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Høringsvar FN konvensjonen om rettighetene til mennesker med nedsatt funksjonsevne (CRPD) - høring av utkast til Norges første rapport til FN komiteen som overvåker konvensjonen (CRPD-komiteen)

Etter å ha lest Norges utkast til rapport, er det med stor skuffelse vi må erkjenne at staten mangler en grunnleggende forståelse for det paradigmeskiftet CRPD representerer. Det vises dessverre ingen tegn til å gå i riktig retning for å oppfylle de forpliktelsene CRPD gir i forhold til mennesker med psykososiale funksjonsnedsettelse.

WSO har over mange år gitt skriftlige og muntlige innspill hvor vi redegjør for både hvilke problemer mennesker med psykososiale funksjonsnedsettelse står ovenfor, overgrep som skjer, og hvilke endringer som kreves for å bringe norsk lovgivning og praksis i tråd med CRPD.

Et kort utdrag av hva vi sa i møte med Europarådets Menneskerettighetskommisær 20 Januar 2015 om implementering av CRPD i Norge (hele innlegget ligger til slutt i høringssvaret);

... disability-based discrimination is an ongoing problem in Norway, and fundamental changes in Norwegian law are required, along with other measures, to combat this and fulfill the obligations set forth by the CRPD.

Two major concerns:

- 1. The Norwegian Government are not aware of the extent of their obligations under the CRPD, and lack the acknowledgment that domestic legislation (and practice) in several areas, like mental health law and guardianship law, runs counter to the CRPD.*

2. *Norway's declarations on Art. 12, 14 and 25 of the CRPD¹ demonstrates this lack of awareness. The declarations are discriminatory and are a major obstacle for proper implementation of the convention.*

WSO har gjentatte ganger informert myndighetene om de overgrep, og den tvang og tvangsbehandling vi ser skje mot mennesker med psykososiale funksjonsnedsettelse i Norge, og de alvorlige konsekvensene det har for oss som utsettes for det. I høringsuttalelsen til NOU 2011:9 som vi leverte i 2012, skrev vi dette;

Den doble krenkelsen

Vi opplever gjennom psykiatriske tvangsinngrep omfattende overgrep og krenkende behandling. Det har vi i lang tid fortalt om både muntlig og skriftlig. Når det vi forteller om ikke får noen konsekvenser, er det en dobbel krenkelse: først krenkelsen psykiatrien har påført oss, deretter krenkelsen myndigheter og et offentlig utvalg påfører ved å høre erfaringene, og så ignorere dem og konkludere med at dette må vi akseptere å utsettes for også i fremtiden. En sterkere ugyldiggjøring av våre erfaringer finnes knapt.

Våre erfaringer må få konsekvenser, ikke bare lyttes til for så å ignoreres og marginaliseres.

Fremfor å nok en gang gjenta det vi tidligere har spilt inn, når vi ikke ser tegn til at staten faktisk har tatt våre tidligere innspill med i utarbeidelsen av statsrapporten, legger vi ved en liste over dokumenter fra 2008 til 2015, hvor vi detaljert har beskrevet hvilke forpliktelser vi mener staten har i forhold til CRPD og hvilke endringer som kreves i norsk lovgivning og praksis.

Referanseliste til høring Statsrapport CRPD

WSO, 2015. Høringssvar til NOU 2014:10 – Skyldevne, sakkyndighet og samfunnsvern.

WSO, 2014. Innlegg i forbindelse med UPR i FNs menneskerettighetsråd. Statement at the 27th session of the Human Rights Council, Norway's Universal Periodic Review Outcome,

¹ Norway's declarations to the UN CRPD;

“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.**”

During the UPR review in the Human Rights Council in 2014 Norway got the recommendation to withdraw its declaration on Articles 12 and 14 of the CRPD, but Norway did not accept this.

World Network of Users and Survivors of Psychiatry & We Shall Overcome (WSO), Norway, Statement delivered by Hege Orefellen, Geneva, 18 September 2014.

WSO, 2013. UPR-rapport til FNs menneskerettighetsråd. Submission to the Universal Periodic Review (UPR) of Norway from We Shall Overcome (WSO), United Nations Human Rights Council, 19th Session of the Working Group on the UPR, April/May 2014, Submitted September 2013.

WSO, 2013. Parallellrapport til FN-komiteén for økonomiske, sosiale og kulturelle rettigheter (ØSK). Parallel Report to the 5th Periodic Report of Norway to the UN Committee on Economic, Social and Cultural Rights for the 51 session (4 – 29 November 2013); “Forced psychiatric interventions as disability-based discrimination”. We Shall Overcome (WSO), September 2013.

WSO, 2012. Parallellrapport til FNs torturkomité (CAT). Joint submission on Norway by We Shall Overcome (WSO), the World Network of Users and Survivors of Psychiatry (WNUSP), the European Network of (Ex-)Users and Survivors of psychiatry (ENUSP) and the International Disability Alliance (IDA), 49th Session of the Committee against Torture (29 October – 23 November 2012).

