**Intervention at OHCHR consultation on Mental Health and Human Rights, Geneva, 15 November 2021**

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**Morning session**

I participated to the development of the WHO guidance for human rights-based services, as far as

an experience in Italy, like Trieste, is concerned, and to the discussion on general issues related to this document and its detailed packages. I also speak on part of the World Federation for Mental Health.

I would like to emphasize the importance of the implementation of a human rights approach, since I think there is now a consistent base of agreement on what should be done; but how it should be done is now the point.

For instance, the crucial aspect of legal capacity framework can be the bearing axis, but this means implementing supported decision-making, thus the role of legally recognized counselors to help people in exercising their choice. But this is also based on empowerment practices for people with lived experience using services, and we need therefore empowerment indicators, as pointed out by several qualitative researches, not just in the legislation process but also in its application.

Another aspect which is in my opinion very important, is to establish a wider reform approach, that should encompass legal aspects, based on rights, as well as policy aspects, e.g. avoiding institutional treatments in favor of more comprehensive care with community

involvement, and developing alternatives for exercising self-determination and choice.

In this wider framework encompassing laws, policies and practices, as mentioned also by Mr. Njenga, we need also human rights based indicators. For instance, one of the most undervalued aspects is taking into account the reduction of rate of involuntary treatment, that is one of the most important aspects in approaching a human rights-based vision by considering concrete outcomes.

I think it should be included in further policy documents, and I hope the new rights-based guidance of mental health legislation as I heard from Dr. Zsuzanna Jakab of WHO.

I would also like to address the issue of inequality, as the World Federation has done for

this World Mental Health Day 2021, which theme is ‘Mental Health in Unequal World’.

This theme would emphasize that we need to address social rights as well as civic human rights in general. So we need reforms that can have the aim of developing more integrated and comprehensive care, not just focus on treatment but on holistic care aiming at a better life for all.

**Afternoon session**

On the negative side, I must underline that in Europe the highly controversial **Draft Additional Protocol to Oviedo Convention** has now been finalized by The European Committee of Bioethics (DH Bio).

Considering the experience of the most advanced country legislation and policies, such as Italy, we note that:

a) The involuntary treatment overlaps with the involuntary placement, that is a full legitimation of the 'internment (as in the mental hospital era), even if separated from treatment;

b) The concept of danger and risk is its main criterion, this establishes the primacy of the reasons for public order and social control at the basis of time-limited mandatory treatments, unlike the Italian law has been the forerunner in protecting the right to health;

c) An involuntary treatment is connected to emergency (within 72 hours) and it does not consider the community-based alternative to it;

c) its duration is indefinite, so it can vary but also be long - not 7 days as in Italy, unless requested to continue the treatment. There is no upper limit;

d) The involuntary treatment is decided directly by a judge, while in the Italian law the tutelary judge checks the respect of rights. The figure of the magistrate as a decision-making authority (rather than, as we have in Italy, the mayor as the first representative of the community) and not only of control (as we are the tutelary judge) conditions the character of a judicial and not simply administrative act;

f) There is the regulation, as already anticipated by the 2017 guidelines of the CoE, of all forms of restraint and seclusion, which are therefore admitted and legitimized, without any reference to the objective of the reduction until the elimination of such practices and without any invitation to States to prepare measures and programs to achieve this goal.

All this makes the text absolutely in contrast not only with the Italian legal framework, but with a whole set of acts with supranational effectiveness and legal value, especially with the United Nations Convention on the Rights of Persons with Disabilities (CRPD ), ratified so far by 184 countries.

Only the Italian representative at DH Bio, also alerted by a group of national stakeholders association, voted against passing the document to the Committee of Ministers, while 7 country representers abstained, but 41 voted in favor.

In addition to many associations, there was also a representative of the Parliamentary Assembly, which confirmed its opposition to the Protocol.

Now the document is in the hands of the Foreign Ministers.

We think the battle on this document is absolutely crucial and requires a clear position statement on part of the vast majority of institutional bodies.

Thank you very much.