

# ■ The UN CRPD and Mental Health Law

Peter Bartlett

Nottinghamshire Healthcare NHS Trust

Professor of Mental Health Law

School of Law and Institute of Mental Health

University of Nottingham

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# Why the CRPD?

We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity. A world which invests in its children and in which every child grows up free from violence and exploitation. A world in which every woman and girl enjoys full gender equality and all legal, social and economic barriers to their empowerment have been removed. A just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met. [para 8]

UN Sustainable Development Goals, 2016

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# Definition

Persons with disabilities include those who have long-term physical, **mental, intellectual** or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

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## ■ Article 2

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

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## ■ Article 4 (3)

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, **States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.**

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## Things we will like

- Freedom from exploitation, violence, abuse (art 16)
- Right to independent living and inclusion in community (art 19)
- Right to health (art 25)
- right to work and employment (art 27)
- right to adequate standard of living (art 28)
- right to participation in political and public life (art 29)
- right to participation in cultural life, recreation and sport (art 30)

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# ■ Problem of compulsion

- A new approach
- Mental Capacity (Art 12)
- Compulsory Treatment (Arts 17, 25)
- Compulsory detention (Art 14)

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# Capacity (Art 12)

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law...

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## ■ Integrity (Art 17)

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

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See also art 15: freedom from torture, inhuman or degrading treatment or punishment, including freedom from experimentation except on the basis of informed consent

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# UN Special Rapporteur on ■ Torture, 2013

Forced interventions, often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged “best interest” of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment. Concern for the autonomy and dignity of persons with disabilities leads the Special Rapporteur to urge revision of domestic legislation allowing for forced interventions.

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## ■ Right to Health (Art 25)

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. [...] States Parties shall:

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including **on the basis of free and informed consent** by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care.

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# Right to Liberty (Art 14)

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
  - (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that **the existence of a disability shall in no case justify a deprivation of liberty.**

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# Committee Guidance on Art 14

Involuntary commitment of persons with disabilities on health care grounds contradicts the absolute ban on deprivation of liberty on the basis of impairments (article 14(1)(b)) and the principle of free and informed consent of the person concerned for health care (article 25). **The Committee has repeatedly stated that States parties should repeal provisions which allow for involuntary commitment of persons with disabilities in mental health institutions based on actual or perceived impairments.** 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.

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