



United Nations Human Rights Council
19th Session of the Working Group on the UPR
April/May 2014

**Submission to the Universal Periodic Review (UPR) of Norway
from We Shall Overcome (WSO)**

Submitted September 2013

We Shall Overcome (WSO) is a Norwegian NGO, run by and for users and survivors of psychiatry, established in 1968. WSO advocates for the human rights of users and survivors of psychiatry, the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD), and bringing forced psychiatric practices and other infringements in the mental health system to an end. The organisation is a member of the World Network of Users and Survivors of Psychiatry (WNUSP), an international organisation of users and survivors of psychiatry who has special consultative status with ECOSOC.

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I. Normative and Institutional Framework of the State

1) Ratification of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities (OP CRPD)

Norway has accepted the UPR recommendation to consider the possibility of signing and/or ratifying the OP CRPD.¹ In the Mid-term report (June 2012), it is stated that Norway has not yet decided on ratification of the OP CRPD (cf. recommendation 4).² Based on the fact that Norway in 2007 promised to evaluate the consequences of ratifying OP CRPD and has had more than 6 years since the signature of the CRPD to consider such ratification, with little viewable progress towards evaluation, consideration and ratification, we strongly urge Norway to move forward.

Persons with disabilities need strengthened legal protection against discrimination and other human rights violations. Ratifying the optional protocol will give individuals and groups who are claiming to be victims of violations of CRPD provisions a much needed opportunity to have their cases examined and evaluated by the independent CRPD committee.

Recommendation:

- Norway should sign and ratify the OP CRPD without further delay.

2) Incorporation of the CRPD into Norwegian law

Norway ratified the CRPD June 3rd 2013, but the convention has not yet been incorporated into domestic legislation. The convention needs to be incorporated with the same status as the UN treaties ICCPR, ICESCR, CRC and CEDAW (as well as the European Convention on Human Rights), which are all incorporated into the Human Rights Act.³ In case of conflicting legislation, the treaties incorporated in the Human Rights Act takes precedence over provisions in domestic laws.

Recommendation:

- Norway should incorporate CRPD into the Human Rights Act.

II. Implementation of human rights

1) Discrimination of persons with psychosocial disabilities

While there are several areas where persons with psychosocial and other disabilities are systematically discriminated against through Norwegian legislation and/or practices, we take this opportunity to address a few issues of urgency and concern.

Norway has partly accepted the recommendation to “*strengthen legislation and improve understanding within society of the issues relating to disability discrimination*” (Recommendation No. 2 under “Partially accepted recommendations in the mid-term report), and is stating that effective legislation is already in place through the Anti-Discrimination and Accessibility Act. However, Norway still maintains discriminatory domestic legislation.

One example of this is the Norwegian Mental Health Act which authorises administrative deprivation of liberty based on psychosocial disabilities (“serious mental disorder”)⁴. Regardless of due process guarantees and legal safeguards, deprivation of liberty based on such criteria constitutes disability-based discrimination and runs counter to the CRPD (art. 5 and 14). The Norwegian mental health legislation also authorises non-consensual psychiatric treatment,⁵ both inpatient and outpatient, including forced drugging (which is specifically contravened by CRPD art. 12, 15, 17 and 25d).

Both the UN Special Rapporteur on Torture and the Office of the High Commissioner for Human Rights (OHCHR) have come to the conclusion that, unlike earlier non-binding standards (such as the “Mental Illness”-principles of 1991), the CRPD does not accept involuntary confinement of persons with disabilities in psychiatric or social care institutions or non-consensual psychiatric treatment as a lawful practice.⁶

In his statement to the Human Rights Council Marc 4th 2013, the UN Special Rapporteur on Torture Juan E. Méndez underscored the need for states to revise the legal provisions allowing detention on mental health grounds and any coercive interventions or treatments in the mental health setting without the free and informed consent of the person concerned.⁷ Méndez has called for an absolute ban of non-consensual psychiatric interventions, including forced and non-consensual administration of mind-altering drugs.⁸

UN Special Rapporteurs on Torture Manfred Nowak and Juan E. Méndez has recognized that mental health detention, as well as non-consensual treatment, meets the criteria for inhuman and degrading treatment or torture;⁹

“Both this mandate and United Nations treaty bodies have established that involuntary treatment and other psychiatric interventions in health-care facilities are forms of torture and ill-treatment.”¹⁰

The obligation to end ill-treatment from being carried out through forced psychiatric interventions is of immediate application.

