

**Alternative report to
the UN Committee on Economic, Social and Cultural
Rights
regarding Norway's sixth Periodic report
under the International Covenant on
Economic, Social and Cultural Rights**

April 2013

Submitted by the following organizations in the Norwegian NGO-forum for Human Rights:

Food First Information and Action Network Norway

International Commission of Jurists Norway

Juss-Buss, Legal Aid Clinic

Legal Aid for Women

Red Cross Norway

Save the Children Norway

The Norwegian Center against Racism

INTRODUCTION

The present report has been prepared by Norwegian NGOs to give input to the **UN Committee on Economic, Social and Cultural Rights** in advance of both the examination of Norway's account of the human rights situation which will take place in November 2013, and in advance of the pre-sessional working group meeting spring 2013.

We welcome this opportunity to address human rights issues in Norway to the **UN Committee on Economic, Social and Cultural Rights**.

The present report covers a vast thematic area and we believe all are relevant issues to an examination of Norway's implementation of *ICESCR*.

The report is organized according to the articles of the *ICESCR*. We have split the text into sections with standardized headings containing the following information about the section in question:

- *ICESCR* article
- The title of the subject
- The numbers of the paragraphs dealing with the same issue in *Norway's Fifth Periodic Report*. RCO is referring to the Response to the Concluding Observations of the Committee from the State Party's rapport.
- Keywords indicating our main message under the topic.

We are grateful for any attention that the **UN Committee on Economic, Social and Cultural Rights** may dedicate to these and other issues raised in this alternative report, **during the examination of Norway**. We hope that representatives of at least some Norwegian organizations will be able to attend the examination expected to take place in the fall 2013 in Geneva to provide the Committee with additional, and perhaps, further updated information on human rights in Norway.

Questions regarding this alternative report may be directed to the *Norwegian NGO-forum for Human Rights* c/o Juss-Buss, Arbinsgate 7, 2530 Oslo, Norway. Contact person: Astrid Iversen at astrid.iversen@gmail.com or Andrea Salomonsen at andreasalomonsen@gmail.com.

Oslo, April 2013

CONTENTS

- CONTENTS..... 3**
- GENERAL ON THE SUBSTANTIVE PROVISIONS..... 5**
 - THE JUSTICIABILITY OF THE CONVENTION RIGHTS.....5
 - OPTIONAL PROTOCOL TO ICESCR6
 - LACK OF TRANSPARENCY AND DIALOGUE WITH THE CIVIL SOCIETY6
 - REPORTS ON OP-ICESCR:7
 - THE STATE PARTY’S NATIONAL INSTITUTION FOR HUMAN RIGHTS8
 - EFFICIENT PROTECTION OF RIGHTS AND LEGAL AID.....9
- ICESCR ARTICLE 2 10**
 - DISCIMINATION OF DISABLED PRISONERS..... 10
 - DISCRIMINATION OF FOREIGN PRISONERS..... 12
- ICESCR ARTICLE 3 13**
 - GENDER EQUALITY 13
- ICESCR ARTICLE 6: RIGHT TO WORK..... 13**
 - RESTRICTIONS ON RIGHT TO WORK FOR IMMIGRANTS 13
 - SOCIAL DUMPING 14
 - RIGHT TO WORK, VULNERABLE GROUPS..... 15
 - HARASSMENT AT WORK 17
- ICESCR ARTICLE 7: RIGHT TO FAIR CONDITIONS OF EMPLOYMENT..... 18**
 - MINIMUM WAGE..... 18
 - EMPLOYMENT PROTECTION, UNFAIR DISMISSAL..... 19
 - EMPLOYMENT PROTECTION, PAYMENT OF WAGES..... 21
 - DOMESTIC WORKERS..... 21
 - AU PAIRS 22
- ICESCR ARTICLE 8: RIGHT TO FORM AND JOIN TRADE UNIONS..... 23**
- ICESCR ARTICLE 9: RIGHT TO SOCIAL SECURITY..... 24**
 - DISCRETIONARY BASED ASSESSMENTS OF SOCIAL SECURITY BENEFITS..... 25
 - WELFARE SYSTEM, CASE PROCESSING TIME 27
- ICESCR ARTICLE 10: RIGHT TO PROTECTION OF THE FAMILY 29**
 - RESTRICTION ON FAMILY REUNIFICATION, SUBSISTENCE REQUIREMENT 29
 - RESTRICTION ON FAMILY REUNIFICATION, CHILDREN 31
 - RESTRICTION ON FAMILY REUNIFICATION FOR ASYLUM SEEKERS 32
 - RESIDENCE PERMITS WITH LIMITATIONS 33
 - EXPULSION, CHILDREN..... 35
 - FREE LEGAL AID TO IMMIGRANTS..... 36
 - TRAFFICKING 37
 - CHILD WELFARE SERVICES, MINORITY FAMILIES, DISCRIMINATION 38

ICESCR ARTICLE 11: RIGHT TO ADEQUATE STANDARD OF LIVING.....	40
ADEQUATE HOUSING.....	40
DEBT AND DEBT COLLECTION	43
ICESCR ARTICLE 12: RIGHT TO HEALTH.....	46
REGIONAL DISPARITIES IN HEALTH INDICATORS	46
CHILDREN IN RECEPTION CENTRES, MENTAL HEALTH.....	46
DE-FACTO ACCESS TO EMERGENCY AND NECESSARY HEALTH CARE FOR IRREGULAR MIGRANTS	47
VICTIMS OF RAPE	52
DOMESTIC VIOLENCE	53
RESIDENCE PERMIT, DOMESTIC VIOLENCE, PROBLEM OF DOCUMENTATION	54
HEALTHCARE SERVICES IN PRISON.....	55
ICESCR ARTICLE 13: RIGHT TO EDUCATION	58
FREE SECONDARY EDUCATION FOR ALL, NON-DISCRIMINATION, ASYLUM SEEKERS	58
PRISONERS’ RIGHT TO EDUCATION	58
ICESCR ARTICLE 15: RIGHT TO CULTURE.....	60
EAST SAMI PEOPLE	60

GENERAL ON THE SUBSTANTIVE PROVISIONS

ICESCR Art.	Subject	State report para.	Keyword
2	<i>The justiciability of the Convention rights</i>	RCO 23	<i>Justiciability</i>

Regarding the justiciability of the Convention rights, reference is made to the State Party's Report para 23.

It seems that the State Party means that it is sufficient for it to incorporate the Covenant into Norwegian legislation only by repeating the Covenants and to simply declare that the Covenant rights are justiciable.

There is still no example of court cases in which the courts have seriously considered the rights of ICESCR, although the plaintiffs of the private parties several times have pleaded arguments deriving from these rights - confer the Norwegian register of such cases ("Lovdata"). The usual reason for this mentioned by the courts, is that it is not possible to derive concrete rights or duties directly from the treaty provisions. The last case before the Supreme Court where this was indicated is registered as Rt-2011-304 para 47 in Lovdata. The plaintiff for the private party pleaded violations of Article 6, 7 and 11 of ICESCR, but the Supreme Court stated that "these articles are in substance uncertain and thus it can be questioned whether the rights can be applied by the courts". It was not necessary for the Supreme Court to consider this further, because the Supreme Court in the end voted in favour of the private party.

The reason for this lack of judgements considering the rights of ICESCR may not derive from a lack of willingness by the courts, but the lack of Statutes, which have been reasoned by ICESCR, or in which ICESCR have been significant. We think therefore that an important reason is the lack of implementation of the treaty rights into concrete justiciable rights in Statutes and Regulations by the State Party. Another example where a right of the ICESCR have not been justiciable is the regulation of the right to an adequate standard of living, confer art 11 in ICESCR. This is precisely because the Norwegian regulation of the right to adequate standard of living is not a justiciable right, see page 39. There are now many General Comments which may guide the State Party in this work. Since this is the responsibility of the State Party, it is not sufficient just to state that the treaty rights are justiciable.

Recommendation:

- *The committee urges the State Party to implement the rights of ICESCR into concrete justiciable rights in Statutes and Regulations.*

Question:

- *Which reasons does the State Party have for lack of implementation of ICESCR as justiciable rights?*

- *Which plans does the State Party have to implement ICESCR rights into statutes?*

ICESCR Art.	Subject	State report para.	Keyword
	Optional Protocol to ICESCR	RCO 24	Ratification Optional protocol

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights will enter into force on May 5th, 2013. Unfortunately the State Party has yet to sign and ratify this new mechanism. ICESCR has already been incorporated into Norwegian law through the Human Rights Law of 1999. However, very few cases¹ have been tried on the basis of the ICESCR through Norwegian Courts.

Lack of transparency and dialogue with the civil society

The drafting of the OP-ICESCR at the UN was carried out over many years. During these negotiations, the Norwegian State never called on the Norwegian civil society to discuss the relevance for such a protocol for vulnerable groups in Norway. Nor did the State Party call on the civil society to discuss Norway's relation to the UN and the need for Norwegian support for strengthening the UN to better defend all human rights. There was some communication between the Government and the civil society in the end, but that was only due to the efforts of human rights organisations.

During the State Party's first Universal Periodic Review (UPR) at the UN Human Rights Council (HRC) in 2009, the State Party made a commitment to assess the legal implications of ratifying the OP-ICESCR. The study was expected to be completed within a year (by March 2011). The report was however only initiated in February 2011 and finalized 16.09.2011².

Amnesty International Norway, FIAN Norway and other organisations have tried to initiate public debate on OP-ICESCR, through articles in the media and with public seminars. The State Party has never responded to any of these initiatives. This is highly unusual in a Norwegian context, where transparency and dialogue are important elements of our democracy. When the civil society finally was requested to discuss the issue with the hired consultant that was writing the State Party's study, 17 NGOs no longer had confidence in the process. Rather than legitimizing a process considered to be unacceptable, these NGOs decided to not participate. In the State Party's midterm UPR report this is addressed: "The NGOs declined the invitation on the grounds that they were highly critical of the role played

¹ Reference to the so-called 'Boplikt' Case, the 'KRL' Case and an employment union case (HR-2000-328 - Rt-2001-603 (114-2001) where the Norwegian High Court has referred to the ICESCR been in the judgments as legal basis for its judgments.

² Henning Harborg (2011): *Valgfri protokoll til ØSK – mulige virkninger av tilslutning*. Report submitted to the Foreign Ministry 16th September, available from: www.regjeringen.no/upload/UD/Vedlegg/FN/Valgfrie_protokollOESK.pdf

by Norway during the negotiations on the Protocol and that the process had been lacking in transparency and had not been inclusive enough.”³ Only one NGO sent a comment on the study that was carried out.

