

SUBMISSION REGARDING THE 7TH PERIODIC REPORT OF NORWAY TO THE UN HUMAN RIGHTS COMMITTEE

Norwegian NGO-Forum for Human Rights

On behalf of

- [Amnesty International Norway](#)
- [Jussbuss: student run free legal aid clinic based in Oslo, Norway](#)
- [Norwegian Organization for Asylum Seekers \(NOAS\)](#)
- [The Norwegian Humanist Association](#)
- [The Norwegian Helsinki Committee](#)

The present report reflects the main concerns and priorities of the above listed organizations, which are members of the Norwegian NGO-Forum for Human Rights. The report has been prepared as an input to the UN Human Rights Committee, which in March 2018, is considering the Norwegian state report during its 7th reporting cycle.

The organizations have drafted different parts of the report and may not have policies in sections which deal with issues that are beyond their mandates. The same goes for organizations that have endorsed the document.

The report has been endorsed by the following additional members of the NGO-Forum:

- [JURK: Legal aid for women](#)
- [Norwegian Burma Committee](#)
- [Save the Children Norway](#)
- [The Norwegian Centre against Racism](#)
- [The Norwegian Support Committee for Western Sahara](#)
- [United Nations Association of Norway](#)

The themes of the report have been chosen to address some of the issues, raised in the Human Rights Committee List of Issues Prior to the Submission of the Seventh Periodic Report of Norway. There are references by way of numbers to the list of issues in each section title.

This report does not intend to be a comprehensive statement of problems in Norway under the Covenant on Civil and Political Rights. The fact that an issue is not addressed in the report does not mean that it is not a relevant human rights concern.

The views in the report are solely on behalf of the organizations listed above. The report was edited by Gunnar M. Ekelove-Slydal, Deputy Secretary General, Norwegian Helsinki Committee.

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1-2 General information

The Norwegian Parliament (Stortinget) amended the Constitution in May 2014, introducing a chapter on human rights. This chapter comprises a majority of the rights contained within the Covenant.¹ However, freedom of religion or belief is not part of the human rights chapter but is contained within chapter B on, “The executive power, the King and the Royal Family and Religion”. According to Article 16,

All inhabitants of the realm shall have the right to free exercise of their religion. The Church of Norway, an Evangelical-Lutheran church, will remain the Established Church of Norway and will as such be supported by the State. Detailed provisions as to its system will be laid down by law. All religious and belief communities should be supported on equal terms.²

In our view, the constitutional protection of freedom of religion or belief falls short of Covenant Article 18, which states i.a. that “this right shall include freedom to have or to adopt a religion or belief of his choice”. Additionally, it creates confusion that freedom of religion or belief is not guaranteed as part of the human rights chapter as this right is closely interconnected with other freedom rights.

3-4 Constitutional and legal framework on the implementation of article 1-27

Concerning Norway’s implementation of Covenant Article 18, we appreciate the amendments that were made to the Constitution on the 21st of May 2012 and the 14th of May 2014. The amendments in 2012 followed as a result of a political compromise on state-church relations, while the amendments in 2014 were done as part of a substantial revision, aiming to strengthen human rights in the Constitution on its 200-years anniversary.

However, even after these amendments a number of problems remain when it comes to equal treatment of the citizens’ religious and life stance affiliation. The Norwegian Church has still not obtained full freedom to rule itself, as it remains regulated by a specific law adopted by the Parliament.

An additional problem is that the Constitutional provisions are not internally consistent, which raises a question on which part of a conflicting article should prevail.

Article 2 of the Norwegian Constitution. Norway’s seventh periodic report to the Human Rights Committee, paragraph 8, replies to the questions in List of issues paragraph 2. As stated in Norway’s report, article 2 of the Norwegian Constitution was amended on the 21st of May 2012. However, Norway’s report only quotes the second sentence of the paragraph, “This Constitution shall ensure democracy, a state based on the rule of law and human rights.” This formulation is of course something we agree with.

The problem is the first sentence, which reads: “Our values will remain our Christian and humanist heritage.”

It is sometimes claimed that this sentence is merely a symbolic statement, however, in Norwegian political debate this sentence is frequently referred to, and even more so in social media – as a statement of what it means to be Norwegian, and as a weapon against “the other”. Furthermore,

¹ Several rights of the Covenant on Economic, Social and Cultural Rights were, however, not included, such as the right to a sufficient standard of living, and the right to health.

² The quote is from the Parliament’s translation of the Norwegian Constitution into English, available at: <http://bit.ly/2nMoBLD>

Article 2 makes a tight connection between religion and national identity and may be felt as exclusionary by citizens of other religion or belief.

The connection between religion and national identity is also to be found in the compulsory education purpose clause; instead of a more open and inclusive wording that was proposed.

A Government appointed Committee tasked with providing recommendations on a more coherent policy on religion and life stances, suggested that the first sentence of Article 2 should be abolished, to make the purpose clause of the Constitution less exclusionary. They recommended creating a formulation that includes all citizens regardless of religious affiliation. The Committee also recommended the abolishment of article 4 and the alteration of article 16 in accordance with the following comments.³

Article 4 of the Norwegian Constitution. Norway's report does not comment on this article, although it is problematic from a human rights perspective, as well as the symbolic function it carries.

Article 4 states: "The King shall at all times profess the Evangelical-Lutheran religion."

This means that the position as a monarch in the realm is reserved for persons of a specific denomination, and on the other hand, that the sovereign does not enjoy freedom of religion or belief on the same footing as the inhabitants of the country he or she rules.

Article 16 of the Norwegian Constitution. It is a fair conclusion that the amended article (see quotation above) has made the Church of Norway more independent of the state than previously. The Church of Norway can now elect its own bishops and it has obtained a status as an independent legal entity. But full separation of state and Church is not yet fulfilled.

As stated in the first and last sentence of article 16, the Constitution proclaims equality for all citizens and belief communities. However, the second and third sentences of the article gives a privileged position to the Church of Norway, as an established "folk church", and gives the Parliament the power to decide, by law, how the church should be organized. This challenges the freedom of the church as well as the principle of equality.

