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Supplementary report from the National Human Rights Institution to the combined twenty first and twenty second periodic report of Norway to the UN Committee on the Elimination of Racial Discrimination

Reference is made to the list of themes issued by the Committee in relation to the combined twenty-first and twenty-second periodic reports of Norway (CERD/C/NOR/21-22). The Norwegian Centre for Human Rights in its capacity as National Human Rights Institution welcomes the opportunity to submit its views to the Committee.

The Norwegian Centre for Human Rights has status as National Human Rights Institution until 30 June 2015, accredited with B-status by the International Coordinating Committee of the global network of national human rights institutions (ICC). As of 1 July 2015, the National Human Rights Institution (hereafter NHRI) will be re-established as an independent organization under new legislation adopted by the Parliament. NHRI is given

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 one of the essential tools for NHRI to fulfil its mandate.

The current report contains a selection of issues that NHRI considers important for the Committee's consideration of Norway's combined twenty first and twenty second periodic reports. Thus, the report does not reflect all relevant human rights challenges in Norway within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The selected issues will be presented in accordance with the order of the Committee's List of Themes (CERD/C/NOR/21-22).

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1.(c) Update on progress in establishing a new national human rights institution that fully complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (CERD/C/NOR/21-22, para. 80; HRI/CORE/NOR/2013, paras. 127–130).

Since 2001, the Norwegian Institute for Human Rights, later the Norwegian Centre for Human Rights (NCHR), at the University of Oslo has held the role of National Human Rights Institution (NHRI). The Royal Decree of 2001 provided a broad mandate to protect and promote human rights. However, there have been limited resources to fulfil tasks that are outside the traditional research and educational activities of the university institution. While NCHR initially received A-status under the Paris Principles by the International Co-ordination Committee of National Human Rights Institutions for Promotion and Protection of Human rights (ICC), it was downgraded to B-status in 2012. The international re-accreditation process was accompanied by a set of national evaluation processes that identified shortcomings in the existing structure and recommended reform of the NHRI.

Key requirements that have been highlighted throughout these processes can be summarized as follows: (a) to strengthen the legal framework, (b) to improve the effectiveness and visibility of the institution; and (c) to enhance human and financial resources.

In April 2015, the Parliament adopted the new Law on Norway's National Human Rights Institution. The adoption of the law was an essential precondition for moving forward with the reform process. The new legislation provides a broad mandate to protect and promote human rights. NHRI's core functions are to monitor and report on the human rights situation in Norway, including to submit annual reports to the Parliament, advise authorities and others on human rights issues, inform and raise awareness, as well as cooperate with human rights actors nationally and internationally. The new law makes direct reference to the Paris Principles and provides strong guarantees for the independence and pluralistic representation of the institution.

The director of the new NHRI is elected by the Parliament after an open recruitment process for a non-renewable period of six years. The new appointment is scheduled for the fall of 2015. The 5 member-board of the institution is also appointed by the Parliament for a period of 4 years. The first board was appointed in June 2015 and includes judges, prominent human rights academics and practitioners, and representatives of legal and medical professions as well as other disciplines. According to the new law, each gender should be represented by minimum 2 members of the board and one member should have expertise on Sami issues. The new NHRI will also have an Advisory Council consisting of

10 to 15 representatives of civil society organizations and other human rights actors. It will be appointed by the Board on the proposal of the Director of NHRI.

Throughout the reform process, the NCHR has undertaken measures to contribute to the further development of the NHRI. Since 2011 it established a separate National Human Rights Institution Unit (NI Unit) that was given wider autonomy to fulfil the role as NHRI. The creation of a specialized National Institution Unit helped to develop necessary expertise and focus on the core mandate and tasks of the institution. During this period the National Institution Unit has increased its capacity and public profile through its work on key human right issues in Norway. According to the reform process, as of 1 July 2015, the current National Institutions Unit will be transferred to the new NHRI, thus providing the institution with a good starting point to continue the institutional development process that started in 2011.

