Norges nasjonale institusjon
for menneskerettigheter

UN Committee on Torture
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Supplementary information from the Norwegian National Human Rights Institution to the UN Committee on Torture in relation to the hearing of the 8th periodic report of Norway on 24 – 25 April 2018

Reference is made to the Committee's invitation to provide country-specific information prior to the consideration of Norway's eighth periodic report at the Committee's 63rd session.

The Norwegian National Human Rights Institution (NHRI) was established 1 July 2015 as an independent institution under new legislation adopted by Parliament. The National Institution has a specific mandate to protect and promote international human rights in Norway, as well as to monitor how the authorities respect their international human rights obligations. Submitting supplementary reports to international human rights treaty monitoring bodies is an essential tool for an NHRI to fulfil its mandate.

In March 2017, we were granted A-status by GANHRI, thus recognizing that NHRI is fully compliant with the UN Paris-Principles.

This report has been prepared in consultation with the Norwegian Parliamentary Ombudsman, the Equality and Anti-Discrimination Ombudsman and the Ombudsman for Children. The Ombudsman for Children has also provided written inputs on issues of particular relevance for children. The Norwegian Parliamentary Ombudsman is submitting a separate report to the Committee.

We hereby take the opportunity to draw your attention to the following issues which we suggest that the Committee address in its deliberations with and recommendations to Norway. Our submission does not, however, reflect all relevant human rights challenges in Norway within the scope of the CAT.

Yours sincerely
On behalf of the Norwegian National Human Rights Institution

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This letter is electronically approved and valid without signature

Contents

1. Police custody, pre-trial detention and imprisonment

1.1. Remand in police custody for more than 48 hours

Reference is made to LOIPR para. 6 and State Report paras. 15-21.

The instances of individuals being held in police custody for more than 48 hours have been significantly reduced in recent years. In 2016, there were 945 cases in which individuals were held in police custody for more than 48 hours. In the first eight months of 2017, there were 446 cases, compared to 582 cases in the first eight months of 2016. Although this suggests a positive development, concerns remain that in practice the current level still appears relatively high.

Suggested recommendation:

- The State should continue and intensify efforts to reduce occurrences of persons being held in police custody for more than 48 hours.

1.2. Juveniles in police custody

Reference is made to LOIPR para 6 and the State Report paras. 22-25

It is positive that the number of children in police custody has decreased in recent years and that annual statistics on children in custody have been made available. Nevertheless, in 2016, children were placed in police cells on 343 occasions. Thirty-four children were detained more than 24 hours without court hearing, despite the Criminal Procedure Act's provision that minors must be presented before a court as soon as possible, and at latest, the day after the arrest.[1]

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

Suggested recommendation:

- The State Party should promote alternative measures to police detention and to police cells when children are detained by the police
- Development of new national instructions on police detention with specific rules regarding detention of minors should be prioritized.

[1] The National Police Directorate (2016) – Report to the Ministry and Public Security on detention figures, overstayers and children in detention in 2016.

1.3. Isolation in police custody

Reference is made to LOIPR para. 6 and State Report paras. 15-21.

In police custody facilities (police custody cells), isolation is used systematically for all detainees, because the custody facilities are normally designed so that detainees have no contact with each other. This means that, in many cases, detainees are placed in isolation without this being deemed necessary for reasons relating to the investigation.

Suggested recommendations:

- The police must always assess whether it is necessary to isolate an individual detainee or not.
- If there is no need for isolation, the individual detainee should be given access to the company of others and to receive visitors. To facilitate the company of others and visits, a communal room should be established in all police custody facilities.

1.4. Isolation in pre-trial detention

Reference is made to LOIPR para. 7.

In cases where a person is remanded in custody by the courts on the grounds that there is a risk of evidence being interfered with, the courts can also decide that the detainee shall be held in partial or complete isolation. Partial isolation, where the detainee shall be excluded from the company of other specified prisoners, may be necessary if several people are remanded in custody in the same case. This makes it possible to prevent contact between them. Complete isolation, exclusion from the company of all prisoners, can be used if there is an imminent risk that the detainee will interfere with evidence by removing clues or influencing witnesses or accomplices if he/she is not held in isolation.

