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Parallel report from the Norwegian Centre for Human Rights related to the fifth periodic report of Norway

Reference is made to the Committee on Economic, Social and Cultural Rights' 51st Session and the consideration of Norway's fifth periodic report (E/C.12/NOR/5). The Norwegian Centre for Human Rights welcomes the opportunity to submit its views to the Committee.

The Norwegian Centre for Human Rights – National institution for human rights

The Norwegian Centre for Human Rights is at present Norway's national institution for human rights (hereinafter NI), accredited with B-status according to the standards of the International Coordinating Committee of the global network of national human rights institutions (ICC). NI is given the specific mandate to protect and promote international human rights and see to that these are being respected and fulfilled by Norwegian authorities. Writing parallel reports to international human rights treaty monitoring bodies is a core means by which NI seeks to enhance respect for human rights in Norway.

Preparation of the report

The present parallel report is prepared in consultation with the Equality and Anti-discrimination Ombud and the Ombudsman for Children. The Ombudsman for Children has also contributed with written submissions on issues of particular relevance for children.

The report contains a selection of issues NI consider it important that the Committee be aware of for a proper consideration of Norway's fifth periodic report. However, the report does not reflect all relevant human rights challenges in Norway within the scope of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The issues will be presented in accordance with the order of the Committee's Concluding Observations to Norway's fourth periodic report (E/C.12/1/Add.109) and the Committee's List of issues in connection with the consideration of the fifth periodic report of Norway (E/C.12/WG/NOR/Q/5).

NI would like to draw the Committees attention in particular to the following issues relating to the general framework of implementation or to the provisions of the Covenant:

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- Reluctance to ratify individual complaint mechanisms protecting and promoting ESC rights (issue 1)
- Review of constitutional human rights protection (issue 4)
- Roma persons staying temporarily in Norway (issue 6.1)
- Irregular migrants and access to adequate health care (issue 16)

I. Issues relating to general framework of implementation

1. Reluctance to ratify individual complaint mechanisms protecting and promoting ESC rights

NI is concerned with the current reluctance of the Norwegian authorities to ratify new instruments that establish individual complaint mechanisms under central international human rights monitoring bodies. This scepticism is evident through protracted national consultation processes, which seem to be used to unreasonable delay or postpone the ratification of human rights instruments.

The existing scepticism can be directly linked to general national discourse regarding the role of human rights in the Norwegian domestic legal system as well as in politics. The Norwegian authorities are in general very positive and supportive of human rights in its foreign policy. However, we note a lack of unilateral commitment to the implementation of human rights nationally. Representatives of political parties, state officials as well as academia are questioning the role and legitimacy of both international human rights protection mechanisms as well as the national courts to interpret international standards as well as have oversight authority.[1] This system is perceived to be problematic as it shifts decision-making power away from democratically elected people's representative (the Parliament and eventually government), especially with regards to important societal issue such as allocation of resources.

Unfortunately, there seems to be particular reluctance towards economic, social and cultural human rights. It is argued that ESC rights are too vague, declarative and lack real substance that makes their implementation even more uncertain and unpredictable.[2]

In 2011, the Norwegian MFA commissioned a study regarding the issue of ratification of the Optional Protocol to the UN Covenant on Economic, Social and Cultural Rights. [3] The study addressed some of those key concerns and argumentation in relation to the scepticism towards ESC-rights, but a clear recommendation as to whether or not Norway should ratify was not part of the study's mandate. The position of the Norwegian authorities after two years

[1] The Norwegian Study on Power and Democracy, NOU 2003:19, August 2003, pp. 31; letters from the Attorney General's office to the Ministry of Foreign Affairs (MFA) of 22 October 2009 and of 6 January 2006.

[2] Ibid.

[3] Harborg, H: *Optional Protocol to the ICESCR - Possible Consequences of Ratification*. Study submitted to the MFA 16 September 2011.

regarding the ratification of the Optional Protocol to the UN Covenant on Economic, Social and Cultural Rights remains to be unclear, which from NIs point of view can be seen as an indication of continued reluctance to ratify.

The rights of the child in general are enjoying greater support in Norway, including across different political fractions. In 2013, a new report, requested by the Parliament representatives and commissioned by MFA, has been issued that assesses the consequences of ratifying the Third Optional Protocol to UN Convention on the Rights of the Child. NI is hopeful that existing general support to the rights of the child can secure necessary political will[4] to ratify the Optional Protocol to CRC in the near future.

Recommendation:

- Norway should move forward in their consideration of ratifying (a) the Optional Protocol to the UN Covenant on Economic, Social and Cultural Rights, (b) the Third Optional Protocol to UN Convention on the Rights of the Child; and (c) the Optional Protocol to UN Convention on the Rights of Persons with Disabilities.

2. Reconsider the need for interpretative declarations to the CRPD

While the NI welcomes Norway's ratification of the CRPD, it is disappointed with the two interpretative declarations made to Articles 12 and 14 of the Convention.[5] These statements are problematic in light of the well-documented excessive use of coercion in the Norwegian mental health care system. Although these problems are acknowledged by the authorities, attempts to substantially reduce use of coercion have not been successful.

The Norwegian Mental Health Care Act contains discriminatory elements as it authorizes involuntary internment and treatment linked to an apparent or diagnosed disability.[6] NI is concerned that the said declarations will be construed as an acceptance of these problematic practices and could further delay necessary national reform processes.

Moreover, as disability is closely linked to economic and social factors, NI is worried that the said declarations will impair the equal enjoyment of the Covenant's rights for persons with disabilities. NI wants in this regard to draw the attention to the CESCRs understanding of the Covenant protection of persons with disabilities, which states that the prohibition on

[4] On 21 June 2013, the Norwegian Parliament voted in favour of asking the Government to present a proposition to Parliament on the ratification of the Third Optional Protocol to the UN Convention on the Rights of the Child.

[5] See the attached Annex I.

[6] Cf. CRPD, Concluding Observations to Spain, 19 October 2011, paras 35-36.

discrimination contained in Article 2 (2), "…clearly applies to discrimination on the grounds of disability".[7]

Recommendation:

- Norway should reconsider the need for the interpretative declarations to the CRPD.

3. Re-establish a National Human Rights Institution (NHRI) with A-status

Both internal and external review processes, 2009-2011, have acknowledged that the current organisational set-up of Norway's NHRI has not functioned optimally. In November 2012 the International Coordinating Committee of NHRI (ICC) downgraded Norway's NHRI from A to B-status, after having given one years notice to enable necessary changes.

The two main substantive criticisms of Norway's NHRI highlighted by the ICC was the lack of (a) legal framework in accordance with the Paris Principles as well as (b) adequate resources to fulfil its functions. The current NI is mandated by the decision of the government[8] with the maximum capacity of 5 persons.

After commissioning external review[9] as well as consultation processes, in September 2012 Norwegian government established an inter-ministerial working group to address this issue. In June 2013 the working groups came up with a report as well as a proposal for draft legislation that has been sent for comments to relevant actors in Norway.

NI is concerned that Norwegian authorities lack general political will to re-establish an effective, high-profile and independent NHRI. The report of the inter-ministerial working group failed to address the problem of inadequate resource as this decision has been postponed to a later stage. Furthermore, NI as well as relevant civil society actors considers that the new institutional setup proposed by the report is a minimum solution that gives limited possibility for the future institution to implement its broad mandate to protect and promote human rights.

Recommendation:

- Norway should, as soon as possible, establish a new NHRI in compliance with the Paris principles that enjoys full independence, a high status and is provided sufficient resources and capacity to strengthen the implementation of human rights in Norway.

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[7] CESCR General Comment No. 5 paras 1 and 5.

[8] Royal Decree of 21. September 2001

[9] The Norwegian Ministry of Foreign Affairs', Review of the Norwegian Centre for Human Rights in its Capacity as Norway's National Human Rights Institution (Sveaass report) , March 2011

4. Review of constitutional human rights protection

The Norwegian Parliament (Stortinget) has initiated a process of legislative amendments that aims to incorporate central provisions of international human rights norms into the Norwegian Constitution, which celebrates 200 years anniversary in 2014. The committee appointed by the Presidency of the Parliament has drafted a report, including legislative text for incorporation of human rights in the Norwegian Constitution.[10] In September 2012 proposals were submitted to the outgoing Parliament. In accordance with Norwegian procedural rules for amending the Constitution, a vote is expected in spring 2014 by the new Parliament, after the general elections held in September 2013.