In our view it is contradictory that, as the process of separating the state and church is moving forward, the Church of Norway, for the first time, is given a prominent place within the article of the Constitution that guarantees freedom of religion or belief.

The article represents a contradiction, as it points at the same time to a privileged and regulated Church of Norway as well as to the equal position of all religious and belief communities.

The issue is not only of contradictory constitutional language, but also about discriminatory practice. For instance, the Parliament has on two occasions during its 2013-2017 period, decided not to compensate other religious and belief communities for extra funding to the Church.⁴

In September 2017, the Government published a white paper, introducing new proposals for how the state shall give financial support to religious or belief communities. Taking article 16 of the constitution as a starting point, the Government introduces different criteria of economic support. The number of members of the Church of Norway will no longer be a criterion for the size of the economic support received from the state, while it will remain so for other communities.

³ The committee is often referred to as «Stålsett-utvalget». Its whitepaper, NOU 2013: 1, is available in Norwegian only at: <http://bit.ly/2sgv2r9>

⁴ L 12, Innst. 113L – decision 27, 11 December 2015 and L 9, Innst. 111L – decision 30, 12 December 2016). In the case L12 it was decided that the compensatory increase in the salary of priests as they no longer would have subsidized houses, should not be compensated in the funding of other religious or belief communities. The case of L 9, was based on similar arguments as L 12, relating to extra funding of the pensions for the priests, which was not compensated for other religious or belief communities.

All minority communities that commented on the proposal agreed that it may lead to discrimination and undermine equal treatment. The Government argued that the Church of Norway has a special role as an established church and therefore should be given more support than the others. This is another example of how the wording in the Constitution is used politically and not just as a symbol.

The public Hearing on the Government law proposal ended on the 31st of December 2017, and it remains to be seen how the Government concludes and which proposals it decides to present to the Parliament.⁵

In summing up, we endorse a conclusion made by Norway's National Institution on Human Rights in its annual report 2016 (page 76), "The new way to organize the Church of Norway might, considering the circumstances, lead to challenges related to freedom of religion and the protection against discrimination, both regarding other religious and belief communities and regarding the Church of Norway itself."⁶

Recommendations:

- The articles in the Constitution concerning religion, church and the values of the State, should be amended, aiming at securing equality and non-discrimination in an open and inclusive way;
 - First sentence of article 2 should be repealed;
 - Article 4 of the Constitution should be repealed;
 - Sentence 2 and 3 of article 16 should be repealed;
- The proposed new system for economic support to the church and religious and belief communities should ensure equal treatment for all religious and belief communities.

5-8 Non-discrimination, equality between men and women (arts. 2, para. 1, 3, 20 and 26)

6. Discrimination in the tenancy market

Jussbuss has observed different forms of discrimination in the tenancy market through its casework. Clients with foreign origin experience discrimination when entering the tenancy market. Ethnic Norwegian tenants are often preferred by landlords and rental companies. *Jussbuss'* clients are forced to accept residences with critically low standards and/or rental contracts with unfavourable conditions.

Jussbuss also experience that foreign clients lack awareness of their rights and that language barriers makes it difficult for them to acquire relevant information.

Recommendation:

- Put in place measures to relieve the challenges that people with foreign origin experience in the tenancy market, including:
 - Informing them about their rights in a language that they understand;
 - Informing them about the possibilities to complain on discrimination in the tenancy market to the Equality and anti-discrimination Ombudsman.

⁵ The Government proposal as well as all comments on it is available in Norwegian only at: <http://bit.ly/2IGcnmB>

⁶ The report is available in Norwegian at: <http://bit.ly/2FL27Bh> The quotation was translated by the authors of this report.

9 Violence against women (arts. 3, 7 and 26)

Gender-based violence against women in Norway, including rape and other sexual violence, overwhelmingly committed by non-state actors but with the state failing to adequately exercise its due diligence obligations, remains a serious and prevalent violation of women's rights, including as protected under the Covenant. A recent prevalence study of rape shows that almost one in ten women have been a victim of rape.⁷ Nearly half of the respondents were subjected to rape before the age of 18. The prevalence of rape has not decreased over time, as younger women do not report fewer incidents compared to older women. Only one in ten female rape victims reported rape to the police.

The number of rape cases reported to the police has increased steadily over the years. Statistics from the National Police Directorate show that 1,663 cases of rape were reported to the police in 2016. This is an increase of nearly 22% from 2015.⁸

Around 80% of reported rape cases are closed by the police and never reach the courts.⁹ Weaknesses in police investigations contribute to the low level of prosecution. Norway's Director of Public Prosecutions recently reviewed the quality of investigations in 275 nationally reported rape cases.¹⁰ The review pointed especially at weaknesses in the initial phase, where necessary steps to secure evidence are not always taken.

According to a 2014 survey, one in ten judges agree with statements such as, "Many women report falsely because they regret having had sex" and "Any woman who arouses a man sexually but who does not really want sex must accept the consequences".¹¹ Such attitudes may result in judgments in rape cases being affected by prejudice and perceptions of "morality", rather than being based on objective assessment of the facts and can be a contributing factor to acquittals.¹² In Norway, 30% or almost every third rape case ends with an acquittal in court, while the acquittal rate is 6.7% in other cases of violent crimes.¹³

Despite several recommendations made by UN treaty bodies to Norwegian authorities,¹⁴ the definition of rape in the Penal Code is still not centred on the lack of consent. Consequently, many cases of rape remain unpunished. According to the National Criminal Investigation Service (KRIPOS) especially party-related rape cases that involve situations falling outside the scope of the present legal definition of rape go unpunished.¹⁵

Recommendations:

- Put in place comprehensive measures to prevent and address violence against women and girls, including rape and other sexual violence, and ensure that all complaints and other reports of gender-based violence are promptly, thoroughly and effectively investigated. In

⁷ Thoresen and Hjemdal, *Vold og voldtekt i Norge*. NKVTS 2014, available at: <http://bit.ly/2E4HyiD>

⁸ Criminal Statistics 2016., available at: <http://bit.ly/2nEWr53>

⁹ <http://bit.ly/2sf3PZD>

¹⁰ Riksadvokaten 1/2017: Statsadvokatenes kvalitetsundersøkelse 2016 voldtekt og mishandling av nærstående. Available at: <http://bit.ly/2GZKdM7>

¹¹ Mons Bendixen Siri Helle Tor Langbach Kirsten Rasmussen, «Voldtektsmyter og kjønnsjåvinisme blant norske lekdommere og fagdommere.» *Tidsskrift for Norsk Psykologforening*. Vol 51, nummer 1, 2014.