The current financial framework for the institution is perceived to be an interim solution that will have to be adjusted with the development of the new NHRI. Providing adequate resources for the new NHRI will be essential for the successful completion of the reform process.

Recommendations:

- Support further reform process of the new National Human Right Institution.
- Provide adequate financial resources to enable the new NHRI to effectively implement its mandate.

1(f) Effective measures to prevent hate speech, inter alia, by political representatives and in the media, including on the Internet. Impact and results of the “No hate speech” campaign launched by the State party (CERD/C/NOR/CO/19-20, para. 21; CERD/C/NOR/21-22, paras. 60–61)

Hate Speech and intolerance continues to affect different groups of the population in Norway (<http://www.jus.uio.no/smr/forskning/publikasjoner/arbok/docs/arbok-2012.pdf>). This includes “traditional” national and ethnic minorities, including Sami people, with a long history in the country as well as “new comers” that have been migrating to Norway for the past decades. The problem also exists in relation to persons with disabilities, persons with non-traditional sexual and gender orientation, asylum-seekers, working and irregular migrants, and others.

However, during the current CERD reporting cycle, there has been particular increase of hate speech and intolerance directed towards Roma people travelling from Eastern Europe to Norway. One example of such statements is a public remark of a well-known local politician that suggested that Roma people should be cut into little pieces and served to the dogs (<http://www.dagbladet.no/2012/07/25/nyheter/politikk/arbeidsliv/22670438/>). Roma have also been called “brown slags” in social media discussions. In 2012, a municipal agency announced a tender for waste removal from the streets, listing “gypsies” as one of the “items” alongside other urban waste like old cars, scrub, etc.

It is the perception of the NHRI that hate speech and intolerance is still noticeable in the political discourse as well as in media debates, not least in social media. The social media is perhaps the platform where you can find both the most frequent and grave use of hate speech. Roma people and migrants from non-western European cultures are most exposed to this phenomenon.

Different sociological studies indicate a rather high level of intolerance among the Norwegian population towards minority groups. A 2012 report from the Holocaust Centre (Oslo) shows that 8% of the population would not want to have a Jewish person as a neighbour or a friend. The same report indicates even more alarming tendencies towards other groups. The survey shows that 25, 40 and 50 % of the population is negative to having a Muslim, Somali and Roma neighbour respectively.

NHRI is concerned by the use of hate speech and intolerance in the public debate. Some argue that hate speech or related discriminatory expressions should be allowed in the public space. The assumption is that public debate will expose and help to rectify this phenomenon. However, NHRI is more concerned that hate speech in the public space can have the opposite effect. It can legitimize intolerance and prejudices towards minority

groups and in the long-term make discriminatory attitudes more common place. There is international research that indicates a high probability of hate speech in the public space having such negative effects.

Freedom of expression is one of the central pillars of human rights and democratic societies. In Norway, freedom of expression forms part of a very strong political and legal tradition. However, this tradition should not be misunderstood or misused to justify hate speech. The Norwegian Criminal Code (Article 135a) provides protection to individuals from discriminatory expressions and hate speech. Practice of the Supreme Court (HR-2012-689-A) also confirms the possibility to effectively use this legislation to protect ethnic minorities from discriminatory remarks. However, according the Equality and Anti-discrimination Ombudsman for the past 10 years there have been only around 5 indictments related to Article 135a that indicates low prioritization of this type of cases.

Combating hate speech, intolerance and prejudices is a complex societal task. To achieve this objective, there is a need for strong political will from all political fractions. There is also a need to increase the scope of positive measures that authorities are undertaking now to make them both more strategic and long-term.

Recommendations:

- Incorporate CERD in the Human Rights Act with precedence over other Norwegian legislation;
- Norwegian politicians must ensure that their public communication does not contribute to stigmatization of or intolerance towards any minority groups;
- Prioritize investigation and prosecution of instances of hate speech punishable under criminal code of Norway, as well as collect and publish statistics on the number of hate speech reported, the number of cases brought to court, and the outcome of these cases;
- Develop a long-term and large-scale strategy to adequately combat hate speech and intolerance directed against any group in Norway.