The CRPD Committee has repeatedly, in their nine issued Concluding Observations so far, urged States parties to ensure that *all* mental health services are provided based on the free and informed consent *of the person concerned*.¹¹ The Committee has urged state parties to ensure that no one is detained against their will in any kind of mental health facility.¹²

To improve the understanding within society of issues relating to disability discrimination, the Government needs to begin with correctly identifying the applicable norms of international law as referred to above. Norway has not yet taken this first crucial step.

Recommendation:

- Norway should undertake legislative reform and repeal discriminatory legislation that authorises deprivation of liberty linked in legislation to “mental disorder”, psychosocial or intellectual disability, or in other ways being based on disability.
- Norway should incorporate into the law the abolition of discriminatory and coercive practices against children and adults with disabilities in the medical setting, including forced and non-consensual administration of neuroleptic drugs and electroshock, recognised as forms of torture or ill-treatment

2) Declarations made upon ratification of the CRPD

Though we very much welcome the Norwegian ratification of the CRPD, we deeply regret the declarations made upon ratification, which we deem illegitimate, discriminatory and as a major obstacle for proper implementation of the convention in Norway:

“Article 12

Norway recognises that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Norway also recognizes its obligations to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. Furthermore, Norway declares its understanding that the Convention allows for the withdrawal of legal capacity or support in exercising legal capacity, and/or compulsory guardianship, in cases where such measures are necessary, as a last resort and subject to safeguards.

Articles 14 and 25

Norway recognises that all persons with disabilities enjoy the right to liberty and security of person, and a right to respect for physical and mental integrity on an equal basis with others. Furthermore, Norway declares its understanding that the Convention allows for compulsory

care or treatment of persons, including measures to treat mental illnesses, when circumstances render treatment of this kind necessary as a last resort, and the treatment is subject to legal safeguards.”¹³

Declaration regarding Article 12

Article 12 is the very core of the convention; the right that persons with disabilities have to exercise legal capacity on an equal basis with others is - a necessary prerequisite for equal enjoyment of other rights. As Norway understands the convention, the right to legal capacity is a relative right that can be withdrawn at any time if some certain authority finds it necessary.

This interpretation is contradictory to the object and purpose of the convention as it fails to recognize the standard of full and equal legal capacity that is guaranteed to **all** persons with disabilities under the CRPD. The understanding also conflict with the interpretations made by the CRPD Committee.

The CRPD Committee holds that guardianship and regimes of substituted decision-making must be abolished and replaced by supported decision-making, which respects the person’s autonomy, will and preferences.¹⁴ Contrary to this, Norway wants to continue the use of compulsory guardianship and uphold mechanisms for declaring persons with disabilities legally incapable¹⁵. Such a position demonstrates a lack of understanding of the scope of Article 12 and of the paradigm shift introduced by the CRPD. It represents a lack of understanding of core elements and guiding principles of the treaty: non-discrimination and respect for individual autonomy, including the right to make one’s own choices.

We regret that Norway is clinging to outdated, discriminatory legislation and practices, instead of taking necessary action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making.

Additionally, Norway’s declaration on CRPD Article 12 is restricting upon the rights given in this Article to the extent that it excludes the legal effect of the provision, and should therefore be treated as a reservation.

Article 46 of the CRPD does not permit reservations that are incompatible with the object and purpose of the CRPD. Such reservations are also contradictory to the Vienna Convention on the Law of Treaties Article 19 c (May 23, 1969). An international legal opinion, signed by 31 leading experts on the CRPD, states the view that reservations against Article 12 are incompatible with the object and purpose of the Convention, because it contravenes fundamental principles articulated in Article 3 and because limitations on legal capacity will extend also to the enjoyment of other rights guaranteed under the CRPD.¹⁶

Declarations regarding Articles 14 and 25

The declarations concerning Articles 14 and 25, is in particular targeting persons with psychosocial disabilities (as the one group specifically mentioned) for limitations of the right to liberty and respect for physical and mental integrity on an equal basis with others. Norway understands the convention so that as it allows for compulsory treatment, including forced psychiatric interventions.

