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Over-Medication of Psychotropic Drugs & African-American Girls in Foster Care

Submission to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
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I. Reporting Organization – The Franklin Law Group, P.C.

The Franklin Law Group, P.C. is a U.S. based child advocacy law firm located in Baltimore, Maryland. Since 2007, we have provided legal representation to over 4,000 abused and neglected children, where our mission is to transform their lives by providing innovative, whole-person legal representation and advocacy that supports their physical, emotional, mental and spiritual well-being.

II. Issue Summary

Children of African descent in the US continue to be a vulnerable population marginalized by persistent race, gender, and economic discrimination in violation of their human rights in the CAT, ICERD, CRC, CEDAW, ICESCR, and ICCPR. This marginalization is heightened when race, gender, and sexuality intersect with foster care. With African-American (hereinafter referred as AA[1]) children being the highest disproportionate group in foster care, they can be subject to greater increase in the use of psychotropic medications. Particularly vulnerable are AA girls in foster care who may be at greater risk when disaggregated data is not collected, resulting in discriminatory treatment that may not be readily apparent.

The ICERD Committee issued its 2014 Concluding Observations requesting that the US government provide, in its next periodic review, detailed information regarding the rate at which African-American children in foster care are prescribed psychotropic medications. Foster care children are often a silent voice, particularly AA girls, who are the subject of this report. This submission will focus on the over-medication of psychotropic drugs on girls in foster care of African descent in the US and its impact on her healthy development, dignity, and self-determination.

With a growing concern of the increased use of psychotropic medications on foster care children, the US has documented that foster care children are prescribed psychotropic medications at rates nine times higher than other children. Children of African descent are diagnosed with higher rates of mood/psychotic and behavior or conduct disorders that link to prescribing anti-psychotic medications, and girls are diagnosed with higher rates

of Depression. Qualitative data supports that psychotropic drugs are threatening the well-being and healthy development of African-American girls in foster care; however, disaggregated, quantitative data is needed to further study the impact on African-American girls. With little known about the side effects and long-term consequences of these drugs, African-American girls' human right to well-being and healthy development are threatened.

III. Background

A. Psychotropic Medications, Side Effects & Long-Term Consequences

Psychotropic medications are mind – altering drugs that have serious side effects and long-term consequences that suppress and disrupt normal brain development and function, alters chemical levels in the brain, and impacts mood and behavior.[2] The more commonly used psychotropic drugs in the U.S. are: a) Antipsychotics, b) Antidepressants c) Attention Deficit Hyperactivity Disorder (ADHD) medications, d) anti-anxiety medications, and e) mood stabilizers.[3]

The side effects and consequences of ingesting psychotropic medications are damaging, debilitating, and life-threatening.[4] Long-term consequences of the ingestion of psychotropic drugs are serious, and can include, but are not limited to, tardive dyskinesia, a neurological disorder that involves involuntary movements of the lower face;[5] shortened life-span up to 25 years for long-term users, and recent evidence shows that these anti-psychotics can lead to shrinkage in the brain.[6]

B. Psychotropic Medications and Foster Care Children

Increased attention has been paid in the last few years to the growing number of foster care children who are prescribed psychotropic medications. Opponents of psychotropic drugging of children, argue that these medications are a form of social and behavioral control.[7] Because of the significant increase in the use of psychotropic medications on foster care children, national media coverage[8] has pushed the US government to respond.[9] As a result, we know the following about foster care children, generally:

- That they are prescribed psychotropic medications at rates 9x higher than other children[10];
- That there has been a 55% increase in the prescribing of psychotropic medications to foster children since the late 1990's[11];
- That they are overwhelmingly diagnosed with ADHD, Bi-Polar Disorder and Depression[12];
- That they are mainly prescribed atypical, anti-psychotic drugs[13];
- That foster children under the age of 5 are prescribed psychotropic medications, including infants[14];
- That they are prescribed several psychotropic medications at one time which can lead to toxic exposure for exceeding maximum levels[15];
- That they are being prescribed these medications off-label, with black box warnings indicating that the U.S. Food & Drug Administration (FDA) and medical guidelines do not sanction these medications for children[16]
- That higher use of psychotropic medications are prescribed to youth in foster homes and residential treatment centers[17]

- That little information is known about the long-term effects of ingesting psychotropic medication[18]

C. *African-American Children in Foster Care & Psychotropic Medications*
- Diagnosed with higher rates of mood/psychotic and behavior or conduct disorders that link to prescribing of anti-psychotic medications. [19]

D. *Girls in Foster Care & Psychotropic Medications*
- Diagnosed with higher rates of Depression.[20]

E. *African-American Girls in Foster Care & Psychotropic Medications*
- Qualitative data evidenced through testimony below. No quantitative data.