The objective of these amendments is to strengthen the position of central human rights in the Norwegian Constitution. Currently there are more than a dozen human rights norms that are included in the Constitution, both from its original draft as well as a result of subsequent amendments. While these are predominantly civil liberties, there are also some ESC rights as well as the right to clean environment. However, the present constitutional protection of human rights norms gives a somewhat misleading and fragmented picture of the overall human rights protection in Norwegian law, as the Constitution has never been subject to a thorough and consistent revision from a human rights perspective.

In the on-going debate on constitutional review, particular fears have been voiced at incorporation of economic, social and cultural rights, giving preference to inclusion of only a limited number of civil liberties and political rights. In particular it is argued that many human rights norms are vaguely defined and of declarative character. As such they can be used only as international treaty language and not in a Constitutional text (like for example the right of everyone to the enjoyment of the highest attainable standard of physical and mental health). Furthermore, it is argued that if human right norms are included in the Constitution there is a danger of different interpretation of these norms at international and national level that would create legal uncertainties that can weaken human rights.

As a consequence, the proposed package of amendments has been split into two main proposals; one includes civil and political rights and another includes economic, social, and cultural rights. NI believes that this approach is undermining the internationally recognized principals of interdependence and indivisibility of human rights.

[10] Report by the Human Rights Commission concerning Human Rights in the Constitution, submitted 19 December 2011 to the Norwegian Parliament, Document 16, 2011-2012

Recommendation:

- Norway should strengthen constitutional protection of human rights taking into full account the interdependence and indivisibility of civil, political, economic, social, and cultural rights.

II. Issues relating to provisions of the Covenant (arts. 1-5)

Article 2 paragraph 2 - Non-discrimination

5. Discrimination faced by persons of immigrant background, particularly in the areas of housing and work

More than half of the immigrant population in Norway has experienced discrimination in one or more of the following areas – labour market, housing sector, nightclubs, education and healthcare.[11] In 2012 the unemployment rate was three times higher amongst persons with immigrant background than in the average population.[12] A survey conducted in 2012 reveals that the likelihood of being called for a job interview is reduced by 25 per cent if the applicant has a foreign name.[13] NI is concerned by the discrimination faced by persons of immigrant background and in particular the persistent unemployment rate during the last 20 years, in spite of seven governments having made nine white papers, seven green papers and 23 plans of action; including 672 measures. The lack of results raises questions with regards to the effectiveness of these plans and measure and has also led to expressed concern by CERD, HRC and CEDAW.

With regard to discrimination in the housing sector, more than 20 per cent claim they have been refused to rent or buy property because of their immigrant background.[14] NI welcomes steps taken by the Government, inter alia by adding anti-discrimination clauses to the Tenancy Act, but is nevertheless concerned these regulations are not enforced in practice.

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[11] Statistics Norway, Report 2008/5 *Levekår blant innvandrere i Norge 2005 og 2006* [Eng: Living Conditions Among Immigrants in Norway 2005 and 2006], 2008

[12] Statistics Norway, 16 May 2013; *See also* the Government White Paper, Meld. St. 6 (2012–2013) *En helhetlig integreringspolitikk [Eng: An overall Integration Policy]*, figure 3.1

[13] Report by Midtbøen and Rogstad, Diskrimineringens omfang og årsaker. Etniske minoriteters tilgang til det norske arbeidslivet[Eng: The Scope and Cause of Discrimination, Ethnic Minorities access to the Norwegian Work Industry], Institute for Social Research, 2012

[14] Statistics Norway, report 2008/5, *Levekår blant innvandrere i Norge 2005 og 2006* [Eng: Living Conditions Among Immigrants in Norway 2005 and 2006], 2008; *See also* the Government White Paper, Meld. St. 6 (2012–2013) *En helhetlig integreringspolitikk [Eng: An Overall Integration Policy]*, ch.9.2

Recommendation:

- Norway should adopt more vigorous measures to combat all forms of discrimination faced by persons with immigrant background. Special attention should be offered to eradicate obstacles faced in accessing the labour market and to eliminate all forms of discrimination in the housing sector inter alia by monitoring to what extent the anti-discrimination clauses in the Tenancy Act are complied with in practice.

6. Discrimination against Roma

6.1 Roma persons staying temporarily in Norway are entitled to basic protection

NI is deeply worried by the situation of the Roma-people staying temporarily in Norway. The current political debates have paid little regard to the fact that persons of Roma origin are entitled to respect for their human rights while staying in Norway. The focus is almost exclusively on measures to criminalize their activities and stay in public spaces, with the objective that Rome people will be forced to leave Norway.

The municipality of Oslo has recently adopted a blanket prohibition against sleeping outdoors in densely populated areas of the city.[15] The prohibition was subsequently affirmed by the Police Directorate.[16] The prohibition was explicitly justified with reference to the influx of "homeless foreign citizens" to Oslo the summer of 2012, thereby giving rise to concern that the prohibition will disproportionately target persons of Roma origin.[17] Moreover, a blanket prohibition on rough sleeping cannot be regarded as a proportional measure to prevent disorderly conduct. The mere fact that someone lives in public space does not infringe on other people's rights and does not endanger the habitual use of space or public order.

These concerns are further strengthened by the fact that transgressions against the prohibition carry sanctions in the form of penalties or prison sentence of up to three months. NIs opinion is that measures which impose sanctions on activities and stay in public places

[15] Regulation 6 June 2007 No. 577 on City ordinance of Oslo municipality, Section 2-1, last paragraph, which reads: "In public parks, green areas, recreation areas, on roads and squares in densely built areas, the sleeping outdoors, camping, tenting or similar acts are prohibited without a specific authorization from municipal authorities"[Unoffical translation] The municipalities of Hamar and Drammen have enacted similar local regulations.

[16] Affirmed by the Police Directorate 31 May 2013 [In line with procedures prescribed in the regulations section 9-3].

[17] Reply of NI to public consultation regarding amendments in the City ordinance of Oslo municipality, submitted 15. February 2013.

may be discriminatory as they disproportionately affect persons living in poverty generally and the Eastern European Roma in particular.[18]

In addition to these legislative measures, in September of 2013 the eviction of a group of approximately 100 persons of Roma origin from the perimeters of forest areas around Oslo was authorised by a decision of the Oslo City Court.[19] The Court found, inter alia, no violation of ICESCR Article 11.1 read in conjunction with Article 2.2 on non-discrimination. Noting that Article 11.1 is vaguely formulated, the Court questioned whether it stipulated individual rights that could be enforced by the Courts.[20] It did not matter to the Court that these groups could not access alternative accommodation in Norway, as they were seen as permanently residing in another country. In NIs opinion, such an understanding may be at odds with Article 11.1 in particular its protection against forced eviction, i.e. that "evictions should not result in individuals rendered homeless or vulnerable to violations of other human rights".[21]

Having said this, the central government has taken some proactive steps to accommodate the basic needs of this group. A grant scheme was established in 2013 so that humanitarian organisations could apply for additional funding to ensure emergency shelter and other basic needs (a lump sum of 10 million NOK).[22] However, in light of the restrictive legal steps described above, the funding appears to be insufficient. It is also unclear whether funding to alleviate basic needs will be allocated in the future.

Recommendation:

- The State Party should reconsider the measures to criminalize rough sleeping
- The State party should further strengthen strategies, in cooperation with affected local governments, to provide for the basic needs of the Roma-persons

6.2 Stronger implementation of the Roma children's right to education

According to the Ombudsman for Children only vague estimates exist for how many Roma children of compulsory school age are living in Norway. [23] Estimates vary between 50 and 150 children. In Norway, children have both a right and an obligation to compulsory education.[24]

[18] UN Special rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda, report to the UNGA, 4 August 2011 (A/66/265) [Citing in particular the ICESCR Article 26 on Equality and Non-discrimination]

[19] Oslo City Court [Oslo Byfogdembete) Decision of 4 September 2013, Case no 13-117117TVA-OBYF/1.

[20] Ibid, page 10. Cf. CESCR General Comment No. 9; CESCR Concluding Observations to Canada 22. May 2006, para. 11.

[21] CESCR General Comment No. 7, para. 16.

[22] Revised National Budget 2013

[23] In this context: Roma children as members of one of Norway's national minorities.

[24] See Education Act Section 2-1

Figures from Municipality of Oslo show that Roma children on average were absent from school 54 out of 190 days in 2012/13.[25] The NI and the Ombudsman for Children are concerned about the very high level of absenteeism among Roma children and the consequently obstacles for a successful integration of Roma children and their families into the Norwegian society. Furthermore, the high level of absenteeism affects the children's education and ability to participate in society as well as enjoy other human rights on an equal basis with other children.

The CRC-Committee has, as far back as in 2000, expressed its concern that many Roma children in Norway do not complete the required years of obligatory education, and recommended that Norway explore means of making formal education more accessible to children who travel for a part of the year.26 There were high expectations to the 2009 plan of action to improve living conditions of Roma people with Norwegian nationality in Oslo.[27] However, the action plan was criticised amongst others by the Ombudsman for children for inter alia a lack of a child-sensitive perspective.

According to the Ombudsman for Children there is a pressing need for an evaluation of the 2009 plan of action and likewise a need for a new plan of action for Roma with a strengthened child perspective and with clear objectives for what the Government wants to achieve. Measures to improve the education for Roma children should inter alia include: (a) stable financial support to schools with Roma pupils, (b) systematization of best practices and lessons learned from schools with Roma pupils for improved routines and (c) measures to ensure that schools having accepted home schooling comply with their obligation to ensure that the children are given adequate education.

Recommendation:

- Norway should take necessary steps to ensure the right to education for Roma children, including to evaluate the 2009 action plan for Roma as well as develop a new action plan that would be based on lessons learned, and strengthened child perspective in educational programme.

7. The right to kindergarten and education for minors irrespective of legal residence status

7.1 The right to kindergarten irrespective of legal residence status

[25] Municipality of Oslo July 2013, Letter to The Ombudsman for Children

[26] CRC Concluding Observations to Norway,28 June 2000 paras. 46-47

[27] Norwegian Ministry of Labour, Action plan for improvement of the living conditions of Roma in Oslo, 2009

The right to kindergarten is connected to a person's status as resident of a municipality.[28] This means that asylum seeking children and children without a residence permit does not have statutory right to kindergarten and that they therefore do not have the same rights as other children in this area.

According to a report from Institute for Social Research on children in reception centres, the lack of equal rights leads to different practices between municipalities when it comes to including asylum seeking children.[29]

The Ombudsman for Children has several times highlighted that children living in a reception centre or a care centre are in a vulnerable situation and need to attend kindergarten on equal basis with other children in Norway. The Ombudsman for Children recommends that children is given a statutory right to kindergarten regardless of their legal residence status, and points out that such amendment is necessary to prevent discriminatory practices, and to secure the children's right to education and optimal development, in accordance with CRC Articles 2, 28 and 6 respectively.

Two government-appointed expert panels have recommended that the government extend the right to attend kindergarten to all children.[30] The government initiated a process to do so in 2009, without having followed up on this initiative.

Recommendation:

- Norway should give all children in Norway the same legal right to attend kindergarten irrespective of their legal residence status.

7.2 The right to education for minors irrespective of legal residence status

As regards the right to education, the NI wants to draw the attention to the concluding observation to Norway in 2005, were the Committee expressed concern about the restrictions placed on the access to education of asylum-seeking minors. NI and the Ombudsman for children regret that the relevant legal provisions have not been amended and that the situation remains the same.

According to the Educational Act all children between the age of 6-16 years old (compulsory school age) have the right to primary and lower secondary education irrespective of their

[28] The Act relating to Kindergartens, section 12 a.

[29] Institute for Social Research, ISF report 2011:1 Medfølgende barn i asylmottak – livssituasjon, mestring tiltak, p. 71.

[30] See the Official Norwegian Reports NOU 2010: 7 - *Mangfold og mestring* and NOU 2011: 10 – *I velferdsstatens venterom*

legal residence status.[31] However, adolescent above the age of 16 with an undecided legal (or illegal) residence status, are – unlike Norwegian minors – not legally entitled to education at all.[32] They do not have any legal right to primary, lower secondary or upper secondary education.

NI and the Ombudsman for children are aware of a grant scheme established from which municipalities can apply for funding so that they can provide primary and lower secondary education for asylum-seeking minors who are over compulsory school age. However, this is a possibility for the municipality and not a legal right for the asylum-seeking minor. The grant scheme is used at the discretion of the individual municipality and according to the above-mentioned report from the Institute for Social Research from 2011, there are great disparities in practice between the municipalities when it comes to how the Educational Act is interpreted and how the municipalities facilitate education for asylum-seeking adolescent.[33] NI and the Ombudsman for Children want to emphasise that according to the IESCR Article 13, the State Parties recognize that, with a view to achieving the full realization of the right (for everyone to education):

"a. primary education shall be compulsory and available free to all;

b. secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;"

Attention should further be drawn to the Committees interpretation of the right to education in its General Comment no. 13, where it inter alia states that "[t]he prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination".[34]

It should also be added that according to the CRC, this group of minors is considered children and have the right to education without discrimination.

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[31] *See* Education Act section 2-1 second paragraph: "The right to primary and lower secondary school applies when it is probable that the child will reside in Norway for a period of more than three months. The obligation to attend primary and lower secondary education commences as soon as residence has lasted for three months."

[32] Education Act, section 3-1 and Regulation to the Education Act, section 6-3

[33] ISF report 2011:1, p. 83.

[34] CESCR General Comment No. 13, para. 31.

The Norwegian Government has previously argued that not providing asylum-seeking children or children without a legal residence permit with the right to upper secondary education can be justified since this type of education is not compulsory in Norway.[35] From NIs point of view the right to upper secondary education has to be seen as a fundamental right in a Norwegian context. It is a right provided to all Norwegian adolescent and made use of by the vast majority. It is on this background difficult to see how this differential treatment is justified. This applies even stronger for primary and lower secondary education for children above the age for compulsory education.[36]

Recommendation:

- Norway should give all children at the age of 16-18, irrespective of their legal residence status, a legal right to primary, lower and secondary education.

8. Unaccompanied asylum-seeking minors

8.1 Unaccompanied asylum-seeking minors aged between 15 and 18 and responsibility for providing care

In Norway the Child Welfare Act regulates the responsibility for children without parental care. After years of pressure from NGOs the Parliament in 2007 adopted new regulations to ensure that unaccompanied asylum-seeking minors should, like other children without parental care, be cared for by the Child welfare services.[37] However, these regulations only include children up to the age of 15. The standards of care provided in reception centres for refugee are much lower than the standards required by the Child Welfare Services, particularly as regards the number of staffing per child, staff skills and competences, housing standards and environmental resources.[38] As the progressive realisation of economic, social and cultural rights must be fulfilled without discrimination,[39] NI sees the lack of transfer to the

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[35] *See* CESCR 54th Session, Summary Record 9 May 2005, E/C.12/2005/SR.15, para. 58

[36] See also Government White Paper on Refugee Children (Meld. St. 27 (2011-2012) Barn på flukt), ch. 8.9, and the Official Norwegian Report NOU 2010: 7 *Mangfold og mestring*, both referring to a legal analysis by Professor Søvig, *Barnets rettigheter på barnets premisser – utfordringer i møtet mellom FNs barnekonvensjon og norsk rett, [Eng: Children's Rights on the Children's terms –Challenges concerning the meeting between The UN Convention on the Rights of the Child and Norwegian law]* ' written at the request of the Ministry for Children and Equality, on the relation between the CRC and the national legislation. The analysis by Søvig concludes that upper secondary education in Norway is a basic right that everyone aged 16-18 years are entitled to.

[37] The Child Welfare Services Act, Chapter 5A (Omsorgssentre for mindreårige) section 5A-1

[38] Institute for Social Research, ISF Report 2013:003 Liden, H. et.al (2013): *Levekår i mottak for enslige mindreårige asylsøkere.*

[39] CESCR General Comment no. 3, para 1

child welfare services as a discriminatory practice against one group of particularly vulnerable children in Norway.

Statistics show that Norway in 2012 received 960 unaccompanied asylum-seekers claiming to be below 18 years.[40] Out of these, 164 claimed to be below 15 years and were provided care by the Child Welfare Services (until 30% were regarded as older and moved to reception centers).[41] The comparable figures for 2011 were 858 and 159.[42] Thus, the statistics show that Norway in the said period has received around 700-800 unaccompanied asylum-seeking minors annually claiming to be between 15-18 years. Statistics from the Norwegian Directorate of Immigration show that 73% of these receive status as minors.[43] This means that in practice the number of unaccompanied asylum-seeking minors is limited to around 550 per year. The Government's grounds for not including children between 15-18 year in the responsibility of the Child Welfare Services, are high number of asylum arrivals and costs. However, in light of the annual arrivals of unaccompanied asylum-seeking minors, a justification based on availability of resources appears problematic. NI wants in this regard to draw attention to the CESCR Concluding Observations to Norway in 2010, where the Committee expressed its concern that the "State party has limited the responsibility of the Child Welfare Services to children under the age of 15 leaving older children with reduced assistance".[44] The CESCR recommended on this background that Norway "[e]xpand, as planned, the responsibility of the Child Welfare Services to children aged 15, 16 and 17" and "[c]arefully follow up on these children during their stay in Norway".[45] NI regrets that since the last reporting cycle this group of children is still not provided proper care.

Recommendations:

- Norway should put in place the required measures to ensure that all minors without parental care have the right to equal standard of care.

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[40] Norwegian Directorate for Immigration, Annual report 2012

[41] Norwegian Directorate for Children, Youth and Family Affairs (Bufetat), ref. http://www.bufetat.no/om/statistikk/ema/

[42] Government White paper on Refugee Children (Meld. St. 27 (2011-2012) *Barn på flukt*), tab. 2.1. Bufetat ref. http://www.bufetat.no/om/statistikk/ema/

[43] Government White paper on Refugee Children (Meld. St. 27 (2011-2012) Barn på flukt), fig. 2.11

[44] CRC/C/NOR/CO/4, para. 51

[45] Ibid, para. 52

8.2 Limited residence permit for unaccompanied asylum-seeking minors aged 16 to 18

The Norwegian Immigration opens for limited residence permits for unaccompanied asylum-seeking minors aged 16 to 18.[46] Such limited permits are given if the child is found to have no grounds for protection as a refugee but cannot be returned as minors as it requires a responsible caregiver to receive the child. At the age of 18, the child can be returned to the country of origin without the requirement of tracing the family. The reason for giving these limited permits is migration control. From 2009-April 2013, 160 unaccompanied asylum-seeking minors have been granted restricted residence permits.[47]

Limited residence permits leave the children in limbo situations during a crucial period of adolescence. The uncertainty and inability to plan for the future, combined with insufficient living conditions, lead to critical mental health problems among children with limited permits.[48] NI is deeply concerned about the impact of these temporary residence permits on this vulnerable group of children. NI believes that the need for such limited permits should be questioned, taking into consideration the best interest of the child.

Recommendation:

- Norway should repeal the provision regarding limited residence permits for unaccompanied asylum-seeking minors between 16-18 years due to the harmful effects it has on the child's mental health.

III. Issues relating to the specific provisions of the Covenant

Article 7 - The right to just and favourable conditions of work

9. Gender pay gap

There is a documented wage gap in Norway based on gender inequality. Women have on average a wage equivalent to approximately 86 % of men's wage.[49] NI is aware that measures have been taken by the State, including amendments in the equality law in order to create more transparency in wages whenever discrimination is suspected. However, NI remains

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[46] Immigration Regulations of 15 October 2009 section 8 paragraph 8.

[47] Norwegian Directorate of Immigration 2013, e-mail to Igesund , Government White paper on Refugee Children (Meld.St. 27 (2011-2012) Barn på flukt), tab. 2.6

[48] Institute for Social Research, ISF Report 2013:003 Liden, H. et.al (2013): *Levekår i mottak for enslige mindreårige asylsøkere*. Institutt for Samfunnsforskning, p. 10 and FAFO Report 2010:46 (Silje Sønsterudbråten) *Evaluering av kvalifiserings- og opplæringsopplegget som tilbys enslige mindreårige med begrensede oppholdstillatelse,* p. 75-76, and Margareth Olin's movie *De andre [Eng: Nowhere Home].*

[49] Statistics Norway, 20 March 2013, [Figures from September 2012]

concerned, as also expressed by CEDAW, by the deep horizontal segregation in the area of employment and by the persistence of a wage gap, especially for women with higher education.

Recommendations:

- Norway should further strengthen its measures to ensure that women and men receive equal pay for work of equal value, and closely follow each measure to evaluate effect and impact.

Article 11 - The right to an adequate standard of living

10. Ensure adequate and affordable housing, especially for families with children

Although the huge majority in Norway enjoy adequate housing conditions, 150.000 people are considered to be disadvantaged in the Norwegian housing market.[50] This group includes low-income individuals and families, persons with disabilities, migrants, persons with different social problems, as well as homeless persons.

Problems related to housing affordability particularly affect these groups, as the strong increase of housing prices for the past decade is making it financially difficult to acquire and keep a home. Seven per cent of Norwegian households spend over half of their disposable income to cover housing expenses.[51] Amongst European counties, Norway also experiences one of the highest numbers of reported housing-related payment problems per capita.[52]

A new survey of homelessness also shows that about 6,250 people in 2012 were without a home.[53] It is particularly worrying that over 650 children were homeless with their parents in 2012, which is a 70 per cent increase from 2008. It is also estimated that five per cent of the homeless on any night are living in night-shelters or sleeping rough. In this context, it is disturbing that the municipality of Oslo has adopted city ordinances imposing a blanket prohibition on rough sleeping. The prohibition especially targets Eastern European Roma staying temporary in Norway.[54]

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[50] Official Norwegian Report, NOU 2011: 15, *Rom for alle - En sosial boligpolitikk for framtiden* [Eng: Room for Everyone –A social housing policy for the future](Hereinafter cited as *NOU 2011:15*)

[51] M. Langford and J. Nilsen, Å leve er også å bo – Norske boutgifter i et menneskerettslig perspektiv [Eng: To Live is Also to Reside –Norwegian Housing Expences in a human rights perspective], Kritisk Juss 2011 (37) nr. 2.

[52] Ibid.

[53] E. Dyb and K. Johannessen, Bostedsløse i Norge 2012 - en kartlegging[Eng: Homeless People in Norway 2012 –A comprehensive survey], Norwegian Institute for Urban and Regional Research (NIBR) report 2013:5.

[54] See Section 6.1 above on Roma persons staying temporary in Norway.

Moreover, there are around 3,000 households that are using temporary accommodation (e.g. shelters). Presently, a quarter of those households are staying there for over three months.[55] This also applies to families with children. It has also been reported very low standard of temporary accommodation in many municipalities.

The causes of the current problems in the social housing sector are diverse yet intertwined. The surge in house prices over the last decade is partly explained by the failure of the housing stock to match demand in some regions, particular in the large urban areas. The private rental sector provides little relief since is very small and consists mostly of non-professional actors. Moreover, the municipal social housing stock nationwide is about 4 per cent of the total housing stock, which is miniscule by European standards. As a result, the criteria for allocation of social housing are strict and there are long waiting lists. In 2008, the Office of the Auditor General of Norway heavily criticised the Government and municipalities for insufficient implementation of policies to help disadvantaged groups in the housing sector.[56]

In addition, there are continuing concerns about other dimensions concerning the right to housing. Discrimination persists in the private housing market. For example, disadvantaged and ethnic minorities generally pay higher rent than others and experience arbitrary dismissals or rent increases.[57] Segregation also marks the distribution of public housing. In larger cities the concentration of municipal housing and social services in poor neighbourhoods may in the long term contribute to increased segregation and social exclusion. In terms of quality, the physical state of the social housing stock is generally poor, with a large estimated maintenance backlog.

While Norway has set general political goals to ensure adequate housing for all, there are significant shortcomings in the social housing policy area. Since Norway's last report, the Government has adopted some new policies to improve the living situation of disadvantaged persons (e.g., loosened the conditions for housing allowance and increased the absolute level of municipal housing stock). However, the measures have not been sufficiently effective to comprehensively address existing challenges. Instead the situation is that the number of homeless people has remained at a high level over a long period of time, with an increase of homeless children and a very low social housing stock throughout the period and a private housing stock that is being outpaced by population growth in urban areas.

