

Understanding and Using the CRPD

Tina Minkowitz

A New Paradigm

- User/survivor rights become international law
- Non-discrimination based on actual or perceived disability
- Full equality in enjoyment and exercise of all human rights and fundamental freedoms
- Social model vs medical model
- Informed by gender perspective

We Name Our Experiences

- Human rights violations
- Altered realities and distress
- Expertise by experience
 - CRPD Article 4.3 creates a human rights basis for consultation in law/policymaking
 - CRPD drafting history supports continuing role of users/survivors to lead implementation/monitoring

Forced Treatment is Torture

- Historically our movement seeks abolition of forced treatment
- Profound violation of bodily autonomy, bodily privacy, personality and consciousness
- Consent under duress or intimidation or without full disclosure is not consent – it is force
- There cannot be any implied consent to an act closely associated with force and domination

Forced Treatment is Torture 2

- Standard is (fully) free and informed consent by the person concerned
 - CRPD Article 12, right to legal capacity on an equal basis with others
 - CRPD Article 14, security of the person
 - CRPD Articles, 15, 16, 17 respect for personal integrity, freedom from torture, violence, exploitation and abuse
 - CRPD Article 25, free and informed consent in health care

Forced Treatment is Torture 3

- States must abolish laws and practices that allow or perpetrate forced treatment, which is an ongoing violation found in mental health laws throughout the globe
 - CRPD General Comment No. 1, paragraph 42
- UN Special Rapporteur on Torture urges absolute ban on forced drugging, forced electroshock, restraints and solitary confinement (2013)

Forced Treatment is Torture 4

- Meets UN definition of torture
 - Discriminatory purpose to directly alter characteristics of the person labeled as impairment
 - Purpose of behavior control (coercion, intimidation, punishment)
 - Minkowitz article “The UN CRPD and the Right to be Free from Nonconsensual Psychiatric Interventions”
 - Special Rapporteur on Torture 2008 and 2013 reports

Answering Psychiatrists

- No “emergency” forced treatment
 - Individual autonomy and capacity to make decisions must be respected at all times including in crisis situations
 - CRPD General Comment No. 1, paragraphs 18 and 42
 - Decisions relating to physical and mental integrity can be taken only with free and informed consent of the person concerned
 - CRPD General Comment No. 1, paragraph 42
 - Social crisis and/or personal crisis, not medical crisis
 - Medical claims of psychiatry are contested scientifically and philosophically

Abolition of Psychiatric Detention

- Detention of any kind, for any duration, is harmful and degrading
- Psychiatric detention is discrimination based on disability labels

Abolition of Psychiatric Detention 2

- Cannot be justified by alleged need for care and treatment, inability to care for oneself, or danger to self and others
- CRPD Article 14 is strict equality provision – we can be subject to criminal proceedings if we violate law, otherwise free to act according to our own will and preferences

Abolition of Psychiatric Detention 3

- Detention in institutions without the person's informed consent is arbitrary detention and violates Articles 12 and 14 (right to legal capacity and right to liberty)
 - CRPD General Comment No. 1, paragraph 40
- Disability-based detention is absolutely prohibited under CRPD Article 14, and cannot be justified by alleged danger to self or others
 - CRPD Statement on Article 14 (September 2014)

Abolition of Psychiatric Detention 4

- Declarations of unfitness to plead in criminal proceedings, and detention based on such declarations, are contrary to Article 14
 - CRPD Statement on Article 14 (September 2014)

Abolition of Psychiatric Detention 5

- European Convention on Human Rights Article 5.1(e) allows detention of “persons of unsound mind,” contrary to CRPD
- European Court of Human Rights should be encouraged to uphold CRPD and stop applying contrary standard

Equal Legal Capacity

- For many of us experienced mostly as deprivation – never having meaningful choices in our lives
- Gender, colonialism, poverty in addition to disability-based discrimination
- Right to have our decision-making respected
- Right to go through our own process of making sense of experiences, with or without support

Equal Legal Capacity 2

- CRPD Article 12 is core of the paradigm shift
- No denials or restrictions of legal capacity based on actual or perceived mental capacity or decision-making skills
 - CRPD General Comment No. 1, paragraphs 13-15

Equal Legal Capacity 3

- Instead, provide support for exercise of legal capacity based on the person's own will and preferences
 - CRPD General Comment No. 1, paragraph 29
- There is always a right to refuse support and to change or terminate a support relationship
 - CRPD General Comment No. 1, paragraphs 19, 29(g)

Equal Legal Capacity 4

- States must abolish all forms of guardianship and substitute decision-making, forced institutionalization and forced treatment
 - CRPD General Comment No. 1, paragraphs 7, 27-28, 40-42

Equal Legal Capacity 5

- Advance directives can be a form of support
 - Aid in communication
 - Based on circumstances to be specified and not on assessment of mental capacity
 - CRPD General Comment No. 1, paragraph 18
 - Potential conflict with recognition that legal capacity exists at all times including in crisis situations

Inclusion in Community

- CRPD Article 19 – Living independently and being included in the community
- Abolition of institutional living situations – any living situation where staff interfere with self-determination
- Right to have support in one's own home and community, and to be welcomed in all community services and facilities
- Can this be a basis for promoting a social model of madness/psychosocial disability, and the right to be different?

Using the CRPD

- Parallel reports to CRPD Committee
- Communications under Optional Protocol (violation of individual's rights)
- Inquiries under Optional Protocol (widespread and systematic violations)
- Communications to UN Special Rapporteurs (can be used in all countries)
- National monitoring mechanisms?
- National implementation processes?
- Litigation – what status does CRPD have in the national law?
- Discussion to continue in self-organized caucuses

References

- CRPD General Comment No. 1,
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1&Lang=en
- CRPD Statement on Article 14,
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15183&LangID=E>
- Minkowitz, “The UN CRPD and the Right to be Free from Nonconsensual Psychiatric Interventions,”
<http://ssrn.com/abstract=1481512>

Contact

- tminkowitz@earthlink.net
- info@chrusp.org
- www.chrusp.org
- www.wnusp.net
- www.madinamerica.com/author/
- <http://ssrn.com/author=1348856>