**Submission by the Norwegian Government**

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

**Draft General Comment on Equality and Non-discrimination (Article 5)**

The Norwegian Government referes to the invitation from the Committee on the Rights of Persons with Disabilities to provide written input on issues covered by its Draft General Comment No. 6 on the right of persons with disablilities to equality and non-discrimination.

The Government would first like to underline the importance it attaches to the Convention on the Rights of Persons with Disabilities, and confirm its commitment to fully comply with Norway’s treaty obligations.

Norway welcomes the Committee’s efforts to formulate General Comments with regard to articles or specific themes concerning the Convention and appreciates this opportunity to submit its observations on the draft General Comment concerning article 5. Where Norway has not provided specific comments on issues raised in the draft General Comment, this should not be interpreted as either agreement or disagreement with its substance.

In relation to the questions that arise under Article 5 concerning legal capacity to act (Article 12 of the Convention) and liberty and security of the person (Article 14 of the Convention), the Norwegian Government wishes to reiterate its previous position as expressed in its submissions to the Committee’s Draft General Comment No. 1 on Article 12 of the Convention and Draft General Comment No. 5 on Article 19.

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 fulfil 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.”

Furthermore, with reference to paragraphs 32, 54-56 and 63-64 in the Committee’s Draft General Comment No. 6, and based on the arguments and interpretative declarations set out above, the Norwegian Government’s understanding is that it is not contrary to the Convention to set out as a condition for criminal liability that the offender must be considered accountable at the time of his or her act, nor to subject persons who are deemed incapable of criminal liability to compulsory treatment when circumstances render it necessary and the treatment is subject to legal safeguards.

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

30 November 2017