Reports on OP-ICESCR:

In 2011 three reports discussed the OP-ICESCR:

- Study by Mr. Harborg commissioned by the Ministry of Foreign Affairs as a response to UPR recommendations⁴
- An evaluation report by Scanteam on the Norwegian development cooperation and promotion of human rights commissioned by Norad. Norad is a directorate under the Norwegian Ministry of Foreign Affairs (MFA)⁵
- A working paper by Mr. Langford commissioned by the National Institution for Human Rights titled: “Reasonable or Risky? Norwegian Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights”⁶

An argument against the ratification of the OP-ICESCR has been that the rights in the ICESCR are too vague, thus making it unpredictable to foresee the position the CESCR would take. Harborg however, concluded in his report that despite the lack of established interpretative limits to the ICESCR, this should not be an argument against the ratification of the Optional Protocol⁷. His report shows that only 27 Norwegian cases have been brought before the other four individual complaint mechanisms. Of these cases, the UN committees have only deemed ten admissible with five cases ruled in favour of the State Party and five against⁸.

The evaluation report commissioned by Norad has a chapter titled “Emerging conflict lines”, here it is stated: “Norway’s stated commitment to promoting and protecting human rights as a central pillar of its foreign policy would be severely undermined if it does not hold itself to the same standard.” (Norad 2011, p. 18).

The report argues that principle arguments against ratification can be reflected in a letter from the 22nd of October 2009 from the Attorney General to the MFA:

³ <http://www.norway-geneva.org/unitednations/humanrights/Universal-Periodic-Review-Norway---Mid-term-report/>

Downloaded 20.03.2013.

⁴ *ibid*

⁵ Norad. 2011. Evaluation of Norwegian Development Cooperation to Promote Human Rights. *Report 7/2011 carried out by Scanteam*. Quote page 18.

http://www.norad.no/no/evaluating/publikasjoner/publikasjon/_attachment/385466?_download=true&_ts=133444a7ab1

⁶ http://www.google.no/url?sa=t&rct=j&q=reasonable%20or%20risky&source=web&cd=1&ved=0CDQQFjAA&url=http%3A%2F%2Fwww.jus.uio.no%2Fsmr%2Fom%2Fnasjonal-institusjon%2Fpublikasjoner%2Frapporter%2Fdocs%2Freasonable-or-risky.pdf&ei=ZbU0Ua1biqy0Bq2cgNAL&usq=AFQjCNGus5lhb-wf9uJM0DHsIK_79hfEIA&bvm=bv.43148975.d.Yms

⁷ *Ibid*, p. 34

⁸ *Ibid*, p. 20

“The concern is related to the renunciation of normative authority which in reality is implicit in the individual complaints mechanism: i.e. a transfer of authority to the Committee (CESCR), combined with a similar narrowing of the freedom of action for Norwegian bodies in wide societal areas. Such transfer of authority raises questions in terms of appropriateness as well as democratic legitimacy, particularly when the transfer in practice is durable, without any opportunity for Parliament to reverse it” (Norad 2011, p. 18).

Mr. Langford argues in his working paper that article 8 meets the Norwegian State Party’s call for a wide margin of appreciation. Furthermore, he argues that ratification would enable the Norwegian foreign policy apparatus more weight when trying to export the importance of human rights abroad. In addition, Langford argues that not ratifying the OP-ICESCR would support the idea that human rights are not equal and indivisible as the State Party has already ratified a similar Optional Protocol for the ICCPR (Langford 2011).

Harborg’s study does not provide recommendations to the Norwegian Government regarding a possible ratification. The evaluation report commissioned by Norad and the working paper commissioned by the National Institution for Human Rights both argue in favour of ratification of the OP-ICESCR.

Recommendation:

- *The Committee urges the State Party to sign and ratify the OP-ICESCR*
- *The Committee urges the State Party to have a transparent and inclusive consultation process on the issue of ratification of the OP-ICESCR that includes all stakeholders*

Question:

- *Why has a joint Norwegian NGO platform decided to refuse to participate in the process of the State Party’s assessment report*
- *Can the State Party provide arguments they are considering relevant in favour of and against ratifying the OP-ICESCR*

ICESCR Art.	Subject	State report para.	Keyword
2	<i>The State Party’s National Institution for Human Rights</i>	<i>RCO 24</i>	<i>National Institution</i>

Regarding Norway’s National Institution for Human Rights, reference is made to the State Party’s Report para 24.

In 2012 the Norwegian Centre for Human Rights, which performs the function of National Institution, was degraded to B status accreditation, because the Centre does not comply with

the Paris Principles. A long time in advance the State Party was informed of the possibility that the centre would be degraded if the activity was not changed in accordance with these principles. The State Party has had a long time to take measures to ensure compliance with the Paris Principles, such as establishing a new institution. In September 2012 the State Party established an inter-ministerial working group to handle the issue, but we have yet to see any results. We are therefore worried that this will be a problem that will last for a long period of time. Victims of violations of ICESCR or other Human Rights Conventions, have no general organ to consult with or apply to, except for different ombudsmen, who have limited competence in the special cases.

Recommendation:

- *The Committee urges the State Party to rapidly establish a National Institution in full accordance with the Paris Principles.*
- *The Committee urges the State Party to ensure civil society participation in both the establishment and the activities of a new National Institution.*

Question:

- *Which plans does the State Party have for the re-establishment of a National Institution in full accordance with the Paris Principles?*
- *When does the State Party expect to have a fully functional National Institution?*

ICESCR Art.	Subject	State report para.	Keyword
	<i>Efficient protection of rights and legal aid</i>	<i>RCO 24</i>	<i>Legal aid</i>

There is limited access to free legal aid in cases regarding violation of ICESCR or other Human Rights Conventions, and assistance to how this matter could be raised before the authorities or courts. The criteria to be granted free legal aid are bound to special types of cases, not to possible violations of the Human Rights Conventions. The use of discretionary possibilities to grant legal aid is limited.

We will in the report highlight several other issues where the lack of legal aid raises concerns about violations of the convention.

Recommendation:

- *The Committee urges the State Party to expand free legal aid to all cases which raise questions of human rights violations.*

ICESCR Article 2

ICESCR Art.	Subject	State report para.	Keyword
2	<i>Discrimination of disabled prisoners</i>		Discrimination in prison, disabled prisoners, foreign prisoners

Disabled prisoners

Disabled prisoners encounter severe difficulties while serving their sentence.⁹ Lack of adaption for prisoners with disabilities and extra security measures taken by the prison authorities limits the disabled prisoners' prospect of enjoying the same Convention rights as those the other prisoners receive.

The Norwegian government has presented a plan of action in order to implement demands for all public buildings to be constructed in a way that makes them accessible for all, with specific focus on disabled people.¹⁰ After this plan was set into action, prisons also had to be built in compliance to these demands. However, few or none measures have been taken to ensure accessibility in already existing prisons. To what extent these prisons are accessible for disabled prisoners are greatly varying. Facilitation to the needs of prisoners with disabilities seems to be random and not always well considered by prison authorities. No government policies currently exist to handle these issues.

Even prisons with some increased accessibility, like adaption to inmates in wheelchairs with wider doors and a more accessible bathroom, lack full accessibility. For example are often door sills and other items placed too high. Thus, partly adaptations are not sufficient to ensure the rights of all these prisoners. The effects of lack of accessibility and adaption are severe.

One issue of particular importance is the alarm systems. Most cells have a calling system, so that the prisoners and the prison officers can communicate. This system is problematic for wheelchair users and deaf prisoners. How each prison chooses to solve this problem varies, in many cases the prisoners in question end up having a limited opportunity to contact the staff. Some have experienced incidents where they lay on the floor for hours because of lacking communication possibilities.

There are also problems with de facto isolation of prisoners with disabilities. Even though the prison cell is made more accessible, the rest of the prison is often not available to disabled prisoners. The prisoners are thus deprived of access to the kitchen, dining areas, outside areas and the gym. The consequence is that these prisoners are isolated to a greater extent than non-disabled prisoners.

⁹ Fafo report 2011:01: «Straffet og isolert – Innsatte med funksjonsnedsettelse i norske fengsler», Hilde Haualand. <http://fafo.no/pub/rapp/20192/20192.pdf>

¹⁰ [http://www.regjeringen.no/upload/BLD/Planer/2009/Norge%20universelt%20utformet%202025%20web%20endelig.pdf#search=universell utforming](http://www.regjeringen.no/upload/BLD/Planer/2009/Norge%20universelt%20utformet%202025%20web%20endelig.pdf#search=universell%20utforming)

Art. 11 states the prisoners right to adequate standard of living. The above mentioned conditions must therefore be viewed as a breach on art 2.

Prisoners with disabilities also experience problems with family contact. Prisoners will often have to choose between a prison that is accessible, but is so far away from their home that their family cannot come to visit, and a prison where they can be closer to their family, but not adapted to their particular needs. This may constitute a breach of the right to family life according to art 10 and art 2 in the Covenant.

Furthermore, there are a limited number of cells in the Norwegian prison system accessible for disabled prisoners. Many cells for disabled prisoners are situated in high-security prisons. This leads to some prisoners serving their entire sentence in a high-security prison, although they should have been transferred to a lower-security prison at some time.

The lower-security prisons give the prisoners the opportunity to work and to study. Both are important measures enabling the prisoners to go back to society after the completion of their sentence. Disabled prisoners will suffer a disadvantage compared to other prisoners when they do not have the same opportunities to be motivated and habituated to work and study once out of prison.

In general comment No 20, the Committee states that “State parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation (...), [a]s long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.”

In conjunction with art. 13 and art. 6, these above mentioned conditions must be considered as breach of art. 2 of the covenant.

Recommendation:

- *The Committee urges the State Party to establish systems which ensures that all prisoners in Norway enjoy the same Covenant rights, indifferent of their physical abilities.*
- *The Committee urges the State Party to ensure that all prisoners are informed of the content of decisions regarding their situation in prison.*

Question:

- *How does the State Party monitor the need for special measures in order to ensure that all disabled prisoners enjoy the same Covenant rights as other prisoners?*
- *What measures are taken to ensure the rights of disabled prisoners?*
- *In what way does Norway plan to make all prisons accessible to all disabled prisoners?*
- *When will all Norwegian prisons be adapted as to provide prisoners with disabilities enjoyment of the same rights as prisoners without disabilities?*

ICESCR Art.	Subject	State report para.	Keyword
2	<i>Discrimination of foreign prisoners</i>		<i>Discrimination in prison, foreign prisoners</i>

We are concerned about the State Party's treatment of foreign prisoners, both in prisons especially designated for foreign prisoners and for foreign prisoners serving in traditional prisons.

Kongsvinger prison has recently been established as a prison for foreign prisoners only. As yet, not much is known about who will be placed at such a prison, and how the conditions for the prisoners will be. Civil society organisations have enquired the State Party about this, but not yet received an answer. We are concerned how such a prison will affect the rights of the prisoners serving time there.

Foreign prisoners serving in traditional prisons are also an issue of concern.

Many foreign prisoners do not speak Norwegian, and often not English. We experience that the access to interpreters in prison is limited. There exist no national guidelines on how to ensure sufficient interpretation to all prisoners.

The lack of interpretation affects the foreign prisoners' access to information about their rights and possibilities while serving their sentence, and the understanding of the procedures and practices inside the prisons. For example, written decisions concerning solitary confinement are made in Norwegian, and not always translated into a language the prisoner can understand. The process of imposing measures such as solitary confinement does not provide prisoners with sufficient possibilities to contradict the accusations behind the decision of placing them in solitary confinement. The time limits for appeals are often as short as 48 hours, making it hard for the prisoner to appeal himself, or to contact a legal advisor for assistance in the administrative complaint procedure. For decisions considered less important than isolation, translation is given to an even less extent. This might occur in matters regarding leave of absence to visit family and access to education programs in prisons.