The number of detainees in full isolation in Norway remains high. During the period 2003-2014 the number of isolations in pre-trial detention was from 400 to 580 per year. There were also examples where detainees had serious mental illnesses without receiving adequate mental health assistance.

The current wording of the Act allows for a high degree of discretionary assessment. Although the threshold for violation of the prohibition on inhuman and degrading treatment is high, the wording of the Act opens for excessive use of isolation, which in extreme cases may violate the convention. Norway has, for a long time, been subject to persistent criticism from human rights monitoring bodies for its use of isolation

Suggested recommendation:

- The State Party should review its practice to ensure that isolation is not used unless absolutely necessary, inter alia to introduce alternative and less intrusive measures to secure the integrity of ongoing investigations.

1.5. Solitary confinement in prison

Reference is made to LOIPR para. 7 (a-d) and State Report para. 26-36.

In March 2017, the Government enacted revised guidelines laying down detailed criteria on the use of solitary confinement, or in Norwegian law, exclusion of prisoners from the company of other prisoners. The guidelines contribute towards ensuring that exclusions are in accordance with law and the principle of proportionality. A major issue has been the relatively high number of exclusions due to building conditions and staff shortages. The guidelines set forth that exclusions on such grounds are only allowed in "acute" situations, and that enduring issues relating to infrastructure and staffing do not constitute acceptable grounds for exclusion. Hence, there is an expectation that the new guidelines will contribute to reducing the number of instances of exclusion.

Nevertheless, so far, this does not appear to be the case. In 2016, the Correctional services registered 3,066 full exclusions and 958 partial exclusions. In 2017 there were registered 4 550 full exclusions and 1 833 partial exclusions. Thus, contrary to the general expectation due to stricter rules, the registered cases of exclusions have increased significantly. Although the cause of the increase is unclear, it may be an indication that the new guidelines have not been adequately implemented in practice, rendering exclusion of prisoners an enduring issue of concern.

Suggested recommendation:

- The State should make necessary efforts to effectively implement the revised guidelines on exclusion, enacted in March 2017, and ensure that prisoners are only excluded insofar as it is in accordance with law and the principle of proportionality.

1.6. Isolation of juveniles in prison

Reference is made to LOIPR para. 7 b-c, State report paras. 30-31

It is positive that the Norwegian parliament in 2012 passed amendments to the Execution of Sentences Act, so that isolation could no longer be used as a disciplinary measure against minors, and that isolation as a preventative measure must be limited to a maximum of seven days. However, the particular provision that limits the exclusion of minors as a preventative measure to a maximum of seven days, has not yet entered into force (Act article 37, para. 4)

Suggested recommendation:

- The State Party should enact the provision in the Execution of Sentences Act which limits the isolation of minors to maximum seven days.

2. Violence against women

2.1. Legal definition of rape in Penal Code

The general provision on criminal liability for rape is set out in section 291 of the Norwegian Penal Code. The provision does not as such prescribe criminal liability for sexual activity without consent. It does, however, comprise typical situations where sexual activity is non-consensual, inter alia subparagraph b, that establishes criminal liability for anyone who engages in sexual activity with a person incapable of resisting the act.

Sexual acts without consent are explicitly criminalized under section 297 of the Norwegian Penal Code. A sexual act encompasses sexual activity, as prescribed in section 291. Thus, a sexual act or sexual activity without consent does entail criminal liability. However, if criminal liability is incurred under section 297 due to sexual activity, it is not denoted as rape, but as a non-consensual sexual act. Thus, although non-consensual sexual activity is criminalized, it is not covered by the definition of rape as set forth under section 291. This issue has been raised by several UN Treaty bodies, and the NHRI adjoins the previous Committee recommendations.

It should also be noted that the maximum penalty in cases of non-consensual sexual acts is prison of one year. In comparison, pursuant to section 292, criminal liability under section 291 incurs a minimum sentence of prison for three years, and normally five years. Hence, in addition to not being covered by the definition of rape, there is a significant gap between the criminal sanctions imposed on non-consensual sexual activity, and sexual activity covered by the general provision on rape in section 291.

