**Submission by the Norwegian Government**

**Committee on the Rights of Persons with Disabilities**

**Draft General Comment No. 5 (2017)**

**Article 19: Living independently and being included in the community**

The Norwegian Government refers to the invitation from the Committee on the Rights of Persons with Disabilities to provide comments on its draft General Comment on the right to live independently and be included in the community (article 19).

Norway welcomes the effort of the Committee to formulate a General Comment with regard to Article 19.

**General observations**

Norway acknowledges the human rights based model of disability, and regards disability as a consequence of the interplay between individuals and society, rather than as a consequence of a person's impairment (the medical model). In line with the Committee, the Government would like to underline the importance of creating an accessible environment, and providing individual support to persons with disabilities. Accessibility and support solutions are important both to secure the right to independent living, and the right to be included in the society.

Norwegian housing and healthcare policies clearly state that persons with disabilities shall have the opportunity to live in an ordinary residence in a local community, to receive health and care services as needed, and to participate in the community on an equal basis with others. A coordinated cross-governmental approach is considered necessary to implement national policy.

**Paragraph 56:** Norway supports the adoption of strategies for de-institutionalization in order for people, regardless of their disability, to live their lives independently and receive assistance when needed and according to their individual preferences. The Norwegian government enacted the Deinstitutionalization Reform (Ansvarsreformen) in 1991 - 1995 to promote normalization and inclusion, improve housing standards and service delivery and improve living standards more generally for persons with intellectual disabilities.

**Legal capacity and and forced treatment (paragraphs 78, 79 etc.)**

In relation to the questions that arise under Article 19 concerning the possibility of restrictions to a person’s legal capacity to act (Article 12 of the Convention) and forced treatment (Articles 14 and 25), the Norwegian Government wishes to reiterate its previous position as expressed in its submission to the Committee’s draft General Comment No. 1 on Article 12 of the Convention.

The Government refers to the following two interpretative declarations made by Norway upon ratification of the Convention:

Article 12

“Norway recognizes 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 recognizes 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.”

The Government’s understanding of Article 12 is elaborated in Norway’s submission to the Committee’s draft General Comment No. 1:

«Norway also recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, in conformity with Article 12 (2), and that Article 12 affirms a permanent presumption that all persons with disabilities have full legal capacity. As the Committee observes in paragraph 11, legal capacity includes both the capacity to be a holder of rights and an actor under the law. In Norway’s opinion, the Draft General Comment does not sufficiently distinguish between these two components of legal capacity. Legal capacity to be a holder of rights, as the right to recognition as a person before the law, can never be removed; every human being is entitled to protection by the legal system.

The legal capacity to act under the law, or exercise legal capacity, is subject to further regulation in Article 12 (3) and (4). According to Article 12 (3), the States Parties have an obligation to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. It is of the greatest importance that the States fulfill this obligation, and provide assistance tailored to the individuals’ needs and preferences. The level of support needed can vary significantly, both from one individual to another, and as a situation may change over time. In some situations, the person in need of support may not be able to give an informed consent, or to communicate his or her will and preferences at all. Others may be acting in ways that are contrary to their interests and carry the risk of grave consequences for their health and well-being or financial situation. In such circumstances, what the Committee refers to as “substitute decision-making” may be necessary, as a last resort, in the interest of the person concerned.»

The Norwegian Government’s position on these matters remains unchanged.

30 June 2017