When using the phone, the prison has the possibility to supervise the inmates' conversations. Due to the limited use of interpreters the prison will not grant the prisoner the phone call if the language used is not English or Norwegian. The option of communicating in another language than English or Norwegian is a severe limitation for the prisoner's rights.

The conditions that foreign prisoners endure during serving in a Norwegian prison pose in practise great restrictions on their possibility to partake in programs and activities in prison. Furthermore the foreign prisoners are in some situations not given the medical help they need, or help that can improve their life quality – help that would have been given to them if they were Norwegian prisoners. Regarding measures with a potential danger to health might thus amount to discriminatory practise regarding ICESCR covenant rights.

Recommendation:

- *The Committee urges the State Party to increase the use of interpreters in prisons to allow phone calls in first languages.*
- *The Committee urges the State Party to ensure that no discriminatory treatment of prisoners based on their country of origin, language or race in relation to ICESCR rights occurs.*

Question:

- *Does the State Party consider the current system of interpretation sufficient?*
- *Which prisoners will be placed at Kongsvinger Prison? What kind of programs will be available to these prisoners?*
- *How will the State Party ensure that no discriminatory practise will take place in prisons designated for foreign prisoners?*

ICESCR Article 3

ICESCR Art.	Subject	State report para.	Keyword
3	Gender Equality		

Issues regarding gender equality are in this report considered in relation to the specific convention rights.

ICESCR Article 6: Right to work

ICESCR Art.	Subject	State report para.	Keyword
6	Restrictions on right to work for immigrants		Asylum seekers, foreign workers, discrimination

The State Party`s report does not deal with the limitations of the right to work in Norway.

Immigrants granted residence permits on humanitarian grounds might have special restrictions imposed. This limitation is meant to encourage the immigrant to provide more extensive proof of their identity. However, many immigrants are unable to provide such proof, both due to conditions in the country of origin where one lack a central administration or because the country is unwilling to issue such documents due to political will, there can also be other reasons for the uncertain identity of the immigrant. In countries that do not have a central administration one should in theory not get a residence permit with restrictions, but due to difficulties when determining where they are from, f.ex an unclear language test, problems remembering which clan they belong to e.g., they can get a restricted residence

permit either how.

The restrictions means that they do not have the right to take part in the introduction course, where one for example learn the Norwegian language and makes it impossible to open a bank account and hence in practice makes it very difficult for these immigrants to get a job. In the above mentioned situations, such limitations impose disproportionate restrictions on the right to work. The organizations working with free legal aid have seen several cases where immigrants have had such residence permits with restrictions for over seven years, not being able to obtain identity documents from their country of origin. See also art 10 on the subject of residence permit with restriction, on how such restrictions limit the right to family life.¹¹

Asylum seekers who have received a final rejection on their application for asylum have an obligation to leave Norway themselves. In some cases this can nevertheless be impossible. This can occur where the asylum seeker does not have any identity papers and the home country can or will not recognize that person as their citizen. It might also occur where a person has become stateless or the country of origin has national rules on how long a national citizen can reside outside of the country, before they lose their full rights as a citizen. Asylum seekers who have been denied asylum and a residence permit on humanitarian grounds have no right to work, even if they cannot return, because their country of origin refuse to receive them. There have been reports of persons staying for over 12 years in Norway, and all the time being refused the right to work.¹²

There is a possibility for the immigrants to get a working permit in the immigration code section 8-7, but in practice we have seen that it is very difficult to fulfil the requirements in this section.

The Committee has emphasized that all rights in ICESCR, including Art. 6, are for everybody regardless of legal status – see General Comment No. 18 para 12 b and No. 20 para 15 and 30. The organizations are therefore concerned that this is not in compliance with Art. 6 compare Art. 2 para 2.

ICESCR Art.	Subject	State Report para	Keyword
6 and 7	Social dumping	RCO 28	Social dumping, harassment, violence

After the enlargement of the European labor market in 2004, labor immigration has been high and growing. This has led to positive growth in the Norwegian labor market. However, growing labor immigration from low-cost countries creates special challenges to the Norwegian work model, especially concerning social dumping.

¹¹ <http://www.fafo.no/pub/rapp/20265/20265.pdf>

¹² <http://www.nrk.no/nyheter/distrikt/nordland/1.10939391>

Social dumping constitutes a genuine risk, and must be combated. Social dumping involves employment where the employees are excluded from the most basic workers' rights such as decent wages, insurances, pension rights, safe working conditions, registration with the public services allowing them social welfare benefits, as well as protection against arbitrary dismissals. Some areas of work are particularly affected, such as the construction sector, the agriculture sector, the transportation sector, and the cleaning sector.¹³ Social dumping does not only have negative effects on the employees directly concerned, but threatens the working conditions of all employees because it may be economically beneficial for employers to employ immigrants who don't demand compliance with the law over other employees, and in the long run working conditions overall may become challenges.¹⁴

Increased internationalization of the economy and the labor market requires continued efforts to prevent social dumping while we simultaneously reinforce international cooperation. Social dumping is a complex problem that should be countered through statutory and regulatory provisions.

Recommendation:

- *The Committee urges the State Party to continue the efforts to combat social dumping*
- *The Committee urges the State Party to continue the three-party-collaboration between the Government, labor unions and employers' organizations in handling problems of social dumping.*
- *The Committee urges the State Party to consider establishing joint offices representing the most important public authorities, in order to facilitate the integration of immigrants into the Norwegian labor market.*

Question:

- *How does the State Party work to combat social dumping?*

ICESCR Art.	Subject	State Report para	Keyword
6 and 7	Right to work, vulnerable groups	15, RCO 28	Unemployment and underemployment concerning vulnerable groups.

Access to the labor market for persons of immigrant background was specifically highlighted by the CESCR as an area of concern in the previous examination of Norway.¹⁵ Although, as the

¹³http://www.regjeringen.no/upload/AD/publikasjoner/rapporter/2011/R_2011_Sluttrapport_arbgruppe_sosial_dumping.pdf, section II page 6

¹⁴<http://www.regjeringen.no/n/dep/ad/dokument/proposisjonar-og-meldingar/stortingsmeldingar/2010-2011/meld-st-29-20102011.html?id=653071>

¹⁵ E/C.12/1/Add.109 para 11

State Party refers in their report,¹⁶ measures have been taken to alleviate this problem, hidden unemployment due to exclusion from the labor market, as well as underemployment, remains a challenge.

This affects in particular immigrants, the physically disabled, people with mental diseases and substance abuse, young people, older workers, and women who work part-time but would like to work more.

There are still 60 000 employees involuntary working part time.¹⁷ 19 % of all part time workers want full time employment.¹⁸ This pattern persists, despite employers' complaints of a tight labor market. The percentage of women working part time is especially high.¹⁹ This problem can be seen in many sectors of the working life, for example in the public health sector. This creates an unacceptable situation for many people, particularly those on temporary contracts who have to hunt for extra hours in order to take out a decent wage, keeping in mind that living expenses in Norway are very high. Women also generally get lower wages than men do²⁰ and there are still relatively more low-paid women than there are men.

Recommendation:

- *The Committee urges the State Party to continue efforts to improve access to full-time positions in the labor market.*
- *The Committee encourages the State Party to handle problems of unemployment and underemployment through cooperation between the private and public sectors, implementing an array of political measures, and the joint efforts of authorities, business and industry and the labor movement.*
- *The Committee urges the State Party to give restrictions and guidelines to the sectors where part-time work is most widespread.*
- *The Committee urges the State Party to consider taking efforts to extend the use of The Inclusive Working Life Agreement in order to increased efforts to reduce sick leave, incorporate more occupationally disabled people into the world of work, and encourage more seniors to keep working longer.*

Question:

- *How does the State Party work to decrease involuntary part time work?*
- *Please describe the effect of the regulation in the Working Environment Act regarding part time work?*
- *How does the State Party work to limit to exclusion of vulnerable groups from the labor market?*

¹⁶ State Party report RCO para 28

¹⁷ CF State report RCO para 30.

¹⁸ Cf. Meld. St. 29 (2010–2011) section 3.3.1 and Nergaard *Avtalt arbeidstid og arbeidstidsønsker blant deltidsansatte* FAFO 2010 page 18

¹⁹ Cf Statistisk Årbok table 206: 40,7 % of women work part time.

²⁰ Cf Samfunnsspeilet nr 1 2010 tabell 2: Women earn in average 85 % of men.

ICESCR Art.	Subject	State Report para	Keyword
6 and 7	Harassment at work	22	Violence, threats and harassment at work.

An increasing number of workers are subjected to workplace violence, harassment and threats. According to new statistics from SSB (Statistisk sentralbyrå), 13 percent of female workers between the age of 17 and 24, have experienced sexual harassment at work at least once every month.²¹ The most prone to this being workers in the health and social sectors, personal services and security. It is problematic that young women experience sexual harassment in their first years in the working life. Sexual harassment is a problem because it degrades the person's integrity, and can lead to exclusion from the working life.

We need more knowledge about the problem of harassment at work and about whether the provisions in the Working Environment Act have the intended effects. Employers must supervise the strain on the working environment caused by violence and threats of violence. Health, environment and safety training should be provided to all employees of companies that have problems of this nature. In this respect, preventive actions, inspections by the Labor Inspectorate, campaigns and information drives are all important measures.

The legal remedies for addressing harassment at work are limited. In practice, the victim has to initiate legal proceedings with limited access to legal aid in order to demand compensation, and very few cases lead to compensation to the victim.

The Labor Inspection Authority does not appear to address the issue on many occasions, and the government should be asked to provide a statistic over the number of cases that the Labor Inspection Authority has investigated, and the number of times it has given an order or a coercive fine when the enterprise has not complied with the law, ref the government's report to the CESCR, dated 30 June 2010, page 35.

In other discrimination cases, the person exposed to discrimination can complain to the Equality and Anti-discrimination Ombud. The Ombud makes a decision as to whether that person has been discriminated against. The decision can again be complained to the Equality and Anti-discrimination Tribunal. However, neither of these bodies can award compensation, and thus not remedy the lack of efficient compensatory measures.

Recommendation:

- *The Committee urges the State Party to take further measures to combat sexual harassment in the work place.*
- *The Committee calls on the State Part to consider broadening the mandate for the Equality and Anti-discrimination Ombud.*
- *The Committee urges the State Party to consider awarding the Equality and Anti-discrimination Ombud legal competence to award damages.*

²¹ <http://www.dagsavisen.no/samfunn/kvinner-far-seksj-okk-i-arbeidslivet/>,
<http://www.ssb.no/arbmiljo>

Question:

- *Please provide information about the occurrence of sexual harassment in Norway.*
- *Please provide information about the measures taken to prevent sexual harassment, and the efficiency of measures such measures.*

ICESCR Article 7: Right to fair conditions of employment

ICESCR Art.	Subject	State Report para	Keyword
7	<i>Right to fair conditions of employment</i>	<i>RCO 19 a and b</i>	<i>Minimum wage</i>

There is currently no legally established general minimum wage in Norway.

