

THE NORWEGIAN CENTRE FOR HUMAN RIGHTS

Shadow Report on ICCPR

**Submission to the UN Human Rights Committee's
consideration of Norway's sixth periodical report**

National Institution for Human Rights

[22.12.2010]

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1 Presentation of the Report

1.1 The Norwegian Centre for Human Rights – Norway’s National Human Rights Institution

The Norwegian Centre for Human Rights (NCHR) is Norway’s National Institution for Human Rights, accredited with A-status according to the standards of the International Coordinating Committee of the global network of national institutions for human rights (ICC).

The Norwegian Centre for Human Rights welcomes the opportunity to submit its shadow report on the implementation of the International Covenant on Civil and Political Rights (ICCPR) to the UN Human Rights Committee.

1.2 Preparation of the Report

The report is based on the NGO ICCPR Centre’s guidelines on submissions to the Human Rights Committee and the UN Human Rights Council guidelines on submissions for the Universal Periodic Review.

This report provides a partial review of Norway’s implementation of the ICCPR and focuses on a limited number of issues. The fact that a subject is not addressed in the current report does not entail that the issue is not of relevance to the implementation of the ICCPR or the general human rights situation in Norway.

1.3 Cooperation with Other Stakeholders

This report is prepared in consultation with the Norwegian Parliamentary Ombudsman for Public Administration, the Ombud for Equality and Anti-discrimination and Gáldu – Resource Centre for the Rights of Indigenous Peoples. The Ombudsman for Children has contributed with written submissions on issues of particular relevance for children.

1.4 Format

The Report is 34 pages in length: Part 1 refers to preparation of the report itself; Part 2 provides an executive summary of recommendations; Part 3 presents the general framework for implementation; and Part 3 targets selected issues under particular rights of the ICCPR and offers proposals for questions and recommendations from the Human Rights Committee to Norway. A list of abbreviations is enclosed at the end of the Report.

2 Executive Summary

A brief view of issues and pertaining questions and recommendations:

General Framework of Implementation

The Status of Human Rights Conventions in Domestic Law

Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Question: Please provide updated information on the work carried out regarding the ratification of OPCAT. What additional steps are planned to be undertaken to complete the ratification process?

Recommendation: Norway should ratify OPCAT without further delays.

The UN Convention on the Rights of Persons with Disabilities and the Optional Protocol

Question: Please provide updated information on the work carried out regarding the ratification of CRPD and its Optional Protocol. What additional steps have to be undertaken to complete the ratification process?

Recommendation: Norway should ratify CRPD and its Optional Protocol without further delays.

The International Convention for the Protection of All Persons from Enforced Disappearance

Question: Please provide updated information on the work carried out regarding the ratification of CPAPED. What additional steps are planned to be undertaken to complete the ratification process?

Recommendation: Norway should ratify CPAPED as soon as possible.

National Plan of Action for Human Rights and Establishment of a High Level Committee

Recommendation: Norway should develop a strong national framework for implementation of human rights through a National Plan of Action for human rights, and a high-level committee as a focal point to ensure implementation of the plan.

Effective and Coordinated Follow-up of the Recommendations of International Monitoring Mechanisms

Recommendation: Norway should develop a National Plan of Action for implementation of recommendations by international monitoring mechanisms, specifying objectives, responsible ministries, procedures for follow-up at the national and local level; and the establishment of an inter-departmental body as a focal point to ensure implementation of the plan.

Norway's National Institution for the Promotion and Protection of Human Rights

Recommendation: Norway should undertake speedy and decisive follow-up of the recently conducted Review of the Norwegian Centre for Human Rights as Norway's National Institution for Human Rights, with a view to strengthening an effective NHRI in full compliance with the Paris Principles.

Article 6

Children's Right to Life

Recommendations:

- Norway should ensure improved routines and increased competence for services involving contact with children, such that children who are exposed to violence are more easily detected.
- Norway should introduce mandatory death-scene investigation for all cases involving the abrupt and unexpected death of an infant.

Article 7

Domestic Violence

Recommendation: Norway should improve and initiate data collection on violence against and abuse of children

Children Houses

Recommendation: Norway must ensure that the deadline for judicial examination is upheld.

Violence-free-child-rearing

Recommendations:

- Norway should ensure that skills levels within the assistance network are raised and that families are given guidance in violence-free child-rearing.
- Norway should do more to ensure that multicultural family guidance is prioritised in all municipalities in Norway that are home to immigrants.

Asylum Procedures

Norwegian Practice and UNHCR's Recommendations

Concluding Observations of UN Human Rights Bodies

Article 9

Lower Threshold for Depriving Foreign Nationals of Their Liberty

Question: How is the proposal of a less strict evidence requirement for depriving a foreign national of his/her liberty on grounds of doubt of identity in accordance with the prohibition of discrimination as enshrined in Article 26?

Recommendations:

- Norway should not to introduce a less strict evidence requirement for depriving foreign nationals of their liberty on grounds of doubt of identity.
- Norway should as explicitly as possible seek to ensure the implementation of a rule of thumb whereby children and families with children are not interned.

Article 10

Pre-trial detention: Police Custody

Recommendations:

- The ample practice of placing arrested persons in police holding cells should immediately be brought to an end. Arrested persons suspected of criminal acts should, as a general rule, be prescribed by law, and placed directly in an ordinary prison cell.
- The grounds for placing a person in a police holding cell should be clearly prescribed by law. Appropriate oversight mechanisms must be put in place to make sure the practice of exceeding the 48-hour time is brought to an end.
- The standard of existing police holding cells should be upgraded to meet the standards of ordinary prison cells. Exceptions should only be made in relation to intoxicated and uncontrolled persons.
- Statistics covering the use of police custody must be compiled. Such statistics should *inter alia* include the total number of persons placed in police custody, number of persons spending more than 48 hours in police holding cells, the total time spent in such cells, the sex of the detained person and whether the detained is a child.

Children in Police Custody

Recommendations:

- Norway should ensure that police detention is not, as a rule, imposed on children. In exceptional cases, police detention should only be imposed for up to a maximum of 12 hours.
- Norway must ensure the care of the child while s/he is in custody, in accordance with the principles of the CRC.
- Norway should compile central statistics on the numbers of children entering custody and the duration of their stays.

Children in Prison

Recommendations:

- Norway should actively develop and use alternatives to prison for children. The overall aim must be that children are not imprisoned.
- Norway should ensure that all relevant services are obligated to follow up children in prison. All children must be followed up on an individual basis.
- Norway should ban the use of isolation for children

Imprisonment of Foreign Nationals

Lack of Maximum Time Limit for Detention

Question: Please give an account of whether the lack of a maximum time limit for detention of foreign nationals on grounds of doubt of identity is in accordance with ICCPR Article 9 and 7.

Statistics

Recommendation: Norway should compile more detailed statistics in relation to foreign nationals detained at Trandum.

Article 18

Teaching of Religion and Moral Education

Question: What measures are taken by the Norwegian authorities to ensure that the legislator's intentions in the new provisions in the Educational Act are being fulfilled for each pupil and his or her parents? Do the schools undergo any control except for assessments of the pupils' skills?¹ What are the possibilities for the pupils and parents to bring forward their complaints?

Recommendations:

- Norway should carry out an evaluation of teaching. An effective evaluation presupposes sufficient financial resources so that observation can be conducted over a certain period of time to make sure the observers get sufficient exposure to the work of the teacher, which requires that there is time for in-depth interviews and for examination of a sufficient number of schools. Including home schooling in the evaluation should also be considered.
- The NCHR recommends that Norwegian authorities reconsider whether there is a need for explicitly highlighting the Christian belief in the statement of objectives in the laws on schools.

Automatic Membership in the State Church

¹ The supervisory authority lies with the County Governor (Fylkesmannen).