¹² Statement from researcher and former judge Lars Jonas Nygård. Available at: <http://bit.ly/2EOwbfS>

¹³ <http://bit.ly/2FUGKNC>

¹⁴ Concluding observations of the Committee on the Elimination of Discrimination against Women: Norway, UN Doc. CEDAW/C/NOR/CO/8, 9 March 2012, para. 24(b); UN Doc. CEDAW/C/NOR/CO/9, 22 November 2017, para. 25(f); Committee against Torture, Concluding observations on the combined sixth and seventh periodic reports of Norway, UN Doc. CAT/C/NOR/CO/6-7, 13 December 2012, para. 12(a).

¹⁵ Kripos Voldtektssituasjonen i Norge (Rape in Norway) 2012, page 36. Available at: <http://bit.ly/2FL5Y1d>

cases where sufficient and admissible evidence is obtained, ensure that perpetrators are prosecuted and punished commensurate with the gravity of their crimes through, inter alia:

- Urgently adopting a legal definition of rape in the Penal Code which places the absence of consent at its centre. Consent must be given voluntarily as the result of a person’s free will, assessed in the context of the surrounding circumstances;
- Training judges about gender-based violence against women, including rape and sexual violence;
- Strengthening the investigative capacity of police and prosecutors in all forms of gender-based violence;
- Adopting an up-to-date National Plan of Action against Rape and Sexual Violence following meaningful consultations, including with survivors, experts and civil society.

12-15 Right to liberty and security of person, treatment of persons deprived of their liberty and fair trial (arts. 7, 9, 10 and 14)

12. Rules related to duration of police custody; use of solitary confinement

In recent years, the number of cases where an arrested person is being held in police custody for more than 48 hours has been significantly reduced. In our view, one of the main reasons for the reduction is an agreement between Norway and the Netherlands to rent places in the *Norgerhaven Prison*, increasing prison capacity and reducing the need to keep persons in police custody for prolonged periods.

However, a 2016 report of the Parliamentary Ombudsman concludes that, “[i]nmates who are transferred to Norgerhaven Prison are not guaranteed adequate protection against torture and inhuman or degrading treatment.” Pursuant to, “the agreement on renting prison capacity, the Norwegian authorities will not be entitled to initiate a police investigation in the event of a violation of the prohibition against torture and ill-treatment in Norgerhaven Prison”.

The Ombudsman further underlines that, “[t]his kind of arrangement is particularly problematic in light of ... [Norway’s] obligations under the UN Convention against Torture. It is also problematic that, in an emergency situation, authorities from another state will be able to use weapons and coercive measures against inmates who have been transferred to the Netherlands to serve their sentences. From the point of view of prevention, such an arrangement, in which the Norwegian authorities are prevented from fulfilling their responsibility to protect inmates, entails a risk of torture and ill-treatment.”¹⁶

Norway’s report informs that, “a new circular and guidelines have been issued and new procedures introduced” (paragraph 125), and that this is the reason for the reduction in the length and frequency of police custody. However, the report offers no further indication on the contents of the circular and the guidelines.

Recommendations:

- The agreement with the Netherlands to rent places in *Norgerhaven Prison* should come to an end;
- Put in place alternative measures to reduce the length and frequency of pretrial detention.

¹⁶ Quotations are from the Parliamentary Ombudsman’s website, which include an English version of his Norgerhaven Prison Report, available at: <http://bit.ly/2BGLrly>

Solitary confinement

Reports of the Parliamentary Ombudsman, under his preventive mandate, indicate that inmates are excluded from company and placed in isolation for prolonged periods both in maximum and low security prisons. Inmates are still being isolated due to building and/or staff conditions.¹⁷

After a visit to Ila Detention and Security Prison from the 6th to 9th of March 2017, the Ombudsman stated that, “I am concerned about the situation for certain inmates who, in practice, have been in isolation for a long time. The prison uses extensive resources on activating these inmates. They are nevertheless unable to treat this group’s mental disorders within the current framework. The authorities must implement measures to ensure that this group of inmates are offered satisfactory treatment and that their isolation ceases”.

He also stated that, “[t]he state of the buildings and the resource situation at Ila also mean that even inmates who are not in long-term isolation risk being locked in their cells for 22 hours or more without activity”.¹⁸

Recommendations:

- Put in place further measures to reduce the use of solitary confinement, both pre- and post-trial;
- Give the correctional services adequate resources to ensure that inmates are not being excluded from company due to building and/or staff conditions.

13. Free legal aid

The present legal aid scheme in civil cases, based on the Legal Aid Act, does not provide an effective protection of civil and political rights.

Norway has, on a number of occasions, received criticism relating to the Legal Aid Act as well as statements on the need for assessment, revision and amendments in order for the Legal Aid scheme to fully fulfil Norway’s international obligations.¹⁹ There has been only limited progress in improving the legal aid scheme following the Committee’s comments in 2011.

Norway’s report points out that the free legal aid scheme is currently under review, “to ensure that it is as fair, specific and effective as possible”.²⁰ However, such reviews have been undertaken previously without resulting in the expansion of the scheme’s coverage.

On this background, we encourage the Committee to reiterate its 2011 recommendations. Norway should initiate a thorough assessment of its free legal aid scheme. As it functions today, it does not ensure that free legal aid is provided in all cases when “the interest of justice so require”.