3(b) Findings and recommendations of the committee tasked by the Government in 2011 with assessing the implementation of policies affecting Romani people/Taters (CERD/C/NOR/CO/19-20, para. 20; CERD/C/NOR/21-22, para. 55) CERD/C/NOR/Q/21-22 3;

1 June 2015 The Governmental Commission (hereafter the Commission) issued its final report “Assimilation and struggle: Norwegian policy towards Taters/Romani people from 1850 until today”. The main finding of the report is that Norwegian authorities have been implementing a hard-handed assimilation policy with regards to Taters/Romani people traceable as late as the 1980s.

The policy was established through different laws and regulations that had discriminatory intent, at least in part, and clear discriminatory consequences the way it has been implemented. The policy has had dramatic effect on Taters/Romani people as an ethnic and cultural group as a whole. The report also exposed the enormous suffering of individuals as a direct consequence of this policy. Such treatment over long periods of time also contributed to the existing negative prejudices towards the group and led to fear and mistrust between Taters/Romani people and the Norwegian society as a whole.

The assimilation policy was manifested in two main activities: (a) transferring/removal of children from parental care and (b) forced (re)settlement of Taters/Romani people.

Measures directed towards children were a key instrument in this policy. Children were taken from their parents and placed in orphanages or adopted by other families. Within two generations starting from 1900 almost one third of children (around 1500 children) born in Taters/Romani families were taken away from their parents. The main justification of these actions was that the travelling way of life was damaging for the children. Furthermore, the report found that after transferring/removal many children were neglected, maltreated and abused. As a consequence, many of these children had an unstable, unpredictable and insecure childhood.

The Commission also found that the situation in the forced settlements was dramatic. Svanviken, a labour colony that functioned until 1970, had a set of restrictive measures for the inhabitants that affected their rights to privacy and family life. Furthermore, in the period 1950-1970, 40 percent of women residents of Svanviken were sterilized. The report also shows that the mortality rate of persons affected by the assimilation policy was 3 times higher than the general population.

The Commission observes that the State outsourced the implementation of these policies to a private Christian organization, the Norwegian Mission for the Homeless ('Mission'),

which operated from 1907 to 1986. The government agencies were instructed to cooperate with the Mission and its activities were supported over the State budget.

The Commission recommended the following set of measures:

- A more visible and clear process of facing the past should take place, as previous apologies by the authorities and the Norwegian Church seems to lack necessary outreach towards affected communities as well as the general public;
- Confidence building measures between Taters/Romani people and both local and state authorities through a participatory process, including competence building of relevant institutions in history and culture of Taters/Romani people;
- Assist rebuilding and strengthening of Taters/Romani communities, including support to youth and women networks;
- Ensure Taters/Romani children enjoy full access to education in a dignified environment, without discrimination of any kind, as well as take positive actions through confidence building measure between school and children and their parents.
- Taking in consideration information about high mortality rate, support full access of Taters/Romani people to health care.
- Prevent discriminatory practices against Taters/Romani people, including possibility to enjoy camping places.
- Provide Taters/Romani communities with legal information, counselling and aid to help both to fully exercise their rights and freedoms as well as to assist individuals to deal with the relevant legal issues and/or cases.
- Improve and enhance the current system for compensations and reparation so that it can be perceived as fair and adequate by the Taters/Romani people.
- Support further research of history and culture of Taters/Romani people.
- It is vital that historical mistakes are not repeated and that lessons learned have direct consequences on today's politics.

Recommendations:

- Fully endorse and implement recommendations of the Commission, in order to ensure truth and justice for mistreatment and harmful practices directed against Taters/Romani people, provide adequate compensations and reparation and to ensure that historical mistakes are not repeated in the future;
- Take all necessary steps to ensure Taters/Romani people can fully enjoy all rights and freedoms on par with the general public.