WSO, 2011. Parallellrapport til FNs menneskerettskomité (SP). Joint submission by We Shall Overcome (WSO), World Network of Users and Survivors of Psychiatry (WNUSP) and the International Disability Alliance (IDA) for the examination of Norway (review of Norway’s 6th Periodic ICCPR report), Human Rights Committee, 103rd Session (17 October – 4 November 2011).

WSO, 2011. Høringsuttalelse til NOU 2011:9 (Paulsrudutvalget).

Hege Orefellen, 2011. ”Frihet og selvbestemmelse på lik linje med andre”, dissens NOU 2011:9 (Paulsrud-utvalget).

WSO, 2009. Mette Ellingsdalen, Hege Orefellen og Bjørg Njaa. I rapporten Vurdering av behandlingsvilkåret i psykisk helsevernloven (IS-1370)(Bernt-utvalget). Vedlegg 5: WSO og Menneskerettighetsutvalget, LPP: ”Tid for endring og paradigmeskifte”.

WSO, 2008. Brukerorienterte alternativer til tvang i sykehus (BAT), Sintef Helse, A8450; særuttalelse fra WSO og Menneskerettighetsutvalget, LPP. Mette Ellingsdalen, Hege Orefellen og Bjørg Njaa.

Oslo 16.04.15



WSOs menneskerettighetsutvalg v/Mette Ellingsdalen



We Shall Overcome (WSO), Oslo, Norway

www.wso.no

Meeting with the Human Rights Commissioner of the Council of Europe

Oslo, 20 January 2015

Implementation of the UN CPRD

We Shall Overcome welcome Norway's ratification in 2013 of the UN Convention on the Rights of Persons with Disabilities (CRPD). However, disability-based discrimination is an ongoing problem in Norway, and fundamental changes in Norwegian law are required, along with other measures, to combat this and fulfill the obligations set forth by the CRPD.

Two major concerns:

3. The Norwegian Government are not aware of the extent of their obligations under the CRPD, and lack the acknowledgment that domestic legislation (and practice) in several areas, like mental health law and guardianship law, runs counter to the CRPD.
4. Norway's declarations on Art. 12, 14 and 25 of the CRPD² demonstrates this lack of awareness. The declarations are discriminatory and are a major obstacle for proper implementation of the convention.

Suggested recommendations;

- The Human Rights Commissioner urges Norway to withdraw its interpretive declarations on Articles 12, 14 and 25 of the UN CRPD.
- The Human Rights Commissioner encourages Norway to take necessary action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making which respects the person's autonomy, will and preferences.

² Norway's declarations to the UN CRPD;

“Article 12

Norway recognises that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Norway also recognises 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.”

During the UPR review in the Human Rights Council in 2014 Norway got the recommendation to withdraw its declaration on Articles 12 and 14 of the CRPD, but Norway did not accept this.

- The Human Rights Commissioner urges Norway to ratify the Optional Protocol to the CRPD.

Use of coercion in the mental health system

Norway is upholding discriminatory mental health legislation, where detention (and forced treatment) are imposed based on an assessment of psychosocial disability (“serious mental disorder”) combined with the additional alternative requirements “need for care and treatment” or “danger to self or others”.³ Regardless of due process guarantees and legal safeguards, such a regime of detention constitutes disability-based discrimination and runs counter to the CRPD. Thousands are detained in Norwegian mental health facilities each year.⁴

Intrusive medical practises, like forced drugging, forced electroshock (ECT), restraints and solitary confinement, continue to be practised against persons with psychosocial disabilities, and can cause severe injuries, harm and suffering, as well as deep fear and trauma in its victims. These forced interventions have been recognised as forms of torture or other ill-treatment by the UN Special Rapporteur on Torture and by the CRPD Committee.

Despite this, the Norwegian Government has no plans to make changes in legislation with regard to mental health detention and forced treatment. In their policies and national strategy plans, the Government focuses on the reduced and “correct use of psychiatric coercion”⁵, as if such a standard exists. Forced psychiatric interventions are discriminatory practises in violation of the CRPD, and there could therefore be no “correct use”. Attempts to reduce the use of coercion are not enough, and have failed. Instead Norway should focus on ensuring elimination of such unjustified coercive practises.

Suggested recommendations;

- The Human Rights Commissioner recommends Norway to repeal legal provisions authorising detention and non-consensual treatment in the mental health system and instead develop a wide range of community-based services and supports that respond to needs expressed by persons with disabilities, and respect the person’s autonomy, choices and dignity, including peer support and other alternatives to the medical model of mental health.⁶
- The Human Rights Commissioner urges Norway to act on the recommendation given in November 2013 by the UN Committee on Economic, Social and Cultural Rights, 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”.⁷

³ Mental Health Act of 2 July 1999 No. 62, § 3-3 first section no. 3.