Suggested recommendation:

- The state should undertake legislative measures to grade the criminal sanctions for non-consensual sexual activity under section 297 to reflect that the severity of such acts, based on the specific circumstances in each case, may equate to the severity of non-consensual sexual activity covered by the definition of rape in section 291.

2.2. Violence and sexual abuse against children, Sámi and elderly

Reference is made to LOIPR para. 8 (b-e) and State Report paras. 39-77

NIM is concerned that there are weaknesses in the measures to ensure effective prevention, protection and redress to vulnerable groups such as children, Sami and elderly exposed to violence and sexual abuse, including domestic violence

In 2017, a Government-appointed committee published a report with an evaluation of 20 serious cases of violence, sexual abuse and neglect of children.[2] One of the questions addressed in the report was whether the situation could have been prevented or identified by social and health services at an earlier stage. The report reveals an extensive failure at the systemic level. In some cases, the children had not been heard, thus not been given the opportunity to tell their story. In other cases, the child's situation was known to some public services, but no further action was taken. The report concludes that mistreatment of children should have been identified at an earlier stage and calls for better protection of these children.

In 2017, a new report about domestic violence in Sami communities was published.[3] It suggests that abused individuals from Sami communities experience special challenges and barriers in their interaction with the police and social and health services, such as a lack of cultural and linguistic understanding. Further, in 2016 the police started an investigation after eleven women and men from the small Sami community Tysfjord-Divttasvuotna came forward with stories of sexual abuse in the media. In total, more than 92 persons are or have been under investigation.[4] In addition, research from 2015 indicates that Sami people in general are exposed to violence more often than ethnic Norwegians.[5] The perpetrators are both Sami and non-Sami. NIM has called for a specific action plan against violence and sexual abuse in Sámi communities, that should be developed through consultations and participation from representative bodies of the Sami, such as the Sámediggi-Sámi Parliament, researchers and civil society. This was also recommended by CEDAW in its concluding observations to Norway in November 2017.[6]

In 2017, the first national study of incidents of violence and abuse against people over 65 years old living at home was published. It indicates that between 56,500 and 76,000 persons (between 6,8 and 9,2 percent) have been victims of violence or abuse after

[2] NOU 2017:12 Svikt og svik.

[3] «*Om du tør å spørre, tør folk å svare*», NKVTS, rapport nr. 2 2017.

[4] *«Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning»,* Nordland politidistrikt, 2017.

[5] Eriksen A. Hansen K.L., Javo C. and Schei B., *«Emotional, physical and sexual violence amon Sami and non-Sami population Norway: The SAMINOR 2 questionnaire study»,* Scandinavian Journal of Public Health, 2015.

[6] CEDAW/C/NOR/CO/9 para. 25

reaching 65 years.[7] Eight out of ten have stated that they were in a close relationship with the offender. A study from 2016 further shows that people over 65 years of age seldom are included in the municipal action plans against domestic violence.[8] Another study, from 2015, also shows that public services lack mapping tools and routine guides to identify and map domestic violence against elderly.[9]

We note with satisfaction that Norway has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (CEST. 210) in November 2017. At the same time, the ratification underpins the need to have a special focus on the protection of vulnerable groups.

Suggested recommendations:

- The State Party should implement effective measures at the systemic level to ensure effective protection, prevention and redress to children, Sami and elderly exposed to violence and sexual abuse.
- The State Party to develop an action plan for enhanced prevention, protection and redress of violence and abuse against Sami victims, especially women and children, in consultation with Sami community, relevant experts, civil society and the Sámediggi-Sámi Parliament

2.3. Sexual violence – police investigations

Reference is made to LOIPR 8 (b-e) and State Report paras. 39-77

The Public Prosecutor's Office undertook a special survey in 2016 of the quality of police investigation of domestic violence and rape.[10] The study indicated existing challenges in the investigation of these cases. Among other things, the report shows that the investigation can be more effective on issue's such as the use of police methods in cases of domestic violence, the use of restraining orders in cases of rape and obtaining evidence in general.