Means testing: The Committee expressed concern in its 2011 Concluding Observations that the means-tested legal aid, failed to consider the actual circumstances of the applicants as well as the actual cost of the legal service being sought.²¹ There has been no substantial change in this situation.

¹⁷ The Ombudsman’s prison reports are available at: <http://bit.ly/2DTq7Wc>

¹⁸ <http://bit.ly/2DTnrhb>

¹⁹ Covenant/C/NOR/6 and addition to the report (Covenant/C/NOR/Q/add. 1).

²⁰ Norway’s seventh periodic report to the Human Rights Committee, paragraph 138.

²¹ Concluding Observations of the Human Rights Committee, Norway, 2011, paragraph 6.

In cases that are subjected to means testing the income limits have not been adjusted since 2009. In the assessment of a person's ability to pay for legal aid, neither debt nor burden of care is taken into consideration. The result is that many people who are unable to finance legal aid themselves are excluded.

In 2016, the Parliament (Stortinget) adopted amendments that, in effect, reduced the legal aid scheme by increasing the excess equivalent for persons who receive means tested free legal aid. The amendment entered into force on the 1st of January 2017. The increase is made without any possibility to apply for exemption from the excess equivalent. An absolute requirement to pay excess equivalent can in some cases lead to a human rights violation.²²

Legal aid in civil cases, prioritized areas of law: The Committee also expressed concern that for certain types of cases, legal aid is not available at all. Today's scheme still excludes areas of law that are important to the welfare of people and ultimately the protection of human rights.

For example, cases regarding the Social Welfare Act are not covered by the Legal Aid Act. The Act does cover, however – based on means testing – cases regarding the National Insurance Act.

Benefits from the Social Welfare Act are lower and far more unpredictable than from the National Insurance Act. People who depend on social welfare benefits will in most cases not have any means to seek legal advice. Therefore, a refusal of a benefit application can be detrimental to the applicant's health and safety, especially in cases involving families with children. Such refusals may in many cases affect the applicant *significantly*.

The distinction between National Insurance cases and Social Welfare cases, under the Legal Aid Act, does not seem to have any justifiable grounds. It leaves persons depending on social welfare benefits vulnerable and with negligible legal protection.

In cases regarding human rights violations, legal aid is still generally not available at the pre-trial stage for domestic courts and in the application stage for international human right bodies.

The Government has suggested excluding means tested free legal aid from economic disputes in divorce cases. This indicates that the Government, rather than being determined to strengthen free legal aid schemes, on the contrary plans to reduce them.

Recommendations:

- Review the free legal aid scheme to allow for the provision of free legal aid in any case where the interest of justice so requires;
- The assessment of a person's ability to pay for legal aid should be based on the actual financial ability of the individual and should consider both the debt of the individual and the burden of care;
- Amend the means testing to better reflect the actual circumstances of the applicants and with regards to the actual cost of the legal service being sought.

16-17 Refugees and asylum seekers (arts. 2, 7, 9 and 13)

16. Detention of asylum seekers

Necessity of detention: The Ministry of Justice and Public Security has, in preparatory works to a recent law amendment on immigration detention, stated that the Covenant articles 9(1) and 12(1) do

²² See ECtHR, Kreuz v. Poland, available at: <http://bit.ly/2E4VGeV>

not provide stronger protection than the European Convention on Human Rights' article 5(1)(f).²³ This is not in line with current case-law, as following reasoning by the European Court of Human Rights' in *Saadi v. UK*, there is no requirement of necessity of detention under article 5(1)(f) of European Convention on Human Rights (ECHR).²⁴

The Norwegian authorities fail to assess whether the Covenant is fully complied with in this context, referring only to the European Convention on Human Rights and the European Court of Human Rights case-law. In the Human Rights Committee's case law, detention must be lawful as well as necessary and proportional.²⁵ The requirement of necessity further implies that detention must not be imposed on grounds of administrative expediency.²⁶

The Norwegian Immigration Act has recently been amended several times, introducing new legal grounds for detention. The Act now contains provisions, that allow an applicant to be detained if an application for asylum is likely not to be assessed on the merits (Section 106(1)(g)) and if the application is considered manifestly unfounded (Section 106(1)(h)). The Government has not assessed whether the amendments are in compliance with the Covenant.

The preparatory works to the provisions explicitly state that the purpose of the provisions is to ensure fast, efficient return procedures.²⁷ Such objectives of administrative expediency are not permissible under the Covenant.²⁸

Furthermore, an individualised assessment of, the necessity of detention, becomes illusory as the provisions do not clearly define the purpose of detention, instead opening for detention entire categories of asylum seekers.

Trandum Migration Detention Centre: A new Security Department at Trandum was established in 2016, with improved conditions. Statistics show, however, that detainees are frequently transferred to the Security Cell. In December 2016, it appears that all transfers – with two exceptions – implied stays with exclusion from the community (27 cases) or transfer to the security cell (8 cases), which means complete solitary confinement. Only one detainee was given access to a shared living area.²⁹

The organisations submitting this brief are concerned that staff do not assess on a case by case basis whether less restrictive measures for detainees, transferred to the Security Department, could be sufficient. The lack of information about whether such assessment takes place is a concern, as well as the lack of possibility for detainees to complain about the use of isolation and other security measures. Minors are also placed in these cells for either their own or other detainees' safety.

²³ Justis- og beredkapsdepartementet, *Høringsnotat om ny heimel for pågriping og fengsling i samband med 48-timarprosedyren for openbert grunnlause asylsøknader*, 3 July 2015, p. 10, available at: <http://bit.ly/2BFRux5>

²⁴ *Saadi v. United Kingdom [GC]*, ECtHR, App. No. 13229/03, paras. 72-74, available at: <http://bit.ly/2FxySSa> Cf. Joint Partly Dissenting Opinion of Judges Rozakis, Tulkens, Kovler, Haijyev, Spielmann og Hirvelä in the same case.