> My name is Dusty and I am now 19.5 years old, and I identify as neither male nor female. I am just who I am. I was in foster care since I was 13 years old, and had been in and out of residential treatment facilities my whole time in foster care – close to 6 years.. I came into foster care because I had been sexually and physically abused. I was diagnosed with: ADHD, Bi-Polar Disorder, Post-Traumatic Stress Disorder, Oppositional Defiant Disorder, Depression, Mood Disorder, Diabetes, and Obesity. I was prescribed Cogentin, Concerta, Depakote, and Geodon. The medications made me sick. I didn't feel like myself. I didn't feel right. I felt off. It made me sleepy all the time and out of it. I had thoughts of hurting myself and sometimes, other people. The last time I was in the residential treatment facility I was 18 and I told them I did not want to take the medications. They would force me to take the medications. I started hiding my medications, and not taking them. The only medication I would take was for my diabetes. Sometimes I would feel very aggressive. I was criminally charged as an adult, while in the facility, for assault on a staff person.

F. *African-American Girls in Foster Care – Vulnerability in Psychotropic Over-Medication*

The vulnerability of prescribing African-American girls psychotropic drugs at higher rates than other racial/ethnic groups and other gender-identities is highly likely. Given the history that African-American girls and women have faced and continue to face in this country through enslavement, brutal rape, commercialization of her body, eugenics, and the outright dismissal of her femininity, places her in a special category for increased protections and special measures because of her heightened exposure to intersectional discrimination. Routine invisibility in discussions and consistent marginalization impact her well-being and her right to self-determination. The Inter-American Commission on Human Rights issued a report on People of African Descent in 2011, noting the vulnerability of women and girls of African descent, citing her impoverished living conditions and denial of access to the most basic human right - affordable, quality health care.[21]

Continued prejudicial and racist, sexist stereotypes[22] (AA girls being angry and aggressive) increase mislabeling diagnoses[23] (AA children are diagnosed with higher

rates of mood/psychotic and behavior or conduct disorders) and the prescribing of psychotropic medications, [24] even to young children (our firm currently has a AA, female client who began Adderall for ADHD at age 6 ½). Anti-psychotics such as, Abilify, Risperdal[25], and Seroquel, are used to treat these behaviors and can have devastating side effects and long-term consequences that impede her healthy development. Even more grave is that as AA girls in foster care mature, she oftentimes abruptly terminates her psychotropic medications because of its problematic side effects, which has been medically proven to be dangerous, placing her at an increased risk of violent behavior and suicidal ideations. Additionally, the use of psychotropic medications as a form of chemical restraint on AA girls in residential settings, places them at even greater risk.

The US government has passed the National Improvement and Innovation Act[26] in 2011, a federal law to ensure state oversight and monitoring of psychotropic drug use on foster care children; however, extension of this oversight is needed by other state and local agencies to ensure the protection of the human rights of foster care children, generally.

Protecting her human right to survival and development, bodily integrity, and self-determination is of grave concern. Ensuring that she receives the special care and assistance given to all children, as promulgated in the CRC, regardless of her race and gender-identity is consistent with the human rights principles established in all UN treaties.

IV. Concluding Observations

In 2006, this Committee noted its concerns in paragraph 13, stating "the State party should ensure that acts of psychological torture, prohibited by the Convention, are not limited to "prolonged mental harm" as set out in the State party's understandings lodged at the time of ratification of the Convention, but constitute a wider category of acts, which cause severe mental suffering, irrespective of their prolongation or its duration."[27]

V. US Government Report

In its 2013 periodic report, the US failed to address this Committee's concerns with wider category of acts which cause mental suffering, irrespective of its duration. Although it mentioned the use of drugs, psychotropic drugging of children in state care or custody generally and as a form of chemical restraint, was not addressed.

VI. Legal Framework

Applicable CAT Articles: 1, 10, 14, and 16.

VII. CAT Committee's General Comments

CAT's General Comment No. 2[28] is specifically aimed at the protection of individuals and groups made vulnerable by discrimination or marginalization. AA girls in foster care are a vulnerable and marginalized population who face routine discrimination and marginalization which can be unnoticed or unaddressed if disaggregated data that includes gender-identity, age, race, ethnicity and other factors is not collected.