Recommendation: The provisions of the Church Act should comprise either automatic termination of membership for children over 15 years of age, or the obligation to notify children of their responsibility to address whether or not they wish to remain a member of the Church of Norway.

Article 24

Unaccompanied Minor Asylum Seekers

Recommendation: The State party should ensure that child welfare services have the duty of care for all UMA under the age of 18.

Deportation of Parents

Recommendation: Norway should ensure that a thorough assessment of the best interests of the child is carried out in all deportation cases involving children, in accordance with Article 3 of the CRC, and that, as far as possible, the child is given the opportunity to express their opinions.

Article 25

Judicial Review of Electoral Complaints

Question: What measures will Norway enact in order to follow up the report from the Venice Commission?

Recommendation: Norway should implement legislative, financial and structural measures in order to facilitate and secure a judicial review of complaints in electoral matters by an independent and impartial judicial body within expedite time limits. Norway should draft a time table and action plan for the implementation of these measures.

The Duty to Accept Candidature and Election

Question: Which measures will Norway enact in order to secure that the regulation of the duty to accept candidature and election is in compliance with the ICCPR?

Recommendation: Norway should review the duty of citizens to accept nomination on a candidate list without prior agreement and to accept election in the light of the ICCPR and other international commitments, standards and good practices.

One Person, One Vote

Question: How is the determination of mandates per constituency in accordance with the principle of one person, one vote as enshrined in ICCPR Article 25?

Recommendation: Norway should scrutinise the allotment of mandates per constituency in the light of ICCPR Article 25 and other international commitments, standards and good practice.

Article 27

Cultural rights of the Sea Sami People

Question: Which measures will Norway enact in order to secure the culture of the Sea Sami People?

Recommendation: Norway should enact legislative, economic and structural measures in order to secure the culture of the Sea Sami People in line with the 2008 report of the Commission on fishing rights in the ocean north of Norway for the Sami People and other citizens.

Sami Children and the Sami Language Action Plan

Recommendation: Norway should actively monitor the extent to which Sami children and young people receive the instruction, in and through the medium of Sami, to which they are entitled in accordance with international conventions and Norwegian legislation.

National minorities

The Kven people

Recommendation: Norway should develop teaching resources in Kven and commit to training teachers to teach in the Kven language.

The Roma people

Recommendation: Norway should review the action plan for the Roma population, ensuring the inclusion of the perspectives of children

Travellers

Recommendation: Norway should implement measures to improve schooling for Traveller children.

3 General Framework of Implementation

3.1 The Status of Human Rights Conventions in Domestic Law

Despite regular pledges made by the authorities, the NCHR discern an increasing political reluctance towards ratification of international human rights treaties in Norway.² Particular problems exist with regard to the acceptance of new human rights commitments and oversight mechanisms. There is a perception that such oversight mechanisms interfere with State sovereignty as they can respond to individual cases, provide general recommendations on policy, and interpret applications of the applicable legal standards.

3.1.1 Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Norway signed OPCAT in 2003, but has not yet ratified. CAT recommended in 2008 that Norway proceeds with the ratification of the Protocol at the earliest possible date. In 2007 the Ministry of Foreign Affairs stated in a letter to the NCHRs that the relevant legislation was being examined and that it was presumed that Norway would be able to ratify in 2008. In the current State report the Government repeats that ratification is under consideration by the Ministry of Justice (see para. 116).

Question: Please provide updated information on the work carried out regarding the ratification of OPCAT. What additional steps are planned to be undertaken to complete the ratification process?

Recommendation: Norway should ratify OPCAT without further delays.

3.1.2 The UN Convention on the Rights of Persons with Disabilities and the Optional Protocol

Norway signed CRPD in 2007, but has not yet ratified. According to the Norwegian State report to the UPR working group, delivered in September 2009, the Government planned to present a Proposal to the Storting (Parliament) for the ratification of the Convention during spring session of 2009. By December 2010 still no progress has been made. Regarding the CRPD Optional Protocol the Government has accepted that it would consider the possibility of signing and/or ratifying.

Question: Please provide updated information on the work carried out regarding the ratification of CRPD and its Optional Protocol. What additional steps have to be undertaken to complete the ratification process?

Recommendation: Norway should ratify CRPD and its Optional Protocol without further delays.

2 The reluctance towards ratification apply inter alia to the following treaties and protocols:

The International Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and the International Convention for the Protection of All Persons from Enforced Disappearance

3.1.3 The International Convention for the Protection of All Persons from Enforced Disappearance

Norway signed CPAPED in 2007, but has not yet ratified. In September 2009 the Ministry of Foreign Affairs informed the NCHR that the Ministry of Justice was working on necessary amendments to the Penal Code, and that ratification was expected by the end of 2009. However, this process seems to be postponed. In the Norwegian State Report to the UPR working group, delivered in September 2009, the Government merely states that it plans to ratify the Convention.

Question: Please provide updated information on the work carried out regarding the ratification of CPAPED. What additional steps are planned to be undertaken to complete the ratification process?

Recommendation: Norway should ratify CPAPED as soon as possible.

3.2 National Plan of Action for Human Rights and Establishment of a High Level Committee

Norway's approach to the implementation of human rights in Norway is based on the principle of mainstreaming. The result is that different ministries have different responsibilities in different sectors. Norway has prepared two general policy documents on human rights in Norway, one in 1977 and one in 1999.³ The latter was a National Plan of Action for human rights considering both national and international questions. The plan was for a five-year period, with the last report comprising 2004-2005. As a key institution working on human rights in Norway, NCHR finds that an unbalanced mainstreaming approach and the present lack of a comprehensive plan leaves Norway without a holistic approach to human rights. In addition, the responsibility for following up on human rights in Norway is fragmented as neither the Government, nor the Parliament structures have one body that accords attention to these matters on an overall basis. The lack of a holistic approach negatively affects the follow-up of commitments under the International Covenant on Civil and Political Rights as well as those under other treaties.

The NCHR recommends that Norway strengthens the framework for implementation of human rights by developing a new National Plan of Action for human rights as recommended in the 1993 Vienna Declaration.⁴ The plan should be based on a baseline study of the conditions of human rights in Norway. The plan should also identify human rights indicators and monitoring mechanisms. The plan must be followed up by evaluations and yearly reports. This will help to identify challenges and give recommendations for a focused approach to strengthen the situation for human rights in the country. The work should be led by a high-level National Committee for Human Rights – a national coordinating and monitoring body – either at the Government or Parliament level.

Recommendation: Norway should develop a strong national framework for implementation of human rights through a National Plan of Action for human rights, and a high-level committee as a focal point to ensure implementation of the plan.

³ White Papers on human rights: St. meld. nr. 93 (1976–1977) and St. meld. nr. 21 (1999–2000): <http://www.regjeringen.no/nb/dep/ud/dok/regpubl/stmeld/19992000/Stmeld-nr-21-1999-2000-.html?id=192704>

⁴ Vienna Declaration Adopted by the World Conference on Human Rights in Vienna on 25 June 1993

3.3 Effective and Coordinated Follow-up of the Recommendations of International Monitoring Mechanisms

(As an alternative to the previous recommendation)

The National Plan of Action on human rights of 1999 foresaw effective follow-up of the recommendations of international monitoring mechanisms as one of the most important measures to strengthen human rights in Norway. However, no proper follow-up mechanism has been put in place. The publications of new recommendations by UN bodies including that of the Human Rights Committee are followed by only one Government meeting between different ministries and civil society. The recommendations are disseminated to the various authorities without translation and sufficient guidelines that would enable the desired changes. A positive development in 2009/2010, was the inter-active process between ministries in preparing for the Universal Periodic Review of Norway by the Human Rights Council. It remains to be seen whether follow-up of the recommendations accepted will set the standard for more effective and coordinated follow-up of international monitoring mechanisms.