²⁵ See e.g.: *A. v. Australia*, CCPR/C/59/D/560/1993, UN Human Rights Committee (HRC), 3 April 1997, para. 9.2, available at: <http://bit.ly/2nZIM86>

²⁶ *Van Alphen v. the Netherlands* (Communication No. 305/1988), Covenant/C/39/D/305/1988, UN Human Rights Committee (HRC), 23 July 1990, para. 5.8., available at: <http://bit.ly/2ijysy9b>

²⁷ For Government's justification of Section 106(1)(g) see: Prop.16 L (2015–2016), pp. 18-19, available at: <http://bit.ly/2Gvar9b> For Government's justification of Section 106(1)(h) see: *Justis- og beredkapsdepartementet, Høringsnotat om ny heimel for pågriping og fengsling i samband med 48-timarprosedyren for openbert grunnlause asylsøknader*, op. cit. p. 11, available at: <http://bit.ly/2BFRux5>

²⁸ *Van Alphen v. the Netherlands* (see footnote 26), para 5.8.

²⁹ Figures for December 2016 received from the Police Directorate Immigration Unit to The Human Rights Committee of the Bar Association (unpublished).

Security cells are not a reasonable or adequate solution and should not be used to protect vulnerable persons from themselves, e.g. where the person is suicidal. Under no circumstance should vulnerable minors be placed in isolation in security cells.

Migration detention of children: The Government has recently proposed new amendments to the Immigration Act's provisions, that govern the use of coercive measures, aiming to make the law more predictable and in line with the principle of legal certainty.³⁰ This is a long-known issue, which was pointed out already in a 2012 report commissioned by the Ministry of Justice³¹ and again in a 2014 NOAS report.³²

The organizations submitting this report are concerned about several aspects of the proposal. Disappointingly, the proposal does neither abolish detention of children nor clearly limit such practice. It does not foresee a separate, maximum time limit.³³

The proposal will allow for initial detention of one day, which may thereafter be extended by the court for three days and, if necessary, for an additional three days. Thereafter, the court may extend detention for a further week at a time, provided there are, "special and strong reasons" to do so.

The proposal specifies that the term, "special and strong reasons" means "first and foremost, that the child's family or the child itself bears a significant share of responsibility for preventing deportation from being executed within six days of the arrest, or that the agreed time of deportation is close at hand". The proposal stresses that his specification is non-exhaustive, again raising issues of legal certainty.

The proposal thus provides the Government with wide discretion when prolonging detention beyond one week. Furthermore, non-permissible reasons of administrative expediency are provided as examples of when detention can be prolonged beyond one week.³⁴ Detention under the proposal can become punitive, in that it may punish people who "bear substantial responsibility for deportation not had been carried out"; it may also punish children for something that their family may have done – not even the children themselves. Finally, the fact that an "agreed time of deportation is close at hand" should not be seen as legitimate ground for keeping children detained beyond one week.

The law proposal foresees construction of a new detention centre with a, "more civilian character" for families with children. The Government believes that detention of children in such a specialised centre will allow for longer periods of detention, as suggested by the newly proposed 1+3+3+7+ model mentioned above.³⁵ The centre is to be managed by the same police unit that runs the detention centre at Trandum and it will allow for detention of up to three families at a time.

In May 2017, the Borgarting Appellate Court found that the detention of a family with four children for 21 days at Trandum, to be a violation of the Norwegian Constitution, the UN Convention on the

³⁰ Justis- og beredskapsdepartementet, *Høring om forslag til endringer i utlendingslovens regler om tvangsmidler*, 19 December 2016, available at: <http://bit.ly/2sk7vte>

³¹ Erling Johannes Husabø og Annika Elisabet Suominen, *Forholdet mellom straffeprosesslovens og utlendingslovens regler om fengsling og andre tvangsmidler: En utredning avgitt til Justisdepartementet*, 2 March 2012, available at: <http://bit.ly/2DPxQVb>

³² Marek Linha and André Møkkelgjerd (NOAS), *Detention of Asylum Seekers: Analysis of Norway's international obligations, domestic law and practice* (2014), available at: <http://bit.ly/OMSxDe>

³³ § 106 of the Immigration Act provides for a general time limit of 12 weeks, in exceptional cases of 18 months, with further exceptions allowing detention beyond 18 months if the detained person is expelled as the result of an imposed penalty or special sanction.

³⁴ See *van Alphen v. the Netherlands* (see footnote 26).

³⁵ Initial detention may be decided for one day, which may thereafter be extended by the court for three days and, if necessary, for an additional three days. Thereafter, the court may extend detention for a further week at a time, provided there are, "special and strong reasons" to do so.

Rights of the Child and Articles 3, 5(1) and 8 of the European Convention on Human Rights, although the parents attempted to stop the deportation from being carried out.³⁶ Corresponding Articles 7 and 9 of the Covenant were not assessed by the Court.

Recommendations:

- Introduce legislation that repeal detention of children or limits it to only very short periods of time;
- Amend provisions allowing for the detention of children for more than seven days without assessing if it is, “necessary and proportional” and in compliance with the Covenant Articles 7 and 9;
- Amend provisions allowing for detention for reasons of administrative expediency, without an individual assessment of necessity and proportionality of detention;
- Amend the regulations concerning the use of security cells at Trandum Migration Detention Centre, to ensure that application of less restrictive measures is considered;
- Placement of detained minors in security cells at Trandum should only take place if it is assessed to be necessary and proportional, and in line with Covenant Articles 7 and 9.

17 (a) Amendments to the Immigration act regarding the safe third country concept and return of asylum seekers to Russia; safeguards against refoulement

On the 20th of November 2015 amendments to section 32 of the Immigration Act, indicating when the immigration authorities may decide not to examine the merits of an application for protection, entered into force. This provision allows Norwegian authorities to refuse to examine the merits of an application for asylum of persons who stayed in a safe third country before arriving in Norway. The amendment removed the condition that the person is given access to the asylum procedure in the return country.

The Ministry of Justice and Public Security instructed the Norwegian Directorate of Immigration (UDI) and the Immigration Appeals Board (UNE) on the 24th of November 2015 about the treatment of asylum applications from persons who have stayed in Russia, including the application of the Immigration Act, section 32 in these cases (Circular No. GI-13/2015). The circular stated that, Russia is a safe country for most third country nationals and that the principle is that the examination of the merits of an asylum application shall be refused if the foreign national has stayed in Russia.

