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**CRPD-based Standard for Ending Psychiatric Coercion: References Quoted**

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Guidelines on Article 14, paragraph 6:

… Impairment in the present guidelines is understood as a physical, psychosocial, intellectual or sensory personal condition that may or may not come with functional limitations of the body, mind or senses. Impairment differs from what is usually considered the norm.

CRPD General Comment No. 1, paragraph 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 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.

Paragraph 15:

In most of the State party reports that the Committee has examined so far, the concepts of mental and legal capacity have been conflated so that where a person is considered to have impaired decision-making skills, often because of a cognitive or psychosocial disability, his or her legal capacity to make a particular decision is consequently removed. This is decided simply on the basis of the diagnosis of an impairment (status approach), or where a person makes a decision that is considered to have negative consequences (outcome approach), or where a person’s decision-making skills are considered to be deficient (functional approach). The functional approach attempts to assess mental capacity and deny legal capacity accordingly. It is often based on whether a person can understand the nature and consequences of a decision and/or whether he or she can use or weigh the relevant information. This approach is flawed for two key reasons: (a) it is discriminatorily applied to people with disabilities; and (b) it presumes to be able to accurately assess the inner-workings of the human mind and, when the person does not pass the assessment, it then denies him or her a core human right — the right to equal recognition before the law. In all of those approaches, a person’s disability and/or decision- making skills are taken as legitimate grounds for denying his or her legal capacity and lowering his or her status as a person before the law. Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity.

Guidelines on Article 14, paragraph 10:

The Committee has repeatedly stated that States parties should repeal provisions that allow for the involuntary commitment of persons with disabilities in mental health institutions based on actual or perceived impairment. Involuntary commitment in mental health facilities carries with it the denial of the person’s legal capacity to decide about care, treatment and admission to a hospital or institution, and therefore violates article 12 in conjunction with article 14.

General Comment No. 5, paragraph 48:

[Obligation to respect right to live independently and be included in the community] … entails the obligation to release all individuals who are being confined against their will in mental health services or other disability-specific forms of deprivation of liberty.

Guidelines on Article 14, paragraph 16:

The Committee has established that declarations of unfitness to stand trial or incapacity to be found criminally responsible in criminal justice systems and the detention of persons based on those declarations are contrary to article 14 of the Convention, since they deprive the person of his or her right to due process and safeguards that are applicable to every defendant. The Committee has called for States parties to remove those declarations from the criminal justice system. It has recommended that all persons with disabilities who have been accused of crimes and detained in jails and institutions without trial be allowed to defend themselves against criminal charges, and be provided with the support and accommodation required to facilitate their effective participation, as well as procedural accommodations to ensure fair trial and due process.

Report of the Special Rapporteur on Torture 1986 (E/CN.4/1986/15), in paragraph 119:

The following list, which is not exhaustive, refers to some methods of physical torture:

…. administration of drugs, in detention or psychiatric institutions … [including] neuroleptics, that cause trembling, shivering and contractions, but mainly make the subject apathetic and dull [the person’s] intelligence

Report of the Special Rapporteur on Torture 2008 (A/63/175), paragraph 40:

Persons with disabilities are exposed to … intrusive and irreversible medical treatments without their consent ([including] interventions aiming to correct or alleviate a disability, such as electroshock treatment and mind-altering drugs including neuroleptics).

Paragraph 41:

Whereas a fully justified medical treatment may lead to severe pain or suffering, medical treatments of an intrusive and irreversible nature, when they lack a therapeutic purpose, or aim at correcting or alleviating a disability, may constitute torture and ill-treatment if enforced or administered without the free and informed consent of the person concerned.

Paragraphs 48-49:

The definition of torture in the Convention against Torture expressly proscribes acts of physical and mental suffering committed against persons for reasons of discrimination of any kind. In the case of persons with disabilities, the Special Rapporteur recalls article 2 of CRPD which provides that discrimination on the basis of disability means “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including lack of reasonable accommodation”.

Furthermore, the requirement of intent in article 1 of the Convention against Torture can be effectively implied where a person has been discriminated against on the basis of disability. This is particularly relevant in the context of medical treatment of persons with disabilities, where serious violations and discrimination against persons with disabilities may be masked as “good intentions” on the part of health professionals. Purely negligent conduct lacks the intent required under article 1, and may constitute ill-treatment if it leads to severe pain and suffering.

Paragraph 65:

… the length of institutionalization, the conditions of detention and the treatment inflicted must be taken into account.

Special Rapporteur on Torture 2021 (A/HRC/43/49), paragraph 37:

It must be stressed that purportedly benevolent purposes cannot, *per se*, vindicate coercive or discriminatory measures. For example, practices such as … psychiatric intervention based on “medical necessity” of the “best interests” of the patient … generally involve highly discriminatory and coercive attempts at controlling or “correcting” the victim’s personality, behaviour or choices and almost always inflict severe pain or suffering. In the view of the Special Rapporteur, therefore, if all other defining elements are given, such practices may well amount to torture.

Guidelines on Deinstitutionalization, paragraph 15:

… Mental health settings where a person can be deprived of their liberty for purposes such as observation, care or treatment and/or preventive detention are a form of institutionalization.

Paragraph 10:

Persons with disabilities experiencing individual crises should never be subjected to institutionalization. Individual crisis should not be treated as a medical problem requiring treatment or as a social problem requiring State intervention, forced medication or forced treatment.

Paragraph 76:

States parties should ensure that options outside the health-care system, that fully respect the individual’s self-knowledge, will and preferences, are made available as primary services without the need for mental health diagnosis or treatment in the individual’s own community. Such options should meet requirements for support related to distress or unusual perceptions, including crisis support, decision-making support on a long-term, intermittent or emergent basis, support to heal from trauma, and other support needed to live in the community and to enjoy solidarity and companionship.

Paragraph 118:

Redress and reparations should be responsive to the violations suffered and the impact on an individual’s life during and after institutionalization, including ongoing, consequential and intersectional harm.

Paragraph 119:

Restitution, habilitation and rehabilitation should be tailored to the needs of individuals and to the losses or deprivation that they have experienced, and should respond to their immediate and longer-term desires and aspirations, such as re-establishing relationships with their children or with their family of origin or retrieving any possessions that can be found.