Establishment of wages in Norway is based on “The Norwegian Model”. This means that instituting a general minimum wage might lead to a general decrease in wages. Employers would then seek to have wages closer to the minimum wage rather than a wage the employees and the employers both agree on.

General collective wage agreements are regulated according to The General Application Act²². A wage agreement may be submitted to the Tariff Board (established under the General Application Act § 3) for general application, if submitted by- a labor union or an employers' organization who are entitled to submit nominations according to section 39 (1) of the Act relating to labor disputes of 2012²³, -and if documenting that foreign employees perform or will perform work under conditions that in summary are worse than those applicable under nationwide collective agreements for that respective sector or profession, or than those generally applicable for that area and profession. The Tariff Board may then decide that the part of the collective agreement concerning salary and working conditions is applied in that sector or profession generally. The Tariff Board has according to The General Application Act a mandate to adopt a regulation that makes the wage agreement binding as a generally applicable law in the industry it pertains to. The General Application Act can be seen as a link that connects the State Party with the labor unions for a joint effort to combat low wages and unsafe working conditions, in keeping with CESCR statements in General Comment No 18 on the importance of trade unions²⁴. These efforts have been targeted at industries where there has been observed that foreign employees are being taken advantage of through low wages. These undertakings have been very effective, and have ensured employees within these industries fair wages and improved working conditions.

²² The General Application Act, URL:

http://www.regjeringen.no/upload/AD/kampanjer/Tariffnemnda/Allmenngjoringsloven_sist_endret_2009_engelsk.pdf

²³ The Act relating to Labour Disputes, URL: <http://websir.lovdato.no/cgi-lex/wiftinn?0000&krono&/lex/lov/nl/hl-20120127-009.html>

²⁴ E/C.12/GC/18 para 54

Currently, generally applicable collective wage agreements now apply to sectors such as the construction, cleaning, agricultural, and shipping- and shipyard industries²⁵. In other branches of trade, where there are similar risks of substandard wages or social dumping, no safeguard against substandard wages or unacceptable working conditions exists.

There have been no direct signals from the State Party that it wants to expand the use of generally applicable wage agreements to other industries.

We are concerned whether this practice sufficiently protects all workers from substandard conditions of employment.

Recommendation:

- *The Committee urges the State Party to consider expanding the use of generally applicable agreements to include other branches of trade where there is a similar need as the industries already regulated.*

Questions:

- *Will the State Party consider expanding the use of generally applicable wage agreements?*
- *How does the State Party ensure basic protection against substandard wages in braches of trade where generally applicable collective wage agreements are not currently in use?*

ICESCR Art.	Subject	State Report para.	Keywords
7	Right to fair conditions of employment	Not mentioned	Employment protection, unfair dismissal

The Working Environment Act (WEA) chapter 15 ensures high protection against termination of employment. The main condition by WEA § 15-7 is that a dismissal only can be granted if this is objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee.

Despite strict regulation, legal aid organizations experience that employees are notes with unfair dismissals.

The current system for contesting unfair dismissals does not work efficiently enough. In many cases, a review of the court on the dismissal is time-consuming. In some cases, especially concerning foreign workers, the employees lack sufficient knowledge about the employment protection legislation, and thus does not seek legal assistance in time to contest the dismissal. Cases concerning unfair dismissal are also a mental strain for the employee, making the barrier for taking the matter to court high.

²⁵ Minimum wage for the cleaning industry: ”So far, decisions regarding the general application of agreements have been made in relation to collective agreements in sectors such as construction, shipyards, electrical work (in parts of State Party) and the ‘green’ sector”, URL: <http://www.eurofound.europa.eu/eiro/2011/07/articles/no1107019i.htm>

Disputes over unfair dismissals are covered by the free legal aid system. However, the income limits for legal aid are very strict. In addition, the legal aid scheme does not cover the employee's responsibility for the legal expenses of the employer if the case is lost.

An area of particular concern is unfair dismissal due to pregnancy. Although Norwegian women are legally protected against discrimination on grounds of pregnancy/parental leave through special provisions in the WEA, dismissal during pregnancy does occur. The Equality and Anti-Discrimination Ombud in Norway receives a considerable amount of work-related complaints, and in 2009 24 of these complaints, mostly from women, concern discrimination on the grounds of pregnancy/parental leave²⁶. The enforcement of the anti-discrimination legislation lacks efficiency, since free legal aid will only be granted for people earning below the income limits²⁷.

Another cause of unfair dismissal is that neither the employer nor the employee is familiar with the basic labor protection legislation. A basic training of employers in labor law, for instance by the Norwegian Labor Inspection Authority, would contribute to alleviate these problems.

Recommendation:

- *The Committee urges the State Party to improve the efficiency of the legislation for protection against unfair dismissal, especially for vulnerable groups.*
- *The Committee urges the State Party to extend the legal aid scheme to ensure all persons in need of legal assistance in cases regarding unfair dismissal, but unable to afford it, will receive legal aid.*
- *The Committee urges the State Party to improve legal knowledge among employees and employers on basic workers' rights.*
- *The Committee urges the State Party to consider expanding the authority of The Anti-discrimination tribunal to award compensation in discrimination cases.*

Question:

- *What measures are taken to monitor the efficiency of the legislation for protection against unfair dismissal?*
- *Does the State Party consider the employment protection legislation give efficient protection to vulnerable groups?*

²⁶ Cf LDOs klagesaker 2007-2010 for utvalgte diskrimineringsgrunnlag og områder table 5

- ²⁷ Supplementary Report to the 8th Norwegian Report to the CEDAW Committee from the Equality and Anti-Discrimination Ombud".
- Arbeidstilsynet.no "Flest klager på diskriminering av gravide", 15.06.2009.
- LDO klagesaker 2007 – 2010 Hovedrapport.
- NOU 2011:18 Struktur for likestilling (Structures for equality)
- NOU 2012:15 Politikk for likestilling (Policies for equality)

- *How will the State Party ensure effective sanctions against discrimination of pregnant women?*

ICESCR Art.	Subject	State Report para.	Keywords
7	Right to fair conditions of employment	Not mentioned	Employment protection, payment of wages

Legal aid organizations regularly experience that employees are not getting the salary they are entitled to. This especially occurs where the employee is a foreign worker.

Many employees lack knowledge about their rights to salary. Thus, they do not institute the proceedings for collecting unpaid salary themselves.

Furthermore, the process of claiming unpaid salary is complicated and time consuming. Especially for an employee not speaking Norwegian, taking a case regarding unpaid wages to court by himself is not practical, although the first instance Conciliation Courts in Norway are intended for persons representing themselves. As the capacity of the Conciliation Courts, at least in the largest cities, is low, it might take 3-10 months²⁸ before a verdict is delivered in the case. In addition, one must go through the forced execution procedures, and possibly both bankruptcy proceedings and proceedings in the State Wage Guarantee Scheme. In total, it might take several years to claim unpaid wages.

The complicated process of claiming unpaid wages is not covered by the scheme of free legal aid. The State Party has conceded that there is a need for legal aid in such cases, and has suggested extending the legal aid coverage to such cases in a Government Policy Paper from 2009.²⁹ However, the suggestions have so far not been implemented.

Recommendation:

- *The Committee urges the State Party to raise knowledge about labor legislation.*
- *Consider expanding the legal authority of the Norwegian Labor Inspection Authority to order the payment of wages.*
- *Implement proposals on expansion of the legal aid scheme from the Government Policy Paper on legal aid.*

Question:

- *How does the State Party ensure that all employees receive the salary they are entitled to?*

ICESCR Art.	Subject	State Report para.	Keywords
7 and 6	Right to fair conditions of employment	Not mentioned	Domestic workers

²⁸ <http://www.regjeringen.no/nb/dep/bld/dok/nouer/2010/nou-2010-11/9/1.html?id=626136>,
<http://www.kco.no/files/dmfile/ForlikrordeneEntrusselmmotrettsikkerheten.pdf>

²⁹ Stortingsmelding nr 26 (2008-2009) s 68

Domestic workers are exempted from the Norwegian Labor Environment Act through the Domestic Aid Regulation (hushjelpforskriften)³⁰. This affords domestic workers less extensive protection against unreasonable termination of contract, worse conditions with regard to working hours than other workers, and worse working conditions in general. This regulation is a continuation of legislation dating back to the 1960s, and has not undergone any thorough reviews since then.

Domestic workers are mainly women, often immigrants, and sometimes immigrant men.

The Labor Inspection Authority does not inspect the working conditions for domestic workers due to concerns regarding privacy of the home.³¹

Recommendation:

- *The State Party should review the current Domestic Aid Regulation.*
- *The State Party should consider abolishing special legislation providing domestic workers.*
- *The State Party should ensure that all domestic workers enjoy adequate protection with regard to work hours, work environment, the right to discussion meetings in cases of termination of contract, and legal counsel.*
- *The Labor Inspection Authorities should inspect workplaces for domestic workers when they receive information that the working conditions are not in accordance with the law.*

Question:

- *Please provide statistics on the prevalence of labor relations regulated by the Domestic Aid Regulation?*
- *Does the State Party still consider it necessary to subject domestic workers to special legislation?*
- *How will the Norwegian government ensure that all domestic workers enjoy acceptable working conditions?*

ICESCR Art.	Subject	State Report para.	Keywords
7, 6, 9 and 10	Right to fair conditions of employment & more	Not mentioned	Au pairs

We are concerned about the situation for au pairs in Norway.

³⁰ Forskrift om husarbeid, tilsyn og pleie i privat arbeidsgivers hjem eller hushold (Domestic Aid Regulation)

JURK report *Au pairer i Norge – Rettigheter og rettighetsinformasjon* (English summary) by Lene Løvdal, see <http://foreninger.uio.no/jurk/publikasjoner/rappporter/au-pair-rapport.pdf>

³¹ Cf Arbeidstilsynet *Prosjektrapport: «Rett Hjem» – kampanje i hjemmetjenesten* page 12: «Arbeidstilsynet har i prinsippet hjemmel til å føre tilsyn i private hjem. Hensynet til personvern og privatlivets fred er imidlertid vurdert så tungtveiende at Arbeidstilsynet har valgt og ikke foreta tilsyn i brukernes hjem.»

Although the au pair scheme is intended as “cultural exchange”, au pairs are in particular risk of being subject to exploitation in breach of their ICESCR rights, for instance like performing domestic work in sub-standard working conditions and for sub-standard wages, or even being victims of forced labor. The legislation protecting au pairs against such exploitation is weak. In addition, enforcement of the current legislation is in practice limited due to inter alia the vulnerable situation of the au pairs and lack of inspection by public authorities on compliance with au pair regulations.³²

Recommendation:

- *The State Party must ensure that all au pairs enjoy basic protection against exploitation and forced labor.*
- *The State Party should review its current au pair scheme and the system of enforcing legislation and regulations on the rights of au pairs.*

Question:

- *Please provide detailed information on the current situation of au pairs in Norway.*
- *Please provide information about the measures taken to ensure enforcing of basic rights for au pairs, in particular the effectiveness of such measures.*

ICESCR Article 8: Right to form and join trade unions

ICESCR Art.	Subject	State Report para.	Keyword
8	Right to form and join trade unions		Trade unions

The high immigration rate resulting in social dumping is considered the main challenge to uphold the rate of organization within trade unions, and must be addressed adequately.