Even though the circular stated that exceptions should be made if, there were specific reasons to believe that the asylum seeker would be in real danger of being subjected to acts that would violate ECHR art. 3, it was clearly stated that Russia in general was a safe country for return. Weight was put on the fact that Russia is a member of the Council of Europe and a Contracting Party to the ECHR, and that Russia has ratified the Refugee Convention.

A few days before the circular was made public, on the 16th of November 2015, the Norwegian Country of Origin Information Centre (Landinfo), published a report about the asylum system in Russia. The report stated that the ECtHR has issued several judgements against Russia for expelling or deporting persons to countries where they could face torture or inhuman treatment, e.g. Uzbekistan and Tadjikistan. Landinfo also referred to a report by UNHCR regarding Syrian refugees in Europe, which stated that 12 Syrian citizens had been deported from Russia to Syria.³⁷

Landinfo also quoted sources claiming that the Russian procedure for determining refugee status was not fair, that the courts tended always to side with the Russian immigration authorities and that

³⁶ Judgment dated 31 May 2017, case number LB-2016-8370.

³⁷ <http://bit.ly/1EVQsh5>

deportation of persons whose asylum case was still pending had occurred. The Norwegian Ministry of Justice and Public Security was therefore aware of the flaws of the Russian asylum system when they published the circular on the 24th of November 2015.

UNHCR presented its observations on the law amendments in a letter to Norway's Minister of Immigration and Integration, Sylvi Listhaug on the 23rd of December 2015. UNHCR's understanding of the law proposal were that a hybrid between the concepts of a, "safe third country" and "safe country of origin" had been created and that this was done, "without applying all of the established criteria and procedural safeguards for the implementation of these concepts".³⁸

In a letter dated 7th of January 2016 to the UNHCR Regional Representation for Northern Europe, Amnesty International Norway, the Norwegian Organisation for Asylum Seekers (NOAS) and the Norwegian Helsinki Committee, expressed "concerns that Norway now fails to uphold its international obligations to respect the rights of everyone to seek asylum".³⁹ The main problem was that Norway risks denying persons who need protection access to its asylum procedure. The organizations argued that asylum seekers coming to Norway from Russia, upon rejection, risked being returned from Russia, "to countries where the risk of torture or other inhuman treatment is imminent ... Arguing that Russia is safe third country is contrary to experiences from a range of cases."

UNHCR expressed similar concerns in a letter dated 15th of February 2016 to the Minister of Immigration and Integration.⁴⁰ In the letter, UNHCR refers to UNHCR EXcom Conclusion No.85 (XIX) – 1998 which stresses that, "as regards the return to a third country of an asylum-seeker it should be established that the third country will treat the asylum-seeker(s) in accordance with accepted international standards, will ensure effective protection against refoulment, and will provide the asylum-seeker(s) with the possibility to seek and enjoy asylum".

In the same letter, UNHCR voices their concern over Russia as an asylum country, stating that "[i]n UNHCR's assessment, asylum-seekers in the Russian Federation are at risk of arrest, detention and expulsion at all stages of the asylum process, including while attempting to apply for refugee and/or TA [temporary asylum] status or after having applied for refugee and/or TA status in situations where the asylum-seeker has not been issued proper documentation."

On the 19th of January 2017 The Ministry of Justice and Public Security issued a consultation containing an evaluation of the temporary law amendments from November 2015 and a proposal to make the amendments permanent.⁴¹ The Ministry stated that Norway was not obliged to make sure that an asylum application will be assessed before referring an asylum seeker to a safe third country. It was noted that such criteria were included in the EU Asylum Procedures Directive in Article 38, but that Norway was not bound by this directive. The concerns that had been raised by UNHCR were not mentioned in the evaluation, nor were they mentioned in the law proposition that was later sent to the Parliament, except from a brief referral to NOAS' consultation response, which mentioned that UNHCR had criticised Norway of mixing the concepts of, "a safe third country" with "a safe country of origin".⁴²

³⁸ The letter is available at: <http://bit.ly/2FJldam> The quotation is from the 11 paragraph.

³⁹ The letter is available in English language: <http://bit.ly/2B3PnTo>

⁴⁰ UNHCR comments on Norway is available at: <http://bit.ly/2DS4y8u> See also a letter of 15 February 2016 to Norway's Minister of Immigration and Integration, Sylvi Listhaug. <http://bit.ly/2DqyAiG>

⁴¹ <http://bit.ly/2E4hXJP>

⁴² <http://bit.ly/2DSY5Kr>

17 (b) Rights of persons facing expulsion or return to a country when they face a substantial risk of violation contemplated by articles 6 and 7

In a few cases it became known that persons that Norway had declined to provide protection, had been tortured upon return to their country of origin. The cases presented below (and other similar cases) have led to a growing concern among human rights organisations and lawyers that Norway takes excessive risks in its rejections of asylum applications of persons coming from countries known to have a “*consistent pattern of gross, flagrant or mass violations of human rights*”.

In line with these concerns, Lyon Administrative Tribunal decided in a Dublin case on the 3rd of April 2017 that an afghan asylum applicant from Nangarhar in Afghanistan could not be returned to Norway since his application had been rejected by Norwegian authorities. According to the decision, the security situation in Nangarhar is critical and if the person had to return there was a high risk of persecution. Sending the person back to Norway would therefore represent a breach of the European Convention on Human Rights Article 3 and the UN Convention against Torture.

One of the explanations of the refolement cases might be the limited legal aid that is provided to asylum seekers. In an ordinary asylum case the attorney is compensated by the state for five hours, which in cases where there is a need for an interpreter, is not enough.

