Submission by the European Network of (ex) Users and Survivors of Psychiatry [ENUSP][1]

in response to the
Joint Committee on Human Rights'
request for evidence relating to the
The UN Convention on the Rights of Persons with Disabilities
24 October 2008

ENUSP welcomes the Joint Committee's review of the UK's progress toward ratification and implementation of the UN Convention on the Rights of Persons with Disabilities.

This paper seeks to clarify our priorities and concerns in relation to the equal enjoyment of human rights and fundamental freedoms by members of the European Network of (ex) Users and Survivors of Psychiatry.

In the first instance, it is with deep regret that we note our contention that the equal enjoyment of human rights for our constituency remains at significant risk. Our aim, in the remainder of this brief paper, is to outline our justification for this claim.

1. We believe that the report of **Manfred Nowak**, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment [2] published in July 2008 is particularly relevant. Mr Nowak's Report emphasises that *human rights law and conventions have traditionally failed to address special concerns of people with disabilities or the subgroup with mental 'disabilities' or mental 'illnesses'*
2. Some instruments have addressed the specific provisions needed to address the rights of groups likely to be vulnerable to discrimination and abuse; for example, the 1993 **Vienna Declaration**[3], affirmed that people with mental and physical disabilities are entitled to the full protection of international human rights instruments, and that governments must establish domestic legislation to realise these rights. *The Conference unequivocally stated that human rights and fundamental freedoms are universal and thus unreservedly include people with disabilities*.
3. The **United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**[4] is an international human rights instrument intended to prevent torture and other similar activities and, as the Nowak report, referred to above, makes abundantly clear, is entirely relevant to disabled people.
4. Article 3 of the **European Convention on Human Rights** contends that: 'No one shall be subject to torture or to cruel, inhuman or degrading treatment or

1 www.enusp.org
2 UN General Assembly 28.8.08, 63rd session, Item 67(a).
3 World Conference on Human Rights.
4 http://www.unhchr.ch/html/menu3/b/h_cat39.htm

punishment'. ENUSP – in common with other regional organisations of (ex) Users and Survivors of Psychiatry – contend that *coercive psychiatric interventions must be classified under this heading*.

5. Manfred Nowak's report in July 08 to the UN General Assembly includes these comments which apply to people with mental health problems - in the UK as elsewhere in the world:

> *Persons with disabilities are exposed to medical experimentation and irreversible medical treatments without their consent (e.g. sterilization, abortion, and interventions aiming to correct or alleviate a disability, such as electroshock treatment and mind-altering drugs including neuroleptics.*
>
> *The Special Rapporteur is concerned that in many cases such practices, when perpetrated against persons with disabilities, remain invisible or are being justified and are not recognized as torture or other cruel, inhuman or degrading treatment or punishment. The recent entry into force of the Convention on the Rights of Persons with Disabilities provides a timely opportunity to review the anti-torture framework in relation to persons with disabilities.*

6. The Special Rapporteur notes that in relation to persons with disabilities, the **Convention on the Rights of Persons with Disabilities** complements other human rights instruments on the prohibition of torture and ill-treatment. For instance, *Article 3 of the Convention proclaims the principle of respect for the individual autonomy of persons with disabilities and the freedom to make our own choices*.
7. Further, *Article 12 recognizes our equal right to enjoy legal capacity in all areas of life*, such as deciding where to live and whether to accept medical treatment. In addition, Article 25 recognizes that medical care of persons with disabilities *must be based on their free and informed consent*. Thus the Special Rapporteur notes that t*he acceptance of involuntary treatment and involuntary confinement runs counter to the provisions of the Convention on the Rights of Persons with Disabilities*.
8. The experience of our constituency confirms that, Inside institutions - as well as in the context of forced outpatient treatment - psychiatric medication, including neuroleptics and other mind-altering drugs, *may be administered to persons with mental disabilities without their free and informed consent or against heir will under coercion, or as a form of punishment*.
9. The administration in detention and psychiatric institutions of drugs, including neuroleptics, that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence has been recognized as a form of torture. The Special Rapporteur notes that *forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely monitored*. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment.
10. Against a background of endemic reports of indignities, neglect, violence and abuse perpetrated against persons with disabilities, *the recognition of these practices for what they are: torture and ill-treatment, and the utilization of the*

international anti-torture framework, will afford avenues for legal protection and redress.[5]

ENUSP requests the Joint Committee notes – and affirms – that:

- Coercion is not medicine;
- Coercive psychiatric interventions cannot be a legitimate medical practice;
- Treatment can be given not only without consent, but against the will of the person concerned, in contrast to all other medical 'treatment';
- Some attempts have been made in recent years to extend free and informed consent to the mental health context. However, law and custom is still based on the days of the asylum when patients had no power to refuse;
- Coercion cannot heal;
- People in psychological distress and anguish seek healing and alleviation of pain. Many do find psychiatric medications provide relief or a way to manage disabling thoughts and feelings. However, psychiatric interventions with these same medications *against a person's will* are not justified as a medical practice;
- Forcible interventions should be understood as a *profound violation of the physical and mental integrity of any person, performed for the purpose of changing the individual's personality*;
- Coercion necessarily involves both injury and distress;
- We would question whether forced treatment can correctly be construed as medical help, when it appears to be no more than social control;
- Coercion in psychiatry changes the role of the doctor, who *is not free to focus on serving the expressed needs of the patient, but has taken on a duty to third parties [usually the State] to control the patient;*
- *Coercion in psychiatry is still widespread* and hundreds of thousands of European citizens are deprived of their legal capacity so as to authorise medical treatment against the will of the individual concerned;
- In almost all countries, the legal assumption is that treatment is an unquestionable good, and that people diagnosed must be compelled to accept it;
- In incorporating the European Convention on Human Rights into British law, the Human Rights Act perpetuates - rather than challenges - the lesser regard for the autonomy of patients with mental illness. (Szmukler & Holloway, 2000);
- Bindman et al [2003] (a group of British psychiatrists) argue that despite the Act, patients' capacity to make treatment decisions is still essentially ignored:

  "When persons are admitted in a general hospital for any other problems--stroke, cancer, broken hip, X rays, tests--these persons wouldn't dream of allowing the doctors, nurses, or nursing aides to lock them up, shock them up, tie them up, or

5 Subject, of course, to the UK's ratification of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.

drug them up, and the staff wouldn't do it to them. Those patients are treated with compassion, caring, respect, and dignity, and persons who have serious ..emotional/mental problems need to be treated the same"

- *It is social attitudes, not lack of treatment*, that have been shown over and again to be the main barrier to social inclusion for many people diagnosed and treated as mentally ill.
- It is our clear understanding that States that ratify or accede to the UN Convention on Rights of People with Disabilities necessarily undertake to enact laws and other measures to improve disability rights and to repeal legislation and change customs and practices that discriminate against disabled people;
- The underlying foundation of the Convention is, self evidently, the principle that welfare and charity should be replaced by the equal enjoyment of rights and freedoms;

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