

Mandate of the Special Rapporteur on the rights of persons with disabilities

REFERENCE:
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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolution 35/6.

In this connection, I would like to thank your Excellency's Government for its reply and acknowledge that I have duly taken note of its position in relation to substituted decision-making, involuntary detention and non-consensual mental health treatment, as well as its views on the Norwegian's legislation compatibility with the State's obligations under the Convention on the Rights of Persons with Disabilities.

Norway ratified the Convention on the Rights of Persons with Disabilities (CRPD) in June 2013. However, the State maintains two interpretative declarations with regards to articles 12, 14 and 25 of the Convention, which limit the right to legal capacity and permit exceptions whereby persons with psychosocial disabilities may be involuntarily detained and subjected to non-consensual treatment on grounds of their actual or perceived impairment.

According to article 19 of the Vienna Convention on the Law of Treaties and article 46 of the Convention itself, reservations and declarations incompatible with the object and purpose of the treaty are not permitted. Given the centrality of articles 12, 14 and 25 to the enjoyment and exercise of all rights set out in the Convention, which are in essence non-discrimination provisions aimed at eliminating historical injustices against persons with disabilities, any declarations which aim to lower the standards set forth by those articles contradict the object and purpose of the Convention.

It is my duty to recall your Excellency's Government that article 14 on liberty and security of person prohibits unlawful and/or arbitrary detention on grounds of disability, including involuntary deprivation of liberty or non-consensual medical treatment. Article 14.1(b) affirms that the existence of a disability shall in no case justify a deprivation of liberty. Article 12 on equal recognition before the law guarantees the rights of persons with disabilities to exercise legal capacity and therefore to make autonomous decisions and have those decisions respected. According to article 12.3, persons with disabilities should have access to adequate decision-making support when seeking to make informed choices. Respect for the legal capacity of persons with disabilities extends to the area of health and decision related to medical treatment (see CRPD/C/GC/1, para. 41). Article 25 on health recognizes that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination, and it requires health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent.

In this regard, I encourage your Excellency's Government to review and withdraw the interpretative declarations made by the State, as they deny the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities. Consequently, Norway should initiate a comprehensive national law review process, including mental health legislation, and make changes to fully implement the right to legal capacity of persons with disabilities. This position is further supported by the Committee on the Rights of Persons with Disabilities, the independent body of experts mandated to provide authoritative interpretations of the Convention. The Committee emphasizes full respect for legal capacity, the absolute prohibition of involuntary detention based on impairment, and the elimination of forced treatment (see General Comment No. 1 CRPD/C/GC/1 and guidelines on article 14 of the Convention).

As noted in our initial communication of 30 January 2017, with the adoption of the CRPD there is consensus that certain involuntary mental health practices, such as mechanical and chemical restraints, solitary isolation and seclusion, may amount to cruel, inhuman or degrading treatment or torture (see A/HRC/22/53; A/66/268, paras. 67-68, 78). Torture, as the most serious violation of the human right to personal integrity and dignity, poses an immediate obligation on States to enforce national laws and frameworks to combat and prevent its occurrence. I therefore urge your Excellency's Government to immediately discontinue these coercive practices and replace them with human rights-based responses, including community-based services that meet the diversity of support needs of persons with disabilities. Support measures which respect the inherent dignity and autonomy of the individual must be available in all situations, including in crisis or emergency situations. Failure to take immediate measures towards such a change is no longer acceptable (see A/HRC/35/21, para.66).

I hope that this letter provides an opportunity to engage in an open, constructive and human rights-based dialogue with your Excellency's Government to further Norway's progress in the implementation of its international human rights obligations, notably as provided by the Convention on the Rights of Persons with Disabilities. Legal capacity and mental health reforms are a crucial milestone all States need to engage in to ensure respect for the dignity and autonomy, including the will and preferences of persons with disabilities.

Your Excellency's Government's response will be made available in the communications report of special procedures to be presented to the Human Rights Council for consideration at its 39th session in September 2018.

I thank your Excellency's Government for its attention on this important matter and make myself available to provide any additional information or assistance on the issues raised in this letter.

Please accept, Excellency, the assurances of my highest consideration.

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities