



Landsforeningen - We Shall Overcome

United Nations Human Rights Council  
**47<sup>th</sup> Session of the UPR Working Group**  
November 2024

**Submission to the Universal Periodic Review (UPR) of Norway  
from We Shall Overcome (WSO)  
UPR 4<sup>th</sup> cycle**

Submitted April 2024

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 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. WSO works on both national and international levels.

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## **I. Normative and Institutional Framework**

### **1) Ratify the Optional Protocol to the UN CRPD (OP CRPD)**

1. The Government decided in 2016 that Norway, at that time, should not become party to the OP CRPD. In 2017, the Parliament supported the Government's view.<sup>1</sup>

2. During the 3rd UPR cycle in 2019, Norway got recommendations to ratify the OP CRPD (140.7, Spain and 140.8, Uganda and Germany), which was not accepted by Norway.<sup>2</sup>

3. Persons with disabilities urgently 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. Norway should reverse its position on this matter.

#### **Recommendation:**

- Ratify the Optional Protocol to the CRPD.

### **2) Incorporate the CRPD into Norwegian law**

4. Norway ratified the CRPD in June 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.<sup>3</sup> In case of conflicting legislation, the treaties incorporated in the Human Rights Act takes precedence over provisions in domestic laws.

5. In January 2024 a legal expert committee concluded its review on this matter. A majority of the committee recommended incorporation into the Human Rights Act.<sup>4</sup> The Government has requested a hearing, with a deadline 5 June 2024.<sup>5</sup> We commend the Government's decision to incorporate the CRPD and welcome a speedily process.

#### **Recommendation:**

- Incorporate CRPD into the Human Rights Act without further delay.

### 3) Withdraw the declarations made upon ratification of the CRPD

6. Norway upholds interpretative declarations on Articles 12, 14 and 25 of the CRPD.<sup>6</sup> The declarations undermine core provisions of the convention, including the right of persons with disabilities to exercise legal capacity on an equal basis with others - a necessary prerequisite for equal enjoyment of other rights. Norway's interpretative declarations are discriminatory and a major obstacle for proper implementation of the convention and for access to justice.

7. In 2014, during the 2<sup>nd</sup> UPR cycle, Norway got recommendations to withdraw its declarations from Articles 12 and 14 (131.9, Pakistan) and in 2019, during the 3<sup>rd</sup> cycle, Norway got recommendations to review the interpretative declarations on articles 12, 14 and 25 (140.19, Paraguay). The recommendations were not accepted.<sup>7</sup> During follow-up, the OHCHR reiterated the recommendations and urged Norway to withdraw the interpretative declarations on articles 12, 14 and 25 of the CRPD.<sup>8</sup>

8. Being incompatible with the object and purpose of the Convention, as well as the specific rights set forth in Articles 12, 14 and 25, we urge states to object to the declarations, and to address this issue in questions and recommendations to Norway during the UPR procedure.

#### Recommendation:

- Withdraw the declarations made upon ratification of the CRPD.

## II. Implementation of specific rights

### 1) Ensure the full and equal right to legal capacity of persons with disabilities

9. In the 3<sup>rd</sup> UPR cycle in 2019, Norway got recommendations on legal capacity;

- Continue to promote the rights of persons with disabilities, including through amendments to legislation regarding the right to legal capacity (140.213, Peru).
- Develop systems to support decision-making for persons with disabilities, based on individual consent, in accordance with the principles of the Convention on the Rights of Persons with Disabilities (140.214, Mexico).

10. Both recommendations were accepted by Norway. However, Norway has not yet abolished substituted decision-making and upholds legislation placing restrictions on the legal capacity of adult persons with disabilities. Such legislations include:

### **Deprivation of legal capacity through guardianship legislation**

11. Through the Guardianship Act a person could be deprived of legal capacity due to cognitive or psychosocial disabilities.<sup>9</sup>

### **Deprivation of legal capacity through health legislation**

12. The Patients' and Users' Rights Act chapter 4A authorizes compulsory somatic treatments based on functional capacity standards (person perceived not competent to give consent or refuse treatment).<sup>10</sup>

13. The Mental Health Act authorizes deprivation of liberty based on psychosocial disabilities, forced treatments and use of coercive means.<sup>11</sup>

14. The Health and Care Services Act authorizes use of coercion based on intellectual disabilities.<sup>12</sup>

### **Exemption from accountability in criminal cases**

15. A person can be exempt from criminal responsibility based on being deemed to not have the capacity to be held criminally accountable on grounds of psychosocial or (severe) intellectual disability.<sup>13</sup> Further, the person can be sentenced to "compulsory mental health care" or "compulsory care".