Effective follow-up of recommendations requires procedures to ensure systematic identification of the nature and specific content of each recommendation and the creation of strategies to implement them. The strategies and concrete objectives should be set out in the form of a written official document for example a plan of action for implementation of international recommendations. Furthermore, such strategies should be based on a broad and consultative process including Government bodies at national, regional and local levels and stakeholders from civil society. In a situation where there is a National Plan of Action for human rights and a responsible high-level committee, follow up of the international recommendations should be an integral part of this process.

Recommendation: Norway should develop a National Plan of Action for implementation of recommendations by international monitoring mechanisms, specifying objectives, responsible ministries, procedures for follow-up at the national and local level; and the establishment of an inter-departmental body as a focal point to ensure implementation of the plan.

3.4 Norway's National Institution for the Promotion and Protection of Human Rights

Norway decided to establish a National Institution for Human Rights in 2001⁵. NCHR has been operational as a national institution since 2002. This gives Norway eight years experience with a national institution for human rights. NCHR was accredited internationally with A-status in 2006. Norway is up for consideration for new international accreditation in 2011.

NCHR found, against this backdrop, that the time was right for an evaluation, assessing to what extent the National institution for human rights has the desired effect and sufficient capacity and resources to fulfil its role. The NCHR recommended in its submission to the UPR of Norway in

⁵ Royal Decree of 21 September 2001: <http://www.jus.uio.no/smr/english/about/national-institution/docs/kg1-res-eng.pdf>

December 2009 that the Norwegian government initiate an evaluation of NCHR as the National Institution for human rights.⁶

The government responded positively to this request and initiated a review, in cooperation with the NCHR, in 2010. A team of four national and international experts was appointed to conduct the review according to a mandate adopted 23.06.2010. The specific purpose of the of the review is two-fold: "To provide the necessary information basis for improving NHRI work in Norway in line with the Paris Principles and ICC's Guidelines for Accreditation and Re-Accreditation; [and t]o explore relevant organizational adjustments and/or organizational models which would enhance the relevance and influence of NHRI in the Norwegian context".

The review will be finalized in early 2011.

Recommendation: Norway should undertake speedy and decisive follow-up of the recently conducted Review of the Norwegian Centre for Human Rights as Norway's National Institution for Human Rights, with a view to strengthening an effective NHRI in full compliance with the Paris Principles.

4 Selected Issues

4.1 Article 6

4.1.1 Children's Right to Life

There is no reference to this issue in the sixth periodic state report from Norway.

Studies show that children are exposed to and witness violence in Norway⁷. Several individual cases over recent years demonstrate that the assistance network, namely, the health service and schools, have fundamentally failed to detect and disseminate information about children who are exposed to violence and neglect⁸. Research supports the need for improved routines and competency in service provision in order to be able to detect and help children who are at risk of exposure to violence⁹.

6 NCHR recommendation in Summary of stakeholder's information, see section C, point 6:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/NO/A_HRC_WG6_6_NOR_3_ES.pdf , reflecting NCHR recommendation no.9:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/NO/NCHR_NOR_UPR_S06_2009_NorwegianCentreForHumanRights.pdf

7 Mossige, S. og Stefansen, K. (2007). Vold og overgrep mot barn og unge. En selvrappporteringsstudie blant avgangselever i videregående skole. Rapport 20/07, Oslo, NOVA

8 The Kodal case, see the County Governor's inspection report on the County Governor's website

9 Øverlien, C and Sogn, H. (2008): Kunnskap gir mot til å se og trygghet til å handle. [Knowledge leads to the courage to see and the confidence to act] Oslo, NKVTS (Norwegian Centre for Violence and Traumatic Stress Studies) Report 3/2007 http://www.nkvts.no/biblioteket/Sider/Info_KunnskapMotHandle.aspx

There is substantial evidence to suggest that babies and small children risk more exposure to violence than older children¹⁰. At the same time, such abuse is often extremely difficult to uncover. In order to ensure that smaller children do not end up with inferior legal protection to older children, the authorities should allocate dedicated resources and organise services in such a way as to ensure that, where possible, smaller children receive the equal protection and assistance to which they are entitled. In the light of this, it is of particular concern that Norway does not conduct mandatory death-scene investigations in all cases where an abrupt and unexpected death of an infant has taken place.

The authorities have proposed that in all such cases, a voluntary examination of the scene of the infant's death should be offered, as well as a mandatory investigation into the case.

The Ombudsman believes that death-scene examinations should be made mandatory. It is unfortunate that parents can refuse to have such investigations conducted. Routine death-scene investigations for all cases would improve the statistics on infant deaths, counteract stigmatisation of the parents as well as safeguard the legal protection of the infant to the highest degree possible.

Recommendations:

- Norway should ensure improved routines and increased competence for services involving contact with children, such that children who are exposed to violence are more easily detected.
- Norway should introduce mandatory death-scene investigation for all cases involving the abrupt and unexpected death of an infant.

4.2 Article 7

4.2.1 Domestic Violence

Reference is made to paragraphs 86-100 of the sixth periodic state report from Norway.

In 2007, NOVA conducted an important survey in order to identify the extent of violence and sexual abuse against children¹¹. It was, however, based on the personal accounts of upper-secondary school students. This implies that an important group of young people are not represented in the survey – those who had dropped out of school. Furthermore, the survey is based on the informants' memory, which means that one can expect violence against young children to be underrepresented in the feedback. Thus, there is a need for increased knowledge on the spread and extent of violence and violations against children across all sections of the child population. There is also a need for more knowledge about the ways in which schools, health services, child welfare services etc., deal with incidents in which children may have been exposed to violence and abuse.

10 US Department of Health and Human Services: Child Maltreatment: Fact Sheet.
<http://www.cdc.gov/ncipc/factsheets/cmfacts.htm>

11 Mossige, S. and Stefansen, K. (2007). Vold og overgrep mot barn og unge. En selvrporteringsstudie blant avgangselever i videregående skole. [Violence and Sexual Assault against Children and Young People in Norway]. Report 20/07, Oslo, NOVA

Recommendation: Norway should improve and initiate data collection on violence against and abuse of children.

4.2.2 Children Houses

Reference is made to paragraphs 86-100 of the sixth periodic state report from Norway.

Children's Houses is a service offered to children who are dealing with the legal system due to suspicion of sexual abuse. The rationale behind children's houses is that children who have been subjected to violent or sexual assault should be guaranteed good, comprehensive assistance and treatment services which are located in one place. After a case has been reported, there is a 14-day statutory deadline within which examination by a judge may take place. An annual report by one of the children's houses in Norway shows that in three out of four cases it takes over two weeks from reporting to judicial examination. On average, there is a period of 73 days between reporting and the examination¹². Such transgression of deadlines has a major impact on the legal protection of children and should not take place.

Recommendation: Norway must ensure that the deadline for judicial examination is upheld.

4.2.3 Violence-free-child-rearing

Reference is made to paragraphs 86-100 of the sixth periodic state report from Norway.

Several national studies have concluded that ethnic minority children face greater exposure to violence than the majority population, after adjusting for other factors such as poverty levels¹³. The Ombudsman for Children believes there is a need for an increase, within the assistance network, of knowledge about culturally-specific violence and information provision to ethnic minority children and parents, focusing on the illegal and damaging nature of violence. The Ombudsman for Children calls for a substantial increase in the provision of multicultural parental guidance courses to give parents alternatives to the use of physical punishment. Although development of parental guidance courses for all kind of families is the responsibility of the central authorities, it is up to the

12 Children's House, Hamar. 2008. Annual Report. Hamar: Children's House. Resource Centre for children and young people who have been exposed to sexual assault.