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[55] NOU 2011: 15, p. 95.

[56] Riksrevisjonen, *Riksrevisjonens undersøkelse av tilbudet til de vanskeligste på boligmarkedet*, Dokument 3:8 (2007-2008) [Eng: The Office of the Auditor General of Norway, Investigation into the Policies for Disadvantaged Groups in the Housing Market].

[57] NOU 2011: 15, p. 69.

Despite the State possessing a margin of discretion in this field,[58] the NI seriously questions whether Norway has complied with its obligations to implement the right to adequate housing for disadvantaged groups "as expeditiously and effectively as possible".[59] NI recalls in this regard the CESCRs last Concluding Observations on Norway, recommending that Norway provide housing units in sufficient numbers to cater for the needs of disadvantaged groups and to strengthen measures to deal with the problem of homelessness.[60] Norway is currently devising a new national strategy for social housing. NI expects that the strategy will lead to a comprehensive strengthening of policies in order to ensure that the implementation of the right to housing for disadvantaged groups is effective in practice.

Recommendation:

- Norway should intensify its efforts to ensure affordable and adequate housing to disadvantaged persons with low income, in particular by ensuring an adequate supply of social housing units, and by considering a legally enforceable right to social housing.
- Norway should take immediate measures to ensure that emergency shelters and social housing units meet an adequate standard, especially for families with children.

Article 12 - The right to physical and mental health

11. Municipal health services for children

In accordance with Norwegian law children and youth between the age of 0-20 years old have a right to public health clinic- and school health services and the municipalities have a responsibility to offer these services. NI wants to emphasise that these municipal health services constitute low threshold programs that play a vital role in fulfilling the right to health for children and adolescent.

The services shall make it possible to identify early signs and symptoms of mental disorders and psychosocial illness, such as depression, eating disorders and self-destructive behaviours. Such symptoms may be related to, inter alia, violence, ill-treatment, abuse and neglect, including sexual abuse, and/or bullying or hazing in and outside school.[61] It is therefore of

[58] CESCR General Comment no. 4, paras 12 and 14; Cf. also The Revised Social Charter Article 31 on the Right to Housing; *Austism-Europe v- France*, European Committee on Social Rights, Complaint no. 13/2002, para. 53.
[59] CESCR General Comment no. 3, para. 9. Cf. *FEANTSA v. France*, European Committee on Social Rights, Complaint no. 39/2006.
[60] CESCR Concluding Observations to Norway, 23 June 2005, paras 37-38.
[61] As also stated by the by the CRC Committee in General Comment no. 4, para. 22.

great importance that the Norwegian Government ensures that these children and adolescents are provided with the necessary services.

A well-functioning system of public health clinics and school health services is also essential for other municipal services to function satisfactorily, such as the specialist health services and social and child welfare services.

NI and the Ombudsman for Children are concerned that there is an inadequate level of commitment to these public health clinic- and school health services for children and adolescent. A report from the Directorate of Health on health-clinics and school health services launched in 2010 shows that there is a lack of 1500 positions (public health nurses, physiotherapists and doctors) in these services for the recommended norm to be fulfilled.[62] A survey conducted in 2013 among 1500 public health nurses also reveal that seven out of ten claim they do not have time to perform all tasks prescribed by law and many reported that they have to turn away desperate children seeking assistance and with obvious needs to talk.[63] According to the recommended norm by the Directorate of Health, a public health nurse in the school health services should have maximum 800 pupils per full-time position. The answers in the mentioned survey show that 6 out of 10 of the public health nurses who took part in the survey are responsible for more than 800 pupils, and that 35 per cent are responsible for more than 1000 pupils.

NI and the Ombudsman for Children welcomes information that the central budget for 2014 will provide NOK 180 million to strengthen the system of public health clinics and school health services in the years to come. However, there are still reasons for concern as estimates suggest that NOK 510-893 million will be required to reach the recommended level for these services.[64] In view of the autonomy of municipalities, it is also a concern that the mentioned funding from the central budget to the municipality may not be allocated for the improvement of the said health services.

Recommendation:

- Norway should strengthen the public health clinic- and school health services for children and adolescent, and evaluate whether the situation improve over the next four years.

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[62] Directorate for Health, TNS Gallup, IS-1798 *Utviklingsstrategi for helsestasjons- og skolehelsetjenesten* [Eng: Development Strategy for Public Health Centres and School Medical Services], 2010, p. 8 (herinafter cited as IS-1798)

[63] Cf. the journal Sykepleien no. 2, 2013, p. 16, published by The Norwegian Nurses Organisation (NSF).

[64] IS-1798,p.10

12. Detrimental health effects when using police detention cells, especially for juveniles

The excessive use of police detention cells in Norway has led to criticism from international bodies such as the European Committee for the Prevention of Torture (CPT), the HRC, the CAT and the CRC. In practice the use of police cells is imposed on detained persons in the initial stage of prosecution and often last for several days.[65] These cells were originally designed to safely confine uncontrollable or intoxicated persons, and the cells often have no windows and no furnishing, only a mattress and a hole in the floor as toilet. Furthermore, as the detainee generally has very limited contact with the outside world, the regime amounts to a severe form of de facto solitary confinement.

The indiscriminate and often prolonged use of police cells is an issue of serious concern, especially given the well-documented harmful effects solitary confinement may have on detained persons' mental and physical health.[66] Well-documented detrimental health effects of solitary confinement range from depression, anxiety and paranoia to hallucinations and psychotic reactions. NI finds it particularly disturbing that juveniles continue to be subjected to such a severe form of solitary confinement.

Because juveniles are still developing physically and mentally, they are even more vulnerable than adults to invasive measures like solitary confinement.[67] Specifically, juveniles are less capable than adults to cope with the stress and anxiety caused by these harsh conditions. [68] According to the Ombudsman for Children, several minors have reported their stay in police cells as extremely exhausting,[69] with inadequate follow-up from the child welfare service and

[65]While, according to section 3-1 of the Police Cell Regulations, a prisoner must be transferred from a police cell to a prison cell within two days of their arrest, the provision allows for exceptions where this is "impossible for practical reasons". In practice, this has led to a routine circumvention of the 48-hour rule due to lack of prison cells.

[66] See inter alia, UN Special Rapporteur on Torture, A/66/268, 5. August 2011; P. S. Smith: *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*; i: Michael Tonry (red.): Crime and Justice, vol. 34, 2006;

[67] Cf. *inter alia* T.O. Sørland and E.Kjelsberg, *Mental helse hos varetektsfengslede tenåringsgutter* [Eng: The Mental Health of Teenage Boys Held in Custody], Tidsskrift for Den norske legeforening, no. 23, 2009; 129:2472-5.

[68] Swedish Ombudsman for Children, *Från Insidan – barn och ungdomar om tillvaron i arrest og häkte* [Eng: From the Inside – Children and juveniles on Existence in Police Detention and Remand], p. 33-34.

[69] Letter from the Ombudsman for Children to the National Police Directorate, *Oppfølging av barn i politiarrest* [Eng: Follow-up of Juveniles in Police Detention Cells], dated 26. January 2012.

health care services.[70] The Ombudsman also finds that there is a lack of general and formalised routines on how to handle minors in police custody.

According to Norwegian law, "persons under 18 years of age should not be apprehended unless it is especially necessary".[71] However, in practice apprehension and arrest of juveniles occur more frequent than the strict conditions suggest. In 2010, there were approximately 1600 incidents of minors being detained in police custody cells.[72] Moreover, juveniles are in some cases detained for periods exceeding the main time limit. In 2011, minors were detained for more than 48 hours in 40 instances.[73]

However, there is a general lack of reliable statistics on the use of police cells both generally and in relation to juveniles. Thus it is uncertain exactly how many juveniles that are being detained in police cells every year, how long they are being held and under what conditions. The Norwegian Government has initiated a process both to improve the statistics and to improve the conditions for minors held in police detention cells, but the process has been protracted. The Government has also recently imposed a time limit of 24-hours regarding the use of police cells for juveniles.[74] Still NI remains concerned about the practical implementation of this time limit in the police districts.

NI takes the view that juveniles should not be placed in police detention cells, as it may be highly detrimental to the mental health of juveniles. Indeed, the UN Special Rapporteur on Torture has recently recommended that states abolish the practice of imposing solitary confinement on juveniles,[75] and key provisions enumerated in the CRC impose very strict requirement for depriving children of their liberty.[76]

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[70] Ombudsman for Children, Supplementary Report to the UN Committee on the Rights of the Child, p.24.