16. The provisions above violate the equal right to legal capacity of persons with disabilities and runs counter to the CRPD. 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.<sup>14</sup>

### **Recommendations:**

- Repeal legislation and practices restricting legal capacity of persons with disabilities and remove functional capacity standards throughout Norwegian law, including the removal of criteria that declares a person not competent to give consent.
- Replace regimes of substitute decision-making by supported decision-making which respects the person's autonomy, will and preferences.

## **2) End coercion in the mental health system**

17. Norway upholds legislation authorizing mental health detention, non-consensual treatments (including neuroleptic drugs and electroshock) and use of coercive means. In Norway, the use of coercion in mental health has, according to formal statistics, increased over the last years. From 2016 the number of decisions regarding establishment of compulsory mental health regimes increased by 17 %, to 9400 in 2022 (which is the last year of published statistics by the Directorate of Health).<sup>15</sup> Also, the numbers on forced treatments are increasing.<sup>16</sup>

18. Forced psychiatric treatments and mental health detention cause pain, trauma, humiliation, shame, stigma and fear to people with psychosocial disabilities.<sup>17</sup> Such interventions violate the equal right to legal capacity, to liberty and security, to respect for physical and mental integrity, to free and informed consent to medical procedures, and to be free from ill-treatment. These forced interventions, which always carry a factor of disability-based discrimination, need to be abolished.

19. Several UN human rights monitoring mechanisms have urged Norway to end the use of coercion in the mental health system.<sup>18</sup>

20. In 2019 the UN CRPD Committee recommended<sup>19</sup> Norway to:

- Repeal all legal provisions allowing for deprivation of liberty based on perceived or actual impairment and the forced treatment of persons with psychosocial disabilities.
- End the use of coercive methods, such as restraints, isolation, segregation, involuntary treatment and other intrusive methods for persons with psychosocial disabilities.
- Prohibit the forced administration of intrusive and irreversible treatments such as electroconvulsive therapy.

21. In 2019 the UN Special Rapporteur on the Rights of Persons with Disabilities recommended the Norwegian Government to:

- Enact legislation to prohibit all forms of coercion of persons with psychosocial disabilities.
- Guarantee that all mental health services are provided based on free and informed consent.
- End the use of coercive interventions for persons with psychosocial disabilities, including involuntary admissions, shielding and isolation, restraints, forced medication and outpatient commitment.

22. The Rapporteur underscores that coercive mental health interventions are contrary to human rights, and that coercion is not a “necessary evil”, but a failure of States to ensure their human rights obligations towards persons with disabilities (..).<sup>20</sup>

### Recommendations:

- Take all necessary legislative, administrative and judicial measures to ensure that all mental health services are provided based on free and informed consent of the person concerned, including in emergency situations.
- Abolish all legal provisions that authorize any forced or non-consensual interventions or treatments in mental health settings, including an absolute ban of non-consensual administration of mind-altering drugs and electroshock (ECT).

- Develop laws and policies that replaces coercive regimes with services that fully respect the autonomy, will and equal rights of persons with disabilities.
- Replace forced treatment and commitment by a wide range of non-coercive support and services in the community that meet the needs expressed by persons with disabilities, and that respect the person’s autonomy, choices and dignity, including peer support, medication-free services and other alternatives to the medical model of mental health.<sup>21</sup>

#### 4) Establish reparation mechanisms for victims of psychiatric coercion

23. Violent medical practices like forced electroshock (ECT), forced drugging, restraint and solitary confinement constitute discriminatory and harmful practices that can cause severe pain and suffering, as well as deep fear and trauma, in its victims. These forced psychiatric interventions meet international definition of torture standards<sup>22</sup> and can cause irreparable damage to life and health.