Norway's understanding fails to recognize that CRPD Article 14 prohibits law from using disability (including psychosocial or mental health) as a reason for detention (disability shall in **no case** justify deprivation of liberty), and fails to recognize that Article 25 (d) is ensuring treatment, including mental health services, to be based on the free and informed consent of the person concerned. Norway's understandings of forced psychiatric interventions as a lawful practice in compliance with CRPD runs counter to the understandings of the CRPD Committee, the OHCHR and the UN Special Rapporteur of Torture.

By undermining core provisions of the CRPD through declarations upholding discriminatory standards, and making declarations/reservations incompatible with the object and purpose of the convention, we hold that the declarations/reservations made by Norway are illegitimate and must be withdrawn.

We highly urge other states to object to these declarations, and to address the issues described above in questions and recommendations to the state during the UPR procedure.

Recommendation:

- Norway should withdraw the two declarations made upon ratification of the CRPD.

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Endnotes:

¹ Consider the possibility of signing and/or ratifying (Argentina)/ratify (Chile) the Optional Protocol to the Convention on the Rights of Persons with Disabilities; Accepted

http://www.upr-info.org/IMG/pdf/Norway_summary_all_responses_to_recommendations_2010.pdf

² Mid-term report page 4.

³ Lov om styrking av menneskerettighetenes stilling i norsk rett, 21. mai, Nr. 30, 1999.

⁴ These are part of the central criteria for deprivation of liberty through the Norwegian Mental Health Act, see additional conditions in the unofficial translation of the Norwegian Mental Health Act; <http://www.ub.uio.no/ujur/ulovdata/lov-19990702-062-eng.pdf>

⁵ Treatment can by Norwegian law, on specific terms, be carried out without free and informed consent when a person is under involuntary confinement, see chapter 4 of the Mental Health Act.

⁶ Interim Report of the UN Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment, A/63/175, July 28, 2008, paragraph 44; Report of the UN Special Rapporteur on Torture, A/HRC/22/53, February 1, 2013; Statement by UN Special Rapporteur on Torture, Mr. Juan E Méndez, 22nd session of the Human Rights Council, 4 March 2013; Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities, U.N. Doc. A/HRC/10/48, January 26, 2009, see especially paragraphs 48-49; Dignity and Justice for Detainees Week Information Note No. 4: Persons with Disabilities (OHCHR Information Note).

⁷ Statement by UN Special Rapporteur on Torture, Mr. Juan E Méndez, 22nd session of the Human Rights Council, 4 March 2013; https://dk-media.s3.amazonaws.com/AA/AG/chrusp-biz/downloads/277461/torture_english.pdf

⁸ Statement by UN Special Rapporteur on Torture, Mr. Juan E Méndez, 22nd session of the Human Rights Council, 4 March 2013.

⁹ UN Special Rapporteur on Torture, interim report, *Protecting Persons with Disabilities from Torture*, A/63/175, July 2008, paras 38, 40, 41, 47, 61-65; UN Special Rapporteur report, *Applying the torture and ill-treatment protection framework in health-care settings*, A/HRC/22/53, February 1, 2013, paras 81 and 89.

¹⁰ UN Special Rapporteur on Torture, A/HRC/22/53, 2013, para 64. See also ; UN Special Rapporteur on Torture, A/63/175, paras. 44, 47, 61, 63; Human Rights Committee, communication No. 110/1981, *Viana Acosta v. Uruguay*, paras. 2.7, 14, 15.

¹¹ See the CRPD Committee Concluding Observations on Tunisia, Spain, Peru, Hungary, China, Argentina, Paraguay, Austria and El Salvador.

¹² Concluding observations of the Committee on the Rights of Persons with Disabilities on the initial report of Austria (CRPD/C/AUT/CO/1), adopted September 2013, para 30.

¹³ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#EndDec

¹⁴ See Concluding Observations of the CRPD Committee on Paraguay, Argentina, China, Hungary, Peru, Spain and Tunisia; <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>,

¹⁵ Such mechanisms will in practice primarily target persons with intellectual and psychosocial disabilities.

¹⁶ <http://disability-studies.leeds.ac.uk/files/library/legal-opinion-LegalOpinion-Art12-FINAL.doc>