

Comments of the CRPD Working Group of the European Network of NHRIs (ENNHRI) on the Draft Additional Protocol to the Oviedo Convention

This consultation response is made on behalf of the CRPD Working Group of the European Network of NHRIs (ENNHRI). The CRPD Working Group ('the Group') is composed of national human rights institutions who are singularly or jointly designated as independent monitoring frameworks under article 33.2 of the UN Convention on the Rights of Persons with Disabilities ('UNCRPD' or 'the Convention').¹

The Group welcomes the opportunity to comment on the draft Additional Protocol to the Oviedo Convention relating to the protection of human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment.

1) The draft Additional Protocol and the UNCRPD

Persons who are confined in mental hospitals and subjected to forced treatment will often have a longer-lasting mental impairment which in inter-action with various barriers may hinder their full and effective participation in society. The UNCRPD applies to the issues that the protocol to the Oviedo Convention seeks to regulate.

We are therefore concerned that the draft Protocol to the Oviedo Convention does not seem to have taken account of the UNCRPD – either implicitly or explicitly. We would find it problematic that the Council of Europe should adopt a new legal instrument which does not accord with the obligations of State Parties under the UNCRPD. Adopting the draft Additional Protocol to the Oviedo Convention in its current form may present difficulties for those Council of Europe Member States who have ratified the UNCRPD

The draft Additional Protocol does not refer to nor does it cohere with the aim and wording of the UNCRPD. As a result hereof the ENNHRI CRPD Working Group advises that the following remarks are directed towards the overall form and approach of the draft Additional Protocol and not the specifics of the provisions.

2) Social model of disability

The UNCRPD is based on a social model of disability. Accordingly, the UNCRPD recognizes that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. The draft Additional Protocol is based on a medical model of disability, as it only addresses how a person's 'mental disorder' affects their abilities and does not recognise the importance of attitudes and culture relating to the use of forced treatments. The three alternative definitions of the scope of the protocol provided for in the draft reflect the medical model. The

¹ Details on the Working Group are included in Annex A.

Group recommends re-consideration of the use of language in relation to disability in the draft Additional Protocol to bring it in line with the language of the UNCRPD.

3) General structures to avoid the use of forced treatment and involuntary placement

The UNCRPD obligates States Parties to remove attitudinal and environmental barriers to the equal enjoyment of rights by persons with disabilities. In relation to psychiatry, this means that the system set up to treat persons with mental illnesses must be based on methods which respect the individual's self-determination, as opposed to a system based on forced treatment.

4) Self-determination

The UNCRPD is based on the principle of self-determination and underlines that persons with disabilities have a right to respect for their personal integrity and a right to make decisions themselves, with the support of others if this is required. The draft Additional Protocol however seems to be based on the principle of substituted decision making.

5) Criteria for the use of forced treatment and involuntary placement

The UNCRPD Article 14(1) reiterates that the existence of a disability is not a lawful justification for any deprivation of liberty. The abolition of legislation permitting institutionalization without free and informed consent of the person concerned is also emphasized by the UN Committee on the Rights of Persons with Disabilities in its examination of States Parties, by the Office of the United Nations High Commissioner for Human Rights in its Thematic Study on enhancing awareness and understanding of the Convention as of 26 January 2009 and by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 March 2013 at the 22nd session of the Human Rights Council.

Finally, the ENNHRI CRPD Working Group recommends the CDDH and DH-BIO consider consulting with civil society on the draft Additional Protocol to the Oviedo Convention, bearing in mind the spirit of the UNCRPD and the requirements set out in Article 4(3) of the Convention. In addition, the CDDH and DH-BIO may wish to engage directly with the UN Committee on the Rights of Persons with Disabilities to ensure consistent human rights standards across this important matter.

Annex A

The role and objectives of ENNHRI's CRPD Working Group

The European Network of National Human Rights Institutions (ENNHRI) is one of four regional networks of National Human Rights Institutions (NHRIs) within the International Coordinating Committee (ICC). ENNHRI brings together over 40 NHRI's from across Europe.

NHRIs are state funded institutions, independent of government, with a broad mandate to promote and protect human rights. They are accredited by reference to the United Nations Principles on the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles) to ensure their independence, plurality, impartiality and effectiveness. ENNHRI was previously known as the European Group of NHRIs.

Article 33.2 of the United Nations Convention on the Rights of Persons with Disabilities envisages a central role for NHRI's acting as 'independent mechanisms', working within a wider framework to promote, protect and monitor implementation of the Convention by States Parties.

To this end, ENNHRI has convened a Working Group on the UN Convention on the Rights of Persons with Disabilities ('the Working Group'), chaired by the British NHRI, the Equality and Human Rights Commission.

The Working Group's objectives are:

- To provide a point of contact on disability rights among NHRIs, equality agencies, and other CRPD independent mechanisms, and between them and EU and Council of Europe institutions, and other regional and international institutions working on CRPD issues.
- To identify, develop and promote good practice guidance on the role and actions of NHRIs in promoting, protecting and monitoring implementation of the CRPD in ENNHRI and internationally.
- To co-ordinate participation of European NHRIs concerning CRPD at the Human Rights Council, the UNCRPD Committee, Conferences of State Parties and other CRPD-related events.
- To work together to influence the interpretation and implementation of the Convention and the development of jurisprudence in our own Countries, by the CRPD Committee and at the ECtHR and ECJ.
- To promote and support the most effective use of the CRPD Optional protocol.
- To assist the European Union Agency for Fundamental Rights (FRA) in any role assigned to it in relation to the EU as a party to CRPD.
- To promote ratification and implementation of CRPD throughout Europe and by the EU.

Given that not all Article 33 CRPD Independent Mechanisms ('IM') are NHRIs, the Group has granted observer status to and works collaboratively with a number of partners including the EU Agency for Fundamental Rights (FRA), the Office for the High Commissioner on Human Rights, Equinet, the European Network of Equality Bodies, The European Ombudsman and the European Disability Forum.

ENNHRI
Permanent Secretariat
Rue Royale 138, B-1000 Brussels, Belgium

T + 32 (0)2 212 3158 **M** + 32 (0)475 914 904 **E** ENNHRI@cntr.be