List of Issues Prior to Reporting - Norway

Submission to the 63rd Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights (CESCR), 15-19 October 2018

Submitted by:

We Shall Overcome (WSO)
Oslo, Norway
www.wso.no

We Shall Overcome (WSO) is a Norwegian NGO/DPO[1], run by and for users and survivors[2] 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. WSO works at both national and international levels. 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.

[1] DPO - Disabled People's Organisations are representative organizations or groups of persons with disabilities, where persons with disabilities constitute a majority of the overall staff and board, and are well-represented in all levels of the organization.

[2] "Users and survivors of psychiatry" are self-defined as people who have experienced mental health problems, psychosocial disabilities, or who have used or survived mental health services, including survivors of forced psychiatric interventions.

Introduction

We Shall Overcome (WSO) has prepared the following information to give input to the List of Issues Prior to Reporting (LoIPR) on Norway to be adopted during the 63rd Pre-Session of the UN Committee on Economic, Social and Cultural Rights, 15-19 October 2018. WSO will also submit an alternative report for the review of Norway's 6th periodic report.
We will have representatives from WSO attending the country briefing in October. Please do not hesitate to contact us for any further information or questions.

Contactpersons:
Hege Orefellen; h.j.orefellen@nchr.uio.no
Liv Skree; liv.skree@hotmail.com
Mette Ellingsdalen; mette.elling@gmail.com

Oslo, 3 September 2018.

Address: Møllergata 12, 0179 Oslo
Tel: +47 22 41 35 90
Website: www.wso.no
E-mail: post@wso.no

ICESCR Articles 2.2 and 12: Forced psychiatric interventions as disability-based discrimination and a breach of the right to health

1. Persons with psychosocial disabilities are facing discrimination regarding their right to the enjoyment of the highest attainable standard of physical and mental health guaranteed under Article 12 of the ICESCR. Norway upholds legislation placing restrictions on the legal capacity of adult persons with disabilities, including legislation authorizing forced treatments and detention based on perceived mental health conditions.[3] In accordance with these laws, persons with psychosocial disabilities are deprived of the right to free and informed consent in healthcare on an equal basis with others. The forced psychiatric interventions and the laws facilitating them constitutes a breach of ICESCR Article 2, in conjunction with Article 12 of the Covenant.

2. As set forth in the CESCR Committee's General Comment No 14, the right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, and the right to be free from interference, such as the right to be free from torture and non-consensual medical treatment.[4] The long held view that the State's obligation to respect the right to health, including to refrain from applying coercive medical interventions, could be set aside "on an exceptional basis for the treatment of mental illness" (ICESCR GC No 14 para 34), are outdated, now superseded by the latest human rights standards set by the UN Convention on the Rights of Persons with Disabilities (CRPD). Norway ratified the CRPD June 3rd 2013.

3. CRPD Article 12 recognises that persons with disabilities enjoy the right to legal capacity on an equal basis with others in all aspects of life, such as the right to make decisions about mental health treatment. CRPD Article 25 d) set forth the right to health care based on free and informed consent, and must be seen in conjunction with Article 12. The State party's obligation to protect the right to free and informed consent, and to ensure that persons with disabilities enjoy this right on an equal basis with others, is an immediate obligation, indispensable for the realisation of the right to health.

4. The CRPD Committee has repeatedly urged States parties to ensure that *all* mental health services are provided based on the free and informed consent *of the person concerned*, and that laws permitting involuntary treatment and confinement are repealed.[5]

[3] Act relating to the Provision and Implementation of Mental Health Care (Mental Health Act), LOV-1999-07-02-62.

[4] CESCR GC 14 para 8.

[5] The UN CRPD Committee has in its General Comment No. 1, in its guidelines on CRPD Art. 14, and in its Concluding Observations established that there can be no legitimate detention in any kind of mental health facility, and that forced treatment by psychiatric and other medical professionals is a violation of the right to equal recognition before the law, as well as an infringement of the rights to personal integrity (CRPD art. 17); freedom from torture (CRPD art. 15); and freedom from violence, exploitation and abuse (CRPD art. 16).

All involuntary commitment in any kind of mental health facility carries with it the denial of the person's legal capacity to decide about treatment and admission to a health care facility. The CRPD sets forward an absolute ban on deprivation of liberty based on impairment or health grounds.[6] This includes where there are additional criteria used to justify the detention, including alleged need for care or treatment or deemed dangerous to self or others.[7]

5. Contrary to this, the Norwegian mental health legislation authorises administrative deprivation of liberty based on psychosocial disabilities ("serious mental disorder") combined with the additional alternative requirements "need for care and treatment" or "danger to self or others".[8] The Norwegian Mental Health Act also authorises non-consensual psychiatric treatment,[9] both inpatient and outpatient, including non-consensual medication (which is specifically contravened by ICESCR art. 2 and 12).

