

Torture and forced psychiatry

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Outline

- General issues
- Definitions of torture and application to psychiatric interventions
- WNUSP framing in CRPD negotiations
- CRPD prohibition of forced interventions
- Application of torture framework
- Challenges and opportunities
- Reparations

Approaching this issue

- Impact on victims, as survivor activists working as human rights defenders, and survivors seeking justice
- Defensive reactions of perpetrators and apologists
- Legal and moral claims through impersonal language of law



Survivor knowledge

- Need to make sense of what happened to us
- No words specifically describe forced psychiatry as a crime or act of violence
- State repression, rape/sexualized violence, enslavement, dehumanization, persecution, torture
- Literal or metaphor or analogy?



UN definition of torture

- [CAT](#) article 1
 - For the purposes of this Convention,
 - the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person
 - for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind,
 - when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
 - It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.



Other definitions

- Note that CAT allows for wider definitions
- See also [ICCPR Article 7](#) and its [General Comment 20](#) para 3
- [Inter-American Convention to Prevent and Punish Torture](#), Article 2 includes:
 - 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.



First UN Special Rapporteur on Torture

- [Kooijmans in 1986](#)

- 119. The following list, which is not exhaustive, refers to some methods of physical torture:
- Electric shocks – Shocks of variable intensity to any part of the body, causing intensive muscular contractions
- Administration of drugs, in detention or psychiatric facilities - ... neuroleptics, that cause trembling, shivering and contractions, but mainly make the subject apathetic and dull his [or her] intelligence



WNUSP text proposal for CRPD

- Everyone has the right not to be subjected to forced or coerced interventions of a medical nature or otherwise, aimed at correcting, improving, or alleviating any actual or perceived impairment.
- Picked up in Working Group text (arts 11, 12 and 21 later renumbered), later by SRT Manfred Nowak (para 47)



Survivorship and Reparation

- Survivors confront the damage with whatever resources we have – self-care, anger, grief, writing, art, caring for land or animals or children, survivor movement
- How can society support us?
 - Recognition that our human rights were violated
 - Reparation including guarantees of non-repetition
- Limits of recognition and reparation? Power?



CRPD

- Arts 15, 16 and 17 generally protect the right to be free from torture, ill-treatment, other violence and abuse
- Art 14 protects equal right to liberty and security of the person and prohibits disability-based detention
- Art 12 guarantees legal capacity – the right to make one’s own decisions
- Art 25 requires health care on the basis of free and informed consent
- See [Nowak 2008](#) para 44 for early exposition



Application of torture framework

- [Nowak 2008](#) – CRPD complementary to anti-torture framework, applies disability non-discrimination
- [Méndez 2013](#) – promotes ‘absolute ban’ on forced psychiatric interventions but self-contradictory on issue of liberty, see also letter to WPA re ‘based solely on disability’
- CRPD Committee [2014](#) and [2015](#) – accepts that forced psychiatric interventions violate right to legal capacity and right to be free from torture and other ill-treatment



Obstacles and opportunities

- SPT conflicts with CRPD standards (see also [CAT](#), ICCPR [GC35](#) para 19)
- [Working Group on Arbitrary Detention](#) largely follows CRPD standards, but practice?
- CERD, CEDAW, CRC, CESCRC Committees positive towards CRPD prohibition of forced treatment and commitment
- [OPCAT monitoring](#) - will National Torture Prevention Mechanism follow CRPD?
- [Equal Rights Trust](#), [APT](#), [HRW](#) – NGOs as potential allies
- CRPD country reviews, optional protocol [cases pending](#) on forced treatment



Reparations

- Satisfaction
- Guarantees of non-repetition
- Restitution
- Compensation
- Rehabilitation
- Truth and reconciliation?
- Apologies?
- Individual/systemic