VIII. Other UN Body Recommendations

A. *ICERD*

1) *2008 & 2014 Concluding Observations & General Recommendation XXV* – In 2014, the Committee, in paragraph 26, requested the US Government to provide at its next periodic review, detailed information concerning the rate that African-American children in foster care are being prescribed psychotropic medications. The 2008 Concluding Observations, noted in paragraph 32, persistent health disparities and racial discrimination in health care (access and poor quality of public health services). The ICERD Committee requested disaggregated data on health disparities affecting persons belonging to racial, ethnic and national minority by age, gender, race, ethnic or national origin, and to include it in its next periodic report.[29] The government responded in its 2013 submission to the Committee that these racial disparities still exist and shared its efforts towards remedying the problem, which is still inadequate. They did not report collecting disaggregated data pertaining to vulnerable children in special populations, such as foster care, to address the disparities in health care for persons belonging to racial, ethnic and national minority by age, gender, race, ethnic or national origin or disability.[30]Failure by the government to collect this data prior to the 2014 Review, is a violation of ICERD Articles 1,2,5,6, and 7, and its continuing obligations to adhere to the treaty, in addition to, failing to adhere to the General Recommendation XXV by the Committee.

B. *CRC*

1) *2013 General Comment 15* – This comment seeks to ensure that children and adolescents have a right to the enjoyment of the highest attainable health care.[31] The government's failure to report disaggregated data by race, gender, and age, in conjunction with testimonies, and the reported quantitative data on foster care children, generally, violates Art. 24. Failure to ratify the treaty violates all children's human rights.

C. *CEDAW*

1) *United Kingdom 2008 Concluding Observations & General Recommendation No. 24, 1999* – Equality for women; special protection of vulnerable populations; including women with disabilities of all ages to ensure their dignity; and women's health (adequate protection and access to quality services), which includes girls and adolescents are protections in CEDAW.[32] The government's failure to ensure these human rights protections for AA girls in foster care violates Art.2. Failure to ratify the treaty violates girls and women's human rights.

D. *CRPD*

1) *Sweden 2014 Concluding Observations* – Sweden's Concluding Observations ensured that women and children with disabilities are free from discrimination, including intersectional discrimination; that their perspectives are included in legislation, policies…services for them; that children receive appropriate psycho-social services; and that States parties increase public knowledge about different disabilities.[33] The government's failure to protect disabled persons, which includes AA girls in foster care with mental health diagnoses, violates Articles 2,

7, 10, 15, and 25 by over-relying on psychotropic medications for this population and limiting the use of psycho-social services. Failure of the government to ratify the CRPD violates the human rights of persons with disabilities.

E. <u>*ICCPR*</u>

1) *US 2014 Concluding Observations* – In 2014, the Human Rights Committee asserted violation of Articles 7 & 17, in paragraph 18,[34] concerning the widespread use of non-consensual forced psychiatric medications, specifically noting the promotion of psychiatric care aimed at preserving the dignity of patients, both adults and minors. This practice continues to violate the human rights of AA girls in foster care in mental health institutions, and the practice should be discontinued.

G. <u>*ICESCR*</u>

1) *Norway 2013 Concluding Observations* – In paragraph 19[35], ICESCR Committee stated its concerns with persons with psycho-social disabilities in facilities, specifically noting their human right to free and informed consent. Articles 3 & 12 ensure the right to equality between genders to enjoy social, economic and cultural rights, and for the enjoyment of the highest attainable standard of mental and physical health. Failure of the government to ratify the ICESCR violates the human rights of AA girls in foster care.

VI. Recommendations

A. The US Government should ratify the CRC, CEDAW, CPRD, and ICESCR to ensure human rights for all and adopt and implement a national racial justice plan that is consistent with the Durban Declaration and Programme of Action.

B. Require Health & Human Services, state, and local governments to collect data concerning psychotropic medication use and prescription categorized by race and ethnic origin that is disaggregated by age and gender-identity within those racial and ethnic groups for foster care children.

C. Health & Human Services, local, and state governments should:

- Provide culturally-competent, gender and trauma-informed, psycho-social therapeutic services;
- Require state and local residential treatment centers for children to obtain informed consents from older youth; and
- Ban forced psychotropic drugging.

