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STEERING COMMITTEE ON BIOETHICS (CDBI)

Statement on the United Nations Convention on the Rights of Persons with Disabilities

adopted by the CDBI at its 41st meeting (2-4 November 2011)

1. The CDBI considered the United Nations Convention on the rights of persons with disabilities. It analysed in particular whether Articles 14¹, 15² and 17³ were compatible with the possibility to subject under certain conditions a person who has a mental disorder of a serious nature to involuntary placement or involuntary treatment, as foreseen in other national and international texts.

To this end, delegations had been invited to send to the Secretariat, information on possible relevant discussions that had been held at national level (in particular for States that have signed/ratified this Convention) concerning the interpretation of the provisions of the UN Convention on the rights of persons with disabilities, especially that regarding its Article 14.)

In the light of this information, a discussion was held in the Committee at its 40th and 41st plenary meetings.

2. As a result, the Committee concluded that the existence of a disability may not justify in itself a deprivation of liberty or an involuntary treatment. Involuntary treatment or placement may only be justified, in connection with a mental disorder of a serious nature, if from the absence of treatment or placement serious harm is likely to result to the person's health or to a third party.

In addition, these measures may only be taken subject to protective conditions prescribed by law, including supervisory, control and appeal procedures⁴.

¹ Article 14 - Liberty and security of person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

- a) Enjoy the right to liberty and security of person;
- 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.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

² Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

³ Article 17 - Protecting the integrity of the person

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

⁴ Regarding treatment of a mental disorder, see for example provisions of Articles 7 and 26 of the Convention on Human Rights and Biomedicine:

Article 7 – Protection of persons who have a mental disorder

Subject to protective conditions prescribed by law, including supervisory, control and appeal procedures, a person who has a mental disorder of a serious nature may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where, without such treatment, serious harm is likely to result to his or her health.

Article 26 – Restrictions on the exercise of the rights

1 No restrictions shall be placed on the exercise of the rights and protective provisions contained in this Convention other than such as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health or for the protection of the rights and freedoms of others.

2 The restrictions contemplated in the preceding paragraph may not be placed on Articles 11, 13, 14, 16, 17, 19, 20 and 21.