13 Allertsen, L. M and Kalve, T. (2006) Innvandrerbarn i barnevernet 2004, Oslo, [Immigrant children in the Child Welfare Service 2004-2006] SSB Report 2006/19

Bredal Anja and Lill Salole Skjerven. 2007. Tvangsekteskapssaker i hjelpeapparatet: Omfang og utfordringer. [Forced marriages, extent and challenges] Oslo: Universitetet i Oslo

Mossige, S. og Stefansen, K. (2007) Vold og overgrep mot barn og unge. En selvrporteringsstudie blant avgangselever i videregående skole. Rapport 20/07, Oslo, NOVA

Schou, L., Dyb, G. og Graff-Iversen, S. (2007) Voldsutsatt ungdom i Norge. Folkehelseinstituttet og Nasjonalt

Kunnskapscenter om vold og traumatisk stress. Rapport 2007:8.

municipalities to offer the courses. The municipalities do not currently prioritise this type of courses¹⁴.

Recommendations:

- Norway should ensure that skills levels within the assistance network are raised and that families are given guidance in violence-free child-rearing.
- Norway should do more to ensure that multicultural family guidance is prioritised in all municipalities in Norway that are home to immigrants.

4.2.4 Asylum Procedures

4.2.4.1 Norwegian Practice and UNHCR's Recommendations

Reference is made to paragraphs 102-103 of the sixth periodic state report from Norway.

The NCHR wishes to draw the attention of the Committee to the presentation of the subject by the Norwegian NGO-forum for Human Rights in its alternative report to the Human Rights Committee. Reference is made to Article 7, Asylum: UNHCR's recommendations. The NCHR gives its full support of the presentation of the theme and the recommendations given by the Norwegian NGO-forum.

4.2.4.2 Concluding Observations of UN Human Rights Bodies

The NCHR wishes to draw attention to the presentation of the subject by the Norwegian NGO-forum for Human Rights in its alternative report to the Human Rights Committee. Reference is made to Article 7, Asylum: Concluding observations of UN human rights bodies. The NCHR gives its full support to the presentation of the theme and the recommendations given by the Norwegian NGO-forum.

4.3 Article 9

4.3.1 Lower Threshold for Depriving Foreign Nationals of Their Liberty

There is no reference to this issue in the sixth periodic state report from Norway.

In July 2010 the Ministry of Justice and the Police circulated for comment a proposal to inter alia lower the threshold for deprivation of liberty in several situations concerning foreign nationals, among others where there is doubt of identity.¹⁵ By replacing the wording "most probable"¹⁶ with

14 Letter from the Norwegian Directorate for Children, Youth and Family Affairs to the Ombudsman for Children, dated 17.4.2009

¹⁵ For the consultation letter, see: http://www.regjeringen.no/pages/13504697/Frihetsberovelse_mv.pdf

<http://barne-echo.imaker.no/sfiles/09/92/2/file/horningsbrev-endringer-i-utlendingsloven-om-adgangen-til-frihetsberovelse-m.v..pdf>

¹⁶ In Norwegian "skjellig grunn til å mistenke"/"mest sannsynlig".

“reason to assume” in several paragraphs in the Immigration Act,¹⁷ the evidence requirement to employ deprivation of liberty will be substantially reduced.

The NCHR was critical to the proposal when it was circulated for comment and raised the question why the threshold for use of coercive measures in accordance with the Immigration Act should be lower than the ordinary evidence requirement for arrest and detention in the Criminal Procedure Act¹⁸ (cf. section 171).¹⁹ The Centre emphasised in this regard the lack of a thorough consideration of the proposal in relation to the prohibition of discrimination (ICCPR Article 26 and ECHR Article 14) in the consultation letter by the Ministry.

With regard to children they are not explicitly omitted from the proposal. The reduction in the evidence requirement implies an erosion of the legal protection of foreign nationals, including children and young people and may result in increasing numbers of minors being deprived of their liberty. The Ombudsman for Children is concerned about the consequences of these proposed amendments for children and families with children.²⁰

In accordance with Article 37 of the Convention for the Rights of the Child (CRC), deprivation of a child’s liberty should only be employed as a last resort. The Ombudsman for Children would prefer the law to set limits on the option to intern children and families with children. The consultative paper states that Swedish legislation does this through the use of the wording “over 18 years of age” in the Act. There has been no explanation as to why this has not been considered for Norwegian legislation. The Ombudsman for Children believes that limiting the interning of minors as much as possible must be an explicit objective and that interning should only be seen as a last resort and a temporary solution.

Question: How is the proposal of a less strict evidence requirement for depriving a foreign national of his/her liberty on grounds of doubt of identity in accordance with the prohibition of discrimination as enshrined in Article 26?

Recommendations:

- Norway should not to introduce a less strict evidence requirement for depriving foreign nationals of their liberty on grounds of doubt of identity.
- Norway should as explicitly as possible seek to ensure the implementation of a rule of thumb whereby children and families with children are not interned.

¹⁷ Lov 15. mai 2008 nr. 35 om utlendingers adgang til riket og deres opphold her (official title).

¹⁸ Lov 22. mai 1981 nr. 25 om rettergangsmåten i straffesaker (official title).

¹⁹ For the consultative submission by the NCHR, see: <http://www.regjeringen.no/pages/13504692/UIO.pdf>

²⁰ For the consultative submission by the Ombudsman for Children, see: <http://www.regjeringen.no/pages/13504692/Barneombudet.pdf>

4.4 Article 10

The issues raised under this article also fall under the ambit of inter alia Articles 7 and 9.

4.4.1 Pre-trial detention: Police Custody

Reference is made to paragraphs 122-130 and 137-140 of the Sixth Periodic State Report from Norway, and the Committee's concluding observations (2006) paragraph 14.

The national legislation regulating police custody (cf. regulation 30 June 2006²¹ § 3-1) provides that any person arrested by the police has to be transferred to an ordinary prison cell within 48 hours after such arrest was made. Exceptions are only permitted if the transfer is impossible for practical reasons.

The statistical data currently available does not give accurate numbers regarding persons placed in police custody. The Norwegian Correctional Services only gather statistics on individuals who are transferred to prison facilities after having spent time in police custody. Individuals that are released directly from police custody are not reflected in those records. The current statistical data provided by the Norwegian authorities is thus not accurate with regard to the total number of persons placed in police custody.

In 2009 the number of persons placed in police custody before transfer to ordinary prison was 3733.²² According to the statistics some 1710 persons, which is almost half of the detainees, spent more than 48 hours in police detention. The Norwegian Bar Association has compiled statistics that shows that a total of 51 917 persons were placed in police custody in 2009. The longest stays in police custody so far in 2010 are 10 days, 8 days longer than it is permitted under current regulation.

The time limit for bringing an arrested person before a judge was extended to 72 hours in 2006. The intention was to reduce the use of remand custody ordered by the courts. The statistics of the Norwegian Correctional Services shows that the majority of the placements in ordinary prison cells are based on court orders.²³ Statistics referred to by the State (cf. State report section 127)²⁴ indicate that there has been an increase in the number of persons in police custody for more than 48 hours (before they are brought before a judge). It could therefore be claimed that the extension of the time limit contributes to violations of the 48 hour limit, and that reduced reduction should be considered so that it coincides with the time limit for the transfer from police detention to ordinary prison cells.

There are also serious concerns with regard to the conditions in the police custody cells. Most of the cells are constructed for very limited use for a very short time. The cells have no furniture, except for a plastic mattress and there is no possibility for turning the light on and off. According to the regulation the detainees have certain rights, such as the right to medical supervision, the right of

21 Forskrift 30. juni 2006 nr. 749 om bruk av politiarrest (official title).

22 The Norwegian Correctional Services' yearly statistics for 2008 and 2009.

23 Based on the Norwegian Correctional Services' yearly statistics for 2008 and 2009.

24 Statistics from the Central Bureau of Statistics and the National Police Directorate. See State report.

access to a lawyer, the possibility to have some time in open air and access to a shower.²⁵ Even though these rights are legally proscribed and are basic, they are only to a certain extent accessible to the detainees.