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[1] African-American, in this report, is defined as Black people living in the U.S. who identify as such, and are descendants of Black Africans from the continent of Africa. For this report, girls include biologically born females ages, 0-21. Please note that although U.S. law and international treaties define children as persons under the age of 18, we are including young women up to the age of 21 for two reasons: a) foster care in Maryland, the state where we provide our legal services, includes young people ages, 18-21 and b) testimonies of affected girls in this report are over the age of 18, but were under the age of 18 when they entered foster care.

[2] Breggin, Peter, MD, "The Psychiatric Drugging of America's Foster Children," May 28, 2014, Citizens Commission on Human Rights International. http://www.cchrint.org/2014/05/29/psychiatric-drugging-of-americas-foster-children/; Francis, Enjoli, "Psychotropic Drugs: What Are They?" December 2, 2011. http://abcnews.go.com/blogs/health/2011/12/02/what-you-need-to-know-about-psychotropic-drugs/; National Institute of Mental Health, Mental Health Medications. http://www.nimh.nih.gov/health/publications/mental-health-medications/index.shtm. This is a list of more commonly used psychotropic medications in the U.S.: a) Antipsychotics, (such as, Abilify, Geodon, Risperdal, Seroquel, Zyprexa) b) Antidepressants (such as Zoloft, Celexa, Paxil, Lexapro, and Prozac), c) Attention Deficit Hyperactivity Disorder (ADHD) medications (such as, Ritalin, Metadate, Concerta, Daytrana, Adderral, Dexedrine, and Dextrostat) medications, d) anti-anxiety medications (such as, Klonopin, Ativan, Xanax and e) mood stabilizers (such as, Zyprexa, Abilify, Risperdal, Geodon, and Clorazil).

[3] Id.

[4] For example, ingestion of atypical, anti-psychotic drugs such as, Abilify, Risperdal, Seroquel, and Zyprexa can lead to, but are not limited to, obesity, elevated blood sugar and diabetes, pancreatitis, cardiovascular abnormalities, behavior changes, anxiety, restlessness, drowsiness, low-energy, suicidal ideations, aggression, insomnia, and memory loss.; Breggin, Peter, MD, "The Psychiatric Drugging of America's Foster Children," May 28, 2014, Citizens Commission on Human Rights International. http://www.cchrint.org/2014/05/29/psychiatric-drugging-of-americas-foster-children/

[5] U.S. National Library of Medicine. http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001705/; National Alliance on Mental Illness. http://www.nami.org/Template.cfm?Section=By_Illness&Template=/ContentManagement/ContentDisplay.cfm&ContentID=145759; Breggin, Peter, MD, "The Psychiatric Drugging of America's Foster Children," May 28, 2014, Citizens Commission on Human Rights International. http://www.cchrint.org/2014/05/29/psychiatric-drugging-of-americas-foster-children/

[6] Id.

[7] Abdelmalek, Mark Dr., Adhikari, B., Koch, S., Diaz, J., and Weinraub, C. "New Studies Shows U.S. Government Fails to Oversee Treatment of Foster Children With Mind-Altering Drugs." November 30, 2011. http://abcnews.go.com/US/study-shows-foster-children-high-rates-prescription-psychiatric/story?id=15058380; Adhikari, Brinda, Martelli, J., and Koch, S. "Doctors Put Foster Care Children at Risk With Mind-Altering Drugs." December 1, 2011. http://abcnews.go.com/Health/doctors-put-foster-children-risk-mind-altering-drugs/story?id=15064560; "Foster Kids Prescribed Psychotropic Drugs." December 2, 2011. http://abcnews.go.com/2020/video/foster-kids-prescribed-psychotropic-drugs-heavy-duty-drug-treatments-neglect-2020-15077792; Breggin, Peter, MD, "The Psychiatric Drugging of America's Foster Children," May 28, 2014, Citizens Commission on Human Rights International. http://www.cchrint.org/2014/05/29/psychiatric-drugging-of-americas-foster-children/; "Efforts to Address Psychotropic Medications and Foster Youth in California Pick Up Speed." National Center for Youth Law. October – December 2012.

http://www.youthlaw.org/publications/yln/2012/oct_dec_2012/efforts_to_address_psychotropic_medications_and_foster_youth_in_california_pick_up_speed/.