24. In a report presented in 2020, the UN Special Rapporteur on torture stated that: “it must be stressed that purportedly benevolent purposes cannot, per se, vindicate coercive or discriminatory measures. For example, practices such as involuntary [...] psychiatric intervention based on “medical necessity” of the “best interests” of the patient, generally involve highly discriminatory and coercive attempts at controlling or “correcting” the victim’s personality, behavior or choices and almost always inflict severe pain or suffering. In the view of the Special Rapporteur, therefore, if all other defining elements are given, such practices may well amount to torture”.<sup>23</sup>

25. Taking into account the serious and systematic violations of human rights caused by forced psychiatric interventions and institutionalization, there is an urgent need for providing the victims with effective remedies and reparations. Coercive mental health practices represent patterns of violence against persons with psychosocial disabilities. There is a need for reparation on a collective, as well as an individual level. The obligation to end ill-treatment from being carried out through forced psychiatric interventions is of immediate application.

#### Recommendation:

- Develop procedures for redress covering all victims of forced psychiatric interventions, ensuring victims with restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, including effective measures aimed at the immediate cessation of violations.

## 5) Abolish forced abortion and sterilization of women with disabilities

26. According to Norwegian law, women with psychosocial or intellectual disabilities can be subjected to forced and non-consensual abortion on the application of a guardian.<sup>24</sup> The woman's consent needs only to be obtained if "it may be assumed that she is capable of understanding the significance of the operation".<sup>25</sup>

27. According to Norwegian law, sterilization requires consent from a legal guardian when a person is having "a serious mental disorder or serious intellectual disability or serious mental impairment", and a legal guardian can apply for sterilization without the person's consent when the person is deemed not able to make a decision about the intervention.<sup>26</sup>

28. Both the CEDAW and CRPD Committees have made recommendations calling for the protection of women with disabilities from forced sterilization and for these practices to be abolished in the law.<sup>27</sup> The UN Special Rapporteur on the rights of persons with disabilities has classified forced sterilization as a pattern of systemic violence being carried out on women and girls with disabilities, causing irreversible harm under the guise of "best interest", and has called on States to immediately repeal all legislation allowing for the administration of any procedures impacting on the sexual and reproductive health and rights of women and girls without their free and informed consent.<sup>28</sup>

### Recommendation:

- Repeal all legislation allowing for the administration of abortion, sterilization and any other procedures impacting on the sexual and reproductive rights of women and girls without the free and informed consent of the person concerned.

