Ubuntu Centre υ SOUTH AFRICA

"a person is a person through other persons"

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Submission to:
The Committee on the Rights of Persons with Disabilities
Day of General Discussion on CRPD Article 12

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We cease to be fully human when our consciousness is denied. This is the ultimate loss of our dignity. We want to be granted the right to explain and express what we want, our desires, understandings and needs at a time of crisis or distress. This we want to be respected. If this does not happen and we are denied this opportunity, it is the ultimate death of our personhood. We cease to exist as social persons.

The dignity of our full personhood must be respected. Removing our legal capacity denies our personhood. It denies the subjective experiential realities of our lives, our personhood and our right to participate in our life choices.

A social paradigm shift must be realized that respects our rights to dignity and legal capacity and this must be reflected in law and practice when others regard us as "mad" or "mentally ill".

We recommend that in order that our full personhood is recognized, medical and other professionals be trained in the requirements and the meanings of Article 12. This must happen with an understanding that the professional is offering us a service and not "care". It is a choice whether or not to engage with psychiatric services and how and to what extent we so desire. The relationship between the professional and the person considering psychiatric services should ideally be a partnership between professional and the potential service user, both searching and considering options and solutions.

When a person approaches or is brought to the Mental Health System in crisis, it is necessary to have a social worker trained in the requirements of the CRDP and that the importance and relevance of Article 12 is recognized and implemented. This will require extensive training of professional staff and the relevant Government Departments, Human Rights Instruments of States and

NGO's. This must be adequately funded and resourced to enable this education and its implementation.

Supported decision making may be needed for the person when deciding whether or not to engage in psychiatric solutions. This should be regarded as an intervention which is embarked upon in the spirit of consultation and not coercion. If a person desires medical treatment and admission, this needs to respected and facilitated in a dignified manner. It must be voluntary.

Supported decision making must be regarded as the method by which psycho socially disabled persons are enabled to make independent decisions. This must be legislated and become hospital and state policy in all important aspects of the services provided where the rights of the psychosocially disabled person may be infringed. The implementation of this method must be monitored by the State.

Recognizing the right to refuse psychiatric services requires that the State provides alternative services outside of the medical paradigm. This is reasonable accommodation of psychosocial disability and must be realized. Currently in South Africa there are only biological psychiatric services available. This translates into no choices for the psycho socially disabled person. To realize the obligations of the CRDP and give real meaning to Article 12, choice of alternative services must be considered and created.

We suggest the creation of Trauma Centers in the communities where persons can be taken to in times of crisis. This Centre can be seen as place where peer-support and non medical intervention takes place and take decisions as to whether medical intervention is desirable. It is envisaged as a place free of coercion and one of support and safety. People in crisis can be informed and referred to the centers for 72 hours with consideration for a longer stay if the crisis continues. Community and personal crisis interventions can assist to alleviate the distress of the person. Supported decision making can continue with different options explored in an environment conducive to well being. Most importantly, decisions around hospitalization are free of undue medical influence and bias.

Ultimately the community is responsible for the well being of all its members. We wish to engage community solutions in our times of crisis. The psychiatric system of attending solely by medical means and isolation from the community must be transformed and move towards alternative services and solutions in the community within a human rights paradigm. The choice of medical care must remain as one of the options. "The idea of community mental health services should not just mean moving psychiatry to the community, but how to foster

better mental health in the community"[1] . When person is removed from the community, it should only be as a very last resort.

For too long communities have discarded the responsibility of their members whose behaviors, thoughts and emotions they have disowned and feared, by locking them in asylums out of sight and out of mind. It creates place of detention which is fertile ground for human rights abuses. This denial and exclusion of their community members who have problems in living life and not acknowledging how they differently experience their subjective realities is untenable in the 21 Century. The social construction of mental illness has become a vehicle to allow for marginalization and exclusion and allows for communities to deny the social and cultural conditions that gave rise to the expression of what is referred to as a mental illness. It allows for communities to conveniently label the biological difference as "illness" and not accept the diversity of subjective life experience. It is experienced as deeply painful by ourselves that our personhood is denied and we are locked away as an embarrassment and source of shame. That are right to legal capacity is diminished and stolen.