[71] The Criminal Procedure Act, section 174.

[72] Law proposition to parliament Prop. 135 L (2010–2011), p. 17. According to the report, around 1000 of these minors were detained in accordance with the Criminal Procedures Act, while the rest were detained on other grounds, e.g. for purposes of control/care. Some minors may have been arrested on multiple occasions.

[73] Police Directorate, *Oversittere i politiarrest* [Eng: Overstayers in Police Detention Cells], Statistical Memo 1/2012, p. 4. [These figures do not include cases from Oslo Police District].

[74] See amendment to Police regulations § 3-1, second sentence, amended by regulation 21 June 2013 no.710.

[75] UN Special Rapporteur on Torture, A/66/268, 5. August 2011.

[76] CRC 37 (b), 39 and 40 of the CRC, taking into account the CRC Committee's general comment No. 10, as well as the Beijing Rules, the Riyadh Guidelines and the Havana Rules. Cf. also CRC Concluding Observations on Norway, 3 March 2010, para. 57-58.

Recommendation:

- The State Party should stop the extensive use of police detention cells to ensure that it is a measure of last resort and for the shortest period of time possible. Juveniles should not be placed in police detention cells.
- The State Party should develop clear and foreseeable routines for treatment of juveniles in police cells and ensure that such routines are implemented in practice
- The State party should compile adequate statistics in all police districts on the number of juveniles in police cells and the duration of their stay

13. The right to health for prisoners

13.1 Lack of adequate mental health care for prisoners

Pursuant to Norwegian national legislation, persons suffering from a serious mental illness should not be imprisoned.[77] Instead they shall receive treatment in an appropriate psychiatric unit or hospital. Yet, it remains a reality that many prisoners in Norwegian prisons have serious mental health problems.[78] Furthermore, according to Norwegian law, prisoners have the same patient rights as the general population.

However, the functioning and quality of the psychiatric health care services for prisoners do not appear to be satisfactory.[79] In a mapping survey made in 2009, it was found that 80 - 95 prisoners did not receive adequate mental health care.[80] The Norwegian Prison and Probation Officers Union have voiced their concern that prisoners suffering from serious mental illness do not receive adequate treatment.[81]

In particular, the NI would like to highlight the following issues of concern: a) situations where prisoners with serious mental health problems are not transferred to a psychiatric in-patient ward; b) situations where prisoners with other mental health problems do not receive adequate mental health care in prison.

The main reason for problems with having seriously mentally ill persons transferred is an insufficient number of beds in psychiatric in-patient wards to accommodate the needs of

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[77] Criminal Procedure Act, Section 459.

[78] P. Hartvig, *Alvorlig sinnslidende i fengsel – noe må gjøres* [Eng: severely mentally ill patients – something must be done], Tidsskrift for Den norske legeforening, no.7, 2011: 131.

[79] *See inter alia* CPT/Inf (2011) 33, para.70.

[80] Consultation – Report from a Working Group on the establishment of Resource Units for Prison Inmates with Mental Disorders and Serious Behavioral Disorders, 22 December 2009, p. 19.

[81] NTB, Fengselsbetjenter ber om hjelp til psykisk syke fanger, Tønsberg blad, 13 September 2012.

disruptive/dangerous mentally ill prisoners. Unfortunately, the tendency the last years, both in general psychiatry and in security psychiatry, has been to downscale in-patient beds for prisoners. As a consequence, prisoners often receive emergency in-patient treatment only and are sent back to prison with the assumption that they will receive adequate mental health care there.

The current prison health service is poorly staffed and organised; the prisoner may therefore not receive adequate mental health care in prison. In the majority of the prisons, mental health care is provided as external health care services that require close co-operation between the prison health services, the specialised health services and the Correctional Services. Yet, the practice shows that in many cases the prisoners risk not receiving adequate treatment due to shortage of resource or lack of co-ordination between the health care services and the Correctional Services. Researchers as well as organisations providing legal aid in prisons experience that mentally disoriented prisoners may be subjected to solitary confinement in prison for safety reasons resulting from an absence of other alternatives.[82] NI finds this extremely disturbing due to the damaging effects solitary confinement may have on already vulnerable inmates.[83]

The NI underlines that the State party is under an immediate obligation to ensure that the right to health will be exercised without discrimination of any kind.[84] While this is formally so according to Norwegian law, it does not appear to be the case in practice. In the NIs opinion, the downscaling of beds in security-psychiatry is particularly serious.[85]

Recommendations:

- The State Party should take immediate steps to ensure that the capacity of in-patient psychiatric wards is strengthened so as to enable these institutions to accommodate prisoners with serious mental illnesses
- The State Party should strengthen efforts to ensure that prisoners receive adequate and individual mental health care in prison
- The State Party should abolish the use of solitary confinement for mentally ill prisoners

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[82] M. Rua, *Hva gjør fengselsleger? En institusjonell etnografi om isolasjon og helse* [Eng: What does Physicians in Prison Do? –An Institutional Ethnography on Isolation and Health], Department of Criminology and Sociology of Law 2012; Alternative report to the UN CESCR submitted by the NGO-forum, April 2013, p. 56.

[83] NI, Use of Solitary Confinement in Prison – Norwegian Law and Practice in a Human Rights Perspective, Thematic Report 2012, p. 68.

[84] ICESCR article 12 on the right to health and article 2(2) on non-discrimination.

[85] CESCR General Comment no. 14, para. 30.

13.2 Need for clear procedures for determining placement of prisoners with serious mental health problems

The NI notes that the Government has decided not to establish an independent commission with the authority to decide on the admission of mentally ill prisoners to psychiatric hospitals. Although the State in its recent report to the Committee against Torture suggested that the Supervisory Council and the Parliamentary Ombudsman could be utilised for these purposes,[86] the NI considers that these institutions has neither mandate, nor medical expertise to handle such issues.

The Directorate of Health has recently published a revised set of guidelines for health services to prisoners.[87] The purpose of the guidelines is, inter alia, to clarify the division of responsibility between municipal services, county administrators, the specialist health services and the Correctional Services.

According to the guidelines, in the event of conflict between the prison director and the prison health care services or the specialised health care services, "the prison doctor may report this to the doctor at the County Governor's Office and request a special consideration. If this office agrees with the prison doctor's assessment and the prison director still upholds the decision, the case is to be transferred to the Correctional Services regional level for a final decision. This regional office's decision cannot be appealed."[88]

Firstly, the NI is concerned about the non-mandatory terms in which these guidelines are coined. In the rare cases where conflicts do occur, it is very important to underline that the responsible authority do not have a choice in bringing the matter to the attention of a superior authority – it is a duty. Secondly, the NI questions whether the responsibility is placed where it belongs. The guidelines state that "such a procedure will be in accordance with the European Prison Rules". However, according to the EPR rule 45.2, the described procedure is the following: "If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority." According to these rules, the responsibility to report to a higher authority inheres in the prison director. NIs third concern is that these guidelines do not provide precise information as to how possible conflicts should be solved practically by this mechanism, e.g.

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[86] Norway's State report to the UN Committee Against Torture, CAT/C/NOR/6-7, para. 207.

[87] Health Directorate, IS-1971, Veileder for helse- og omsorgstjenester til innsatte i fengsel [Eng: A Guide to Health Care Services for Prison Inmates], section 2.9.1.

[88] [Our translation].

that the guidelines does not confer on anyone any clear duty to establish or implement new routines, or to provide training.

Recommendations:

- The State Party should revise the practical guidelines as to how possible conflicts between the Correctional Services and the health-care services may be solved
- The State Party should secure that existing uncertainties and lack of co-ordination between the Correctional Services and health care authorities do not negatively affect the prisoners' fundamental right to mental health care

14. Use of coercion against persons with mental disabilities

The NI is concerned about the high frequency of the use of coercion in mental health care in Norway. More than ten years ago the Norwegian Government officially stated that it was a goal to obtain a substantial reduction of the use of coercion in the mental health care. Nevertheless, the numbers remains high compared to other European countries. The NI believes that this is a consequence of institutional practice, in combination with an inadequate legal framework regulating the application of coercion.