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- <sup>1</sup> Norway's third UPR report, A/HRC/WG.6/NOR/1, para. 7.
- <sup>2</sup> Report of the UPR Working Group, A/HRC/42/3 and Addendum, A/HRC/42/3/Add.1, 2019.
- <sup>3</sup> Act relating to the strengthening of the status of human rights in Norwegian law (The Human Rights Act), LOV-1999-05-21-30, amended LOV-2014-05-09-14, unofficial translation; <https://lovdata.no/dokument/NLE/lov/1999-05-21-30>
- <sup>4</sup> <https://www.regjeringen.no/no/dokumenter/konvensjonen-om-funksjonshemmedes-rettigheter/id3021814/>
- <sup>5</sup> <https://www.regjeringen.no/no/dokumenter/hoering-utredning-om-inkorporering-av-fns-konvensjon-om-rettighetene-til-mennesker-med-nedsatt-funksjonsevne/id3022678/>
- <sup>6</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec)
- <sup>7</sup> Report of the UPR Working Group, A/HRC/27/3 and Addendum, A/HRC/27/3/Add.1, 2014.  
Report of the UPR Working Group, A/HRC/42/3 and Addendum, A/HRC/42/3/Add.1, 2019.
- <sup>8</sup> Follow-up letter by the OHCHR, November 2019:  
[https://upr-info.org/sites/default/files/documents/2020-03/hc\\_letter\\_33rdsession\\_norway.pdf](https://upr-info.org/sites/default/files/documents/2020-03/hc_letter_33rdsession_norway.pdf)
- <sup>9</sup> Act relating to Guardianship (Guardianship Act), LOV-2010-03-26-9, Section 22.
- <sup>10</sup> Act relating to Patients' and Users' Rights (Patients' and Users' Rights Act), LOV-1999-07-02-63, Chapter 4A.
- <sup>11</sup> Act relating to the Provision and Implementation of Mental Health Care (Mental Health Act), LOV-1999-07-02-62.
- <sup>12</sup> Act relating to Municipal Health and Care Services, etc. (Health and Care Services Act), Lov-2011-06-24-30.
- <sup>13</sup> The Criminal Code, LOV-2005-05-20-28.
- <sup>14</sup> See for example Concluding Observations of the CRPD Committee on Paraguay, Argentina, China, Hungary, Peru, Spain and Tunisia; <https://www.ohchr.org/en/treaty-bodies/crpd>
- <sup>15</sup> Control of Use of Coercion, Directorate of Health, 2022; <https://www.helsedirektoratet.no/rapporter/kontroll-av-tvangsbruk-2022>, published December 2023.
- <sup>16</sup> <https://www.helsedirektoratet.no/statistikk/samdata-spesialisthelsetjenesten/behandling-uten-eget-samtykke-i-psykisk-helsevern>
- <sup>17</sup> UN Rights experts call on Council of Europe to stop legislation for coercive mental health measures", press release of 28 May 2021; <https://www.ohchr.org/en/press-releases/2021/05/un-rights-experts-call-council-europe-stop-legislation-coercive-mental>
- <sup>18</sup> Recommendations regarding forced psychiatric interventions have been given to Norway by; the Council of Europe Human Rights Commissioner, the UN Committee Against Torture, the UN Human Rights Committee, the UN Working Group on Arbitrary Detention, the UN Special Rapporteur on Torture, the UN Special Rapporteur on Health, the UN Special Rapporteur on Violence Against Women, the UN Special Rapporteur on the Rights of Persons with Disabilities, the UN Committee on the Rights of Persons with Disabilities, and through UPR reviews in 2014 and 2019, to mention some.
- <sup>19</sup> CRPD Concluding Observations, CRPD/C/NOR/CO/1, paras 24a, 24b and 26a, adopted 4 April 2019.
- <sup>20</sup> Report of the UN Disability Rapporteur, visit to Norway, A/HRC/43/41/Add.3, paras 90, 68 and 70.
- <sup>21</sup> The UN Special Rapporteur on the Rights of Persons with Disabilities urge Norway to "instead of regulating exceptions to use coercion, discussions should focus on systemic change to prevent and end coercion" and underscores that this "includes the development of community-based services and the provision of support, including supported decision-making and non-coercive responses to mental health crises." (A/HRC/43/Add.3, para 69).
- <sup>22</sup> UN Special Rapporteur on Torture, interim report, *Protecting Persons with Disabilities from Torture*, A/63/175, July 2008, paras 38, 40, 41, 44, 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 64, 81 and 89.
- <sup>23</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment to the UN Human Rights Council, A/HRC/43/49, 14 February 2020.
- <sup>24</sup> Woman who are perceived to have "a severe mental disorder or an intellectual impairment to a considerable degree".
- <sup>25</sup> Act concerning Termination of Pregnancy of 13 June 1975 No. 50.  
Unofficial translation of the Act; <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19750613-050-eng.pdf>
- <sup>26</sup> Sterilisation Act of 3 June 1977 No. 57.  
Persons perceived to have "a serious mental disorder or an intellectual disability or being mentally impaired".  
According to Norwegian law, the person concerned can request sterilization from the age of 25 years (and earlier on specific terms, upon application). However, exceptions apply for persons with psychosocial, mental or intellectual disabilities.
- <sup>27</sup> CEDAW/C/JOR/CO/5, para 46; CRPD/C/PER/CO/1, para 35; CRPD/C/ESP/CO/1, para 38.
- <sup>28</sup> Statement by the UN Special Rapporteur on the Rights of Persons with Disabilities, 24 October 2017; "Forced sterilization of young women with disabilities must end, UN rights expert says".