The most common concern expressed and militates against social acceptance of the granting of full legal capacity is that the person is a danger to self and others. Denial of legal capacity is often the standard knee-jerk reaction in society when it comes to us diagnosed with "mental illness".

The issue of the mental state of the individual has been at the heart of the issue of legal capacity and it has long been assumed that psychiatric patients who are involuntary admitted are not of sound mind and would not be in a position to make informed decisions. This is referred to as the categorical approach and that a person who is involuntary admitted has no right to legal capacity due to his/her mental state being "compromised". This approach is outdated but still operates in the practices and beliefs of society. Academics in South Africa now discuss a functional approach which is said to be captured in the spirit of the new Mental Health Care Act of 2002. The functional approach requires that legal capacity or the ability to make informed decisions should be subject to clinical determination of the mental state of the patient on an ongoing basis even if an individual is hospitalized involuntarily.

Although the functional approach to legal capacity seems to be more progressive than the older categorical approach, both approaches are now out of line with requirements of Article 12 of the CRPD. Full legal capacity is a right and clinical opinions cannot restrict an individual or deny the person of his/her right to full legal capacity. Psychiatry has often been referred to as an "art" rather than an exact science, and more often than not psychiatrists are the final arbiters on people's right to legal capacity and this risks that rights are being based on value

[1] Benedetto Saraceno, Head of the WHO, Department of Mental Health and Substance Abuse; at the Launch of the Global Forum for Community Mental Health in 2007 in Geneva. Moosa Salie personally heard Dr Saraceno speaking these words.

judgment rather than empirical evidence. This potential for abuse must be guarded against when judging a person dangerous to him or herself or the community. Being a danger to oneself must be seen to be a person in need of supported decision making. A person that is a danger to the community must with full legal representation be handed over to the judicial system to independently decide the veracity of the allegation.

Supported decision making is a means by which society can deal with the challenges of persons who experience limitations in their lives as a result of their psychosocial disability. Instead of taking away responsibility, i.e. alleviating the "danger to oneself", the state and the community need to put into place mechanisms which will enable persons with disabilities, no matter how impaired they are perceived to be, to make an input into the decisions in their lives which affects them. A break is needed with paternalism and a spirit of cooperation needs to be fostered with psychosocially disabled persons and their communities. Supported decision making mechanisms require that the state as well as civil society must consult and the State must provide adequate resources in exploring non-paternalistic and empowering ways of assisting, accommodating and supporting persons with disabilities to realize their full legal capacity on an equal basis with all other citizens. So that we can experience our lives as we choose and so achieve our full potential of capacity to contribute to our communities and be regarded full citizens. To feel to be of worth to ourselves and others.

It is therefore important that States put into place mechanisms for supported decision making as is required by the CRPD. States when reforming legislation must consult when with all stake holders and role players. These consultations should engage in exploring and creating best practice examples of supported decision-making and ensuring that it is incorporated in relevant legislation. It goes without saying that disabled person's organizations should be the key stake-holders and role players in civil society representation.

It is vital that this right is monitored and the means by which this is done should be included in the consultations with civil society and stakeholders.

We want to end our submission by referring to the unique African concept of Ubuntu. It is a philosophy which is based on an old Xhosa saying:

"Umuntu ngumuntu ngabantu"

Roughly translated it is: *"A person is a person through other persons"*

Archbishop Emeritus and Nobel Laureate, Desmond Tutu said regarding Ubuntu.

"A person with Ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good, for he or she has a proper self-

assurance that comes from knowing that he or she belongs in a greater whole" and is diminished when others are humiliated or diminished, when others are tortured or oppressed"

It is only if mental health services are offered within this spirit of Ubuntu that the rights of persons with psychosocial disability be fully respected. It is the CRPD and particularly Article 12, which can make it possible that Ubuntu be realized for all.