**Committee Against Torture on Norway at 63rd Session, meeting 23 April 2018.**

**Intervention by Director Petter Wille, the Norwegian National Human Rights Institution**

Mr. Chair, distinguished members of the Committee,

Thank you for inviting us to this meeting. We are pleased to have the opportunity to address the Committee and provide input to your dialogue with Norway.

We are also pleased that you recognize the importance of National Human Rights Institutions (NHRIs) by holding a separate meeting. As mentioned in our written contribution of 24 February, we were accredited with A-status in 2017.

The UN Treaty Bodies play a crucial role in monitoring states’ implementation of their human rights obligations. Interaction with the Committees in consideration of Norway’s reports is therefore a key part of our work to promote and protect human rights in Norway, and we actively use your recommendations to the Government in our dialogue with them.

In our interaction with you, we will supplement the information provided by the government, and highlight areas and challenges that deserve special attention.

In our written submission, we address a variety of issues. I draw your attention to some of these issues, that in our view, deserve special attention.

1. **Submission from the NPM**

Based on a comprehensive review of the report from the NPM, we acknowledge and support their recommendations. Their work is of major importance for prevention of torture in Norway. Therefore, we will mainly focus on issues other than those highlighted by the NPM.

1. **Use of coercive electroconvulsive treatment in mental health institutions**

Under section 4-4 of the Mental Health Act, coercive ECT treatment is prohibited under Norwegian law. However, in the preparatory works from 1999, it is stated that coercive ECT may be used under the criminal law provision of necessity. This is a general provision precluding criminal liability if a criminal act is committed as a means of last resort and is a proportionate response to protect vital interests, for example the life of others.

From the rights holder perspective, this is not a legal basis for coercive treatment. It merely precludes criminal liability for the person administering the treatment. It should be mentioned, however, that the Directorate of Health in 2017 published comprehensive national guidelines on the use of ECT treatment, which include guidelines on coercive ECT treatment. Although an improvement, the guidelines do not suffice as an adequate legal basis.

Nonetheless, on this basis, coercive ECT treatment is practiced in mental health institutions. Presumably, due to the lack of proper regulation, there are currently no comprehensive statistics on coercive ECT treatment. However, a simple survey conducted by the Directorate of Health shows that 30% of mental institutions had administered coercive ECT in 2012. There are also indications that coercive ECT is practiced differently across institutions.

As a consequence of coercive ECT treatment not being set out in law, safeguards that apply for other forms of coercive treatment under the Mental Health Act, do not apply.

It is thus reasonable to conclude that the practice of coercive ECT treatment in Norway is not in accordance with law. In effect, the lack of a proper legislative framework also significantly increases the risk of material violations of the prohibition of torture.

Moreover, it should be mentioned that the State has appointed a legislative committee mandated to propose amendments on coercive medical treatment, including ECT treatment. The committee is, however, not due to submit their proposal to the Ministry of Health before June 2019.

In our view, the appropriate response to the issue of coercive ECT, is to recommend that the State undertake immediate legislative measures if the State is to continue its practice. Perhaps most importantly, a legislative process will necessitate a comprehensive and updated review on whether coercive ECT treatment is acceptable under any circumstances. Accordingly, we will emphasize that our position in no way should be misconstrued as to positively condoning coercive ECT treatment as such.

We believe that this issue is only adequately resolved through a legislative process, and reiterate para. 26 of the recent Concluding Observations on Norway from the Human Rights Committee:

*The State party should increase procedural safeguards for patients and stipulate in law the circumstances allowing for the limited use of coercive electroconvulsive treatment.*

Furthermore, we refer to the specific recommendation on p. 15 in our written submission.

1. **Juveniles in police custody and isolation of juveniles in prison**

Although the number of incarcerated children has decreased, there are still human rights issues relating to juvenile justice in Norway.

Firstly, the number of juveniles in police custody has decreased in recent years, which is positive. We also welcome that annual statistics on children in custody have been made available. Nevertheless, in 2016, children were placed in police cells on 343 occasions. Thirty-four children were detained more than 24 hours without court hearings, despite the Criminal Procedure Act’s provision that minors must be presented before a court as soon as possible, and at latest, the day after the arrest.