3. Situation of Roma and Romani/Tater families (arts. 2–7): (a) Updated information on the implementation of and the results achieved by the Action Plan to Improve Living Conditions for Roma in Oslo regarding equal access to health-care and social services, public places, housing, employment and education and to counter racial discrimination against Roma (CERD/C/NOR/CO/19-20, para. 20; CERD/C/NOR/21-22, paras. 54 and 55);

In June 2009, the Norwegian authorities adopted an Action Plan with the main objective to combat discrimination against Roma in Oslo and to improve their living conditions. The Action Plan consisted of 10 sub-activities, including adult education, assistance and mediation service for contacts with the municipal services, providing information about Roma to the general public as well as staff of municipalities and relevant social services, kindergarten for Roma children, and developing extracurricular activities for youth.

The report “One step forward, evaluation of action plan to improve living conditions of Roma in Oslo” was published in 2014 (Guri Tyldum og Jon Horgen Friberg, FAFO <http://www.faf.no/~faf/images/pub/2014/20397.pdf>). The evaluation was conducted as an assignment mandated by the Ministry of Local Government and Regional Development. The main conclusion of the report was that many Roma still live outside of mainstream Norwegian society and that the Action Plan had contributed little to improving their situation. The report was rather critical to the quality of the measures as well as how they had been planned and implemented. It suggested that Roma in Oslo had been contacted prior to the planning process, but their wishes were seldom seen as relevant or taken into account when the measures were designed. The report recommended that the authorities draw lessons learned from these processes and develop follow-up measures in the area of education, confidence building, community development, empowerment of women and strengthening cultural identity.

Roma in Norway are still victims of discrimination and have problems in fully enjoying the right to education, housing, employment and other rights. The Commissioner for Human rights of the Council of Europe Nils Muižniks in his latest report highlights two particular issues of concern: (a) Frequent use of child protection measures separating children from their families and (b) low school attendance. The information collected by the Commissioner indicates that about half of the total number of (non-immigrant) Roma children in Norway are placed under child welfare services or are vulnerable to such interventions in the future. NHRI cannot verify this information due to a lack of official statistics, but it raises concern, not least in light of the recent findings of the Commission for Tatars/Romani people.

NHRI reaffirms the statement of the Commissioner that the best interests of the child should always be a primary consideration in decisions regarding the social welfare of children, in line with Article 3 of the UN Convention on the Rights of the Child. However, preventing family separation and preserving family unity are important components of the child protection system as well – the separation of children from their parents should only take place as a last resort. As existing jurisprudence of the European Court of Human Rights indicates, removal of children from parental care should only take place for extraordinarily compelling reasons and economic reasons cannot alone be a justification for separating a child from his or her parent.

The report of the Commissioner also indicates serious problems with elementary education where a high number of children are not enrolled in the school system, whereas others are enrolled but have long periods of absence from school, high rates of illiteracy and lack official certificate/diploma. The Ombudsman for Children and the National Institution for Human Rights have expressed concern with regards to this issue during the fifth periodic report of Norway to Committee on Economic, Social and Cultural Rights, September 2013.

Recommendations:

- Develop a new set of appropriate activities for improving living conditions of Roma in Oslo through a consultative process involving the Roma community as well as relevant experts;
- Review practices of social welfare institutions to identify reasons for reported frequent use of child protection measures separating Roma children from their families and remedy this negative trend as appropriate.
- Ensure full enjoyment of the right to education for Roma children, including through support measures at schools and in families.

Additional issue to List of themes: Situation of Roma migrant from Eastern Europe

The situation of Roma migrants from Eastern Europe gives reason for particular concern. Roma migrants have come to Norway under the EU/EEA agreement that provides them the possibility of legal stay in the country and to seek job opportunities. The migration of Roma usually takes place during summer months with smaller groups also staying in Norway during the winter. The exact pattern of migration and number of Roma is not known, but it is estimated that the numbers can vary from several hundred to more than one thousand in Norway as a whole.

Migration of Roma, especially during the summer months, is usually accompanied with wide and often negative media coverage. Some representatives of political parties, police authorities and commentators focus on Roma migrants as a problem and argue against the presence of Roma in Norway. There are strong elements of prejudice as well as intolerance in these comments and even use of hate speech.

