

THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK APPLICABLE TO CHILDREN WITH A PSYCHIATRIC DISABILITY

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In this paper, a legal analysis is given of the international human rights framework applicable to children with a psychiatric disability (first, a terminological justification is included). Using the discourse of the international children's rights movement, these children undeniably constitute a 'very vulnerable group': 'vulnerable' because they have a disability, and 'very vulnerable' because the disability they have is not always a physically tangible one. Indeed, practice shows that the classical patients' rights are not automatically assumed to be applicable to children treated for a psychiatric disability. These children can be locked up without having been in conflict with the law, given medication without their consent, denied psychiatric treatment without a medical reason. It appears that these practices are often in conformity with – hiatuses in – national legislation. Therefore, the main purpose of this paper is to examine the compliance of the latter with the state obligations flowing from international human rights law.

The key principle of this international human rights framework is simple: being a 'child treated for a psychiatric disability' is not per se a valid criterion to be treated differently. All human rights are applicable. Only if an objective and pertinent justification can be given, protection of those rights can be restricted or expanded. Placing a child against his or her will in an institution is therefore merely possible if the safeguards provided in international law are respected, both with regard to the conditions of placement and those in placement. Nevertheless, it is not always self-evident to apply human rights law to children with a psychiatric disability. The 'free and informed consent' doctrine, for instance, confronts children's rights lawyers and health professionals with particular problems. Does this doctrine under international human rights law constitute a genuine 'right' for children treated for a psychiatric disability? Is parental consent sufficient, provided that children are involved in accordance with their evolving capacities, or does international children's rights law require a reversal, in principle asking the child's consent? Does a psychiatric disability always influence a child's evolving capacities? What is the impact of compulsory placement? Likewise, many questions can arise with regard to the classical patients' right to confidentiality. Should information on the health status of a child with a psychiatric disability be disclosed to the child himself or herself, or to his or her parents or guardian?

In this paper, the analysis covering the abovementioned problems is made from a legal, more in particular human rights, perspective. Patients' rights are proclaimed in numerous declarations, which are mostly non-binding instruments (a laudable exception being the 1997 Council of Europe Convention on Human Rights and Biomedicine). It is argued, however, that all those patients' rights can be derived from the – binding – international

human rights treaties adopted within the framework of UN and the Council of Europe. Also the draft Disability Convention, which is hopefully soon to be adopted, is taken into account. It is concluded that children with a psychiatric disability are granted a certain level of protection of their rights at the international level.

A first step to materialize those rights consists of implementing the international state obligations in domestic law. This paper briefly compares the domestic implementation of those state obligations in Belgium, in the Netherlands and in Indonesia. The three countries can be said to have made some effort to comply with international human rights law. For theory to become reality, however, the most important step is the actual realization of legislation, so that children with a psychiatric disability are treated with respect for their human dignity – as are all other people.