[7] *«Vold og overgrep mot eldre personer. En nasjonal forekomststudie», NKVTS,* Rapport 9/2017.

[8] *«Kommunale handlingsplaner mot vold i nære relasjoner - også for eldre utsatte?»,* NKVTS, Rapport 9/2016.

[9] *«Oversikt over rutineguider og kartleggingsverktøy for avdekking av vold i nære relasjoner»,* NKVTS, Rapport 4/2015.

[10] Report of the General Prosecutor's Office on domestic violence and abuse, https://www.riksadvokaten.no/document/kvalitet-pa-etterforsking-og-patalearbeid-i-mishandlings-og-valdtektssaker/ and "*Evaluering av politiets arbeid med seksuelle overgrep*", Politidirektoratet and KRIPOS, January 2015.

Similar gaps in the quality of investigation were identified in a 2015 study by the National Criminal Police Authority (Kripos).[11] The report found considerable variation in quality and effectiveness of the investigations conducted. As much as 39% of the cases are not investigated in a satisfactory manner.

Suggested recommendation:

- The State Party should strengthen its investigative capacity on domestic and sexual violence.

3. Trafficking

3.1. Asylum-seeking children

Reference is made to LOIPR para. 10 (a-b), and State Report para. 71-77 and 158-161.

Research suggests that during the period 2008 to June 2015, a total of 625 unaccompanied asylum-seeking minors disappeared from reception centers and care centers.[12] The numbers for 2016 and 2017 are also high, 150 disappeared in 2016, and from 1 January to 31 October 2017, a total of 223 unaccompanied asylum-seeking minors disappeared.[13]

In 2017, NIM published a thematic report on care for unaccompanied asylum-seeking minors aged 15 – 18 in reception centres. The report argues that article 22 paragraph 2 of the Convention on the Rights of the Child obliges Norwegian authorities to give unaccompanied asylum-seeking minors aged 15-17 a standard of care and protection which is equivalent to what is offered to other children in Norway under the responsibility of the Child Welfare Services.

The report shows that there are significant differences in the accommodation and care given to unaccompanied asylum-seeking minors under the age of 15 and minors aged 15 to 18. The younger children are under the responsibility of the Child Welfare Services, while the older children live in designated reception centres. Unaccompanied asylum-seeking minors aged 15-18 receive less care than what is offered to unaccompanied asylum-seeking minors under 15 and other children in Norway under the responsibility of the Child Welfare Service. The report concludes that unaccompanied minors aged 15 - 18,

[11] Politidirektoratet og KRIPOS, "Evaluering av politiets arbeid med seksuelle overgrep" January 2015.

[12] Norwegian Institute for Urban and Regional Research, Report 2016:17 page 19.

[13] Press, Save the Children Youth Organization, "Vi kan ikke reise tilbake" ("We can't go back"), page 8.

are subject to differential treatment contrary to their rights under the Convention on the Rights of the Child.

A recent report from FAFO indicates that only 30 % of unaccompanied minors living in reception centres with 4 or more symptoms of psychological health problems receive psychiatric services from a psychologist.[14]

Furthermore, over the last years, unaccompanied asylum-seeking minors aged 16-18 increasingly receive temporary resident permits, whereby they are returned to their countries of original when reaching the age of 18.

These uncertainties increase the children's vulnerability. The Ombudsman for Children is concerned by reported psychological health issues, incidents of self-harm and suicide attempts as well as an increased number of disappearances from the reception centres.

In early 2017, the Norwegian Institute for Urban and Regional Research, published the report *"Prevention and follow up of unaccompanied minor (UAM) asylum-seekers that disappear from UAM reception centres and care centres in Norway".*[15] According to the report, in 59 % of the cases where unaccompanied minors have disappeared in the period between January 2011 to June 2015, it is unknown to Norwegian authorities where they have disappeared to and what has happened to them. One of the conclusions of the report is that the children should be offered a strengthened care system for minors. The report has several recommendations on how the Norwegian government could strengthen its work on unaccompanied asylum-seeking minors that disappear from reception centres in Norway.