A number of authoritative reports as well as official statistics highlight the various challenges within the Norwegian mental health care system.[89] More specifically, the reports reveal huge differences in the use of coercion amongst mental health institutions. It is evident that some psychiatric wards use coercion in an arbitrary and disproportionate way. That being said, the reports also indicate that there is a substantial potential to reduce levels of coercion in all institutions. In light of this, the Government should intensify efforts to reduce the use of coercion in mental health care. Specifically, authorities should strengthen its internal control of psychiatric wards with the most frequent use of coercion. Such scrutiny should be informed by best practices from other institutions.

In NI's opinion, the current legislation is not providing adequate legal protection for individuals with mental disabilities. According to the Mental Health Care Act, compulsory admission and treatment require that the patient is diagnosed with a "serious mental illness" and that at least one of two additional criteria are met: the possibility of cure or considerable

[89] The Directorate of Health, IS-1861, Bruk av tvang i psykisk helsevern for voksne 2009 [Eng: Use of Coercion in Mental Health Care for Adults 2009], December 2010; Bjørkly et al , Innsamling og analyse av data om bruk av tvangsmidler og vedtak om skjerming [Eng: Compilation and Analysis of Data About Coercive Measures and Decisions on Seclusion], Centre for forensic psychiatry, 2011; T.Husum et al (2010), A cross-sectional prospective study of seclusion, restraint and involuntary medication in acute psychiatric wards: patient, staff and ward characteristics, BMC Health Services Research, 10:89.

improvement will be lost (the "treatment criterion") or; the patient represents a considerable danger to himself or to others (the "danger criterion"). According to national statistics, the "treatment criterion" is being used as the sole justification in more than 50 % of the compulsory admissions. This criterion opens up for discretionary powers to such an extent that it might lead to arbitrary and excessive practice.

Furthermore, by explicitly linking the existence of mental illness to criterions of danger and treatment, the legislative framework singles out a particular group of disabled people as particularly dangerous or in particular need of forced treatment. Several elements of this framework may be at odds with the prohibition of discrimination, including the UN Convention on the Rights of Persons with Disabilities (CRPD).[90] For these reasons, the NI together with many experts and stakeholders, have argued for a thorough review of the Mental Health Care Act and its provisions.

In May 2010 a committee was appointed by the government to review the provisions in the Mental Health Act. The committee's report was submitted to the Government in June 2011. The report presented legislative proposals meant to strengthen legal protection by introducing stricter procedural requirements for decisions on coercion. This included a new system for independent judicial review, as recommended by the CESCR.[91] The Government held a public consultation on the committee's report ending at the beginning of 2012. However, it is stated in the Government's Draft Budget Proposition for 2013 that the Ministry of Health and Care Services has decided not to amend the existing legal framework promptly.[92] The justification is that the Ministry wants to postpone consideration of eventual legislative changes for another three years; as it first wants to consider the effects of a recently launched national strategy on increased voluntariness in the mental health care services.

While the NI welcomes the Government's initiative we are not convinced that such a national strategy alone can lead to a substantial reduction in the use of coercion in the mental health care services. After all, many action plans and strategies have over the years been implemented to address the problem, to no avail. The NI is of the opinion that the Government has to improve both current practices and the existing legislation in order to achieve the goal of a substantial reduction in the use of coercion in mental health care.

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[90] ICESCR Article 12 read in conjunction with article 2(2); see also CESCR General Comment no. 14, paras. 8,18, 26 and 40.

[91] CESCR Concluding Observations to Norway, para. 42.

[92] Draft Resolution Prop. 1 S (2012-2013) p. 129.

Recommendations:

- The State Party should take immediate steps to improve the situation in psychiatric wards with the most frequent use of coercion
- The State Party should move forward with review of the national legislation to ensure that persons with mental disabilities have adequate legal protection against disproportionate use of coercion and from discrimination based on mental disability

15. Detainees at the Police Immigration Detention Centre at Trandum and access to psychological/psychiatric assistance

NI is concerned that despite the assurances given by the Norwegian authorities in their response to the CPT report on the 2005 visit to the Police Immigration Detention Centre at Trandum,[93] it was revealed by the CPT delegation in May 2011 that the Centre was no longer visited by a part-time psychologist.[94] The CPT was also informed that there was often long waiting periods before consultations with a psychiatrist could be arranged except in emergencies. The CPT recommended on this background that the Norwegian authorities "take urgent steps to [. . .] ensure appropriate psychological/psychiatric assistance to foreign nationals".[95] Likewise did CERD in its concluding observations in 2011 recommend that the State party "provide the necessary mental and psychological health services by specially trained qualified staff".[96]

NI is, against this background, concerned by the response of the Government of Norway to the CERD in September 2013 stating that "[p]reviously, the medical centre with which the detention centre has an agreement had its own psychologist, but this arrangement was discontinued because it proved to be unnecessary".[97]

NI is furthermore not reassured by the scant annual reports from the supervisory board for the Police Immigration Detention Centre. With regard to health, the reports have over the last three years merely stated that "the supervisory board has further looked at what is being offered to the internees regarding health cf Regulation § 5, and have not found anything to comment. Some of the internees have approached the supervisory board with information in

[93] Response of the Norwegian Government to the CPT, 2006, para. 37.
[94] CPT Report on the Visit to Norway, 2011, para. 33.
[95] CPT Report on the Visit to Norway, 2011, para. 33.
[96] CERD Concluding Observations to Norway, 8 April 2011, para. 13
[97] Norway's Follow-up on CERD Concluding Observations to the 19./20. Report, 2013, para. 35.

relation to their health and that they feel they do not receive adequate supervision and treatment. These matters have been raised with the management and the health services."[98]

NI wants to draw the attention to the CESCRs interpretation of the right to health stating that health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination of any of the prohibited grounds. NI underlines that the notion of accessibility also relates to the quality of the health services in terms of being medically appropriate.[99]

Attention should also be drawn to the UNHCR guidelines on detention of asylum-seekers stating inter alia that "[a]ppropriate medical treatment must be provided where needed, including psychological counselling [. . .]. A medical and mental health examination should be offered to detainees as promptly as possible after arrival, and conducted by competent medical professionals. While in detention, detainees should receive periodic assessments of their physical and mental well-being. Many detainees suffer psychological and physical effects as a result of their detention, and thus periodic assessments should also be undertaken even where they presented no such symptoms upon arrival. Where medical or mental health concerns are presented or develop in detention, those affected need to be provided with appropriate care and treatment, including consideration for release."[100]

NI is particularly concerned with regard to the medical examination in relation to the use of coercive measures (the use of security cells, placement in a separate ward and segregation from other residents). According to lawyers with clients at Trandum with whom NI has been in touch with, there is no routine for the use of psychologists or psychiatrists in the medical evaluation of the detainee at this stage. According to media and the mentioned lawyers several persons who have been restricted at Trandum have a medical history, including suicide attempts and self-inflicted harm. NI wants to emphasize that the use of coercive measures in general, and security cells in particular, are highly intrusive measures which may have detrimental health effects on the detainees concerned. Apart from limiting the use of such measures to exceptional cases only, as a last resort and for a shortest possible time, the use also has to be strictly monitored by appropriate health-care staff. Particular vigilance is required when the detainee shows signs of mental health problems. NI holds that the use of coercive measures should be strictly prohibited if a detainee is suicidal or suffers from a

[98] Annual reports for 2012, 2011 and 2010, by The supervisory board for the Police Immigration Detention Centre at Trandum, p. 7, p. 7 and p. 6 respectively.

[99] CESCR General Comment no. 14, para. 12.

[100] UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline 8. Conditions of detention must be humane and dignified, para. 48(vi).

mental illness. However, this requires an adequate medical examination as well as appropriate medical supervision.

Recommendation:

- Norway should ensure proper documentation and reporting of the mental health challenges at Trandum Detention Centre
- Norway should ensure appropriate psychological/psychiatric assistance to detainees at Trandum Detention Centre, including in relation to the use of coercive measures

16. Irregular migrants and access to adequate health care

Irregular migrants is one of the most vulnerable groups in the Norwegian society. Health practitioners have for many years voiced grave concern over the very poor health state of many of these individuals, including especially mental health.[101] However they are not ensured necessary health care by the State party.