6. In a joint statement, the UN Special Rapporteurs on the rights of persons with disabilities and on the right to health calls on states to eradicate all forms of nonconsensual psychiatric treatment as a matter of urgency, and says that the international community needs to acknowledge the extent of these violations. The Rapporteurs states that the concept of "medical necessity" behind non-consensual placement and treatment falls short of scientific evidence and sound criteria, that the legacy of the use of force in psychiatry is against the principle of "first do no harm" and should no more be accepted.[10]

Follow-up on recommendations from CESCR and other human rights monitoring mechanisms

7. Despite decades of critique and concerns from national and international human rights monitoring mechanisms, Norway insist on maintaining laws, policies and practices that institutionalize and forcibly treat people with perceived psychosocial disabilities, and thus systematically violate fundamental human rights.

---

[6] CRPD Guidelines art. 14, para 6, 8, 10.

[7] Ibid, para 13.

[8] According to Norwegian law, "compulsory mental health care", including psychiatric incarceration, can be carried out when: "*The patient is suffering from a serious mental disorder and application of compulsory mental health care is necessary to prevent the person concerned from either*

a. having the prospects of his or her health being restored or significantly improved considerably reduced, or it is highly probable that the condition of the person concerned will significantly deteriorate in the very near future, or

b. constituting an obvious and serious risk to his or her own life or health or those of others

on account of his or her mental disorder.

The patient lacks the capacity to consent, cf. the Patient and User Rights Act § 4-3. This condition does not apply to the obvious and serious risk to his or her own life or health or those of others."; Act relating to the Provision and Implementation of Mental Health Care (Mental Health Act), LOV-1999-07-02-62, section 3-3.

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

[10] UN Special Rapporteurs on the rights of persons with disabilities, Catalina Devandas-Aguilar, and on the right to health, Dainius Pûras; Call on States to eradicate all forms of non-consensual psychiatric treatment. "Dignity must prevail" – An appeal to do away with non-consensual psychiatric treatment, World Mental Health Day, 10 October 2015. http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16583&LangID=E

8. In 2013, the CESCR Committee recommended Norway to "incorporate into the law the abolition of the use of restraint and the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs and electroconvulsive therapy".[11]
- Norway has not followed up on this recommendation.

9. Regrettably, these practices are still legitimized through Norwegian law and practice and the government has not given any indications on how and when these practices will be abolished. Medical practices like forced electroshock, forced drugging, restraint and solitary confinement continue to be practiced against persons with psychosocial disabilities, causing pain and suffering, as well as deep fear and trauma.[12]

10. In 2014, during the Universal Periodic Review of the Human Rights Council, Norway got recommendations on the need to ensure that criteria for detention in legislation and in practice are non-discriminatory and to "remove any criteria referring to disability or serious mental disorder".[13]

11. In 2015 the Commissioner for Human Rights of the Council of Europe expressed his concern about the use of coercion in the mental health system and urged Norwegian authorities to reform legislation so that it applies objective and non-discriminatory criteria for deprivation of liberty which are not specifically aimed at people with psychosocial disabilities. The Commissioner underscored that "all people with disabilities have the right to enjoy the highest attainable standard of health without discrimination and the care provided to them should be based on free and informed consent in line with Article 25 of the CRPD."[14]

12. In 2017, Norway received an Urgent Appeal concerning a case of mental health detention and forced psychiatric treatments from the UN Working Group on Arbitrary Detention, the UN Special Rapporteur on the Rights of Persons with Disabilities and the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[15]

13. The UN Special Procedures mandate holders states in the Urgent Appeal that "it is highly concerning that no adequate actions seems to have been taken by the appropriate national

[11] CESCR Concluding Observations, E/C.12/NOR/CO/5), para 19, adopted, 29 November 2013.
[12] The suffering of the victims of forced psychiatry have been recognized by several UN monitoring mechanisms, including by the CRPD committee who in its General Comment No. 1 makes reference to people using mental health systems who have experienced deep pain and trauma as a result of forced treatment. CRPD GC 1, para 42.
[13] See Outcome of the Review, Report of the Working Group, 131.167, and Addendum; https://www.upr-info.org/sites/default/files/document/norway/session_19_-_april_2014/recommendations_and_pledges_norway_2014.pdf
[14] Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Norway, from 19 to 23 January 2015; https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2015)9&Language=lanEnglish
[15] Urgent Appeal; https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22955

mechanisms to investigate Mr. X's serious allegations (…)", that the facts of the case "appear to be in contravention of the rights of persons with disabilities not to be arbitrarily deprived of their liberty and the right to equal recognition before the law (…)" and that "the deprivation of liberty in psychiatric hospitals and the denial of legal capacity related to consent for treatment, as in the present case, is likely to also inflict severe mental pain and suffering on the individual (..)."