According to Amnesty International, “Hadi”⁴³ had been severely tortured in Afghanistan before fleeing to Norway with his wife and three children. Norwegian authorities rejected his asylum application, and he and his family were deported to Afghanistan in mid-2016. He soon disappeared and was later found dead. His wife is convinced that he was killed by those who had previously tortured him.⁴⁴

“Qane”, an Iranian citizen, claimed that he had been tortured before fleeing to Norway.⁴⁵ Norwegian authorities rejected his asylum application and forcibly returned him to Iran in June 2014. Upon return he was severely tortured for 15 days. His father was asked to come to the prison to pick up his body and bury him secretly. He was told that Qane had died of a heart attack.

However, the father noticed that Qane was not dead and called for an ambulance. He was in a coma for two months at the hospital and remained there for four more months. Four months later intelligence officers took him back to prison, where he was kept in solitary confinement for one year and three months, beaten up and threatened frequently.

Qane’s father died when Qane was taken back to prison. Qane was able to attend the commemoration ceremony one year after his death. A cousin had paid prison guards for him to be able to leave prison and then managed to get him out of Iran and into Turkey on the 14th of August 2017.

Qane has serious injuries from the torture. He has received refugee status by the UNHCR; staying at UNHCR’s hotel in Ankara awaiting an answer from the Norwegian Immigration Appeal Board (UNE) on his application to revoke the previous rejection of his application for asylum.

In a letter dated the 1st of July 2015 to Norway’s then Minister of Foreign Affairs, Børge Brende, the Norwegian Helsinki Committee, described the fate of six Uzbek asylum seekers that had been returned from Norway to Uzbekistan in December 2014. Upon return, they had been arrested, tortured and found guilty of anti-constitutional activities. They were convicted to 12-13 years’ imprisonment.

⁴³ We do not provide the real names of asylum applicants in this section.

⁴⁴ See Amnesty International, *Forced back to danger: Asylum seekers returned from Europe to Afghanistan*, 2017, pages 12-13. Available at: <http://bit.ly/2xjKeVs>

⁴⁵ All information about the case is from Amnesty International Norway.

The six Uzbeks were returned from Norway to Uzbekistan despite strong warnings from their Norwegian lawyer.⁴⁶ In the letter to Norway's Foreign Minister, the Norwegian Helsinki Committee argued that since the Uzbeks may have been returned to Uzbekistan in breach of Norway's international obligations, Norway had a responsibility to follow-up on their situation.

In a response letter (of 30 September 2015), the Minister noted that competent Norwegian authorities had conducted their own investigations, which led to the conclusion that the Uzbeks indeed had been arrested and were given long prison sentences. In general terms, the Ministry letter outlined how Norway, together with other countries, "continues to put international pressure to try to achieve positive changes in the country [i.e. Uzbekistan]." There is, however, little detail in the letter on how similar cases of return to arrest and mistreatment will be avoided in the future, except for a general reference to each asylum case being subject to concrete and individual assessment.⁴⁷

On the 19th of December 2014, the Immigration Appeals Board (UNE) suspended returns to Uzbekistan. However, this suspension was reversed on the 9th of July 2015.

In similar cases, the Norwegian Helsinki Committee in December 2015 criticised Norway for returning two Chechens to the Russian Federation, Aпти Nazujev and Umar Bilemkhanov. The Norwegian Helsinki Committee claimed that both men had been subjected to torture and killed upon return. In media debate about the cases, UNE maintained that it was not convinced about the connection between the return from Norway and the abuses the two persons eventually endured in Russia.⁴⁸

In a well-known case, an Iranian woman, Leyla Baylat, told Norwegian immigration authorities that she had been sentenced to 80 lashes in Iran. She presented the judgment which detailed the sentence to Norwegian authorities. She was, however, returned to Iran because the authorities did not believe her. Based on verification from sources in Iran, they held that the judgment was not authentic. Upon return in September 2017 she was lashed 80 times.⁴⁹

17(c) Grounds and procedures of expulsion

Norway's report states that free legal aid is given in "many cases" before a decision on expulsion is made.⁵⁰ Free legal aid is, however, not provided in expulsion cases on the grounds of breach of the Criminal Act or when the person concerned is an EEA citizen.⁵¹ In cases where free legal aid is provided, the state only covers three hours before a first instance decision and one hour in the appeal process.⁵²

The Government has proposed to cut the notification procedure in cases where the reason for expulsion is the failure to leave the country within the deadline set out in the asylum rejection decision, reducing the possibility for contradiction in the case. The Government has also proposed to reduce free legal aid in expulsion cases from four to three hours.⁵³

⁴⁶ <http://bit.ly/2BKf4sj> and <http://bit.ly/2BLYmco>

⁴⁷ Both the NHC letter and the Ministry of Foreign Affairs' response is available (in Norwegian only) at: <http://bit.ly/2E4Kclk>

⁴⁸ Statements and media coverage are available (in Norwegian only): <http://bit.ly/2nr5QNg>

⁴⁹ Reported by the Norwegian Daily newspaper VG. Available (in Norwegian only) at: <http://bit.ly/2DQm7FQ>
The organisations behind this report also know other cases of returnees being severely tortured, which has not been exposed in media.

⁵⁰ Norway's seventh periodic report to the Human Rights Committee, paragraph 169.

⁵¹ The Legal Aid Act Article 11 no. 1, cf. the Immigration Act Article 92 para. 1.

⁵² «Stykkprisforskriften» Article 5 para. 1.

⁵³ <http://bit.ly/2E7Zxb9>

A further problem is that expulsion decisions are written in Norwegian or English language only. English is sometimes used even if the person concerned does not master the language sufficiently enough to understand the reasoning of the decision. Sometimes a person is expelled before being informed about the decision because he or she does not have a legal residency.

Since expulsion decisions also informs about the prohibition to re-enter Norway, the lack of translation into a language the expelled person understands, may result in breach of this prohibition. In Jussbuss' experience, violations of the re-entry prohibition are often caused by the persons concerned not understanding that they were given such a prohibition.

Recommendations:

- Uphold fully international obligations to respect the right to seek asylum;
- Put in place stronger safeguards to ensure that persons are not returned to torture;
- Establish a follow-up procedure for persons that have been returned to torture, to ensure that they are taken back to Norway;
- Uphold free legal aid in expulsion cases on a sufficient level. Expulsion decisions should be explained to the person concerned in a language he or she understands.

