Persons with Psychosocial Disabilities and the Standard Minimum Rules on the Treatment of Prisoners[[1]](#footnote--1)

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The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (MI Principles), has been superseded by the Convention on the Rights of Persons with Disabilities, particularly where the two conflict.[[2]](#footnote-0) Among other things, the CRPD prohibits guardianship, psychiatric detention and compulsory treatment, and makes no exceptions to the right to live in the community.[[3]](#footnote-1) Just as the CRPD made no reference to the MI Principles in its Preamble, a revised SMR with a Preamble referring to human rights instruments should likewise omit the MI Principles.

The CRPD requires non-discrimination, reasonable accommodation and accessibility in work, education, physical exercise and training, and all other programs including work release eligibility. This makes it necessary to change SMR rules 71 (work), 77 (education) and 21 (physical training and activity) and to consider adding a general provision on the rights of prisoners with disabilities. (Any such general provision needs to fully include prisoners with psychosocial disabilities and to provide the framework for the rights of prisoners with psychosocial disabilities and the treatment[[4]](#footnote-2) of such prisoners under the SMR.)

The CRPD requires free and informed consent in relation to all medical assessment, diagnostic procedures and treatment. Medical reports should not be used to determine penal treatment of a prisoner or to assign him/her to particular rehabilitation activities. Both health care and all types of activities offered as rehabilitation programs need to be offered to all prisoners so that they can choose those that meet their own needs. Medical assessment and diagnosis should not be done without the person’s free and informed consent; this is particularly relevant to psychiatric diagnosis which relates to behavior and personality.

This requires changes to SMR rules 22, 24 and 26 (on medical assessment and treatment), rules 62, 66 and 69 (on rehabilitation), and rules 82 and 83 (on classification of prisoners as insane or mentally abnormal and their transfer to medical institutions or supervision).

Rules 82 and 83 need further discussion. These rules are based on an outdated model of disability that has been superseded by the CRPD. It is a model of management and control – not the control of prison but control of a person simply because she or he has a disability. Such classification and segregation under medical control and supervision contravene many provisions of the CRPD, particularly those on non-discrimination, legal capacity, liberty, respect for physical and mental integrity, living in the community, health care and rehabilitation, as well as its governing principles. The CRPD provision on right to live in the community (Article 19) needs to be applied mutatis mutandis to the prison context, so that prisoners with disabilities are eligible to live in general population and are not transferred to any particular living arrangement against their will.

It should be noted that the Special Rapporteur on Torture has noted that forced and coerced psychiatric interventions and institutionalization may amount to torture and ill-treatment (in report of July 28 2008, interim report to GA). Psychiatric institutions are not a viable alternative to prison, rather they are a parallel form of imprisonment where similar abuses and traumatizing practices occur.

The classification of some persons as insane and thus not liable to imprisonment for a crime is also called into question by the CRPD. Rule 82 demonstrates one of the reasons why an insanity defense is not necessarily beneficial – it results not in freedom as do other acquittals but in an alternative imprisonment and doubly stigmatized identity. At the very least, if a person is determined insane and not liable for a crime, then the institutionalization is based on a disability, contrary to the CRPD. How can we explore having a single system of accountability that would take account of mitigating circumstances, and disability where it affected the person’s behavior, without having these two segregated systems?

1. These points were presented as an intervention in the Inter-governmental Expert Meeting on the Standard Minimum Rules on the Treatment of Prisoners, 31 January – 2 February 2012. Materials cited in the footnotes and this paper itself can be found at www.chrusp.org/home/Resources. [↑](#footnote-ref--1)
2. See IDA Position Paper on the CRPD and Other Instruments. [↑](#footnote-ref-0)
3. See WNUSP Position Paper on CRPD and Prohibition of Forced Treatment. [↑](#footnote-ref-1)
4. Note: “treatment” as used in the SMR refers to the manner in which prisoners are treated (as in humane treatment, ill treatment, etc.) and not to medical treatment. I follow that usage here when the word “treatment” is used alone. [↑](#footnote-ref-2)