



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

Submission to the Special Rapporteur on Torture regarding the Standard Minimum Rules on the Treatment of Prisoners

July 5, 2013

The Special Rapporteur is to be commended for his interest in contributing to the revision of the Standard Minimum Rules on the Treatment of Prisoners.² The Standard Minimum Rules were adopted in 1955 before the existence of the core human rights treaties and require updating from a human rights perspective, including with respect to the right of detainees to be free from torture and ill-treatment.³ Certain of the Rules apply specifically to persons with psychosocial disabilities and contravene provisions of the Convention on the Rights of Persons with Disabilities.⁴ The World Network of Users and Survivors of Psychiatry has raised these concerns in the meetings of the Intergovernmental Expert Group responsible for the revision.⁵

The Standard Minimum Rules fail to mention the right to free and informed consent in health care, including with respect to mental health services. Rule 33 allows restraint to be imposed “on medical grounds”. Rule 82 requires the removal of some persons with psychosocial disabilities from prison to psychiatric institutions, and for others to be placed under medical supervision.⁶ These provisions (and the

¹ For information about submitting organizations, see Annex I.

² Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

³ See <http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings5.html>.

⁴ Adopted 13 December 2006, A/RES/61/106 Annex.

⁵ See <http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/NGO-5-WNUSP.pdf> and <http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/NGO-5-Add1-WNUSP.pdf>.

⁶ Article 82 reads as follows:

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

failure to address free and informed consent) violate the requirements of the Convention on the Rights of Persons with Disabilities and facilitate acts of torture and ill-treatment, in particular the use of restraint as a medical intervention against persons with disabilities, psychiatric detention and the nonconsensual administration of mind-altering-drugs and electroshock, contrary to the recommendations of the Special Rapporteur on Torture.⁷

The Outcome Document of the most recent meeting in December 2012 reflects agreement that health care staff in prison settings have a duty to “respect the principle of informed consent in the doctor-patient relationship and the autonomy of patients with regard to their own health.”⁸ However, nothing is said with regard to Rule 33, and only cosmetic changes are proposed to the “outdated language” in Rules 82 and 83. Furthermore, in discussing the “protection and special needs of vulnerable groups deprived of their liberty,” a distinction is made between “persons with disabilities” and “persons with mental health-care needs.” Such a distinction is improper, as the CRPD applies to all persons who express a need for mental health-care or who are perceived as such by others. Failure to use the proper terminology “persons with psychosocial disabilities” and to incorporate this sector into the same rights-based framework as other persons with disabilities will create confusion as to the applicable standards, and in particular may encourage a reversion to the MI Principles which have been thoroughly discredited in light of the CRPD. It should be noted that the United Nations Office on Drugs and Crime, which is secretariat to the SMR revision process, issued separate guidelines on the treatment of prisoners with disabilities and on the treatment of prisoners with mental health care needs,⁹ which bear out this concern.

CRPD Article 14(2) states, “If persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez A/HRC/22/53, Feb 1, 2013 [Torture in Health Care], paras 85(e) and 89.

⁸ Report on the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Buenos Aires from 11 to 13 December 2012, UNODC/CCPCJ/EG.6/2012/4, 27 December 2012, paragraph 9(e).

⁹ UNODC Handbook on Prisoners with Special Needs, available at: <http://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>.

by provision of reasonable accommodation.” Removal to a psychiatric facility or segregation within a prison psychiatric unit separate from the general population amounts to a deprivation of liberty beyond that imposed as a sanction for a criminal offense or for some other lawful reason unrelated to disability. Such detention, under medical supervision and subject to medical judgment as to discharge or release, is deprivation of liberty based on disability and prohibited under CRPD Article 14(1)(b). CRPD Article 19 is also pertinent; the right to live in the community applies mutatis mutandis to the context of detention so that detainees who are persons with disabilities have the right to be housed in general population and to be provided with support and accommodation that meets their expressed needs. Detainees who are persons with disabilities have a right to be eligible for all programs and services available to other detainees, such as work and education, and such services must be made accessible to them and offer reasonable accommodation.

CRPD Article 12 has implications for criminal liability, since legal capacity entails responsibility for one’s acts and choices. As stated by OHCHR:

In the area of criminal law, recognition of the legal capacity of persons with disabilities requires abolishing a defense based on the negation of criminal responsibility because of the existence of a mental or intellectual disability.¹⁰ Instead disability-neutral doctrines on the subjective element of the crime should be applied, which take into consideration the situation of the individual defendant. Procedural accommodations both during the pre-trial and trial phase of the proceedings might be required in accordance with article 13 of the Convention, and implementing norms must be adopted. [internal footnote retained]¹¹

The Committee on the Rights of Persons with Disabilities holds under Article 13 that penal sanctions applicable to persons with psychosocial or intellectual disabilities must be subject to the same guarantees and have the same conditions as any other person, providing for reasonable accommodation and procedural accommodation.¹²

Rule 82(1) contravenes these standards when it refers to “prisoners who are found to be insane” and prescribes their removal to psychiatric institutions. While the Rules cover only the treatment of prisoners once detained, and not permissible

¹⁰ Often referred to as “insanity defense”.

¹¹ Thematic study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities, A/HRC/10/48, 26 January 2009, para 47.

¹² CRPD/C/PRY/CO/1, para 32. This standard is a welcome advance over an earlier recommendation that had countenanced the imposition of distinct security measures on persons with disabilities who had been declared “unimputable” with respect to criminal liability; see CRPD/C/ARG/CO/1, para 26.

grounds or procedures related to detention, they must be harmonized with existing standards in human rights treaties, including the CRPD.

The Special Rapporteur should recommend the deletion of Rule 33(b) and Rule 82, and the enactment of a new Rule on the rights of prisoners with disabilities based on CRPD Article 14(2) as well as Articles 12, 13 and 19. References in the Rules to psychiatry and mental health services should be amended to de-emphasize the medical model of mental health in favor of alternatives including trauma-informed approaches and peer support.¹³ References to free and informed consent as proposed in the Outcome Document paragraphs 9(e) and 9(f) should include the phrase “of the person concerned” and should specify mental health services along with HIV testing and reproductive screening as examples of areas where autonomy in health care is to be respected; the exception to confidentiality of records based on “clear and imminent harm to the person or to others” should be removed.

Suggested language for a new Rule:

Prisoners who are persons with disabilities are entitled to guarantees on an equal basis with others in accordance with international human rights law and shall be treated in compliance with the standards of international human rights law pertaining to persons with disabilities, including by provision of reasonable accommodation.

Prisoners who are persons with disabilities are entitled to be eligible for all programs and services available to other prisoners, including community release programs, and to be housed in general population, on an equal basis with other prisoners without discrimination.

Penal sanctions can only be applicable to persons with psychosocial disabilities and persons with intellectual disabilities under the same standards, guarantees and conditions as applied to others, subject to reasonable accommodation and procedural accommodation.

¹³ See Torture in Health Care, para 89(c); and CRPD/C/CHN/CO/1, para 38.

Annex I, Information on organizations making this submission

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.¹⁴ 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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¹⁴ 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.