Suggested recommendation:

- The State Party should continue its efforts to strengthen protection of unaccompanied minor asylum-seekers, including prevention of, and effective follow-up on disappearance-cases.
- The State Party should give unaccompanied asylum-seeking minors aged 15-17 a standard of protection equivalent to that offered to other children under the responsibility of the Child Welfare Services, including unaccompanied asylum-seeking minors under the age of 15.
- The State Party should ensure that minors living in reception centres receive adequate psychiatric services provided by competent staff.

[14] Care practices in reception centers for unaccompanied asylum seeker minors (Norwegian), Sønsterudbråten et.al, Fafo-rapport 2018:05

[15] English summary is available pp. 18-28 in NIBR-rapport 2016:17.

4. Persons with mental disabilities

4.1. Mentally ill in prison

Reference is made to LOIPR para. 11 and State Report para. 78-80.

In 2016, the Directorate of Health and the Directorate of Norwegian Correctional Service published a joint report on the treatment of prisoners with mental illness and substance abuse problems ("Oppfølging av innsatte med psykiske lidelser og/eller rusmiddelproblemer"). Of grave concern are the findings on persons with symptoms of severe mental illness and aggressive behavior at the Ila Detention and Security Prison ("Ila"). Due to insufficient staff and the demanding behavior of these inmates, they are frequently isolated for extended periods of time. The report also raised concern that this group of inmates does not receive adequate healthcare. Hence, due to the severity of the situation, the report recommends establishing a separate ward adapted to the needs of these inmates, to provide them with adequate healthcare and reduce the frequency of isolation.

In 2017, after visiting Ila, the Parliamentary Ombudsman as NPM reaffirmed the findings in the previous report from the Directorates, pointing out the issue of extensive isolation and lack of adequate healthcare for persons with symptoms of severe mental illness. The Ombudsman recommended implementation of measures to provide better medical treatment and to end the practice of isolation.

The NPM has raised similar concerns after visits to Ullersmo prison and Åna prison in 2017, especially concerning the use of security cells and medical care. Moreover, in 2018 the newspaper Bergens Tidende reported on persons with severe mental health issues in Bergen prison being isolated in security cells and not receiving proper medical care.

Suggested recommendation:

- The State should immediately take measures to ensure that inmates with symptoms of severe mental illness are properly diagnosed and treated, and that they are not subjected to isolation.

4.2. Use of coercive force in mental health care

Reference is made to LOIPR para. 12 (a-c) and State Report para. 81-92.

The Committee asks the State Party to provide information on the implementation of the National Strategy for Increased Voluntariness in the Mental Health Services (2012-2015). In the State`s Report to the ICCPR from September 2017, it states the following:

"The National Strategy for Increased Voluntariness in the Mental Health Services (2012-2015) has not led to the desired reduction in the use of coercion. Coercion rates have

remained relatively stable over time, despite the introduction of new measures in this area. Consequently, a new and more binding approach has been adopted in order to achieve the desired reduction in the use of coercion and correct reporting of data on the use of coercion."[16]

One such measure is the adopting of a number of amendments to the Mental Health Care Act in January 2017 (the proposal to new legislation is partly drescribed in para 90-91). In the State Report to the ICCPR, the State Party has pointed out the following about the new adopted amendments:

"Under the amended act, patients with the capacity to consent cannot be treated against their will. The compulsory examination time before a decision can be made regarding forced medication has been extended from three to five days. Patients are entitled to up to five hours of legal counsel free of charge in connection with complaints to the county governor over decisions concerning examinations and treatment carried out without their consent. Patients must be given the opportunity to express their views before a decision is made to provide mental health care, including involuntary treatment. The act clearly prescribes that the responsible mental health professional must consult with another qualified health care professional before making a decision regarding examination and treatment without the patient's consent. Requirements for when decisions should be made and for justifying the use of coercion have also been sharpened. The use of coercion must be assessed in consultation with the patient as soon as possible after the measure has been completed."[17]

In the cited above, the State Party refers to the specific requirement in the Mental Health Care Act of 2017 obliging the responsible mental health professional to consult other qualified mental health professionals before administering coercive examination and treatment. It is worth emphasizing that it is not a requirement that the mental health personnel being consulted should be independent. With reference to CPT's recommendations, the ECHR has reaffirmed that independent second-hand assessments are *"an important safeguard against possible arbitrariness (...)."*[18] Further, it is true that patients with the capacity to consent cannot be examined or treated against their will. However, there is an exception to this: If patients with the capacity to consent represent an immediate and serious danger to his or her own life or to others' lives or health, these patients *can* be examined or treated against their will.

