD Article 16.5.

<sup>22</sup> CRPD Article 16.4.

to prevent, cease, and seek redress against all forms of violence, exploitation and abuse.<sup>23</sup>

#### 7. Freedom from torture and other ill-treatment

No older person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no older person shall be subjected without his or her free and informed consent to medical or scientific experimentation or to medical interventions of an intrusive or irreversible nature, including those aimed at correction or alleviation of a disability.<sup>24</sup>

#### 8. Integrity of the person; choice and dignity in health care

All older persons have the right to respect for their physical and mental integrity on an equal basis with others.<sup>25</sup>

States Parties shall require health professionals to provide care of the same quality to older persons as to others, including on the basis of free and informed consent of the person concerned, and by raising awareness of the human rights, dignity, autonomy and needs of older persons through training and the promulgation of ethical standards for public and private health care.<sup>26</sup>

States Parties shall provide those health services specifically needed by older persons, including alternative, non-medical services designed to minimize and prevent further disabilities and enhance quality of life according to the individual's autonomy, will and preferences.<sup>27</sup>

#### 9. Equal access

States Parties shall take appropriate measures to ensure to older persons, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.<sup>28</sup>

#### 10. Right to take part in cultural life

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<sup>23</sup> CRPD Article 13.

<sup>24</sup> ICCPR Article 7; CRPD Article 15. With respect to disability-based nonconsensual medical interventions as torture and ill-treatment, see A/63/175 para 47; A/HRC/22/53 paras 81, 84, 85(e) and 89(b).

<sup>25</sup> CRPD Article 17.

<sup>26</sup> CRPD Article 25(d).

<sup>27</sup> CRPD Article 25(b); CRPD/C/CHN/CO/1, paras 22 and 38.

<sup>28</sup> CRPD Article 9.

States Parties shall take appropriate measures to enable older persons to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.<sup>29</sup>

Older persons shall be entitled, on an equal basis with others, to recognition and support for their specific cultural and linguistic identities, including to enjoy their own culture, to profess and practise their own religion, and to use their own language.<sup>30</sup>

#### 11. Work and education

Older persons have the right to access adult education, general tertiary education, vocational training, and lifelong learning without discrimination and on an equal basis with others.

Older persons have the right to work and gain a living by employment freely chosen, and to pursue their chosen careers and professions. States Parties shall take measures to ensure that older persons are not discriminated against in any aspect of employment by reason of age or other factors.

#### 12. Close consultation of older persons and their representative organizations

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to older persons, States Parties shall closely consult with and actively involve older persons, through their representative organizations.<sup>31</sup>

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<sup>29</sup> CRPD Article 30.2.

<sup>30</sup> ICCPR Article 27; ICESCR Article 15; CRPD Article 30.3.

<sup>31</sup> CRPD Article 4.3.

Annex I:

## **Information on organizations**

The **World Network of Users and Survivors of Psychiatry (WNUSP)** is an international organisation of users and survivors of psychiatry, advocating for human rights of users and survivors, and representing users and survivors worldwide.<sup>32</sup> The organisation has expertise on the rights of children and adults with psychosocial disabilities, including on the latest human rights standards set by the CRPD, which it played a leading role in drafting and negotiating. WNUSP is a member organisation of IDA and has special consultative status with ECOSOC. WNUSP supports its members to advocate before UN treaty bodies, and has provided expertise to UN bodies including the Special Rapporteur on Torture, the Subcommittee on Prevention of Torture and the Committee on the Rights of Persons with Disabilities. WNUSP is currently engaged with processes for review of the Standard Minimum Rules on the Treatment of Prisoners and for the development of an instrument on the rights of older persons.

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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.

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<sup>32</sup> In its 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.