14. In Norway's reply to the UN mandate holders the Government dismiss the case by stating that it "fails to see that this case requires it to take particular measures and that it warrants an urgent appeal to Norway".[16]

15. More than 19 months has passed since the Urgent Appeal, and Mr. X, who is a member of WSO, has remained under forced psychiatric interventions, including neuroleptic medication without free and informed consent.

16. Norway has also on earlier occasions received Urgent Appeals concerning forced psychiatric interventions from the UN Special Rapporteur on Torture, the UN Working Group on Arbitrary Detention, the UN Special Rapporteur on Health, and the UN Special Rapporteur on Violence against Women.[17] There are few signs that any of these Urgent Appeals has led to effective investigations or that effective measures have been taken to intervene and to prevent recurrence of such acts.

Amendments to the Mental Health Act

17. In January 2017 the Parliament adopted a number of amendments to the Mental Health Act, including the additional criteria for "compulsory mental health care" requiring that "the patient lack the capacity to consent", unless there is perceived to be imminent and serious danger to his or her or others life or health.[18] Introducing a legal reform where "incapacity to consent" is a condition for the use of coercion, does not bring domestic legislation in compliance with international human rights norms and the principle of non-discrimination. It constitutes a functional approach to legal capacity that runs counter to the CRPD.[19] Despite the amendments, the Mental Health Act is still inherently discriminatory.

---

[16] Norway's reply; https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=60255

[17] A/HRC/13/39/Add.1, page 277
http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.1_EFS.pdf
A/HRC/16/52/Add.1, page 333
http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.Add.1_EFSonly.pdf

[18] Mental Health Act No. 62 of 2 July 1999 sections 3-2, 3-3 and 4-4.

[19] CRPD GC 1 para 14; Report by the UN Special Rapporteur on the Rights of Persons with Disabilities, A/HRC/37/56, 2017, para 14.
Also the UN Working Group on Arbitrary Detention underscores this in its adopted Principles and Guidelines; "Perceived or actual deficits in mental capacity, namely the decision-making skills of a person that naturally vary from one to another, may not be used as justification for denying legal capacity. Understood as the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency)". UN Basic Principles and Guidelines on remedies and procedures on the right to anyone deprived of their liberty

Forced medication

18. Forced medication is administered in hospitals and on an out-patient basis. There is no reliable data on how many persons that are subject to forced medication in Norway, or how long they are forcibly medicated.[20] The lack of data on formalized decisions regarding forced medication is only part of the problem to record the scope of coerced medication. Research and personal testimonies has shown that the line between forced medication and voluntary medication is blurred. People report the threat of force, pressure, fear of additional punishment (detention, seclusion and/or physical restraints) and lack of known options as reasons for "complying" with taking medication. Such occurrences would not be registered as forced or non-consensual drugging even if the authorities were able to produce good statistics on formal decisions.

19. The Norwegian National Preventive Mechanism (NPM) have documented during their visits that patients who were forcibly medicated mostly had negative experiences that were described as "horrible", "cruel" and "torture". Several patients showed unpleasant adverse reactions such as headache, apathy and weight gain, as well as increased symptoms of hallucination and confusion. Other findings was loss of trust to the staff after forced medication, pressure to consent to medication to avoid forced medication or other sanctions.[21]

20. A large part of WSOs members are or have been subject to forced medication, and live with the serious consequences.

Electroshock (ECT)

21. According to the Norwegian Mental Health Act, the administration of electroshock (ECT) is not permitted without informed consent. However, ECT without informed consent is practiced and accepted by the authorities. This is being carried out according to the "principle of necessity" and purportedly justified to prevent (serious) damage to life and health. There are no official statistics on the extent of the use of forced ECT, nor ECT administered with informed consent.

22. The NPM write in their annual report for 2017; ECT administered on grounds of necessity entails a high risk of inhuman or degrading treatment. Findings made during the NPM's visits in 2017 have shown that ECT administered on grounds of necessity is a very invasive form of treatment. The Ombudsman has identified cases where mental health professionals have

---

to bring proceedings before a court, UN Working Group on Arbitrary Detention, A/HRC/30/37, para 106b (text as adopted with footnotes WGAD/CRP.1/2015; http://www.ohchr.org/Documents/Issues/Detention/DraftBasicPrinciples/March2015/WGAD.CRP.1.2015.pdf)

[20] Omfang av tvang, tvangsforskningsnettverket, 2017: http://www.tvangsforskning.no/noekkeltall_tvang/cms/83 Bruk av tvang i psykisk helsevern for voksne i 2014, Helsedirektoratet: https://helsedirektoratet.no/Lists/Publikasjoner/Attachments/1161/Rapport%20om%20tvang%20IS-2452.pdf

