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Dr Ms Elina Steinerte, Vice Chair of UN Working
Group on Arbitrary Detention
Ms Theresia Degener, Chair of the Committee on
the Rights of Persons with Disabilities
Ms Catalina Devandas-Aguilar, Special
Rapporteur on the Rights of Persons with
Disabilities
Mr Dainius Pūras, Special Rapporteur on the right
of everyone to the enjoyment of the highest
attainable standard of physical and mental health
Office of the High Commissioner For Human
Rights
Palais des Nations
CH-1211 Geneva 10

Strasbourg, 8 December 2017

Dear Ms Steinerte,
Dear Ms Degener,
Dear Ms Devandas-Aguilar,
Dear Mr Pūras,

Thank you for your letter expressing your concerns on the draft Additional Protocol to the Convention on Human Rights and Biomedicine, which is currently being prepared by the Committee on Bioethics (DH-BIO) of the Council of Europe.

To put this work in its broader context, I would like to refer to the position adopted on this issue on 9 November 2016 by the Council of Europe's Committee of Ministers - the Organisation's statutory decision-making body (decision CM/AS(2016)Rec2091¹), appended for ease of reference). This position is based on our member states' legal obligation to respect the rights enshrined in the European Convention on Human Rights, as interpreted in the European Court of Human Rights' case-law.

The Committee of Ministers underlined that "the utmost should be done to promote alternatives to involuntary measures".

In line with the European Convention on Human Rights, it nevertheless recalled that "in exceptional situations where there is risk of serious harm to the health of the person concerned or to others, and in the absence of alternatives, involuntary measures could be justified subject to strict protective conditions".

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¹ Reply to Parliamentary Assembly of the Council of Europe's Recommendation 2091 (2016) "The case against a Council of Europe legal instrument on involuntary measures in psychiatry".

The Committee of Ministers further observed the number of cases regularly brought before the European Court of Human Rights relating to violations as a result of involuntary measures.

Bearing in mind this reality, the Committee considered that "an Additional Protocol to the Oviedo Convention could be an effective tool to ensure that in all circumstances, involuntary measures are embedded with the guarantees required by the European Convention on Human Rights", thus contributing "to prevention of abuses and (to) encourage the progressive transition to a more uniform application of voluntary measures in psychiatry by the member States, in accordance with the spirit of the United Nations Convention on the Rights of Persons with Disabilities".

It was on this basis that the DH-BIO resumed work on the Additional Protocol during its 10th plenary session (Strasbourg, 5-8 December 2016). Following backing by the Committee of Ministers, the DH-BIO also decided, further to the already existing participation of the Conference of INGO's, to directly involve disability rights organisations, inviting them to participate as observers in the relevant sessions of its meeting.

The DH-BIO has carefully examined all comments received during the public consultation, which reflected a diversity of opinions, including those questioning the compatibility of the Draft with the Convention on the Rights of Persons with Disabilities (CRPD), as interpreted by the CRPD-Committee.

It also considered other relevant UN work, in particular the UN Human Rights Committee's General Comment no. 35 on the right to liberty and security of person(s).

The DH-BIO continues to actively seek input from relevant actors in the field, as is demonstrated by the recent exchange of views between the Chair of DH-BIO with the Ad Hoc Committee of experts on the Rights of Persons with Disabilities (CAHDPH) during their 6th plenary meeting (29 September 2017). Furthermore, the CAHDPH, in which the Office of the UN High Commissioner for Human Rights (OHCHR) holds participant status, is invited to participate in the work of the DH-BIO and to send a representative to its meetings.

For further information on the drafting process, I would invite you to consult the DH-BIO's website (<http://www.coe.int/en/web/bioethics/psychiatry/about>).

Please be assured that I fully share your commitment to the principles of transparency, mutual respect and meaningful dialogue to reach a common consensus. It is in this spirit that the Council of Europe, including the DH-BIO, will continue work in this area.

Yours sincerely,



Christos Giakoumopoulos

Appendix: CM reply to Parliamentary Assembly Recommendation 2091 (2016) "The case against a Council of Europe legal instrument on involuntary measures in psychiatry" [CM/AS\(2016\)Rec2091](#)