In 2011 the Ministry of Health and Care Services approved a regulation which severely limits access to necessary health care for persons without legal stay in Norway,[102] despite protests from nearly all stakeholders in the health sector, including the Norwegian Medical Association.

According to the regulations, irregular migrants are only entitled to emergency health care services and "help that is completely necessary and cannot be deferred without risk of imminent death, permanent and permanent severe functional impairment, serious injury or severe pain".[103] The latter legal category only encompasses medical conditions that are seen as necessary to treat within a timeframe of three weeks.[104] The timeframe is set based on the authorities' assumption that irregular migrants will leave the country within those three weeks. As a rule, irregular migrants have no right to palliative or rehabilitative treatment.

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[101] The Health Centre for Undocumented Migrants, run by the Oslo Red Cross and the Church City Mission, offers medical consultations and provides basic health care free of charge to irregular migrants. The centre has expressed grave concern that many patients with complex and serious conditions; such as post-traumatic stress disorder, psychosis and heavy depressions are not ensured specialised public health care.

[102] Regulation No. 1255 of December 16, 2011 on the Right to Health and Social Services for Persons Without Permanent Residence in Norway.

[103] *See ibid* paragraph 5 a) [our translation].

[104] This follows from a circular on the implementation of the regulation*: Rundskriv 1-5/2011 om Helsehjelp til personer uten fast opphold i riket og personer uten lovlig opphold* [Eng: Circular 1-5/2011 concerning Health care services for persons without Permanent Residence in the Realm and Persons without Legal Stay].

Moreover, in a circular the authorities have provided a table with guidelines on the medical conditions that normally meet the strict legal requirements in the regulations, as well as estimates on how fast these conditions should be treated. Examples include terminal-stage cancer (2 weeks), life-threatening heart attack (0-2 weeks), severe depression with risk of suicide (days) and third degree burns (2 weeks).[105] Doctors NI have consulted, found the guidelines arbitrary and raised doubt as to whether anyone with a medical background was consulted in the decision-making process. Another worry is that the regulations have created confusion for public health care practitioners as to exactly what type of treatment irregular migrants are entitled to.[106]

NI is deeply concerned about the consequences of limiting necessary health services for this vulnerable group. In light of the CESCRs established practice, all persons, including irregular migrants, have the right to "preventive, curative, and palliative" health services in accordance with ICESCR article 12.[107] The UN Special rapporteurs on Health and on Migrants rights, as well as the UN Committee on Racial Discrimination have expressed similar views.[108]

The aforementioned restrictions on basic health services are based on the irregular status of the migrants, and as such appear to constitute a violation of ICESCR Article 12, both alone,[109] and read in conjunction with the prohibition on discrimination in Article 2.2. Decisions on whether or not to provide health services should be based on medical opinions, not the legality of stay. The denial of necessary health care services must not be used as a deterrent measure.

Children living in an irregular situation have a more complete set of health rights than adults. Yet they do not have the right to a GP ["fastlege"] on an equal basis with other children in Norway. This limitation may be at odds with the CRC article 24, read in conjunction with the prohibition on discrimination in CRC article 2. Indeed, the CRC-committee has previously stated in its concluding observations to Norway that children "whose presence is not in line

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[105] *See* Appendix 1 in the Alternative report to CESCR by the NGO-forum for Human Rights, April 2013.

[106] Media reported the case of a nine month's pregnant women that was dismissed at the hospital doors, another was charged 17.000 NOK after a labour [Dagsavisen 26. November 2011, Papirløs fødsel]. Doctors have also refused to perform abortion because a women staying irregularly could not pay [Aftenposten 13. January 2012, Papirløs ble nektet abort ved Ullevål].

[107] CESCR General Comment No. 14, para. 34 and 43 a).

[108] UN Special rapporteur on Health A/HRC/4/28/Add. 2, paras. 72-75; UN Special rapporteur on migrants rights, A/HRC/17/33, paras. 34-40; UN CERD General Recommendation no. 30 Discrimination against Non-Citizens, para. 36.

[109] *See* CESCR General Comment No. 3 The nature of States parties obligations (1990), para. 10; CESCR General Comment no. 14, para. 43.

with legal requirements" have the right to health care services on an equal basis with other children.[110] Children in an irregular situation should receive health services on an equal basis with other children, including the right to a GP.

Another matter of grave concern is that no financing-scheme exists to ensure that irregular migrants have access to health care. Because they are not members of the National insurance scheme, irregular migrants have to pay the full cost of the already very limited health care services they are entitled to by law (except for emergency health care). As irregular migrants are not permitted to work, they cannot afford to pay the full cost of health treatment and medication. NI wants in this regard to draw the attention to the CESCRs interpretation of the right to health, stating that health facilities, goods and services have to be accessible to everyone without discrimination, including economic accessible or affordable.[111]

Recommendations:

- The state party must re-evaluate its health care regulations depriving irregular migrants of basic health services
- The state party must ensure that children in an irregular situation receive health services on an equal basis with other children
- The state party must also set up an efficient refunding-scheme to ensure that necessary health services to irregular migrants are accessible in practice
- The state party should ensure that the health practitioners have sufficient knowledge of the legal health rights of irregular migrants

Article 15 - Cultural rights

17. Teaching materials on the Sami population

Sami is the indigenous population in Norway. Teaching in schools is very important for upholding the culture. However the teaching materials regarding the Sami population are reportedly outdated and lack a fair, accurate and informative portrayal of the society and culture of this indigenous people as required in ILO convention 169 Article 31[112]. NI is, inter

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[110] CRC Concluding Observations to Norway 28 June 2000, para. 20-21; *see also* CRC Concluding Observations to Sweden (CRC/C/SWE/CO/4), para. 61 and CRC General Comment No. 6, para. 12.

[111] CESCR General Comment no. 14, para. 43(a) and para.12(b)(iii).

[112] H.L. Khosravi, FNs barnekonvensjon artikkel 29 (1) om formålet med opplæring: En rettssosiologisk studie om hva barn lærer om det samiske folk [Eng: The UN Convention on the Rights of the Child Article 29(1) About the Purpose of Education: A legal-sociological study on what children learn about the sami people], Ph.D. Universty of Oslo, 2011; UN.

alia, concerned over the lack of adequate information in school curricula on the assimilation policy towards the Sami and the movement fighting for Sami rights.[113]

Recommendation:

- Norway should involve the Sami population in a process to review all teaching materials on the Sami population to make sure they are up to date and non-biased.

18.Need for efforts to protect and promote the Kven language

While measures have been taken to revitalise the Kven language, the situation is still precarious and further pro-active steps are needed to encourage its use and development.[114] There is a lack of qualified teachers speaking the Kven language, reportedly at all levels. Furthermore, the position of the Kven language in broadcasting and literature is limited.

Recommendation:

- Norway should strengthen efforts to protect and promote the Kven language, in particular through improving the situation of the language at all appropriate levels of education.

E/C 19/2013/8 IV.C.44, Study on the right to participation of indigenous youth in the Nordic countries in decision-making processes.

[113] NI' Statement to the UN Human Rights Council regarding the report of the UN Special Rapporteur on Indigenous Peoples on the Situation of the Sami people in Norway, Sweden and Finland, 20 September 2011.

[114] *See* Committee of Experts of the European Charter for Regional or Minority Languages, findings and proposals for recommendations to Norway, CM (2012) 143, 25. October 2012 and Resolution CM/ResCMN (2012)11 on the implementation of the Framework Convention for the Protection of National Minorities by Norway, adopted by the Committee of Ministers 4 July 2012.

ANNEX I

Convention on the Rights of Persons with Disabilities

New York, 13 December 2006

Norway

Declarations:

"Article 12

Norway recognises that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Norway also recognizes its obligations to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. Furthermore, Norway declares its understanding that the Convention allows for the withdrawal of legal capacity or support in exercising legal capacity, and/or compulsory guardianship, in cases where such measures are necessary, as a last resort and subject to safeguards.

Articles 14 and 25

Norway recognises that all persons with disabilities enjoy the right to liberty and security of person, and a right to respect for physical and mental integrity on an equal basis with others. Furthermore, Norway declares its understanding that the Convention allows for compulsory care or treatment of persons, including measures to treat mental illnesses, when circumstances render treatment of this kind necessary as a last resort, and the treatment is subject to legal safeguards."

Cf. the United Nations Treaty Collection list of Reservations and Declarations, Norway