⁴ Official statistics indicate around 7700 involuntary admissions (for 5400 persons) in 2013. However the quality of national reporting is not satisfactory, and complete data do not exist. The 2014 report from the Norwegian Directorate of Health (Helsedirektoratet) shows an increase in the number of days that adults were deprived of liberty in mental health facilities from 2012 to 2013 with 4 % (to 346 000 days).

⁵ National Strategy for reduced and correct use of force in mental health services, Ministry of Health and Care Services, 19 March 2010, and National Strategy for increased voluntariness in mental health services, 2012-2015.

⁶ CRPD Committee Concluding Observations on China, [CRPD/C/CHN/CO/1](#), September 2012, para 38.

⁷ CESCR, Concluding Observations on Norway, E/C.12/NOR/CO/5, November 2013, para 19.



We Shall Overcome (WSO), Oslo, Norway⁸

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Meeting with the Human Rights Commissioner of the Council of Europe,

Oslo 20 January 2015

Statement delivered by Hege Orefellen⁹

We Shall Overcome is a Norwegian DPO, run by and for users and survivors of psychiatry. We represent a marginalized group that is discriminated against based on our actual or perceived psychosocial disabilities. Some of the gravest violations happen in the medical setting, where we, without having committed any crime, can be locked up in institutions for indefinite time, segregated from society, family and friends, and treated as objects of medical interventions, instead of subjects and holders of rights. Thousands are detained in Norwegian mental health facilities each year.

Norway is upholding discriminatory mental health legislation, where detention and forced treatment are imposed on us based on an assessment of psychosocial disability (“serious mental disorder”) combined with the additional alternative requirements “need for care and treatment” or “danger to self or others”.¹⁰ The Mental Health Act runs counter to the CRPD as it authorizes deprivation of liberty based on psychosocial disability, it fails to recognize our autonomy and legal capacity on an equal basis with others, it fails to ensure us the right to health care based on our free and informed consent, and it fails to equally protect us against coercion and ill-treatment.

Intrusive medical practises, like forced drugging, forced electroshock (ECT), restraints and solitary confinement, continue to be practised against persons with psychosocial disabilities, and can cause severe injuries, harm and suffering, as well as deep fear and trauma in its victims. The situation is unbearable and urgent interventions are required.

Implementation of the CRPD

CRPD implementation is lagging behind standard setting mainly due to;

- A lack of understanding by the government that domestic legislation, like mental health law and guardianship law, is not in compliance with the CRPD – the first step must be to acknowledge the need for legal reforms in these areas.

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⁸ **We Shall Overcome** (WSO) is a Norwegian NGO/DPO, run by and for users and survivors of psychiatry, established in 1968. WSO advocates for the human rights of persons with psychosocial disabilities, 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.

⁹ International Representative, WSO

¹⁰ Mental Health Act of 2 July 1999 No. 62, § 3-3 first section no. 3.

- Norway's declarations on Art. 12, 14 and 25 of the CRPD demonstrates this lack of awareness. The declarations are discriminatory, contrary to the CRPD and are a major obstacle for proper implementation of the convention.

Last, we would like to bring attention to how domestic remedies are failing when we are subjected to violations of the CRPD through forced psychiatric interventions;

When cases are brought in front of court, domestic remedies are unlikely to bring effective relief, since the violations are authorised by domestic law and not recognised as discriminatory, unlawful acts. I will give a couple of examples;

The first is a case to the Borgating Court of Appeal; a member of our organization is currently under forced psychiatric drugging with severe negative effects. He describes the forced drugging like this;

“It feels like the pills suffocate my soul. I feel dead inside. It is scary. It is as if my personality disappears. I wish I could find a way out of this vacuum. It hurts to be a living dead.”

The court ruled in favour of the state and the forced drugging continues.¹¹ We are now sending his case to the UN Special Rapporteur on the Rights of Persons with Disabilities as the forced drugging is a serious violation of his right to legal capacity on an equal basis with others, with his right to health care based on free and informed consent, of his right to respect for physical and mental integrity on an equal basis with others, and his right to be free from ill-treatment.

The second example is a case to the Oslo District Court, were a young woman who is currently deprived of liberty in a psychiatric hospital is fighting to be free. From the court documents it becomes clear that she has spent more than 9 months in restraints, 24 hours a day. At night she is strapped to a bed, at daytime her hands are either strapped to a chair, or to a table. If she needs to go to the toilet, two staff members go with her. She is in a situation of extreme powerlessness, under the total control of the medical staff.

And these intrusive psychiatric interventions and violations of the CRPD are allowed to continue as the court recently ruled in favour of the state.¹² This is Norway. This is our situation in 2015.

¹¹ Borgating Court of Appeal, 19 November 2014; 14-159767ASD-BORG/02.

¹² Oslo District Court, 21 November 2014; 14-163619TVI-OTIR/04