Over the last 30 years the State Party has on several occasions violated the rights to organize in trade unions and to strike by referring labor disputes to compulsory arbitration. Latest this took place in the labor dispute in the petroleum activity sector the summer of 2011. In the provincial ordinance passed by the King in Council (due to the absence of the Parliament in the summer) 10.08.2011³³, it is stated: *"If there should be conflict between international conventions and the Norwegian use of compulsory arbitration, the Ministry of Labor is of the opinion that it under any circumstances is necessary to act."*

In addition to be a violation of art 8, compulsory arbitration is a violation of important conventions within the scope of ILO and the European Social Charter. The trade unions concerned by the violation have on several occasions filed complaints to the Committee on Freedom of Association in ILO which has supported the complaints.

Recommendation:

- *The Norwegian State Party should fully respect its international obligations and*

³² Løvdal *Au pairer i Norge* JURK report no. 64 2012

³³ Kgl.res.dated 10.08.2011

recommendations from international bodies regarding the right to form and join trade unions.

ICESCR Article 9: Right to social security

ICESCR Art.	Subject	State Report para.	Keyword
9 and 11	Right to social security & right to adequate standard of living	33	Temporary residents and irregular immigrants' rights to social assistance, discrimination

According to Regulations (to Statute on social services in NAV) of 4 December 2009 Section 2 non-nationals without residence permit have not the same rights to non-contributory social services as others, except for emergency cases. This includes asylum seekers having been denied asylum and residence permit on humanitarian grounds.

Asylum seekers who have received a final rejection on their application for asylum have an obligation to leave Norway by themselves. In some cases this can nevertheless be impossible because their country of origin refuse to receive them. This can occur where the asylum seeker does not have any identity papers and the home country does not know if, or will not recognize, the person as their citizen. It might also occur where a person has become stateless or the country of origin has national rules on how long a national citizen can reside outside of the country, before they lose their full rights as a citizen.

In its last report to the Committee³⁴ the State Party claims that the group of people who are rejected a residence permit, or for other reasons are unlawfully residing in Norway, are entitled to “emergency social assistance until they leave the country”. This is an imprecise rendition of their legal situation. The Regulations of 4 December³⁵ § 4 grants emergency social assistance only until the foreigner has the *possibility* to leave the country, and not until the person has actually left Norway.

The Committee has emphasized that all rights in ICESCR, including Art. 9, are for everybody regardless of legal status. Especially should non-nationals have reasonable access to non-contributory schemes for income support – see General Comment No. 19 para 31 and 37 and No. 20 para 15 and 30. The organizations are concerned that the Norwegian practise does not comply with Art. 9 compare Art. 2 para 2.

The Norwegian practise is problematic as the State Party’s assessment of what constitutes an “emergency situation” is very narrow. As an example, the Emergency Social Security Office in Oslo (Sosial Vaktjeneste) will not provide night shelter to homeless persons from this group unless the temperature is below -10° Celsius.

The organizations have experienced incidents where people have been rejected even to apply for emergency social assistance, on the basis that they are not in Norway legally. This

³⁴ State Party’s Fifth Periodic ESCR report, page 40

³⁵ Forskrift om sosiale tjenester for personer uten fast bopel i Norge, URL: <http://www.lovddata.no/for/sf/ad/td-20111216-1251-0.html#5>

effectively denies them their right to have their application assessed in accordance with the law.

When non-nationals have been denied social services, they need legal help to have effective remedies. This is difficult to achieve, because such cases are not among those prioritized in the Statute on Free Legal Aid.

Concerning this the Committee has stated: “*Legal assistance for obtaining remedies should be provided within maximum available resources*” – see General Comment No. 19 para 77.

Recommendation:

- *The Committee urges the State Party to give all persons staying in Norway regardless of legal status the same right to non-contributory social security, in accordance with The General Comment No. 19 para 31 and 37 and No. 20 para 15 and 30.*
- *The Committee urges the State Party to include cases concerning social security in the legal aid scheme.*
- *The Committee urges the State Party to ensure that the case workers at the Welfare and Labour Administration are aware of the fact that persons residing illegally in Norway have the right to apply for emergency social assistance.*

Question:

- *What constitutes an “emergency situation” that will entitle all persons a right to emergency social security?*
- *Which solutions does the State Party have for the group of people who are prevented from returning to their home country, concerning the right to non-contributory social security?*
- *How will the State Party ensure that non-nationals without residence permit are able to enjoy the non-contributory social security that they are entitled to according to The General Comment No. 19 para 31 and 37 and No. 20 para 15 and 30?*

ICESCR Art.	Subject	State Report para.	Keyword
9	Right to social security	RCO 29	Discretionary based assessments of social security benefits

Norway’s Fifth Periodic Report on the Covenant states:

“Exactly what constitutes an adequate living is determined on the basis of an assessment of the needs of each individual applicant.”

Non-contributory social security (sosialhjelp) is administered by the municipalities. Each application for non-contributory social security should, according to the Public Administration Act and the Act related to the social services in the labor and welfare administration of 2009, be assessed individually according to the need of the individual applicant.

The municipalities have a large degree of discretion when assessing such applications. The County Governor, as the representative of the Government, handles complaints on such decisions, but can only overturn the municipal social services' decisions if it is "clearly unreasonable".

In practice, we see quite large differences between each municipality in how much is granted as non-contributory social security benefits.³⁶

We are concerned about such differences. They do not appear to be correlated to differences in living expenses in different municipalities, although differences in calculation of the benefits make it hard to compare. In municipalities where the non-contributory social security benefits are particularly low, they might be insufficient to fulfill ICESCR rights. Although the State Party in its report from 2010 concedes that there is a need for evaluation of the scheme's arbitrariness,³⁷ no action has been taken.

As mentioned in the State Party's report, the Government publishes non-binding guidelines for what is to be considered appropriate rates of non-contributory social security benefits. However, the level of these rates is well below the level of minimum subsistence recommended by the National Institute for Consumer Research (Statens Institutt for Forbruksforskning). In addition, many municipalities have rates below the level indicated in the Government guidelines. In a government-commissioned research report from 2006, one fourth of the municipalities are found to have non-contributory social security benefits rates below the rates in the Government guidelines.³⁸

Furthermore, the municipal social services often have local guidelines on non-contributory social security benefits rates. However, several legal aid organizations experience that in practice decisions are based on a too strict compliance with such local guidelines, and not an individual assessment of each individual applicant's need. This might lead to persons in need of social security being denied such benefits.

Moreover, individuals applying for social assistance are not covered by the Free Legal Aid Act, and will have to tend for themselves without any assistance from legal expertise. In 2009, it was published a State policy paper which revealed the need for legal assistance in such cases. It proposed including social security in the legal aid scheme, but its proposals have not yet been implemented.³⁹

³⁶ Bent Brandtzæg et al. *Fastsetting av satser, utmåling av økonomisk sosialhjelp og vilkårsbruk i sosialtjenesten* Telemarksforskning 2006 s 36.

³⁷ The State Report para 29

³⁸ Bent Brandtzæg et al. *Fastsetting av satser, utmåling av økonomisk sosialhjelp og vilkårsbruk i sosialtjenesten* Telemarksforskning 2006 s 36.

³⁹ Stortingsmelding nr 26 (2008-2009) s 67

Recommendation:

- *The Committee urges the State Party to ensure that all persons entitled to non-contributory social security will receive such benefits according to their individual need.*
- *The Committee urges the State Party to remove the extraordinary restrictions on the County Governor's consideration of appeals on decisions related to applications for social assistance.*

Question:

- *What level of subsistence is, in the State Party's opinion, the minimum needed in Norway to ensure compliance with the right to adequate standard of living?*
- *How does the State Party ensure that social security given by municipalities meet the basic standards of subsistence?*
- *Why are there such great differences between the social security benefit rates in the different municipalities of Norway?*

ICESCR Art.	Subject	State Report para.	Keywords
9 and 7	<i>Right to fair conditions of employment & Right to social security</i>		<i>Welfare system, case processing time</i>

The responsibility for the applications for and payment of social security benefits under the national insurance scheme (Folketrygden) lies exclusively with the Norwegian Labor and Welfare Administration (NAV).

Although most applicants receive the benefits and information on whether they have a claim, there has also been observed problems that might threaten the applicants' right to social security benefits.

Decisions on benefits are strictly regulated by law in the National Insurance Act. The procedure for making decisions regarding benefits is regulated in The Public Administration Act as well. In practice, we often see a lack of understanding among the NAV case handlers on the legal framework, both concerning right to benefits and procedural rights for administrative decisions. Public evaluations point to lack of knowledge, especially within legal matters and administrative procedures.⁴⁰

In addition to this, The Labor and Welfare Administration, like all Norwegian Government organizations, has a general duty to inform and guide individuals regarding their rights. This also applies to how individuals can obtain the benefits they are entitled to according to The National Insurance Act. As an example of particular concern, we can highlight the difficulties in computing the rights to parental benefits for women with varying income, as described on page **Error! Bookmark not defined.** Such computation is complex, and the need for

⁴⁰ Cf Hagen et al *Tiltak for å bedre NAVs virkemåte* 2010 page 73

information is great. However, organizations working with legal assistance for users of NAV report severe lack in the compliance with the general obligations to provide such guidance and information.⁴¹

Furthermore, the time that it takes the Labor and Welfare Administration to give the applicant their decision is often much too long. We are often approached by applicants that have been waiting several months for a decision from the Labor and Welfare Administration. These decisions are regarding much needed benefits and lead to people living on nothing while they wait for the answer. In one case the applicant got the decision regarding their parental benefits several months after their child was born, after applying a full year in advance. In another case currently under assessment by NAV, NAV have used almost 10 months in forwarding a complaint to the Court of Social Security. The Parliamentary Ombudsman has reported similar delays, and NAV has conceded that such delays are in breach of their obligations according to the Public Administration Act.⁴²

In General Comment No. 19, CESCR have highlighted that the right to social security encompass that “*public authorities must take responsibility for the effective administration [...] of the system*”⁴³, and furthermore that information on social security entitlements is a specific part of the right of social security⁴⁴.

Recommendation:

- *The Committee urges the State Party to initiate measures to ensure an increase in the efficiency of the Labor and Welfare Administration's treatment of social security applications.*
- *The Committee urges the State Party to ensure that all employees who handle applications in the Labor and Welfare Administration receive proper training on the applicant's rights and the organization's duties according to Public Administration Act, The National Insurance Act and the Act relates to the services in the labor and welfare administration of 2009.*
- *The Committee urges the State Party to make sure the Labor and Welfare Administration inform the applicants, so that they are aware of their rights and duties in their specific cases.*

Question:

- *How does the State Party ensure the correct and efficient processing of all claims for benefits by NAV, guaranteeing all entitled their lawful benefits?*

⁴¹ Marit Lommundahl Sæther *Årsrapport for Juss-Buss 2012*.

