



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

**Violence, neglect and abuse – Normative requirements – Submission to 9th
Session Open Ended Working Group on Ageing***

Issues relating to respect for physical and mental integrity, privacy and dignity¹

1. Older persons have a right to maintain their alertness and full range of emotion to the extent they desire, and not to be controlled with drugs.²
2. Neuroleptics and other psychotropic drugs are often used on older people as a form of chemical restraint, for example to quell ‘agitation.’ It is a serious and widespread problem in psychiatric institutions, in nursing homes, in facilities designated to serve older persons, and in some palliative care facilities. Chemical restraint and forced drugging for any reason must be prohibited as torture and ill-treatment.
3. Psychotropic drugs can be used only with the free and informed consent of the person concerned, in the absence of any coercion or incentive and ensuring that alternatives are adequately explored, along with individuals’ values and inclinations regarding different classes of psychotropic drugs.³ The resulting course of action must adhere to the individual’s will and preferences.
4. Older women have been disproportionately subjected to electroshock, which impairs the memory and causes other cognitive impairment, as a psychiatric intervention. This practice should be banned, in light of the increased vulnerability of older persons.⁴
5. Service providers must respect the bodily privacy of older persons, for example by conducting physical examinations in private and not in common rooms of a facility.
6. When a person is experiencing pain or distress or discomfort, service providers as well as friends or family attending them need to respond in a timely manner to acknowledge the person’s suffering and offer any available relief.

7. Older persons who require assistance with mobility or other bodily needs must be treated with care and dignity. Service providers and friends and family attending them must deal with any negative emotions or reactions they may have to the older person they are caring for, in ways that do not cause harm to that person.
8. Exploitation of the older person can occur when family members or service providers call into question the older person's decision-making so as to implement a decision contrary to that person's will and preferences. This can result in financial exploitation, dispossession of the person from their home and surroundings, placement in an institution, drugging, and other restriction of the person's autonomy and participation. Even when it does not result in such abuses, depriving an older person of the right to make decisions violates obligations under the CRPD to respect the legal capacity of all adults, including older persons, to make decisions and not have others make substituted decisions for them against their will.⁵
9. Training and support should be provided to service providers and friends and family caring for older persons to prevent neglect, violence, exploitation, and abuse of any kind.

* The Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP) works for legal capacity for all, the abolition of committal, forced treatment and substitute decision-making, and creation of supports that respect individual choices and integrity. CHRUSP is a disabled people's organization and holds special consultative status with ECOSOC. Contact Tina Minkowitz, info@chrusp.org; website www.chrusp.org.

¹ CRPD Arts 15 and 16

Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and

their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

African Disability Protocol Arts 5 and 6

Right to Liberty, Security of Person and Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

1. Every person with a disability has the right to liberty and security of person and the right to be free from torture or cruel, inhuman or degrading treatment or punishment.

2. States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:

- a. Enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily;
- b. Are not forcibly confined or otherwise concealed by any person or institution;
- c. Are not subjected to torture or cruel, inhuman or degrading treatment or punishment;
- d. Are not subjected without their free, prior and informed consent to medical or scientific experimentation or intervention;
- e. Are not subjected to sterilisation or any other invasive procedure without their free, prior and informed consent;
- f. Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.

3. States Parties shall take appropriate measures to prevent deprivation of liberty to persons with disabilities, to prosecute perpetrators of such abuse and to provide remedies for the victims.

4. Where persons with disabilities are lawfully deprived of their liberty, States Parties shall ensure that they are on an equal basis with others entitled to guarantees in accordance with international human rights law and the objects and

principles of the present Protocol.

5. The existence of a disability or perceived disability shall in no case justify deprivation of liberty.

Harmful Practices

1. States Parties shall take all appropriate measures, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.

2. States Parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviour of persons with disabilities, and they shall prohibit the use of derogatory language against persons with disabilities.

3. States Parties shall offer appropriate support and assistance to victims of harmful practices.

CRPD General Comment 3, para 55

... Age and impairment, separately or jointly, can increase the risk of institutionalization of older persons with disabilities. In addition, it has been widely documented that institutionalization may expose persons with disabilities to violence and abuse, with women with disabilities being particularly exposed.

² Inter-American Convention to Prevent and Punish Torture, Article 2

Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

³ CRPD General Comment 1 para 42

As has been stated by the Committee in several concluding observations, forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (art. 17); freedom from torture (art. 15); and freedom from violence, exploitation and abuse (art. 16). This practice denies the legal capacity of a person to choose medical treatment and is therefore a violation of article 12 of the Convention. States parties must, instead, respect the legal capacity of persons with disabilities to make decisions at all times, including in crisis situations; must ensure that accurate and accessible information is provided about service options and that non-medical approaches are made available; and must provide access to independent support. States parties have an obligation to provide access to support for decisions regarding psychiatric and other medical treatment. Forced treatment is a particular problem for persons with psychosocial, intellectual and other cognitive disabilities. States parties must abolish policies and legislative provisions that allow or perpetrate forced treatment, as it is an ongoing violation found in mental health laws across the globe, despite empirical evidence indicating its lack of effectiveness and the views of people using mental health systems who have experienced deep pain and trauma as a result of forced treatment. The Committee

recommends that States parties ensure that decisions relating to a person's physical or mental integrity can only be taken with the free and informed consent of the person concerned.

CRPD Guidelines on Article 14, para 12

The Committee has called on States parties to protect the security and personal integrity of persons with disabilities who are deprived of their liberty, including by eliminating the use of forced treatment, seclusion and various methods of restraint in medical facilities, including physical, chemical and mechanic restrains. The Committee has found that these practices are not consistent with the prohibition of torture and other cruel, inhumane or degrading treatment or punishment against persons with disabilities pursuant to article 15 of the Convention. [internal footnotes omitted]

⁴ Special Rapporteur on Torture Manfred Nowak, A/63/17, para 61

The use of electroshocks on prisoners has been found to constitute torture or ill-treatment. The use of electroshocks or electroconvulsive therapy (ECT) to induce seizures as a form of treatment for persons with mental and intellectual disabilities began in the 1930s. CPT has documented instances in psychiatric institutions where unmodified ECT (i.e. without anaesthesia, muscle relaxant or oxygenation) is administered to persons to treat their disabilities, and used even as a form of punishment. The Special Rapporteur notes that unmodified ECT may inflict severe pain and suffering and often leads to medical consequences, including bone, ligament and spinal fractures, cognitive deficits and possible loss of memory. It cannot be considered as an acceptable medical practice, and may constitute torture or ill-treatment. In its modified form, it is of vital importance that ECT be administered only with the free and informed consent of the person concerned, including on the basis of information on the secondary effects and related risks such as heart complications, confusion, loss of memory and even death.

⁵ See CRPD references on legal capacity in endnotes to submission on Autonomy and Independence, as well as Arts 15 and 16 cited above. Further reference:

Special Rapporteur on Torture Manfred Nowak, A/63/175 para 50

Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Persons with disabilities often find themselves in such situations, for instance when they are deprived of their liberty in prisons or other places, or when they are under the control of their caregivers or legal guardians. In a given context, the particular disability of an individual may render him or her more likely to be in a dependant situation and make him or her an easier target of abuse. However, it is often circumstances external to the individual that render them "powerless", such as when one's exercise of decision-making and legal capacity is taken away by discriminatory laws or practices and given to others.

