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Need to Distinguish between a Norm and its Implementation

It is next contended by the proponents of guardianship that supported decision-making cannot substitute for guardianship and even if it could such support is not available. These arguments it is submitted conflate the concerns of implementation into the adoption of norms. Should these constraints of implementation provide the basis for adoption of norms under the Convention especially when the norms adopted under the Convention will be the basis of all future discourse on rights of person with disabilities? A pragmatic approach for the implementation of norms is acceptable but a similar perspective towards the adoption of norms is questionable because this is letting the limitations of today confine the developments of tomorrow.

Substituted Decision Making will apply to all persons with psychosocial disability

A further argument by proponents of some form of substituted decision-making is that as a rule all persons with disability have legal capacity but there are a very small percentage of persons with severe disability for whom supported decision-making will not be sufficient and for whom guardianship will need to be provided. Proponents argue that these guardianship arrangements should be put in place subsequent to determination by a judicial body after due observance of fair procedure safeguards. They contend that this substituted decision-making will be the exception not the rule and would apply to a small percentage of cases.

The first consequence of accepting this argument will be that the rule of substituted decision-making will need to be incorporated in the Convention. Now the rule according to its proponents has been incorporated only for a very small percentage of persons with psychosocial disability. It therefore becomes necessary to ask by what procedure this small percentage of persons will be identified. Evidently this will be done from case to case. This process of identification will render the capacity of all persons with psychosocial disability open to question.

This would give rise to a situation where for questionable advantages to a small group of persons all persons with psychosocial disability shall be disadvantaged. The contention of questionable advantage is being made because studies evaluating the functioning of guardianship have found abuse isn't in fact prevented with guardianship, it is facilitated. Further these arrangements once made cause the guardian to take all decisions on behalf of and without consultation with the ward. This ouster makes for the civil death of the persons subjected to guardianship.

Supported Decision Making the Sole Model

In the circumstances it may be worthwhile to ask if the paradigm of supported decision-making would be a preferable option for all persons with disability as it would keep us at the centre of all decisions affecting us. It would interrogate the cognitive privileging existing in present laws and yet allow persons with disabilities along with others needing help to seek assistance in those tasks which require higher reliance on cognitive capabilities.

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Advocacy Note: Forced Interventions Meet International Definition of Torture Standards

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Forced interventions on people with disabilities, which are aimed at preventing, correcting, improving or alleviating any actual or perceived impairment, meet the elements of the definition of torture under international law.

The Convention Against Torture defines torture as an **intentional act** that inflicts **severe pain or suffering** on the victim, done for one of a number of **purposes**. The required intent is not a specific intent to cause the victim to experience pain or suffering, but a general intent to perform the act knowing that severe pain or suffering is likely to result.

Torture usually requires the **participation of a public official**, but failure to provide redress or protection from acts of private violence which would otherwise qualify as torture may also violate this norm. Forced interventions are often performed by public officials or pursuant to authority delegated by law; meaningful redress and protection are virtually unheard of.

Doctors, traditional healers and others who may perform forced interventions **know that severe pain or suffering is likely to result**. The victim's resistance, refusal to consent, or expression of fear, anger or despair in response to the proposed intervention convey the information that it is unwelcome. Furthermore, the contexts in which forced interventions are performed reflect a systemic imbalance of power, often including deprivation of liberty, routine violations of human rights and dignity, and dehumanization of human beings as medical objects based on disability. Perpetrators reveal a profound indifference to the effects of such interventions on people with disabilities, even when it is commonly accepted that similar interventions on non-disabled people would cause severe pain and suffering. This indifference demonstrates that forced interventions are carried out with the requisite knowledge and intent.

Forced interventions cause severe pain and suffering to disabled people. These interventions are rationalized as attempts to prevent, correct, improve or alleviate an impairment, without appreciating that impairment is a value-laden concept meaning deficiency, lack or absence. People with disabilities experience ourselves as whole human beings and any attempt to alter us against our will attacks our sense of identity as well as mental and bodily integrity. The experience often results in lifelong trauma as well as additional disability.

Purposes of torture include obtaining information or a confession, intimidation, coercion, punishment, or any reason based on discrimination of any kind.

Discrimination is always a factor in forced interventions. Encouragement or coercion to make us more closely resemble non-disabled people perpetuates a hierarchical classification of human beings according to disability, contrary to the principle of "acceptance of disability as part of human diversity and humanity" and the right to be different as expressed in the UNESCO Declaration on Race and Racial Prejudice. Furthermore, often interventions used on disabled people do not make us non-disabled; they make us differently disabled and may create additional impairments; such interventions

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do nothing to address the social and environmental dimension of disability. The pain, suffering and diminishing of existing capacities inherent in many interventions used against disabled people reflects the discomfort of non-disabled people when faced with non-conforming body types, sensory abilities, self-expression and behavior, and a willingness to sacrifice people with disabilities in the name of saving us from ourselves.

Coercion is a factor in forced interventions, not only in that they are by definition coercive, but also in the attempt to undermine our identity and cause us to accept subordination to authorities which are purported to have expert knowledge of our condition. A person's body and mind are integral to identity and every human being has the right to have his or her physical and mental being, no less than other aspects of identity such as religion and political beliefs, protected from interference. Furthermore, forced intervention is also used in directly coercive ways, as when behavior is attributed to a disability and interventions are used to prevent the behavior, either by being used as a deterrent to the undesired behavior, or by diminishing the person's physical or mental capacities to carry out the undesired behavior.

Punishment is a factor in forced interventions, since in institutions or other situations of power imbalance, interventions that assault a person's identity and mental and bodily integrity are a convenient method of punishment. The threat of forced interventions is also used to intimidate people with disabilities into complying with demands of people in positions of authority, including the demand to comply with interventions on a voluntary basis.

The Inter-American Convention to Prevent and Punish Torture clarifies the international definition by presenting a variation: **measures intended to obliterate the personality or diminish the physical or mental capacities of the victim**, whether or not such measures cause pain or suffering. Commentators believe that such measures are implicit in the prohibition of torture in the UN Convention Against Torture, since such measures may not cause immediate pain or suffering but cause psychological or physical damage that can become evident in the long term.

As already discussed, forced interventions on people with disabilities are often **designed** to **diminish the person's mental or physical capacities**, and to change important aspects of the person's identity. Some egregious interventions are intended to obliterate the personality. This provision from the Inter-American Convention is widely understood to refer particularly to use of mind-altering substances and procedures, which is one of the most predominant types of forced interventions.

The above exposition shows that **forced interventions satisfy the elements of the international definition of torture**. Since the aim of the norm against torture is to prevent and protect against all instances of torture, and since protection of minority groups is explicitly encouraged by incorporating discrimination into the definition of torture, international instruments and jurisprudence should address forced interventions on people with disabilities as a matter of utmost concern.