⁴² Sivilombudsmannens Sak 12/2065

⁴³ E/C.12/GC/19 para 11

⁴⁴ E/C.12/GC/19 para 26

- *How does the State Party ensure that all users, and especially those from vulnerable groups like single mothers, foreign workers and immigrants, receive sufficient information and guidance from NAV?*
- *Is the State party satisfied with the current situation in NAV?*

ICESCR Article 10: Right to protection of the family

ICESCR Art.	Subject	State Report para.	Keyword
10	Right to protection of the family	RCO 35, 39	Restriction on family reunification, subsistence requirement

The requirement of a certain income for the person residing in the receiving country

Reference is made to the State Party's Report para 35 where the Committee encourages the State party to consider easing restrictions on family reunification.

In October last year the Norwegian authorities promoted a change in the Immigration Act. The proposal involves an increase to the subsistence requirement in cases where a foreigner wishes to establish family life in Norway. This means that where the sponsor arrived in Norway before he or she married the applicant.

The State Party argues that a higher income requirement will ensure the self-support, promote integration, prevent forced marriages and prevent large influx of asylum seekers to the country. The signing organizations believe that it is neither necessary nor appropriate to raise the subsistence requirement in cases of family immigration.

The goal of preventing forced marriages through a proposal of increasing the subsistence requirement is hardly effective, considering that most marriages are concluded voluntarily. The income requirement is broadly designed, and affects a much larger group than the purpose of preventing forced marriage would imply. We believe that other mechanisms can be implemented in the local society to prevent forced marriages, e.g. non-governmental organizations that specifically work with these types of issues in the local community. We are convinced that this would have a far better effect than raising the financial requirement.

In regards to the purpose of preventing large influx of asylum applicants, there are no studies that can confirm that asylum applicants' choice of country is related to the requirements for family reunification. Applying for asylum in a country is an independent right which should not be limited due to immigration control considerations.

We believe that specific integration measures, such as extended right to learn Norwegian properly, strengthening the NGOs who work with integration and create a better system for recognition of education and work experiences from abroad, are more suitable to counter the problem of immigrants not being economically self-supported.

We also see that the income requirements already have huge consequences for immigrant women in Norway, who already are in a very vulnerable position⁴⁵. We see that they have difficulties with fulfilling the income requirements. Many of these women have little education, and they often have young children they have to support. These women also have a very small network, and there are language barriers that make it very difficult to find a job.

Quarantine time for people who have received social assistance benefits

If the sponsor has received social benefit during the last 12 months prior to the decision, the application will be refused and a 12-month period of quarantine will then commence when applying for family reunification.

Immigrants that come to Norway as asylum seekers are offered a place at the introduction program. When they are finished with this, they can be a part of a qualification program that is vocational and is intended to be an introduction to working life. This program is categorized as social benefit and hence gives twelve-month quarantine.

In many cases the sponsor is unaware of the fact that this is a type of social security and that quarantine time that will occur, because the information given from the authorities is very inadequate and insufficient.

During the last examination of Norway the CESCR criticized the subsistence requirement.⁴⁶ The UN Human Rights committee has also previously criticized the family reunification legislation.⁴⁷

Recommendation:

- *The Committee urges the State Party to evaluate the regulations regarding subsistence requirement in family unification cases as to ensure that the practice do not constitute a disproportional restriction on family life.*
- *The Committee urges the State Party to evaluate how the income requirement affects women and men differently and whether this could be discriminatory in the relation to the right to family life.*
- *The Committee urges the State Party to give explicit information to immigrants about the consequences of receiving social benefits and that it is followed by 12 months quarantine when applying family reunification.*

⁴⁵ [http://www.dagbladet.no/2012/04/17/kultur/debatt/debattinnlegg/kvinner/inntekt/21159592/Anne Staver, Family Reunification: A Right for Forced Migrants? Refugee Studies Centre, 2008, http://www.vg.no/nyheter/innenriks/artikkel.php?artid=10058727](http://www.dagbladet.no/2012/04/17/kultur/debatt/debattinnlegg/kvinner/inntekt/21159592/Anne%20Staver,%20Family%20Reunification:%20A%20Right%20for%20Forced%20Migrants%20?ref=RSS)

⁴⁶ E/C.12/1/Add.109 para 16

⁴⁷ CCPR/C/NOR/CO/6 paragraph 15

Question:

- *Can the State Party please provide information on why and how the raise in income requirements is necessary to ensure the mentioned objectives?*
- *Will the Norwegian State Party evaluate the immigration rules with regard to indirect discrimination of women?*
- *What measures are taken to improve immigrant women's income possibilities and access to labor markets and thereby improving the possibility to family reunification?*

ICESCR Art.	Subject	State Report para.	Keyword
10, 2	Right to protection of the family	RCO 35, 39	Restriction on family reunification, children

The subsistence requirement for adolescents between 15 and 18 years old without caregivers in their home country

There is an exception from the subsistence requirement when the applicant is a child under the age of 15, without a caregiver in the home country. However, if the applicant is a child between 15 and 18 years old, the sponsor must meet the income requirements.

The purpose of the exception from the subsistence requirement is to ensure that a child without parents or family in its home country should be able to live with its family in Norway regardless of the family's income. There is no reason for why this purpose does not apply to children between 15 and 18. In all other Norwegian law anyone who is under the age of 18 is considered a minor. The same age limit should be used also for non-nationals in the immigration Act. A child is still a child, regardless of its nationality.

Operating with different age limits in the immigration regulations makes the legislation inconsistent and unsystematic, and also makes it very complicated for the individual to clarify their legal position.

The UN Convention on the Rights of the Child recognizes everyone under the age of 18 as children. This should also apply for cases under the Norwegian immigration act.

Recommendation:

- *The Committee urges the State Party to raise the age limit for the mentioned exception from the subsistence requirement to 18 years.*

Question:

- *Can the State Party explain why the exemption for the subsistence requirement is only for children up to the age of 15 years?*

ICESCR Art.	Subject	State Report para.	Keyword
10	<i>Right to protection of the family</i>	<i>RCO 35, 39</i>	<i>Restriction on family reunification for asylum seekers</i>

The time limited exception from the subsistence requirement of 1 year for people who are granted resident permit as a refugee

If the family reunification application is submitted within one year after the sponsor has been granted resident permit as a refugee, there is no subsistence requirement for the sponsor. It is a requirement that the applicant is the sponsor's spouse, cohabitant or child. The family relation must have been started before the sponsor (now living in Norway) arrived in Norway.

We have seen multiple examples where the immigrants are not informed properly about the opportunities and conditions for this exception. We have experienced that both Norwegian embassies and the police default to give correct information. Even some of those who are employed in municipalities don't know about the one-year exemption and hence do not provide information about it to the refugee. This happens way too often and makes it difficult, especially for asylum seekers who have just arrived, to meet their rights to family life. Immigrants not applying within the timeline of one year must then meet the ordinary income requirements which can take many years to fulfill, because it takes time to learn the language and have sufficient schooling to get a permanent work and the required income. The Norwegian immigration authorities have themselves in a letter admitted that this information has been hard to obtain for immigrants. In later time, some improvements have been done and now information about the rule is on the web pages of the immigrations authorities and in all asylum decisions.

The Directorate of Immigration has previously stated that they do give exceptions from the 1-year requirement where there has been given incorrect information concerning the family reunification rules. To get this exemption you need to prove that one has been given incorrect information. The organizations providing free legal aid in such cases experience the threshold of evidence to be very high. The person who has given the misleading or incorrect information is seldom willing to admit this, and it therefor becomes quite difficult to provide evidence.

The Administration Act, section 11 states that the government has a supervision duty. If parts of the government inform incorrectly this should not affect the rights of the refugee in relation to family reunification and the right to family life.

Recommendation:

- *The Committee urges the State Party to secure the information flow within all public offices about the 1 year limitation to the exception from the requirement to a certain income*

Question:

- *How does the State Party ensure that all relevant public offices know about the 1*

year limitation to the exemption from the subsistence requirement?

ICESCR Art.	Subject	State Report para.	Keyword
10, 12, 13	Right to protection of the family	RCO 35	Residence permits with limitations

The use of “residence permits with restrictions” for people who cannot prove their identity hinders the right to family reunification

If an asylum seeker does not fulfill the requirements for asylum, but is in a special vulnerable situation, he or she can get a resident permit based on strong humanitarian grounds, in accordance with section 38 in the immigration Act. If this person is not able to document its identity sufficiently, he or she can get a resident permit with limitations. This limitation is meant to encourage the immigrant to provide more extensive proof of their identity.

However, many immigrants are unable to provide such proof, both due to conditions in the country of origin where one lack a central administration or because the country is unwilling to issue such documents due to political will. In countries that do not have a central administration one should in theory not get a residence permit with restrictions, but due to difficulties when determining where they are from, f.ex an unclear language test, problems remembering which clan they belong to e.g., they can get a restricted residence permit either how.

Firstly, a temporary residence permit with restrictions does not give the rights to a family reunification for family abroad.

Secondly, for the majority⁴⁸ of the immigrants with such a resident permit with restriction this permission does not give right to permanent residence, and it will not trigger integration grant (integreringstilskudd.) This means that no municipality will receive and settle them, as the municipalities give priority to those refugees who receive funding from the State Party. This means that they in practice stay in refugee reception centers for years. Living under such conditions constitutes severely obstacles to leading a normal and healthy family life⁴⁹.

Also, the people affected do not have the right to go to the introduction program that the municipality offers. The program aims at providing basic Norwegian language skills and insight into the Norwegian society, and aims to prepare refugees for entering the labor force

⁴⁸ Some of the immigrants who have a resident permit based on humanitarian grounds because their children have a certain link to the country, will be settled in a municipality.

⁴⁹ Kommentarutgave, (Utlendingsloven, kommentarutgave Vevstad, Vigdis, Universitetsforlaget 2010, the immigration act (2008/35), the preparatory works to the immigration act 38 (5), Ot.prp.nr.75 (2006-2007), Lovlig med forbehold, by Silje Sønsterudbråten, «Tett på innvandrerkvinner - møt kvinnene ikke statistikken», skrevet av Marie Louse Seeberg og Sahra Cecilie Hassan, Nova.

or education. They will also not be able to open a bank account, which makes it difficult in to get a job in Norway.

Where a child has received a resident permit as a refugee, e.g. due to danger of female genital mutilation, but the parents have a limited resident permit on humanitarian grounds, the family as a whole will not be settled in a municipality.

To get the limitations removed they have to prove their identity. Today the immigrants with limited resident permits are encouraged to provide identity documents, often through traveling to the country of origin. Many find this difficult especially due to the economic expenses or because they are afraid to contact the Government in their country of origin. Taking in consideration the difficulty of getting a job for these people, the lack of language courses and lack of possibility to settle, it is almost impossible to cover the expenses of such a trip to the country of origin⁵⁰. Today there are no systems for financial support which enables them to fulfill this demand. For some groups of immigrants it is further impossible to document their identity because documents from their home country do not have enough notoriety to serve for this purpose.