The use of police custody in Norway has led to severe criticism from international bodies, *inter alia* from the ECPT, the CAT and the CRC. As early as in 1993 the CPT recommended that the Norwegian authorities take steps to ensure that persons remanded in custody are not kept for prolonged periods in police establishments.²⁶ The criticism has been repeated after every visit carried out by the CPT since (that is in 1997, 1999, and 2005). In 1999 the CPT emphasised that holding persons on police premises after they have been remanded in custody should be the exception and not the rule.²⁷ In 2005 the CPT once again stated that the practice of accommodating remand prisoners in police establishments should be put to an end, except in exceptional circumstances.²⁸ The Committee also drew attention to the conditions in police custody and recommended that certain immediate steps be taken.²⁹

The Norwegian Parliamentary Ombudsman has also criticised the use of police custody in a written statement of May 2010, based on a survey initiated in 2008.³⁰ The Ombudsman found that the number of violations of the 48 hour limit was “worryingly high” and that the statistics for the time spent in police custody was unsatisfactory.

The NCHRs finds the use of police custody and the lack of willingness to make any appropriate measures to improve this situation strongly regrettable.

Recommendations:

- The ample practice of placing arrested persons in police holding cells should immediately be brought to an end. Arrested persons suspected of criminal acts should, as a general rule, be prescribed by law, and placed directly in an ordinary prison cell.

25 Regulation 30 June 2006 regarding police custody chapter 2.

26 Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 June to 6 July 1993 para. 28.

27 Report to the Norwegian Government on the visit to Norway carried out by the CPT from 13 to 23 September 1999 para. 14.

28 Report to the Norwegian Government on the visit to Norway carried out by the CPT from 3 to 10 October 2005 para. 10.

29 Report to the Norwegian Government on the visit to Norway carried out by the CPT from 3 to 10 October 2005 para. 15-31.

30 Written statement from the Parliamentary Ombudsman 14 May 2010 (Case 2008/1775).

- The grounds for placing a person in a police holding cell should be clearly prescribed by law. Appropriate oversight mechanisms must be put in place to make sure the practice of exceeding the 48-hour time is brought to an end.
- The standard of existing police holding cells should be upgraded to meet the standards of ordinary prison cells. Exceptions should only be made in relation to intoxicated and uncontrolled persons.
- Statistics covering the use of police custody must be compiled. Such statistics should *inter alia* include the total number of persons placed in police custody, number of persons spending more than 48 hours in police holding cells, the total time spent in such cells, the sex of the detained person and whether the detained is a child.

4.4.2 Children in Police Custody

Reference is made to paragraphs 150-155 of the sixth periodic state report from Norway.

In 2009, there were over 2000 cases where children were remanded in police custody.³¹ The number of children involved is uncertain since some children may have been arrested on multiple occasions. Approximately ten minors were detained in police custody for more than 48 hours. This exceeds the time period stated in the general regulations governing police custody. Some children were detained in police custody for as long as 80 or 90 hours³².

The Ombudsman for Children is highly critical of the use of police custody for children. The Ombudsman has spoken to children who tell of stays in police custody spanning several days. Many of these children describe their stays as very exhausting, with extremely poor or non-existent follow-up from assistance networks. The absence of central statistics on the numbers of children entering custody and the duration of their stays also gives cause for concern.

Recommendation:

- Norway should ensure that police detention is not, as a rule, imposed on children. In exceptional cases, police detention should only be imposed for up to a maximum of 12 hours.
- Norway must ensure the care of the child while s/he is in custody, in accordance with the principles of the CRC.
- Norway should compile central statistics on the numbers of children entering custody and the duration of their stays.

4.4.3 Children in Prison

Reference is made to paragraphs 150-155 of the sixth periodic state report from Norway.

31 Letter from the Ombudsman for Children to national Police Authorities, dated 3.3.2010
<http://www.barneombudet.no/sfiles/95/02/2/file/brev-til-politidistriktene.pdf>

32 <http://barne-echo.imaker.no/temasider/kriminalitet/arkiv/bekymring-/>

The Ombudsman for Children is highly critical of the fact that children are imprisoned in Norway. In the opinion of the Ombudsman for Children, the current prison conditions for children are unacceptable and in contravention of the UN Covenant on Civil and Political Rights, Article 10. The treatment received by children goes against basic psychological research about the types of follow-up children need.

Children are in ordinary prisons together with adults and, to a large extent, subject to the same conditions as adults – in contravention with Article 10 of the Covenant and Article 37 c) of the CRC. It is extremely worrying that children are imprisoned together with adults who are hardened criminals, sometimes in high-security prisons.

It is also of grave concern that children have reported being in isolation in their cell for up to 23 hours over extended periods of time. The physical conditions in prisons are most definitely not appropriate for children, and the follow-up they receive is often extremely inadequate. With the exception of a few prisons employing child-welfare professionals, prison personnel are not required to have any specific training for working with young people. Children entering prison form a particularly vulnerable group and are in particular need of follow-up from different services, such as child welfare services, health services, schools etc. The Government has begun construction work on two prisons for children and the Ombudsman for Children awaits an evaluation of these prisons in 2013.

Recommendation:

- Norway should actively develop and use alternatives to prison for children. The overall aim must be that children are not imprisoned.
- Norway should ensure that all relevant services are obligated to follow up children in prison. All children must be followed up on an individual basis.
- Norway should ban the use of isolation for children.

4.4.4 Imprisonment of Foreign Nationals

4.4.4.1 Lack of Maximum Time Limit for Detention

Reference is made to paragraphs 141-144 of the sixth periodic state report from Norway.

The new Immigration Act³³ has, similar to the previous legislation, no maximum time limit for the total length of detention of a foreign national who is considered to give false information about his or her identity. The Immigration Act states that the total length of detention cannot exceed 12 weeks, unless there are special circumstances. In a Supreme Court decision concerning detention based on doubt of identity, the Court stated that the circumstances giving grounds for detention for *more than 12 weeks* does not qualitatively have to be of another character (than the grounds for

33 Lov 15. mai 2008 nr. 35 om utlendingers adgang til riket og deres opphold her (official title).

detention within 12 weeks). They just need to be more weighty.³⁴ On this ground, foreign nationals have been detained for as long as nearly 19 months on grounds of doubt of identity.³⁵

Question: Please give an account of whether the lack of a maximum time limit for detention of foreign nationals on grounds of doubt of identity is in accordance with ICCPR Article 9 and 7.

4.4.4.2 Statistics

Reference is made to paragraphs 145-148 of the sixth periodic state report from Norway.

The statistics presented by the Government only shows the number of detainees placed in the holding centre for foreign nationals (Trandum) each year and how many of these are detained by court decisions. To be able to acquire an overview over the situation there is need for more detailed statistics, such as the length of the detention; whether it is a so-called Dublin case; how many of those detained are children; and if so whether they are unaccompanied minors seeking asylum; the national, ethnic, religious origin of the detained asylum seeker, etc.

The NCHR requested more detailed statistics in its written submission to the draft State report, but this was not taken into account in the final State report.

Recommendation: Norway should compile more detailed statistics in relation to foreign nationals detained at Trandum.

4.5 Article 18

4.5.1 Teaching of Religion and Moral Education

Reference is made to paragraphs 193-196 of the sixth periodic state report from Norway.

