**Letter to Human Rights Committee regarding draft General Comment No. 35, paragraph 19**

The undersigned organizations and individual experts strongly urge the Human Rights Committee to reverse its earlier jurisprudence as summarized in paragraph 19 of draft General Comment No. 35, which views mental health detention as acceptable under Article 9 of the Covenant. We call on the Human Rights Committee to instead adopt the emerging norm that prohibits any form of mental health detention and compulsory treatment, as elaborated under the Convention on the Rights of Persons with Disabilities.

Paragraph 19 of the Human Rights Committee’s draft General Comment on Article 9 of the Covenant conflicts in particular with CRPD Article 14, which directly elaborates on the right of persons with disabilities to enjoy liberty and security of the person on an equal basis with others. The CRPD unlike earlier non-binding declarations prohibits detention on mental health grounds, including when additional factors or motivations, such as prevention of harm to the person or others, are added.

As interpreted by the Committee on the Rights of Persons with Disabilities, Article 14 obligates states to ensure that no one is detained in any kind of a mental health facility and to repeal legal provisions that authorize detention of persons with psychosocial disabilities, including those provisions that portray persons with psychosocial disabilities as potentially dangerous to themselves or others, or as being in need of care and treatment.[[1]](#footnote-1) CRPD General Comment No. 1 holds that institutionalization against a person’s will or without their free and informed consent constitutes arbitrary detention and violates Article 12 on equal recognition before the law, in addition to Article 14 on liberty and security of the person.[[2]](#footnote-2) A person’s actual or perceived deficits in mental capacity or decision-making cannot justify a denial of legal capacity including the standing and agency to make decisions about medical (including psychiatric) treatment.[[3]](#footnote-3) Support for decision-making must be made available based on the person’s will and preferences rather than a perception of their best interest.[[4]](#footnote-4) Concluding Observations under the CRPD consistently articulate a state obligation to ensure that all health and mental health services are based on the free and informed consent of the person concerned.[[5]](#footnote-5) General Comment No. 1 characterizes forced psychiatric treatment as an infringement of the freedom from torture as well as a violation of the right to decide about medical treatment under Article 12, and urges its abolition.[[6]](#footnote-6)

The emerging norm of prohibition rather than tolerance of mental health detention and compulsory treatment suggests that the standard employed by the Human Rights Committee offers inadequate protection to the rights of persons with disabilities to enjoy liberty and security of the person on an equal basis with others and to be free from arbitrary detention under Articles 2 and 9 of the Covenant. The Human Rights Committee should delete paragraph 19 and instead address the issue of mental health detention and compulsory treatment as an unjustified breach of the right to liberty and security of the person and of the right to be free from arbitrary detention.

The Human Rights Committee should join the Committee on the Rights of Persons with Disabilities in urging states to ensure that no person is detained in any kind of a mental health facility and that all mental health services are based only on the free and informed consent of the person concerned. The legal capacity of persons with disabilities to give or withdraw consent for mental health services or hospitalization must be respected at all times, including in crisis situations, and supports must be provided for decision-making that are based on the person’s will and preferences, rather than best interests.[[7]](#footnote-7) The Committee may also wish to state, in accordance with CRPD Article 14 paragraph 2, that persons with disabilities are not exempt from any form of detention that is applicable to the general population, and are entitled to equal guarantees as others in the event of such detention; in addition they are entitled to be treated in accordance with the highest standards found in international law regarding the rights of persons with persons with disabilities, including the provision of reasonable accommodation. The draft General Comment on liberty and security of the person is an ideal context to announce its adoption of this emerging norm, so that people with psychosocial disabilities are ensured of their full enjoyment and exercise of all rights under the Covenant on an equal basis with others and all states are made aware of their obligations.

**ALAMO - Promoción de Salud Mental**, Peru

**Alliance Autiste**, France

**Asociación Azul**, La Plata, Argentina

**Asociación Peruana de Abogados con Discapacidad Visual (APADV)**

**Association for Disabled People (Disabled Power)**, New Delhi, India

**Autistic Minority International**

**The Association for Protection against psychiatric violence (Verein zum Schutz vor psychiatrischer Gewalt e.V.)**, Berlin, Germany

**Bapu Trust for Research on Mind & Discourse**, Pune, India

**THE BROTHERHOOD of HEARTS Association for Mental Health**, Poland

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

**Civil Rights Foundation Stop Discrimination**, Norway

**Collective of the Promotion of the Right of PWD**, Morocco

**Disabled Women In Africa**

**Ektha**,Chennai, India

**Enthinderungsselbsthilfe von Autisten für Autisten – ESH**, Germany

**Equals, Centre for Promotion of Social Justice**, Chennai, Tamil Nadu, India

**European Network of (ex-)Users and Survivors of Psychiatry**

**Fundación Derechos Civiles y Desarrollo en Equidad para Personas con Discapacidad, DECIDE**, Chile

**Fundación Mundo Bipolar**, Spain

**Fundamental Colombia**

**ICJ Norway (International Commission of Jurists, Norwegian Section)**

**International Disability Alliance**

**Japan National Group of Mentally Disabled Persons**

**Mental Health Awareness Advocacy Foundation**, Nigeria

**M.O.M.S.**, Vancouver, WA, USA

**MindFreedom International**

**The MISS Foundation**, USA

**Nationwide Campaign to Stop Forced Mental Health Treatment**, USA

**The Norwegian Human Rights Alliance (Norwegian Forum of Trans Persons; Harry Benjamin Resource Center; LLH - Norwegian LGBT Association; Landsforeningen for Romanifolket; The Norwegian Association of Disabled; The Norwegian Association for Persons with Developmental Disabilities; Norwegian Queer Youth; Civil Rights Foundation Stop Discrimination Norway; Synshemmede Akademikere; Taternes Landsforening; ULOBA - Independent Living Norway)**

