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Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

January 22, 2014

Dr. Jeffrey Lieberman, President
American Psychiatric Association
Dr. Pedro Ruiz, President
World Psychiatric Association
Dr. Saul Levin, CEO/Medical Director
American Psychiatric Association

Dear Drs. Lieberman, Ruiz and Levin:

I have received the letter dated December 9, 2013 that you have sent to me (in my capacity as UN Special Rapporteur on Torture) and to the President of the Human Rights Council. Speaking only for myself, I wish to acknowledge the effort you have made to engage my rapporteurship in a detailed conversation about the report I presented to the Council in March 2013, on torture and cruel, inhuman and degrading treatment in some health care settings.

I will of course let President Henczel respond as to what the Human Rights Council proposes to do about my report of last year. That report was in the agenda of the Council in its session of March 2013. Several States and accredited non-governmental organizations chose to speak on the subject, some voicing criticism at some of my findings. As far as I know, there are no plans to continue the conversation or to “adopt” the report. In fact, reports from mandate-holders like me are not submitted for adoption by the Council but only for a free and open discussion. It would be up to a member State to propose a resolution to the Council on the basis of my report but I have no knowledge that any member State has such intention.

The nature of these thematic reports is of a vehicle to generate a discussion among States and interested civil society on standards that the mandate believes are necessary to cover issues and practices for which the existing normative framework is ambiguous or unclear. My thematic reports are not meant to be read as the ultimate word on the international law governing the issues I choose to deal with, but rather to initiate a discussion about what international law should provide for regarding those matters. They are also a recognition that the normative framework changes, as it must, to reflect evolving social standards and scientific advances. Precisely because that is the purpose of my report, I am encouraged by the detailed attention you have given to it and by your very substantial and authoritative contribution to the discussion I wished to generate.

With respect to the content of the report, I regret that some inartful wording has given rise to misunderstanding of some statements included in it; some passages can be legitimately read as contradictory with other passages. One example is my paragraph 32. For the record, I did not mean to propose an absolute ban on non-consensual interventions (including institutionalization and restraints) under any and all circumstances. I meant to restrict my condemnation to non-consensual treatment based exclusively on discrimination against persons with disabilities. In other words, the fact that a person is diagnosed as having a psychosocial disability should not by itself be enough to justify non-consensual treatment. Unfortunately, in many countries that is standard practice, often validated by domestic courts and even by international tribunals (in some decisions that my report criticizes). As you point out, elsewhere in my report (paragraphs 68 and 69) I do mention that involuntary detention and treatment is legitimate if its purpose is to prevent the patient harming him or herself or causing serious harm to others, and then for the limited time and scope necessary to prevent such harm. I firmly believe, however, that legislation should be revised to place the burden on the State to justify each decision to apply non-consensual treatment under such narrow grounds.

I do not doubt that my proposal coincides – in large part, at least – with the highest professional standards of your profession as reflected in the policy statements relevant to this topic that you have attached. My concern is with the many parts of the world where those professional standards are not applied. More specifically, I am concerned that domestic legislation generally allows for a very loose understanding of disability, of legal capacity, of guardianship and even of medical necessity. I believe very strongly that in many countries these provisions are the enabling legal environment where abuses take place. It is important to encourage all States to take another look at domestic legislation and to overhaul antiquated norms that effectively make free and informed consent meaningless. It seems to me that, in general at least, your associations are comfortable with the existing normative framework; if so, yes there is a disagreement between us. I hope, however, that this letter helps to narrow the scope of that disagreement.

My report was difficult to write because I believe the legal landscape on these issues is changing rapidly. In particular, the Convention on the Rights of Persons with Disabilities has altered that landscape in a significant way. Beyond what the Convention provides for in its text, the authoritative interpretation of it by the treaty body it created, the Committee on the Rights of Persons with Disabilities, may be moving that normative framework even further. Whether one agrees with the Committee's interpretations or not, there is no doubt that pronouncements of treaty bodies entrusted with a specific are of law must be taken into account. It is part of my task as Special Rapporteur to encourage States to align their domestic legislation with binding international standards. More important than the legal reasons, however, is my conviction that there is plenty of abuse of psychiatry in our world today. My report was an attempt to call attention to such abuse; not by any means to impugn the profession and the science of psychiatry, for which I hold great respect and admiration.

Let me thank you again, sincerely, for your comments and criticism. They help me understand the problem in all its dimensions. As part of my work on this issue I plan to publish a volume with contributions from many individuals and entities interested in the matter. It will include divergent views, including of course



disagreements with my report. I would very much appreciate your permission to publish your letter in full in that volume. Needless to say, I intend to include this letter as well.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Méndez'.

Juan E. Méndez

Special Rapporteur on the question of torture and other cruel,
inhuman or degrading treatment or punishment

Cc Baudelaire Ndong Ella, President, UN Human Rights Council