The State report points out that as a consequence of the criticism towards the compulsory school subject "Christian Knowledge and General Religious and Ethical Education" (CREE) (HRC in 2004 and ECHR in 2007) the authorities have made amendments in national legislation "to eliminate any doubt that the legal and curricular provisions in this field are in agreement with international law". The State refers to the amendments in the Education Act in June and December 2008, which *inter alia* entailed that the name of the CREE subject was changed to "Religion, Philosophies of Life and Ethics" (RLE) and that the content in the education was explicitly defined as having to be objective, critical and pluralistic; in addition changes were made in the exemption scheme a new purpose clause was adopted.³⁶

34 Cf. Supreme Court decision, HR-1999-521-S, published in Rt. 1999 p. 1460

35 Cf. Supreme Court decision, HR-2009-1215-U, published in Rt. 2009 p. 797

36 Cf. Section 1-1, 2-3, 2-3a and 2-4 of the Education Act 1998. Lov 17. juli 1998 nr. 61 om grunnskolen og den vidaregåande opplæringa (official title of the Education Act).

The NCHR was positive to the legislative amendments when they were proposed, but emphasised that legislative amendments alone will not prevent new human rights violations. In its comment to the proposed curriculum for the RLE-subject, the NCHR stated the following (unofficial translation):

"The draft curriculum of the Educational Directorate does not describe the working methods for the teaching. It is instead referred to the responsibility of the school to attend to the requirement of an objective, critical and pluralistic education. When the Educational Directorate to a large degree chooses to leave the practical implementation of the subject to the schools and teachers based on vague guidelines in the curriculum, it is hard to ensure that the legislator's intentions in the new provisions in the Educational Act are being fulfilled for each pupil and his or her parents. From the perspective of the NCHRs this entails that there will still be a considerable risk of human rights violations."³⁷

From the NCHR's point of view the criticism is still of high relevance.

With regard to the new purpose clause the Norwegian Government states that it can no longer be considered to give "undue preference to the Christian faith, as compared to other religions and philosophies of life" (State report section 196).

The NCHR call attention to the fact that it is stated in the purpose clause that the teaching shall be based on "fundamental values in the Christian and Humanistic heritage and tradition." The NCHR was critical to this formulation in its written submission to the Ministry of Education in the consultative round.³⁸ It might not be in direct conflict with Norway's human rights obligations. Nevertheless, it is the view of the NCHR that the purpose clause should be as inclusive as possible and concern fundamental values that are endorsed by various religions and philosophies of life – without a linkage to the Christian tradition. (This would also be in better compliance with ESCR article 13(1) and CRC article 29).

Question: What measures are taken by the Norwegian authorities to ensure that the legislator's intentions in the new provisions in the Educational Act are being fulfilled for each pupil and his or her parents? Do the schools undergo any control except for assessments of the pupils' skills?³⁹ What are the possibilities for the pupils and parents to bring forward their complaints?

Recommendations:

- Norway should carry out an evaluation of teaching. An effective evaluation presupposes sufficient financial resources so that observation can be conducted over a certain period of time to make sure the observers get sufficient exposure to the work of the teacher, which

37 The written submission of the NCHR (of 2 April 2008) to the Educational Directorate's proposed curriculum for the subject "Religion, Philosophies of Life and Ethics" (RLE).

38 The written submission of the NCHR (of 31 October 2007) in the consultative round on the Official Norwegian Report (NOU) 2007: 6 Purpose for the future – Purpose for the kindergarten and the education.

39 The supervisory authority lies with the County Governor (Fylkesmannen).

requires that there is time for in-depth interviews and for examination of a sufficient number of schools. Including home schooling in the evaluation should also be considered.

- The NCHR recommends that Norwegian authorities reconsider whether there is a need for explicitly highlighting the Christian belief in the statement of objectives in the laws on schools.

4.5.2 Automatic Membership in the State Church

Reference is made to paragraphs 193-196 of the sixth periodic state report from Norway.

Section 3, no. 6. of the Church Act states: "Persons over 15 years of age may register or withdraw their membership in the Church of Norway." The equivalent right to register or withdraw membership in a religious community is found in Section 3 of the Act relating to Religious Communities; see also Section 32 of the Children Act concerning the right to register or withdraw membership of associations.

Children who have not been baptised, but whose parents are members of the Church of Norway, receive automatic membership in the Church of Norway. Section 3, no.5 of the Church Act states that: "When a child reaches 18 years of age without having been baptised, he/she will no longer be deemed a member of the Church of Norway". Children who are members based on affiliation will therefore be deemed members until they are 18 years old according to Norwegian regulations, while other children will have the opportunity to withdraw their membership at the age of 15.

The Ombudsman for Children believes that a child who is deemed a member of the Church of Norway due to the membership of her parents' church affiliation should be subject to the same general regulations that govern registration in and withdrawal from religious communities⁴⁰.

Recommendation: The provisions of the Church Act should comprise either automatic termination of membership for children over 15 years of age, or the obligation to notify children of their responsibility to address whether or not they wish to remain a member of the Church of Norway.

4.6 Article 24

4.6.1 Unaccompanied Minor Asylum Seekers

Reference is made to paragraphs 242-244 of the sixth periodic state report from Norway.

The Ombudsman for Children has long been concerned that unaccompanied minor asylum seekers (UMA) are not receiving adequate follow-up services. The Ombudsman for Children was therefore pleased that in 2007 child welfare services assumed the duty of care for unaccompanied minor asylum seekers under the age of 15. Today, there is especial concern for UMA over 15 years of age who receive significantly poorer levels of follow-up than both Norwegian children without caregivers in Norway and UMA who are under 15 years of age. The Norwegian authorities have previously argued that the number of UMA coming to Norway has increased greatly, making it practically

40 <http://barne-echo.imaker.no/horingssuttalelse/2010/kirkeloven/>

impossible to implement the reform any faster. In 2010, we experienced a dramatic reduction in the numbers of UMA entering the country. Nonetheless, the transfer of the duty of care to child welfare services has been postponed indefinitely. The Ombudsman for Children is highly critical of this and is of the opinion that the Government should make use of the current situation to implement the transfer as quickly as possible.

Recommendation: The State party should ensure that child welfare services have the duty of care for all UMA under the age of 18.

4.6.2 Deportation of Parents

Reference is made to paragraphs 176-179 of the sixth periodic state report from Norway.

The Ombudsman for Children receives a great many enquiries from families in crisis over the deportation of a parent; in the majority of cases, due to the parent's contravention of the Immigration Act. The Ombudsman for Children has long been concerned about the application of deportation provisions and the consequences this has for children.

The Ombudsman for Children has addressed this issue, including in Parliament, in connection with the creation of the new Immigration Act and is pleased that the Committee, while preparing the Act, stated: "[The majority] requests that the Ministry assess the possibility of establishing regulations which will ensure, to a greater extent, that the best interests of the child will be taken into consideration in deportation cases."

The Ombudsman for Children attaches great importance to the fact that each deportation of a parent, even a limited deportation of two or five years duration, has major repercussions on the children.

The Ombudsman for Children would also like to point out that the consequences of the deportation on children will be just as significant, irrespective of the background for the deportation decision, and the best interests of the child should therefore be the decisive factor in accordance with the CRC, Article 3.

The Ombudsman for Children believes that current deportation practice raises issues in relation to Article 9 of the CRC which places responsibility on the Government to ensure that children are not separated from their parents. The UN Committee on the Rights of the Child has expressed concern about Norway's deportation practice. In addition, the Committee's General Comment No. 7 emphasises that small children are particularly vulnerable in the event of separation from parents due to their physical dependency on and emotional attachment to their parents/primary caregivers.

Recommendation: Norway should ensure that a thorough assessment of the best interests of the child is carried out in all deportation cases involving children, in accordance with Article 3 of the CRC, and that, as far as possible, the child is given the opportunity to express their opinions.