[21] NPMs reports after visits to Sørlandet Hospital and Akeshus University Hospital.

found that patients have suffered serious cognitive side effects following ECT, and where the patients cannot remember having had the treatment. One clear finding was that patients who had undergone ECT on grounds of necessity are also subject to other invasive coercive measures during their treatment, such as the use of a restraint bed for the administration of ECT. The NPM also found cases where the use of force had escalated following a course of ECT on grounds of necessity. The overall scope of the use of force in connection with the administration of ECT on grounds of necessity leads to a high risk of patients being subject to inhuman and degrading treatment.[22]

23. There is no monitoring by the government to ensure that the consent given before the administration of ECT is given freely and that the information provided is sufficient and correct. Testimonies shared by individuals who have received ECT, and the written information provided by hospitals about the treatment, show that information about risk of cognitive damage and side-effects, including permanent memory loss and brain damage, is absent or under-communicated. They also report that consent is given in an "un-free" situation during forced commitment or under the threat of force, as the only option available.

24. The use of electroshock without valid free and informed consent has grave consequences for the people subject to it, some of whom is in our organization.[23]

Coercive means; Physical Restraints

25. The NPM has in their findings documented that the use of physical restraints is wide-spread, used beyond the criteria of emergency situations, used as a preventative measure and used for prolonged periods.[24]

26. In 2016 investigative journalists in the newspaper VG conducted a thorough investigation into the use of physical restraints in Norwegian hospitals.
Their findings documented that the official statistics are gravely underreported. The official number for use of physical restraints was 2802 times in 2014. The journalists found that the real number for 2014 was 3768, more than 25% underreporting.[25]
25 % of the patients that was subject to mechanical restraints was restrained more than 8 hours[26]. They documented one case where a person had been subject to physical restraint 70 days and nights[27], and another case were a person had been restrained 64 days and nights.[28] None of the findings was contested by the health-authorities.

[22] Norwegian Parlamentary Ombudsmann Annual Report 2017 Document 4:1
[23] Testimony about this is previously brought before the UN CRPD Committee, during the 14th session, 19 August 2015.
[24] The Norwegian NPM's submission to the UN Committee against Torture's 63rd session – Information regarding the Norwegian Government's implementation of the Convention.
[25] https://www.vg.no/nyheter/innenriks/i/72rXW/vg-avsloerer-vet-ikke-hvor-mange-som-legges-i-belter
[26] https://www.vg.no/nyheter/innenriks/tvang-i-psykiatrien/holdes-i-belter-i-hundrevis-av-timer/a/23669706/
[27] St.Olavs Hospital in 2015, 1855 hours.
[28] Østfold Hospital in 2015, 1549 hours.

27. A court-case from 2014/2015 high-lights the totality of the use of force one person can be subject to under the current Norwegian legislation, and the lack of effective remedies;

28. A woman Y, 31 year old, brought the administrative decision of the supervisory commission concerning "compulsory mental health care" before the Oslo District Court[29], and then appealed the case to the Borgating Court of Appeal[30]. She had been deprived of her liberty since 2006, in different closed psychiatric wards. Various measures had been forced upon her such as shielding, isolation from other patients, holding, forced intravenous nutrition, feeding by gavage, restrictions in her connections with the outside world, restraints and surveillance day and night. Since 2014, she had been held in restraints, 24 hours a day. At night she was strapped to a bed, at daytime her hands were either strapped to a chair, or to a table. If she needed to go to the toilet, two staff members went with her. When she took a shower she was watched over by staff members. Y had on several occasions inflicted potentially fatal injuries upon herself. She stated a clear wish to die.

29. Borgating Court of Appeal acknowledge in its decision that Y "during a longer period of time has been subjected to an extreme coercive regime". When the court gave its judgement 23. March 2015, Y had been deprived of liberty for almost 9 years. She had been in restraints and under surveillance 24 hours a day continuously for more than 1 year. The court rules in favour of the state, and the "compulsory mental health care" is maintained.

Suggested questions for the List of Issues Prior to Reporting:

- Please provide information on what measures have been taken to ensure that all mental health services is based on the free and informed consent of the person concerned and to abolish all legal provisions that authorize any forced or non-consensual interventions or treatments in the mental health setting.

- What steps have been undertaken to replace forced treatment and commitment by a wide range of services in the community that meet the needs expressed by persons with disabilities, and that fully respect the person's autonomy, choices and dignity, including peer support and other alternatives to the medical model of mental health.

- Please provide an update on the steps taken to incorporate into the law the abolition of the use of restraints and the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs and electroconvulsive therapy (ECT).

[29] Oslo District Court, 21 November 2014; 14-163619TVI-OTIR/04.
[30] Borgating Court of Appeal, 23 March 2015; LB-2015-13924.