**The Opal Project**, USA

**SDDA: Societé pour les droits des enfants autistes**, France

**Sociedad y Discapacidad (SODIS),** Peru

**Stichting Mind Rights**, The Netherlands

**Survivor Research**, London, UK

**Tunisian Association For the Rights of Persons with Disabilities**

**The Ubuntu Centre**, South Africa

**We Shall Overcome**, Norway

**WE THE PEOPLE In Remembrance of Esmin Green Who was Murdered-by-Neglect at Kings County Hospital Center Psychiatric Emergency Room June 19, 2008**, USA

**Women With Disabilities Australia (WWDA)**

**World Network of Users and Survivors of Psychiatry**

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**Suvarna Raj**, New Delhi, India

**Rajiv Rajan**, President, Ektha, Chennai, India

**Jolijn Santegoeds**, Torture survivor [https://spdb.ohchr.org/hrdb/24th/public\_-\_AL\_Netherlands\_08.10.13\_(2.2013).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_AL_Netherlands_08.10.13_%282.2013%29.pdf), the Netherlands

**Nilesh Singit**, Freelance consultant and activist

**Arj Subanandan**, MAD Images, UK

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**David Webb**, PhD, Author of "Thinking About Suicide,” Australia

**Janna Weiss**, PhD, LAc, New York, USA

**Mari Yamamoto**, Member of Japan National Mentally Disabled People, Tokyo, Japan

1. CRPD/C/SWE/CO/1 paras 35-36; CRPD/C/AZE/CO/1 paras 28-29; CRPD/C/AUT/CO/1 paras 29-30; CRPD/C/SLV/CO/1 para 32; CRPD/C/AUS/CO/1 para 34; CRPD/C/CHN/CO/1 para 26; CRPD/C/HUN/CO/1 para 28; CRPD/C/PER/CO/1 para 29; CRPD/C/ESP/CO/1 para 36; CRPD/C/TUN/CO/1 para 25. CRPD Concluding Observations have also called for abolition of mental health detention under Articles 13 (access to justice), holding that mental health commitment regimes cannot be used as a diversion from criminal proceedings; under Article 15 (freedom from torture); and under Article 25 (right to health). CRPD/C/AUS/CO/1 para 29; CRPD/C/CRI/CO/1 para 34, CRPD/C/CHN/CO/1 paras 28 and 36. [↑](#footnote-ref-1)
2. CRPD/C/GC/1 (advance unedited edition) paras 8 and 36. [↑](#footnote-ref-2)
3. CRPD/C/GC/1 (advance unedited edition) paras 7, 8, 12, 12bis, 13, 16, 25(f), 27, 37, 38. [↑](#footnote-ref-3)
4. CRPD/C/GC/1 (advance unedited edition) para 25(b); see also para 17. [↑](#footnote-ref-4)
5. Under Article 12: CRPD/C/SWE/CO/1 para 34; CRPD/C/CRI/CO/1 para 22; CRPD/C/AUS/CO/1 para 28; CRPD/C/AUT/CO/1 para 28; CRPD/C/PRY/CO/1 para 30; CRPD/C/HUN/CO/1 para 26. Under Article 13: CRPD/C/AUS/CO/1 para 29. Under Article 14: CRPD/C/SWE/CO/1 paras 35-36; CRPD/C/AUS/CO/1 paras 33-34; CRPD/C/AUT/CO/1 para 31; CRPD/C/SLV/CO/1 para 32; CRPD/C/HUN/CO/1 para 28; CRPD/C/ESP/CO/1 para 36. Under Article 15: CRPD/C/SWE/CO/1 paras 37-40; CRPD/C/AUS/CO/1 paras 35-36; CRPD/C/AUT/CO/1 paras 32-33; CRPD/C/SLV/CO/1 para 33; CRPD/C/PER/CO/1 paras 30-31. Under Article 17: CRPD/C/TUN/CO/1 paras 28-29. Under Article 25: CRPD/C/CHN/CO/1 para 38; CRPD/C/ARG/CO/1 paras 41-42. [↑](#footnote-ref-5)
6. CRPD/C/GC/1 (advance unedited edition) para 38. [↑](#footnote-ref-6)
7. See CRPD/C/GC/1 (advance unedited edition) paras 7, 8, 16, 17, 25(b), 36, 37 and 38. [↑](#footnote-ref-7)