4.7 Article 25

4.7.1 Judicial Review of Electoral Complaints

There is no reference to this issue in the sixth periodic state report from Norway.

In Norway complaints on electoral matters are processed without any judicial review by the courts or an independent electoral commission. All complaints against a decision of electoral committees at all levels during local and parliamentary elections are in the first instance submitted to the respective committee. The Ministry of Local Government and Regional Development is the final appeal body for all electoral complaints related to local elections. For parliamentary elections the Parliament itself is the appeal body for appeals concerning the right to vote, whereas the National Election Committee, which is appointed by the Cabinet, is the body for other appeals. The newly elected parliament validates its own election, which in effect gives it the authority to decide on any aspect of the election. The law does not provide for a right to appeal to the courts against the validation of the parliamentary election and other decisions by the Ministry, National Election Committee and the Parliament in electoral complaints. The law neither provides a time limit for the processing of electoral complaints.

ICCPR Article 25 (b) provides for the right to vote and to be elected in elections. The Human Rights Committee states in its General Comment No. 25 (para.20) to ICCPR Article 25 that “there should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.” The present review system in Norway is more of an administrative than a judicial character and thus appears to be in contradiction to Article 25 (b).

Furthermore, Article 14 of the ICCPR entitles everyone to a hearing by a competent, independent and impartial tribunal established by law for the determination of his or her rights and obligations in a suit at law. According to General Comment No. 32, such a tribunal must be independent of the executive and legislative branches of government or enjoy in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature. In NCHR’s opinion, in so far electoral complaints fall under the ambit of Article 14, none of the organs involved in electoral dispute resolution fulfil the criteria set out in General Comment No. 32.

Moreover, ICCPR Article 2 (3) (a) and (b) obliges each State Party to ensure effective remedies against violations of the rights and freedoms in the Covenant. It further instructs states to ensure that the right to such remedies “shall be determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibility of judicial remedy.” In the view of NCHR, Norway has failed to develop the possibility of a judicial remedy for complaints pertaining to electoral rights under Article 25.

The general administration of elections enjoys a high level of public confidence, but the review of electoral complaints has been criticised by international election observers: after the 2009 parliamentary election the OSCE recommended Norway to consider providing a right to appeal all

election-related matters and election results to a competent court as the final authority and setting specific expedite time limits for the adjudication of election-related complaints and appeals.⁴¹

As a positive follow up to these recommendations, in May 2010 Norway requested the Venice Commission⁴² to evaluate Norway's system of electoral dispute resolution. In its final opinion the Venice Commission scrutinises the Norwegian system in the light of ICCPR Article 2 (3), General Comment No. 32 to ICCPR Article 14 and international standards and good practice. The NCHR fully supports the final conclusions by The Venice Commission⁴³:

“To meet international standards and commitments, Norway should include the judiciary in the process of electoral dispute resolution. It should provide for final appeal on all election-related complaints to a court. Furthermore, the final validation of the election should include a possibility of appeal to a high judicial body, such as the Supreme Court.

...

It is recommended that election-related appeal procedures be developed to guarantee timely decisions on all electoral matters in dispute.”

Question: What measures will Norway enact in order to follow up the report from the Venice Commission?

Recommendation: Norway should implement legislative, financial and structural measures in order to facilitate and secure a judicial review of complaints in electoral matters by an independent and impartial judicial body within expedite time limits. Norway should draft a time table and action plan for the implementation of these measures.

4.7.2 The Duty to Accept Candidature and Election

There is no reference to this issue in the sixth periodic state report from Norway.

This issue could also fall under the ambit of Articles 18, 19 and 22.

A feature of the Norwegian electoral system is that everyone with a right to vote is obliged to accept to be placed on a candidate list by a political party without his/her agreement and to eventually accept the election. In parliamentary elections only those who are registered in a different constituency, who were members of the previous Parliament or who are members of another political party may claim exemption from the duty to be elected. In local elections exemptions may be justified on similar grounds. The duty to stand for and accept election has a long tradition in Norway and has its rationale in the civic duty to participate in the deciding bodies of society.

41 OSCE/ODIHR Election Assessment Mission Report. Norway Parliamentary Elections 14 September 2009. Page 20-22. http://www.osce.org/documents/odihr/2009/11/41624_en.pdf

42 The European Commission for Democracy through Law

43 The Draft Joint Opinion on the Electoral Legislation in Norway was adopted, with minor language amendments, on the 85th Plenary Session of the Venice Commission on 17-18 December 2010. The final adopted opinion was not available in electronic version at the time of submission of this shadow report. Thus only link to the draft: <http://www.venice.coe.int/docs/2010/CDL-EL%282010%29029-e.pdf>

In practical terms all parties seek the prior consent of their candidates, but it happens from time to time that candidates are nominated against their will. After the 2009 parliamentary election the election observers from OSCE reported that one nominee unsuccessfully sought removal from a candidate list. The OSCE furthermore problematised the duty's compliance with the freedom of political opinion and association as enshrined in the ICCPR and recommended that Norway review the duty in light of the Covenant.⁴⁴

Against this background the Ministry of Local Government and Regional Development proposed an amendment to the Election Act which would provide listed candidates a right to be exempted from the duty if they are not a member of a political party and they declare that the political view of the list is in contradiction to their own political opinion.

One concern is that the existing regulation of the obligation to accept candidature and election may be a contravention of the right to be apolitical in both thought and association and the right not to associate with any political party, as provided for by ICCPR Articles 18 (1), 19 and 22.

Another matter for concern is the proposed legislative amendment's apparent violation of Article 19 and the right to hold opinions without interference and the freedom of expression by forcing unwilling list candidates to declare and expose their political opinions. The proposal also seems to challenge the freedom of thought in Article 18 (1).

General Comment No. 10 to Article 19 proclaims in its first paragraph that the Covenant permits no exceptions or restrictions to the right to hold opinions without interference. This is confirmed in General Comment No. 22 to Article 18 (para. 3) that also extends this unconditional protection to the freedom of thought and declares that no one can be compelled to reveal his or her thoughts.

In the view of the NCHR the draft amendment should be rejected and the duty to accept candidature and election should be thoroughly reviewed in light of the ICCPR and other international commitments, standards and good practice.

Question: Which measures will Norway enact in order to secure that the regulation of the duty to accept candidature and election is in compliance with the ICCPR?

Recommendation: Norway should review the duty of citizens to accept nomination on a candidate list without prior agreement and to accept election in the light of the ICCPR and other international commitments, standards and good practices.

4.7.3 One Person, One Vote

There is no reference to this issue in the sixth periodic state report from Norway.

The allocation of parliamentary mandates per constituency is in Norway determined by the demographic and geographical size of the constituency. As a consequence rural areas are overrepresented in the Parliament compared to urban areas, the population taken into consideration.

⁴⁴ OSCE/ODIHR *supra* at page 4-5.

This has received international attention and after the 2009 parliamentary election in Norway the OSCE election observers reported:⁴⁵

“Members of Parliament are directly elected through a proportional representation list system, with nationwide compensatory seats. Of the 169 deputies, 150 are elected from 19 multi-member constituencies that correspond to the counties. There is no legal threshold at constituency level. After distribution of mandates within constituencies, the remaining 19 compensatory seats are distributed so as to reflect the nationwide proportional vote among those political parties receiving at least four per cent of the national vote. Each constituency is assigned one additional compensatory seat. The number of mandates per constituency is determined every eight years by the Ministry of Local Government and Regional Development, using a formula established in the Constitution (Article 57), which gives weight both to the population and to the geographic size of each county. The factor of county geographic size in mandate allocation is a historical consideration intended to balance the perceived uneven distribution of power between rural and urban citizens in national politics. The result is that the country’s rural constituencies, which are significantly larger in geographic size than the urban constituencies, are allocated a greater number of seats than would be the case if based strictly on population.