It is argued that Roma migrants are linked with organized crime. Police authorities have on different occasions made such statements without thoroughly substantiating such allegations. However, the newly issued report on the situation of Roma people in Scandinavia “When poverty meets affluence” provides a very different picture of the reality (http://www.faf.no/index.php?option=com_zoo&task=item&item_id=7976&Itemid=895&lang=en). Media have also focused on the lack of access to hygienic facilities for Roma migrant in such a way as to increase tensions among local communities and migrants, and contributing to prejudice and stigmatisation of Roma. Common perceptions are that Roma people present a threat to the Norwegian social welfare system, and that any positive treatment of the migrants in Norway will trigger a further “invasion” of Roma people.

Unfortunately, these attitudes are not only dominating public discussion in the media. For the past years, Norwegian authorities have taken both legal and policy measures that will have direct discriminatory effect on the Roma migrants and could violate human rights and freedoms of members of this group. Two main legislative initiatives are to (a) criminalise begging and (b) criminalise “sleeping rough”.

In spring 2014, the parliament amended Article 14 of the Law on Police (politiloven) that gives local municipalities right to introduce total prohibition on begging. Arendal and Lillesand are two municipalities that have used this possibility so far. It is important to note that Norway decriminalized begging in 2006. An argument used back then was that poverty should not be criminalized. Furthermore, it was argued that the state should not criminalize activity that causes no societal harm (skadefølgeprinsippet).

In January 2015, the government took the initiative to introduce a nation-wide prohibition of begging. In February, the proposed changes to the Criminal Code were withdrawn when the necessary majority support in the Parliament was withdrawn.

NHRI is concerned that total prohibition of begging will have a discriminatory effect on Roma people. As the emerging comparative jurisprudence indicates, the ban of begging can violate the freedom of expression. Begging is a form of expression of an individual's social situation. In the case of Norway, such interference with this right might not be a proportional measure to ensure peace and order.

On 15 May 2013, the Municipality of Oslo expanded the prohibition on sleeping rough (Regulation No. 577) so that it imposed blanket ban sleeping in any public space in the city territory. NHRI recently commissioned an empirical study, including survey to assess consequences of implementation of this legislation. Results of interviews with 86 persons living on the streets of Oslo have been already collected and analysed. The findings of this research give NHRI ground for concern.

The study indicates first of all that the Oslo prohibition is implemented in a discriminatory manner against foreigners, particularly individuals of Roma and African descent. Decisions by the police over whether to evict a homeless individual, afford them due process, and respect their other human rights such as property seem to be heavily dependent on an individual's nationality and ethnicity rather than the circumstances. For example, non-Norwegians are more than twice as likely to be evicted as Norwegians (83% compared to 40%). The frequency of eviction of persons of Roma and African descent is three times higher than other groups;

The second finding is that some evictions are conducted with the use of inappropriate racist speech and/or excessive force and thus might constitute degrading treatment according to the jurisprudent of the ECtHR. NHRI is particularly concerned with the police practice to arbitrary take away and dump individuals in forests roads outside Oslo (and even outside Norway). This practice seems to be more common until 2013. The Bureau for the Investigation of Police Affairs publicly criticised the Oslo Police for this practice. However, NHRI is not aware of any concrete action taken against any individual officers involved in these incidents.

NHRI also considers that a blanket ban on "sleeping rough" can violate (1) the right to privacy, family life and respect for the home and (2) the right to freedom of movement and choice of residence. The law is framed in an absolute and broad way that permits uniform and routine eviction without consideration of whether an individual is causing a public order disturbance. Furthermore there is no *due process* in the form of warnings or notice

periods and no requirement to assess the person's ability to find *alternative accommodation*. *Therefore regulation* on its face fails a proportionality test as it does not sufficiently balance public order concerns with the individual rights.

Recommendations:

- Repeal legislation which criminalises begging and “sleeping rough”;
- Investigate incident of arbitrarily taking away Roma from the city and dumping on the forest roads.
- Combat all forms of discrimination against Roma migrants