Also, significant variation in the number of children detained and in the use of alternative measures between the different police regions highlight the need for better practices. Measures to secure equal practice between the districts have still not been put in place.

Another positive development is that the Norwegian Parliament in 2012 passed amendments to the Execution of Sentences Act, so that isolation could no longer be used as a disciplinary measure against minors, and that isolation as a preventative measure must be limited to a maximum of seven days. However, the provision that limits the exclusion of minors to a maximum of seven days, has not yet entered into force.

As to our specific recommendations we refer to pp. 4 and 7.

1. **Detention of children awaiting deportation**

As mentioned in our written submission, we will elaborate on the recent development regarding legislation on children pursuant to the Immigration Act.

In March 2018, the Parliament passed a new act on the use of coercive means in immigration cases, which includes new rules on the detention of children in forced return situations. Provided that the law makes it possible to detain children in forced return processes only when detention is absolutely necessary as a measure of last resort to ensure return, the new act on detention in immigration cases provides children with much stronger rights than before. The new rules are aimed to implement the requirements of the Convention on the Rights of the Child, and to be in line with the practice from the European Court of Human Rights.

Further, the Parliament has asked the Government to take several other measures to ensure the rights of children and families awaiting deportation, including securing that families with children can only be detained in separate immigration detention facilities especially adapted for children.

Finally, we would like to emphasize the lack of an overall assessment of the cumulative effects of the coercive measures on each child being subjected to forced return, as described in our written submission.

On this matter, I refer to the specific recommendations on p. 17 in our written submission.

1. **Asylum-seeking children disappearing from reception centres**

The issue of asylum-seeking children disappearing from reception centres is still an issue of concern. As stated in our written submission, the numbers of children disappearing are high.

A recent report, referred to in our written submission, suggests that in 59% of the cases where unaccompanied minors have disappeared in the period between January 2011 to June 2015, it is unknown to Norwegian authorities where they have disappeared to and what has happened to them. One of the conclusions of the report is that the children should be offered a strengthened care system for minors.

Several other reports also raise concern about the situation for the unaccompanied minor asylum-seeking children between the ages of 15 and 18, including psychological health issues and insufficient care.

Further, the Human Rights Committee in their Concluding Observations to Norway of April 2018, have raised concern about these issues and recommend the State Party to take action.

Reference is made to the recommendation on p. 11 of our written submission.

1. **Violence against women**

The subject violence against women raises several issues of concern.

Firstly, in our written submission, we highlight issues relating to domestic violence against children, Sami and the elderly. Several reports indicate weaknesses in the measures to ensure effective prevention, protection and redress to these vulnerable groups.

This issue was also raised by CEDAW while considering the 9th periodic report of Norway in 2017, as well as the Human Rights Committee while considering the 7th periodic report of Norway in 2018. In their Concluding Observations, both Committees address the need for action plans against domestic violence, including in the Sami communities.

Secondly, we would like to draw the attention to the issue of police investigations of domestic violence and rape. As referred to in our written submission, reports indicate variation in the quality and effectiveness in these cases.

A third issue is the definition of rape in the Norwegian Penal Code. Although we support previous Committee recommendations that lack of free consent should be at the center of the rape definition in section 291, we would like to point out that another viable option would be to recommend amendments in section 297.

Currently, the maximum penalty in cases of non-consensual sexual acts under section 297 is prison of one year. In comparison, pursuant to section 292, criminal liability under section 291 incurs a minimum sentence of prison for three years, and normally five years. Thus, there is a significant gap between the criminal sanctions imposed on non-consensual sexual activity, and sexual activity covered by the general provision on rape in section 291.

In our view, an alternative is to close this gap by grading the criminal sanctions for non-consensual sexual activity under section 297 to reflect that the severity of such acts may equate to the severity of non-consensual sexual activity covered by the definition of rape in section 291. Within the context of the Norwegian Penal Code, such an amendment could effectively contribute to enhance legal protection against rape, similarly as setting lack of free consent at the center of the rape definition in section 291.

On these issues, we refer to the specific recommendations on pp. 7, 9 and 10 of our written submission.