The discrepancy is particularly notable in Finnmark County where there are 7,409 registered voters per mandate, while in Vestfold, there are 18,464 per mandate. The Finnmark quotient is a 50 per cent deviation from the average quotient in the country (14,954 votes per mandate). Four other counties have a deviation of approximately 20 per cent, and a total of seven counties deviate from the norm by more than 15 percent.”

The Human Rights Committee states in its General Comment No. 25 (para. 21):

“[...] the principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another.”

Question: How is the determination of mandates per constituency in accordance with the principle of one person, one vote as enshrined in ICCPR Article 25?

Recommendation: Norway should scrutinise the allotment of mandates per constituency in the light of ICCPR Article 25 and other international commitments, standards and good practice.

4.8 Article 27

4.8.1 Cultural Rights of the Sea Sami People

Reference is made to paragraphs 274-275 of the sixth periodic state report from Norway.

In 2006 the Government of Norway appointed the Commission on fishing rights in the ocean north of Norway for the Sami People and other citizen (hereafter the Commission) in order to examine the rights of the indigenous Sea Sami People. The Commission had a broad composition and was headed

⁴⁵ OSCE/ODIHR *supra*. at page 5-6.

by Mr. Carsten Smith, member of the UN Permanent Forum on Indigenous Issues and former Chief Justice at the Norwegian Supreme Court.

In February 2008 the Commission delivered its unanimous report to the Government.⁴⁶ With reference to ICCPR Article 27 and other international obligations the Commission concluded that the Sami people have the right to claim affirmative action by the State in order to ensure the survival and continued development of their culture. It further underlined the particular critical situation for the Sea Samis' culture due to a long lasting policy of assimilation.

The Commission proposed a new legislative act for fisheries in the Finnmark County which aimed at securing the cultural rights of the Sea Samis by indiscriminate means. The act codified a right for all residents along the fjords and coast of Finnmark to fish, for both self-support and professional purpose, in the sea off the Finnmark coast. This right was based on historical usage and international law on indigenous peoples and minorities. Among other features the act also codified a right for the residents along a fjord to fish in that particular fjord. The Commission emphasised in this connection the cultural and economical importance of the fjords for the Sea Sami People. A new public authority, with participation of Sami representatives, was proposed to administer the fishing rights in the relevant areas.

The report was unanimously supported by the Sami Parliament, but unfortunately the Government has not yet taken any concrete legislative or practical measures to follow up the Commission's recommendations.

The Human Rights Committee states in General Comment No. 23 to Article 27 (para. 7):

"With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting [...]. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them."

Against this background the NCHR deeply regrets the Government's reluctance to implement the well-founded recommendations of the Commission on fishing rights in the ocean north of Norway for the Sami People and other citizen.

Question: Which measures will Norway enact in order to secure the culture of the Sea Sami People?

Recommendation: Norway should enact legislative, economic and structural measures in order to secure the culture of the Sea Sami People in line with the 2008 report of the Commission on fishing rights in the ocean north of Norway for the Sami People and other citizens.

46 Retten til fiske i havet

<http://www.regjeringen.no/pages/2050081/PDFS/NOU200820080005000DDDPDFS.pdf>

4.8.2 Sami Children and the Sami Language Action Plan

Reference is made to paragraphs 282-284 of the sixth periodic state report from Norway.

The Government has established an important action plan for the strengthening and preservation of the Sami language in Norway. Access to the Sami language in kindergarten and school is essential if Sami children are to feel proud of and be given the chance to preserve their cultural identity. Many Sami children and young people want to learn the Sami language at school. However, figures show that the number of children learning Sami is falling⁴⁷.

The Ombudsman for Children has closely monitored the issue of training and teaching in the Sami language, and in 2008 compiled a report on Sami children and young people in Norway⁴⁸, which centred on the learning situation for Sami children. In the report, Sami children and young people explain that they experience significant frustration due to the shortage of teaching resources in Sami, underdeveloped distance education, inadequate levels of information on rights regarding Sami-oriented school education, poor integration of Sami instruction into the school day and a lack of continuity in terms of Sami teachers. Taken together, these elements may contribute towards explaining the decreasing numbers of children receiving instruction in Sami.

Recommendation: Norway should actively monitor the extent to which Sami children and young people receive the instruction, in and through the medium of Sami, to which they are entitled in accordance with international conventions and Norwegian legislation.

4.8.3 National Minorities

Reference is made to paragraphs 296-310 of the sixth periodic state report from Norway.

4.8.3.1 The Kven People

The Government has implemented a number of measures to improve the situation for the Kven language and culture. The Norwegian Kveni Association has presented a number of recommendations to the Ombudsman for Children regarding measures which would be of great significance for Kven children. Among these are a comprehensive commitment to funding the development of teaching resources in the Kven language and improving teacher training/ in-service training of teachers in the Kven language since, in their view, there is a critical shortage of teachers. The Ombudsman for Children supports these recommendations.

Recommendation: Norway should develop teaching resources in Kven and commit to training teachers to teach in the Kven language.

47 Figures from Statistics Norway http://www.ssb.no/emner/00/00/20/nos_samer/nos_d437/nos_d437.pdf

48 The Ombudsman for Children 2008. Retten til medvirkning for samiske barn og unge. [The Participatory Rights of Sami Children and Young People]. http://barne-echo.imaker.no/publikasjoner/retten_til/

4.8.3.2 The Roma People

In 2009, the Norwegian authorities unveiled an action plan to improve living conditions for Roma people⁴⁹. The Ombudsman for Children has previously provided extensive feedback on the action plan in order to ensure that the perspectives of children were taken into account; however, [the](#) suggestions were not incorporated into the plan. The Ombudsman for Children therefore requests that the Government review the plan, bearing in mind that Roma children constitute the weakest party within an already extremely vulnerable group in Norway⁵⁰. The Ombudsman for Children has been in dialogue with the Ministry of Government Administration, Reform and Church Affairs, but has yet to receive clarification from the Government as to whether the plan will be revised in order to incorporate solid measures to safeguard the rights of children.

Recommendation: Norway should review the action plan for the Roma population, ensuring the inclusion of the perspectives of children.

4.8.3.3 Travellers

A project from 2009 entitled "Travellers from childhood to adulthood"⁵¹, documented school attendance among travellers in Norway. The project illustrates that only very few traveller children complete upper-secondary school in Norway and even fewer go on to receive college or university level education. There are also many young Travellers who do not complete lower-secondary school because they have to assist their fathers, take care of younger siblings or because they dislike being at school. A number of children are also frequently absent due to travelling, which forms a major part of their culture. The report recommends both improved levels of information on Travellers to schools, clarification of legal rights regarding school absences for Traveller children and additional resources to enhance teaching provision for Traveller children. The Ombudsman for Children supports the project's recommendations.

Recommendation: Norway should implement measures to improve schooling for Traveller children.

49 Action Plan for Better Living Conditions for the Roma People

http://www.regjeringen.no/upload/AID/publikasjoner/rapporter_og_planer/2009/Handlingsplan_2009_rom_oslo.pdf

50 The Ombudsman for Children's letter to the Ministry of Government Administration, Reform and Church Affairs <http://www.barneombudet.no/sfiles/69/68/1/file/handlingsplan-for-rom-befolkningen-manglende-barneperspektiv.pdf>

51 Taterfolket fra barn til voksen [Travellers from childhood to adulthood] 2009, Queen Maud University College, The Norwegian National Travellers' Association and Sør-Trøndelag University College

5 Abbreviations

Where not otherwise indicated:

ECPT The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CAT The Committee Against Torture

CRC The Committee on the Rights of the Child

NCHR National Centre for Human Rights

UMA Unaccompanied Minor Asylum Seekers

UPR Universal Periodic Review