[16] CCPR/C/NOR/7 para 113.

[17] CCPR/C/NOR/7 para 114. The State Party mentions many other measures as well.

[18] *X v. Finland* 3 July 2012, paras. 168–171.

Another key issue, not mentioned by the State, are the visits of the NPM to nine different mental healthcare institutions from 2015-2017.[19] The NPM assessed topics such as coercive medication, coercive ECT, shielding of patients from other patients and the use of mechanical instruments such as belts. It also assessed the patients' procedural safeguards and how they were handled by institutions. The NPM's recommendations are specific and adapted to the individual institution Nevertheless, it seems that a consistent recommendation is that the procedural safeguards of the patient should be strengthened. One example is the need for more thorough written documentation when using coercive treatment or measures. Another key recommendation is that several of the institutions must be better at considering alternative and less intrusive measures before using force.

In para. 92, the State Report refers to the legislation committee which will review the rules for using coercion in the health and care services. The National Institution strongly supports such a review.

Suggested recommendations:

- The State Party should continue its efforts to end the unjustified use of coercive force, including review of legislation.
- The State Party should ensure further reduction of the use of coercion, including through training of staff, prioritizing alternative and less intrusive methods, as well as strengthening procedural guarantees and control.

4.3. Use of coercive electroconvulsive treatment in mental health care

Reference is made to LOIPR para. 12 (a-c) and State Report para. 88.

The authorities have no complete factual overview on the use of coercive ECT, and there are indications that involuntary ECT is practiced differently across institutions.[20] Moreover, there is no clear legal basis in formal law or regulation that allows ECT to be given to non-consenting patients. According to the preparatory works of the Mental Health Care Act, ECT can be used without the consent of the patient if the procedure meets the conditions of the *"principle of necessity"* in the Penal Code.

NIM finds that the coercive use of ECT with reference to the *"principle of necessity"* may be against the principle of rule of law in both the Norwegian Constitution and international human rights law. It is a serious concern that the use of ECT lacks a formal

[19] See the website of the NPM: https://www.sivilombudsmannen.no/besoksrapporter/?type_institusjon=psykisk-helsevern&period.

[20] Helsedirektoratet, *«Nasjonal faglig retningslinje om bruk av elektrokonvulsiv behandling – ECT»*, June 2017 and visits conducted by the NPM.

legal basis, while other coercive treatments have a direct anchoring in the Mental Health Care Act with strong procedural safeguards. The new guidelines implemented in 2017 address several of these weaknesses, nevertheless, the principles of clarity, predictability and more consistent practice of the use of coercive ECT suggest that a regulatory framework must be strengthened.

Suggested recommendations:

- The extent of and the need for ECT without consent on an emergency basis must be investigated as soon as possible. If the ECT is to be used in emergency cases without consent, this coercion should have basis in law as other forms of coercive treatment, and be subject to safeguards.

5. Detention of asylum seekers

5.1. Trandum Holding Center in general

Reference is made to LOIPR para. 17 (a-b) and State Report paras. 121-127.

After the State Report was submitted to the Committee, the Parliamentary Ombudsman's National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of persons deprived of their liberty (the NPM) issued a new report based on a visit to Trandum in March 2017.[21] During this visit, the NPM examined the detention center's practice concerning the use of its security section and the use of coercive measures.

The NPM was concerned that the security cells were used more frequently at the beginning of 2017 than previously. The NPM also found it worrying that a large percentage of placements in the security section were partially or entirely based on the detainees' mental health, self-harming or risk of suicide. Placing detainees in the security section appeared to be the only measure the detention center had to safeguard those with such challenges There were also incidents where minors were placed in the security section.

