Committee on the Rights of Persons with Disabilities at the 10th pre-session discussion of Norway on 24 September 2018.

Intervention by Special Adviser/Head of Delegation Petter Wille, the Norwegian National Human Rights Institution

Madame Chair, distinguished members of the Committee,

We are pleased to have this opportunity to address the Committee and provide input to your consideration of Norway`s initial report.

We will do our best to contribute to your preparations of the list of issues and thus to a constructive dialogue with the state party. The CRPD is, however, an extensive convention which regulates many and difficult areas. We must therefore ask for understanding that we have not studied all the issues covered by the convention.

We will now highlight areas and challenges that deserve special attention. In our written submission, we address six issues. I draw your attention to four of these issues, that in our view, deserve special attention.

1. The Act on Guardianship in practice

As stated in our written submission, NIM is concerned about how the Guardianship Act is applied in practice.

The Guardianship Act allows for two forms of guardianships: voluntary and involuntary guardianships. Voluntary guardianships, are established by the county governor, whereas involuntary guardianships can only be established by a court. This applies also when a person lacks decision making competence and includes full or partial restriction on legal capacity. The Guardianship Act is unclear concerning persons who lack decision making competence and who object to being placed under guardianship. A PhD study, which examined practice from 2015, which mostly concerned voluntary guardianship, showed that in half of the cases the self-determination of the person was not respected because the person was deemed to lack decision making competence. In 2018, the Legal Department of the Ministry of Justice and Public Security clarified that a person can only be placed under guardianship against his or her will by deprivation of legal capacity established by a court. This is so regardless of whether the person has decision-making competence or not. It is reason to follow up on how this clarification is applied in practice.

Furthermore, a report from the Office of the Auditor General has uncovered several shortcomings concerning how the Guardianship Act is practiced. Such shortcomings are, i.a.: the mandates of guardians are broad and generic, and not adapted to the needs of the person under guardianship, many guardians have guardianship for too many persons and knowledge about how guardians conduct their work is lacking. The Auditor General has made recommendations as to how to deal with these shortcomings, which are supported by the Parliament.

For these reasons, we encourage the Committee to include this issue in the List of Issues to Norway. As to our specific questions, we refer to page 7 in our written submission.

2. Use of coercion and persons with disabilities

2.1. Use of coercion in mental healthcare

The use of coercion in mental health care is regulated by the Mental Health Care Act. The use of coercion remains high. Reports from the NPM, as referred to in our written submission, emphasize the need to strengthen procedural safeguards for the patients, including more thorough written documentation of coercive treatment and focus on considering less intrusive measures.

The use of coercive electroconvulsive treatment (ECT) in mental health care is of particular concern. 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. From the rights holder perspective, this is not a legal basis for coercive treatment. It merely precludes criminal liability for the person carrying out the treatment. There is therefore no clear legal basis in formal law or regulation for the use of non-consensual ECT. Moreover, the authorities have no complete overview of the use of coercive ECT. Findings from the NPM has shown that patients are at high risk of inhuman and degrading treatment in connection with the coercive use of ECT treatment.

As to our recommended questions, we refer to page 8 in our written submission.

2.2. Use of coercion and persons with intellectual impairment

Now I turn to the issue of the use of coercion against persons with intellectual impairment.

The use of coercion against persons with intellectual impairment is regulated by the Health and Care Services Act. The aim of the Act is to prevent and limit the use of coercion. Nonetheless, statistics from the Norwegian Board of Health Supervision show that the use of coercion and force against persons with intellectual impairment is high and has increased. Decisions on the use of coercion and force also seem to be weak and to lack explicit considerations of the right of persons with intellectual impairment to self-determination.

On this matter, I refer to our recommended questions on page 9.

2.3. Use of coercion and older persons in nursing homes

The last issue concerns the use of coercion against older persons in nursing homes, which is regulated by the Patient`s Rights Act.

Our main concern is how the use of involuntary somatic healthcare is practiced in nursing homes. A systemic audit of practices in nursing homes in selected municipalities in the period 2011-2012 revealed extensive use of coercion contrary to the Patient's Rights Act. We are not aware of any more recent audits.

As to our recommended questions, we refer to page 10 in our written submission.

We stand ready to answer any questions the Committee may have to these and other issues we have raised. Thank you for your attention.