

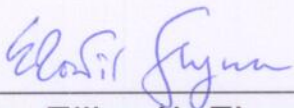
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UN Office of the High Commissioner for Human Rights  
Regional Office, Europe  
Rue Montoyer 14  
1000 Brussels  
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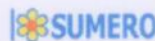
Dear Mr. Jarab,

As Principal Investigator of the PERSON project, on behalf of all the partners to the project, I agree to co-sign the attached letter to the members of the Council of Europe Committee on Bioethics.

Yours sincerely,



Dr. Eilíonóir Flynn  
Acting Director  
Centre for Disability Law & Policy



14 November 2015

To the Members of the Committee on Bioethics,

The undersigned organizations thank you for the opportunity to provide comments to the draft Additional Protocol concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment.

We have each prepared our respective comments, in line with the mandates of our organizations, which set out concerns regarding the compatibility of the draft Additional Protocol with the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). In addition, we have prepared this joint letter as we have some common, overall issues to raise regarding the draft. Our main concerns arise in relation to non-discrimination, equal recognition before the law, liberty and security of a person, right to health and prohibition of torture and ill-treatment. Furthermore, we are concerned about the lack of meaningful involvement and consultation of disabled persons' organizations in the elaboration and drafting of this document, contrary to article 4(3) of the UN CRPD.

It is important to recall at the outset that 41 out of 47 Member States of the Council of Europe (CoE) have ratified the UN CRPD. In addition, 5 CoE Member States have signed but not yet ratified the UN CRPD, and are therefore bound, in the period between signing and ratification or consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.

The UN CRPD is based on the recognition of persons with disabilities, including those with psychosocial disabilities, as rights holders, not objects of care. However, both the overall approach of, and the language used in the draft Additional Protocol reflect the old, medical model of disability which constitutes a step back from the developments that led to the adoption of the UN CRPD. The stated aim of the draft Additional Protocol is to clarify the "standards of protection applicable to the use of involuntary placement and of involuntary treatment<sup>1</sup>". It is our view that the *raison d'être* and the provisions contained in the document (as detailed further in our comments) demonstrate that the guiding principles of the UN CRPD, namely non-discrimination and equality, autonomy, participation and inclusion in society, are not incorporated in a meaningful way in the draft.

We also have concerns with the draft viewing involuntary treatment and placement as a form of "therapy" or "care". There is a growing and convincing body of evidence of involuntary interventions violating human rights and in some cases, even amounting to torture. The CRPD Committee has stated in several concluding observations, as well as in their General Comment No. 1 and in their Guidelines on CRPD Art. 14, that forced treatment by psychiatric or other health and medical professionals is a violation of the right to equal recognition before the law and not consistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment pursuant to article 15 of the CRPD.

Finally, we take this opportunity to recall that regional human rights standards should not aim lower than nor undermine international human rights standards. The standards in this draft Additional Protocol appear to reflect provisions contained in national laws currently in force in some CoE Member States, for instance related to legal capacity and to involuntary placement and treatment. However, in its reviews of State Party reports to date, the UN Committee on the Rights of Persons with Disabilities has identified some such national laws as requiring reform in order to be in line with the UN CRPD. While it is understood that some legislative reforms may take time, the State Parties' obligation to abolish

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<sup>1</sup> Preamble of the draft Additional Protocol.



discriminatory regimes of detention and practices amounting to torture or other ill-treatment is of immediate application.

States Parties to the UN CRPD have undertaken to put in place systems that respect persons with disabilities as rights holders, and not objects of care. However, the document in question does not promote nor encourage the principles underlying the UN CRPD. Rather, it sets out standards that step away from those contained in the UN CRPD.

Given the nature of our concerns, we have come to the conclusion that they cannot meaningfully be addressed by partial changes to some of its provisions. Therefore, we would like to encourage you to withdraw this proposal while pursuing – in cooperation with a wide range of stakeholders including disabled persons' organizations (DPOs) – other initiatives that would enhance the protection of rights of persons with disabilities and help to bring national legislation in line with the UN CRPD.

Sincerely,

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