Further, the use of handcuffs in connection with transportation appeared to be routine procedure. The report also reveals a serious incident where pepper spray was used on a detainee in order to complete a body search. The NPM found that both the decision to

[21] The report in English, see https://www.sivilombudsmannen.no/wp-content/uploads/2017/09/Visit-report-2017-Trandum.pdf

use pepper spray and the way in which force was used, appeared questionable in light of the requirements for necessity and proportionality.

The report also contains recommendations to the State regarding the physical conditions and activities offered in the security section, as well as recommendations in relation to the independence of the medical personnel.

Suggested recommendation:

- The State Party should implement further measures to prevent use of restrictive and coercive measures as well as increase focus on psychological support for the detainees

5.2. Detention of children awaiting deportation

Reference is made to LOIPR para. 17 (a-b) and the State Report paras. 128-131.

The State Report refers to the current legal framework for detention of children in immigration cases. The report underlines that neither the ECHR or the UN Convention in the Rights of the Child stipulate any fixed time limit for the length of time for which children or families with children may be remanded in custody.

In July 2016, the ECtHR passed five judgements. In all five judgements, the Court concluded that French authorities had violated ECHR Article 3 on inhuman treatment in cases where small children were detained together with their parents pending expulsion. The children were between four months and up to four years of age, and were detained between seven and 18 days in immigration detention centres with well-equipped specialized units for families.

On the national level, the Borgarting Court of Appeal passed a judgement on 31 May 2017, in a case where a family with four children were detained in Trandum immigration detention centre for a period of 20 days. The Court concluded that the state had violated Article 3 of the ECHR, article 37 letter a of the Convention on the Rights of the Child and section 93 paragraph two of the Norwegian Constitution. The Court of Appeal found the conditions in Trandum to be similar to those mentioned in the five judgements against France.

Reference is also made to Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child, in which it is i.a. recommended that "...child and family immigration detention should be prohibited by law...".

In March 2018, the Standing Committee on Local Government and Public Administration in the Storting have recommended the Storting to adopt a proposal from the Government for new legislation regarding the detention of children in immigration cases. The proposed

new legislation improves the rights of children in these cases in many aspects, compared to existing procedures in the current legislation. The Storting will decide on this matter shortly. The NHRI will come back to the Committee with updated information as soon as the Storting have decided on this matter.

The Government has also announced that it is planning to establish a separate immigration detention center for families with children outside Trandum. A new temporary immigration detention center for families with children was established in Hurdal from 1 January 2018. The Standing Committee on Local Government and Public Administration has recommended the Storting to ask the Government to secure that families with children only should be detained in separate child- and family units, specifically adapted for children, where they should be offered activities, healthcare and legal aid. The NHRI would like to emphasize the importance of establishing a *permanent* and child-friendly immigration detention center for families with children in line with the recommendations from the Standing Committee on Local Government and Public Administration.

Finally, on 23 May 2017 the Norwegian Organisation for Asylum Seekers (NOAS) and Save the Children issued a report on the experiences of children and parents having been returned by force in immigration cases. The report gives an insight into how these children and parents experienced arrest, immigration detention, and deportation from Norway to their home country. The report indicated that the whole process of forced return is a frightening and difficult experience for children. NIM would point out that forced return procedures often consist of several coercive measures; arrest, detention and the deportation. Each of these measures could be traumatic to a child. Currently, to our knowledge, there is a lack of an overall assessment of the cumulative effects of these measures on each child being subjected to forced return. The cumulative effect is of importance in the assessment of whether the forced return process in total is in violation of the UN Convention against Torture Article 16, the Convention of the Rights of the Child article 37 letter a and the European Convention on Human Rights article 3.

Suggested recommendations:

- The State Party should prioritize the establishment of a new permanent child-friendly immigration detention center for families with children outside Trandum.
- The State Party should adopt procedural safeguards for ensuring that the cumulative effects of the coercive measures in the forced return process for a child is not in violation of the UN Convention against Torture Article 16.