[8] Abdelmalek, Mark Dr., Adhikari, B., Koch, S., Diaz, J., and Weinraub, C. "New Studies Shows U.S. Government Fails to Oversee Treatment of Foster Children With Mind-Altering Drugs." November 30, 2011. http://abcnews.go.com/US/study-shows-foster-children-high-rates-prescription-psychiatric/story?id=15058380; Adhikari, Brinda, Martelli, J., and Koch, S. "Doctors Put Foster Care Children at Risk With Mind-Altering Drugs." December 1, 2011. http://abcnews.go.com/Health/doctors-put-foster-children-risk-mind-altering-drugs/story?id=15064560; "Foster Kids Prescribed Psychotropic Drugs." December 2, 2011. http://abcnews.go.com/2020/video/foster-kids-prescribed-psychotropic-drugs-heavy-duty-drug-treatments-neglect-2020-15077792

[9] The U.S. and state governments have written national and state reports, held conferences and convenings on psychotropic medication oversight, held congressional and hearings, passed federal legislation (P.L. 112-34), and enacted special initiatives to address this issue. http://www.gao.gov/assets/660/650716.pdf; http://www.gao.gov/products/GAO-12-270T; http://www.gao.gov/products/GAO-12-270T; http://www.gao.gov/products/GAO-12-270T; http://www.whitehouse.gov/blog/2014/05/01/doing-better-most-vulnerable-amongst-us-our-nation-s-children-foster-care; http://childrensmonitor.wordpress.com/2014/06/03/house-hearing-on-psychotropic-medication-in-foster-care/

[10] Abdelmalek, Mark Dr., Adhikari, B., Koch, S., Diaz, J., and Weinraub, C. "New Studies Shows U.S. Government Fails to Oversee Treatment of Foster Children With Mind-Altering Drugs." November 30, 2011. http://abcnews.go.com/US/study-shows-foster-children-high-rates-prescription-psychiatric/story?id=15058380; Government Accounting Office. Children's Mental Health. "Concerns Remain about Appropriate Services for Children in Medicaid and Foster Care." December 2012. http://www.gao.gov/assets/660/650716.pdf; Government Accounting Office. "Foster Children: HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions." December 1, 2011. http://www.gao.gov/products/GAO-12-270T.

[11] "Efforts to Address Psychotropic Medications and Foster Youth in California Pick Up Speed." National Center for Youth Law. October – December 2012. http://www.youthlaw.org/publications/yln/2012/oct_dec_2012/efforts_to_address_psychotropic_medications_and_foster_youth_in_california_pick_up_speed/

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[13] "Efforts to Address Psychotropic Medications and Foster Youth in California Pick Up Speed." National Center for Youth Law. October – December 2012. http://www.youthlaw.org/publications/yln/2012/oct_dec_2012/efforts_to_address_psychotropic_medications_and_foster_youth_in_california_pick_up_speed/

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Mind-Altering Drugs." November 30, 2011. http://abcnews.go.com/US/study-shows-foster-children-high-rates-prescription-psychiatric/story?id=15058380

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[17] NSCAW, No. 17: Psychotropic Medication Use by Children in Child Welfare. Office of Planning, Research & Evaluation. May 15, 2012. **http://www.acf.hhs.gov/programs/opre/resource/nscaw-no-17-psychotropic-medication-use-by-children-in-child-welfare**

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[27] CAT, *Concluding Observations: United States,* CAT/C/USA/CO/2, para. 13 (CAT, 2006).

[28] CAT, *General Comment No. 2: Implementation of article 2 by States parties,* (Sess. 40, 2008), para. 20,-24, U.N. Doc. CAT/C/GC/2 (2008).

[29] CERD, *Concluding Observations: United States,* CERD/C/USA/CO/6, para. 32 (CERD, 2008).

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[32] CEDAW, *Concluding Observations: United Kingdom, CEDAW,* CEDAW/C/UK/CO/6, para. 264, 292, 293, 294 (2008); CEDAW, *General Comment No. 24: Women and Health,* (Sess. 20, 1999), para. 8, 12, 16, 22, 25 (2008).

[33] CRPD, *Concluding Observations: Sweden, CRPD,* CRPD/C/SWE/CO/1, (Sess. 124, 2014), para. 13,14,17,18,19,21,22 (2014).

[34] CCPR, *Concluding Observations: United States, CCPR,* CCPR/C/USA/CO/4 (Sess. 110, 2014), para. 18 (2014).

[35] ICESCR, *Concluding Observations: United States*, *ICESCR,* E/C.12/NOR/CO/5 (Sess. 51, 2013), para. 19 (2013).