In the mid of February 2013 the government introduced a new practice to the immigration directorate. People who are given a temporary and limited resident permit due to the immigration act section 38, together with section 8-12 will hereafter be settled in a municipality after their resident permit have been renewed once without it being possible for them to show new identity documents to clarify their identity. There are no plans to changes the immigration act and it is still a question what the consequences of the change in practice will be. There is neither any plan to remove the restriction on the possibility to have family reunification.

Recommendation:

- *The Committee urges the State Party to ensure that those immigrants who after the new practice will be settled after 1 year with a “residence permit with restrictions” should be entitled to be settled and to attend the introduction program.*
- *The Committee urges the State Party to extend the use of oral hearings in the asylum procedure, in order to improve the procedure to establish the asylum seekers identity, and thereby reduce the use of resident permits with limitations.*
- *The Committee urges the State Party to limit the use of residence permits with restrictions to only those cases where the identity is not credible, e.g. take away the requirements in section 8-12 a and b in the immigration policy.*

Question:

⁵⁰ <http://www.faf.no/pub/rapp/20265/20265.pdf>

- *We encourage the State Party to provide information on how the proposed changes in practice will change the above-mentioned issues?*
- *Has the Norwegian government evaluated the effects of this exclusion, with regard to the cost of marginalization, lack of access to work, mental distress and illness, and other similar issues?*

ICESCR Art.	Subject	State Report para.	Keyword
10	Right to protection of the family		Expulsion, children

The State Party's assessment of the child's best interest

When an immigrant is expelled from his or her spouse and child, this leaves the child with only one parent, and thus represents a family disruption.

In cases of expulsion the State Party is obligated to take into account the child's best interest in all cases concerning children. However, this does not limit the use of other interests, especially the interest for immigration control. There is a concern that the need for immigration control largely trumps the child's best interest, and that this also might constitute a breach to the protection of family life.

If the children of the expelled person have been born after the decision to expel has been made, the link between the parent and the child will have minimal importance in the State Party's assessment of proportionality. This applies both to the assessment of the best interest of the child and the assessment of whether the expelled person has a certain link to the country.

Neither resident permit nor visitation rights

In order to expel an immigrant from Norway, the expulsion must be proportionate. In this assessment the State Party will take into account if the immigrant has any ties to Norway, a child will here be of importance for the decision. A visitation right to the child in Norway is crucial in this assessment.

When it comes to the right to visitation itself, the courts often judge against the expelled person referring to the fact that they do not have the right to stay in Norway any way. And when it comes to a complaint on an expulsion case (or application for residence permit based on family reunification with a child), the immigration authorities reject the case because they do not have visitation rights. Because the Court does not take in to consideration the fact that expulsion case decided by the immigration authorities depends upon the visitation right decided by the Court, and vice versa, the expelled immigrant will be trapped in a loop and not have the opportunity to maintain a family life.

All-immigrant-prison (Kongsvinger)

If a foreigner is expelled or in danger of being expelled due to a breach of the penal code, they are forced to serve their remaining prison sentence in an all-immigrant-prison (Kongsvinger).

The expelled immigrants may have family living all across Norway and the distance to travel could be insurmountable. Firstly this makes it difficult for the immigrants to maintain a family life through visits. Norwegian prisoners have greater opportunities to serve their sentence in close to where the family lives. Secondly this hampers him or her from fulfilling visitation rights with a child, something which could be devastating for the expulsion evaluation, since the link to Norway is weaker.

Recommendation:

- *The Committee urges the State Party to make the assessment of the child’s best interest in cases of expulsion more thoroughly and more visible in the expulsion assessments. This should be done through clear guidelines in the form of legislation.*
- *The Committee urges the State Party to consider the child’s best interest and the right to family life regardless of if the child is born before, or after the parent is expelled.*
- *The Committee urges the State Party to take due consideration to the fact that the use of an all-immigrant prison prevents the immigrant’s right to visitation, when they consider expelling a person.*

Question:

- *Please provide detailed information on who are to be placed at Kongsvinger prison. Only immigrants who has received a final expulsion decision or also immigrants who has an open expulsion case at the immigration authorities.*
- *How does the current practice ensure that all inmates have adequate contact with their families?*

ICESCR Art.	Subject	State Report para.	Keyword
10	Right to protection of the family	39	Free legal aid to immigrants

In their report to the Committee the State Party has failed to give the correct information on the free legal aid immigrants are entitled to under the act on free legal aid. Immigrants who have received a rejection on their asylum application are entitled to 5 hours of free legal help. Immigrants who are expelled due to a breach of the Immigration Act are entitled to 3 hours of free legal aid. Immigrants who are expelled due to a breach of the penal code are not entitled to any free legal aid at all, neither are immigrants with a rejection on an applications on family reunification.

The above mentioned hours are meant to reflect an average of what an immigrant need of legal help in these types of cases. Lawyers are meant to use more time on difficult cases, while some cases might need less time than what is allocated. The system does not always function as intended. As the remuneration for legal aid work is poor, there have been

examples of sub-standard work done by lawyers.

Recommendation:

- *The Committee urges the State Party to ensure that all immigrants will be entitled to necessary free legal aid in all cases regarding expulsion and family reunification, to ensure their rights to protection of family life.*
- *The Committee urges the State Party to ensure that the scope of and time allocated to free legal aid reflects the importance of the case for the individual and the complexity of the case.*

Question:

- *Please explain why legal aid is available in cases regarding expulsion due to breach of the immigration act, while not available in similar expulsion case due to breach of the penal code?*
- *What measures are taken to ensure that legal aid given under the legal aid scheme is adequately meeting the needs of the individual?*

ICESCR Art.	Subject	State Report para.	Keyword
10	Right to protection of the family	41	Trafficking

Progress has been achieved in setting up structures and measures for the identification and referral of child victims of trafficking, the investigation of cases and the prosecution of perpetrators. Still there are only a few children that are identified and registered as victims of trafficking each year. Child trafficking is concentrated mainly on cases of sexual exploitation but there is evidence and a growing awareness that children are exposed to many different and multiple forms of exploitation⁵¹.

The exploitation of children in begging and criminal activities has so far received limited attention. There is little evidence as to whether children are exploited and if they are victims of trafficking. The children are often seen as “street children”, children in conflict with the law or migrant and asylum seeking children. In cases of Roma children, their involvement in begging or other street based activities and the possible link to organized exploitation and trafficking, are not recognized and investigated.

Children living in asylum centres are vulnerable to human trafficking. During the year 2012, 85 unaccompanied minors between 15-18 years went missing from asylum centres in Norway⁵². The number has increased since 2011. The children often are going missing after being denied asylum in Norway. The organizations fear that the children who have disappeared have become victims of trafficking. We are concerned about the care situation in

⁵¹ Council of the Baltic Sea State Child Centre, Expert Group for Cooperation on Children at Risk – Children trafficked for exploitation in begging and criminality: A challenge for law enforcement and child protection. February 2013.

⁵² According to PRESS Save the Children Youth State Party and the report “Savnet” (Missing). January 2013.

asylum centres for unaccompanied minors between 15-18 years. The Child Welfare Act chapter 5 A has only been put into force for children below the age of 15.

The State Party's Plan of Action against Human Trafficking 2011-2014 contains specific measures to prevent trafficking of children. One specific measure is to prevent and investigate the disappearance of minors from asylum centers. In a status report for the plan of Action against Human Trafficking this measure is reported as "being carried out". Despite search for information regarding the work that is "being carried out", we have not been able to receive information as to what concrete steps that has been taken so far.

Questions:

- *How will the State Party ensure that children that are exploited in begging and criminal activities are identified and registered as victims of trafficking*
- *What will the State Party do to avoid that the legislation discriminates between unaccompanied minors below and above the age of 15, and especially why there is no progress plan to include these children in the child welfare system in the future?*
- *What will State Party do to allocate sufficient competence and resources to the immigration authorities and to the police for preventing and investigating possible cases of trafficking when children disappear from the asylum centers?*
- *What specific actions have been taken by the State Party in this regard and when will this specific measure be completed?*

ICESCR Art.	Subject	State Report para.	Keyword
10	<i>Right to protection of the family</i>		<i>Child Welfare services, minority families, discrimination</i>

Statistics show that minority families are overrepresented in the child welfare services. In relation to the child population we find the highest client ratios among immigrant children and 2.6 times as many immigrant children were placed outside their homes as children without immigrant background.⁵³ The number of immigrants and Norwegian born children to immigrant parents with measures in the child welfare services has increased from 16 percent of all children in 2004 to 21 percent in 2009.

Minority families can experience more stress related factors, such as poverty, unemployment, marginalization, trauma, lack of language skills and lack of social networks, compared to the majority population, that may have impact on their mental health, parenting and childcare skills.⁵⁴

⁵³ Kalve T. and Dyrhaug T. (2011), «Barn og unge med innvandrerbakgrunn i barnevernet 2009». Report 39/2011, Statistics State Party, <http://www.ssb.no/publikasjoner>.

⁵⁴ Berg, B. and M. Valenta (2008), *Flukt, eksil og flyktingers sosiale integrasjon*. Oslo, Norges forskningsråd; Neumayer, S.M. et al. (2008), *Forebygging av vold i oppdragelsen. Samarbeid mellom hjelpeapparat og minoritetsforeldre – en kunnskapsoversikt*. Nasjonalt Kunnskapssenter om vold og traumatisk stress - NKVTS

Research shows at the same time that the handling of cases of violence, abuse and neglect of children in minority families in the child welfare services are characterized by large differences from office to office. There is a lack of cultural understanding and both too little and too much interference. The research indicates that a large number of immigrant children are not getting the services they are entitled to and that the received measures do not help as they should. This implicates discrimination and unequal treatment of minority children in the child welfare system compared to ethnic Norwegian children. Child welfare officers and public health nurses claim that they do not receive the training they feel they need nor do they gain the necessary competence and sensitivity to help minority families in a proper way and with the same quality as ethnic Norwegian families.⁵⁵

Recommendation:

- *The Committee urges the State Party to ensure that minority families in need get the necessary assistance and support to enable them to exercise their parental role and responsibilities in the upbringing of their children*
- *The Committee urges the State Party to ensure that the child welfare services and public health nurses are given sufficient competencies as regards to the upbringing of children in minority families. The knowledge of how professionals and others should act in cases of assumed violence, abuse and neglect in minority families should be strengthened and the measures taken should be facilitated to minority families to ensure that also immigrant children and their families in the child welfare services are followed-up in the best way possible.*

Question:

- *What will State Party do to ensure that the child welfare services have the same quality of services for everyone?*
- *What will State Party do to investigate why minority families are overrepresented in the child welfare services?*
- *What will State Party do to identify and follow up minority families with need for support and how will State Party provide them with the necessary assistance and support to enable these families to exercise their parental role and responsibilities in the upbringing of their children?*
- *What will State Party do to increase competence and sensitivity on minority families and ensure that social welfare officers and others know how to act properly in family situations culturally differently from their own?*

⁵⁵ Berggrav, S. (2013), «Tåler noen barn mer juling?» En kartlegging av hjelpeapparatets håndtering av vold mot barn i minoritetsfamilier. Save the Children 2013.