18. Statelessness

Norway's report, paragraph 172, refers to Government instructions, which provides for applications for citizenship from stateless applicants who are born in Norway to be, "processed in accordance with international conventions by which Norway is bound". Such instructions, however, have insufficient legal standing as they can be changed or removed quickly by the Government. Therefore, the Government should propose a legislative act, to be adopted by the Parliament, with similar language as the instructions. Such legislation would safeguard the rights to citizenship in a satisfactory manner.

During 2017, there has been considerable political debate about an intensified practice by Norwegian immigration authorities of revoking citizenship from persons who gained citizenship by application. If citizenship was gained based on long-term residence permits, that were based on false information about identity, the reason for seeking residence in Norway or other essential factors, the citizenship can be revoked according to the Norwegian Citizenship Act Article 26.⁵⁴

Cases exposed in the media about persons having resided in Norway for more than 15 years, having their citizenship revoked, caused criticism from human rights groups and legal experts. The practice had severe consequences for children and even grandchildren of citizens who had their citizenship revoked, because their citizenship was also therefore revoked.

As the Nationality Act does not allow for dual citizenship, revoking citizenship leaves people stateless. In some cases of revocation, the consequence was that children who were born in Norway were left stateless and under an obligation to leave the country.

The Government and the Parliament is currently reviewing the practice of revoking citizenship. Proposals have been introduced in the Parliament that, revocation should only be possible by a decision of a court, and that there should be an upper time limit.

⁵⁴ The Norwegian Nationality Act, Article 26, second part reads as following: "An administrative decision regarding nationality may be revoked if it is possible to reverse it pursuant to section 35 of the Public Administration Act or general rules of administrative law. However, revocation of nationality that is based on incorrect or incomplete information may only be carried out if the applicant has furnished the incorrect information against his or her better judgment or has suppressed circumstances of substantial importance for the decision." (An unofficial translation of the Act is available at: <http://bit.ly/2BNW4cw>)

Another proposal is to introduce legislation which ensures that children cannot be left stateless even though their parents or grandparents gained a right to residency based on false information.

Recommendations:

- Put in place legislation which ensures that applications for citizenship from stateless applicants, who are born in Norway, are processed in accordance with binding international law;
- Limit the practice of revoking Norwegian citizenship by requiring that revocation can only be decided by a court and by introducing a time limit;
- Introduce legislative guarantees that ensure children are not made stateless due to mistakes made by their parents.

19-22. Rights of persons belonging to minorities (arts. 23, 24, 26 and 27)

21. A Government appointed committee, responsible with the investigation into Norwegian policies regarding the Romani people/Taters, submitted its report in 2015, *Assimilation and Resistance* (NOU 2015: 7).⁵⁵ The Government is still considering follow-up of the report as well as many comments received during a hearing period that ended on 30th of May 2016.

There are different views among persons belonging to the minority on whether the Government should establish special measures to support members of the minority, which due to the previous assimilation policies are in a vulnerable and/or unfavourable position. Some hold that such measures will increase the visibility of the group and therefore increase the risk of discrimination and harassment.

Others hold that the group needs to become more visible to overcome negative attitudes and rebuild trust between the group, the state and the majority population.

In our view, the Government and authorities at different levels should engage in greater dialogue with members of the minority. Reconciliation and building of trust is a long-term process, due to the pervasive negative effects of past policies. There is a need for members of the minority to see that the Government is pro-active and wants to improve the relationship, not the least at local levels with the police, educational institutions, social welfare institutions, etc.

It is, however, urgent for the Government to deal with issues related to compensation for past abuses against members of the minority. As the Government committee, the Council of Europe Advisory Committee on the Framework Convention on National Minorities⁵⁶ and civil society organizations in Norway have underlined, there is an urgent need to standardize economic compensation schemes for past abuses.

As an example, some Romani persons who suffered abuses at orphanages were rewarded by municipal compensation schemes, while others who suffered similar abuses were not rewarded either because the municipality responsible for placing the person in an orphanage did not establish a compensation scheme or because of the lack of documentation or a formalized placement decision.

⁵⁵ The report and comments from a wide range of stakeholders are available in Norwegian only at: <http://bit.ly/2EpRWoG>

⁵⁶ See “Issues for immediate action”, page 2 of the Committee’s third opinion on Norway, adopted on 30 June 2011, available at: <http://bit.ly/2C2KmuF>

Recommendations:

- To overcome distrust due to past assimilation policies, the Government and local authorities should engage in enhanced dialogue with members of the Romani people/Taters;
- As a priority measure, the Government should ensure that a national scheme for awarding appropriate financial compensation of past abuses is set up, in close consultation with the persons concerned.

Concluding Observations paragraph 15 (Covenant/C/NOR/CO/6) Tightening of the rules related to family immigration

The rules for family immigration were substantially tightened in 2016-2017. Some of the restrictions were introduced as measures to reduce forced marriages; others as efforts to make Norway less attractive for asylum seekers, and yet others were described as efforts to ensure better integration.

In our view, there is little documentation showing that restrictive rules for family reunification lead to a reduction in forced marriages and better integration. There is also a concern that, in specific cases, the restrictions will lead to violations of the right to family life. Furthermore, no thorough assessment has been conducted to determine whether the restrictions are both proportionate and necessary to achieve the stated purpose.

There has neither been a thorough assessment of whether the restrictions follow Norway's human rights obligations. Several of the Government proposals lacked a proper discussion of human rights compliance.

The subsistence requirement was increased without Parliamentary approval. In June 2016, the majority of the Parliament presented two petitions, one of which reduced the subsistence requirement to its previous level. The reduction entered into force in August 2017. However, during a period extending more than a year, families had been denied family reunification due to an income requirement that was introduced without Parliamentary approval.

Another point of criticism was that the Government introduced a range of legislative proposals with far-reaching consequences with very short deadlines for civil society actors and other stakeholders to comment. This was in breach of previous practices.