ICESCR Article 11: Right to adequate standard of living

ICESCR Art.	Subject	State Report para.	Keyword
11	<i>Right to an adequate standard of living</i>	<i>RCO 37</i>	<i>Adequate housing</i>

Current national provisions on the right to housing

The Act on Social Services in the Labor and Welfare Administration § 15 imposes an obligation on the authorities to “assist” in obtaining housing for socially disadvantaged or marginalized people. This regulation does not provide a justiciable right to housing for individuals, only a right to assistance.

In lack of sufficient Norwegian legislation, some municipalities do not give this problem the attention nor the resources required.

The current situation

According to statistics there are currently around 150.000 people who are regarded as disadvantaged/marginalized in the housing market.⁵⁶

The problems for the disadvantaged in the housing sector must be seen on the background of the general housing situation and policies in Norway. In Norway around 77 per cent of the population are home-owners, and enjoy benefits in form of tax deductions and low interest charges. Yet, the Norwegian population has one of the highest house-related debt burdens in Europe; seven per cent of Norwegian households spend more than 50 per cent of their net income on housing expenses⁵⁷.

The rental sector is small and largely comprised of unprofessional actors.

Homelessness

There is a persistent problem of homelessness in Norway – the most recent mapping study found that approximately 6.100 persons are without a home.⁵⁸ Importantly, people in a homeless situation are not only persons with various behavioural problems, including families living in poverty with children. In fact, 378 children are homeless along with their parents.⁵⁹ Additionally the number of homeless persons under 24 years has been steadily increasing. It is also estimated that around 2 per cent of the homeless are living without shelter.⁶⁰

Social housing

⁵⁶ NOU 2011/15 s 42

⁵⁷ Langford and Nilsen, Å leve er også å bo – Norske boutgifter – i overensstemmelse med retten til bolig ? Kritisk Juss 2011 s. 92-119. [english translation]

⁵⁸ NOU 2011/15 s 95

⁵⁹ Dyb, E. og K.Johannessen (2009) Boligløse i Norge 2008 – En kartlegging, NIBR-rapport 2009:17.

⁶⁰ NOU 2011/15 s 94

Moreover, the social housing sector is minimal by European standards, at approximately 4 per cent. As a result, the criteria for approving applications for social housing are strict, and there are long waiting lists for accommodation. More than 74 per cent of the large municipalities have reported that it is common to wait up to a year.⁶¹ This has led to an accumulation of social problems, and as a result families with children often live side by side with persons with various social and behavioural problems.⁶² In a report from the Office of the Auditor General of Norway (Riksrevisjonen), the following was revealed:

- 76 % of municipalities are in a shortage of housing units for people with problems related to substance abuse.
- 68 % have a shortage of housing for large families (four children or more).
- 57 % have a shortage of housing for families with children.
- 53 % have a shortage of housing for people with disabilities.
- 53 % have a shortage of housing for single persons.

Furthermore, despite clear policy targets, 25 per cent of the estimated 3.000 households that are accommodated in temporary municipal housing (hospits, natthjem) live there for more than three months. In big cities like Oslo, even households with children are sometimes accommodated in temporary municipal housing.

Availability of commercial housing

Even the State's policy on housing for the non-disadvantaged group is problematic. The general housing stock in and around big cities and densely populated areas is inadequate, in light of the net population growth. This causes shortages of affordable housing, and cause sharply rising prices. Evidently, all these factors disproportionately affect the disadvantaged.

Government measures on the right to housing

In light of the situation described above, the Norwegian housing sector has been described as the "wobbly pillar" of the welfare state.⁶³ Several stakeholders have questioned whether the Norwegian government efforts to ensure that everyone is adequately housed.⁶⁴ In particular, the government have been criticised for not doing enough to stimulate the construction of housing. The Office of the Auditor General of Norway has strongly criticised both the municipalities and the state for inadequate efforts for the disadvantaged in the housing market. The State party has to a certain degree acknowledged these shortcomings by appointing a commission to propose social housing policies for the years ahead.⁶⁵ The

⁶¹ NOU 2011/15 s 79

⁶² NOU2011/15 s 79

⁶³ Ulf Torgersen, "Housing: the wobbly pillar of the Welfare State".

⁶⁴ Langford and Nilsen, Å leve er også å bo – Norske boutgifter – i overensstemmelse med retten til bolig ? Kritisk Juss 2011 s. 92-119. Retten til bolig og oppfølgingstjenester, Alice Kjellevoid NOU 2011.

⁶⁵ NOU 2011: 15 Rom for alle – En sosial boligpolitikk for fremtiden.

commission has presented several constructive proposals, which will hopefully be followed up when the State Party presents its forthcoming policy report “Boligmelding” in April 2013.

In light of the problems for the disadvantaged in the housing sector, the State Party should take further steps to effectively implement the right to an adequate standard of living as enumerated in ICESCR article 11. The state has a wide margin of appreciation regarding choice of measures, but: “When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State party must take measures that allow it to achieve the objectives of the charter within a reasonable time, with measureable progress and to an extent consistent with the maximum use of available resources”.⁶⁶

Notwithstanding many positive measures the last years, and wide margin of appreciation regarding the choice of measures – they must be effective in practice.⁶⁷

Follow up of previous recommendations on the right to housing

We refer to the enclosed article by the researchers Malcolm Langford and Johannes Nilsen regarding the right to housing in Norway. It indicates that the State Party has not followed up the Concluding Observations of the Committee of 13 May 2005 para 18, 37 and 38 in a satisfactory way.

Recommendation:

- ***The State Party should intensify efforts to ensure affordable and adequate housing to the disadvantaged with low income, in particular by ensuring an adequate supply of social housing units.***
- ***The State Party should consider approving a new law on non-commercial housing.***
- ***The State Party should approve a legal right for individuals to receive necessary assistance from the responsible authorities to find adequate housing if the person cannot solve the housing need on their own.***
- ***The State Party should introduce a strategy/action plan for securing an adequate stock of affordable and adequate housing.***
- ***Special attention should be given to homeless children.***

Question:

- ***What measures does the State Party take to improve the housing situation?***
- ***Please provide further information on what has been done since the last hearing to comply with the need for council housing for the disadvantaged and marginalized.***
- ***Will the State Party make sure the right to adequate housing becomes a statutory right?***

⁶⁶ Cf. The Revised Social Charter, article 31 on the right to housing; Autism-Europe v. France, European Committee on Social Rights, Complaint No. 13/2002, para. 53.

⁶⁷ Cf. FEANTSA v. France, Complaint No. 39/2006.

- *Will the State Party take measures to provide for long term housing for the groups of people who need it?*

ICCP Art.	Subject	State Report para.	Keyword
11	<i>Right to an adequate standard of living</i>		<i>Debt and debt collection</i>

An increasing cause of poverty in Norway is debt, because of the increasing debt burden in general.⁶⁸ Unsecured and short time-loans, often given as consumer credit, is used more frequently.⁶⁹ Taking up loans which one does not have the financial ability to repay, often with excessive fees and exorbitant interest, poses a great problem for certain groups.

The Government has instituted an obligation to recommend consumers against taking up loans if the financial ability of the consumer indicates that he or she seriously should consider refraining from it.⁷⁰ However, the credit institution does not have access to information regarding the financial situation of the person seeking credit, and are thus rarely able to assess the situation adequately. In addition to this, there are few regulations regarding the consumer debt market. There are for instance few restrictions on marketing of costly loans⁷¹ and no upper limit on the fees and interest the creditor can demand.

The State party has acknowledged these problems, and has considered establishing a national debt register.⁷² This will expand the credit institutions knowledge of the economic situation of the applicant, and thus the obligation to recommend against risky loans will be more efficient. However, the government has not yet decided on the issue.

There have been no other measures taken by the State Party, such as limiting marketing towards children, educational measures in school, or maximum interest rates for unsecured consumer credit loans.

Financial advice

Getting adequate financial advice is an important factor to prevent debt problems and poverty. All municipality social services have a legal obligation to provide inhabitants with advice and assistance regarding their financial situation, including matters on debt⁷³. However, as the financial advice service is organized on the municipality level, we see great differences in how these obligations are fulfilled. In several municipalities, especially in Oslo, the financial advice service seems to have too little capacity to cope with the demand for such services. As

⁶⁸ Oppdragsrapport nr. 3-2013 s.34-35.

⁶⁹ Oppdragsrapport nr. 3-2013 s.40-41.

⁷⁰ Finansavtalelovens § 47

⁷¹ LOV 2009-01-09 nr 02: Lov om kontroll med markedsføring og avtalevilkår mv. (markedsføringsloven)

⁷² Høringsnotat om registrering av enkeltpersoners kreditt til bruk ved kredittvurdering BLD xx desember 2012

⁷³ Lov om sosiale tjenester § 17

a result, the waiting list for seeing a financial advisor is very long. In one case from Sandefjord Municipality, a person in urgent need of debt advice had to wait 2,5 years before obtaining such service⁷⁴.

As a result, charitable organizations are trying to cope with the demand for such services, but are also lacking capacity to satisfy the demand.

Question:

- *What kind of measures have the State Party taken to prevent persons from incurring debt they are unable to repay?*
- *Will the State Party implement a national debt register?*
- *Does the State Party consider taking any other measures in the future, to prevent poverty caused by debt problems?*
- *Does the State Party consider that the current system for economical and debt advice is sufficient?*

ICESCR Art.	Subject	State Report para.	Keyword
11	<i>Right to adequate standard of living</i>	<i>Not mentioned</i>	<i>Subsistence rates during enforcement</i>

We are concerned whether enforcement proceedings fully respect the right of the debtor to retain sufficient funding, in order to provide an adequate standard of living.

Dekningsloven (the Claims Act) § 2-5 states that during enforcement procedures the debtor should have enough left for subsistence. However, the Claims Act allows a discretionary assessment of what is considered to be necessary for subsistence. These discretionary decisions are handled by enforcement officers, and the decisions are most often based on local guidelines for rates on subsistence.

The rates vary between approximately 6700-10 700 NOK per individual living alone.

We are worried about the differences between enforcement officers in different municipalities. They do not appear to be correlated regarding differences in living expenses. In general, they are lower than the recommended minimum subsistence rates in the Reference Budget for Consumer Expenses published by the National Institute for Consumer Research (SIFO). In municipalities where the rates of subsistence during enforcement are particularly low, they might be insufficient to fulfill ICESCR rights.

A similar problem arises regarding coordination between the different debt collecting offices. In Norway there are four different collecting units that collect debt depending on who the

⁷⁴ <http://www.nrk.no/nyheter/distrikt/ostafjells/vestfold/1.10847521>

creditor is. However, there is no coordination between the different debt collection offices. In practice, there have been examples of several enforcement officers or debt collection offices collecting debt from the same debtor at the same time, leaving the debtor with little or no means for subsistence. In such cases, money which has been unlawfully collected from the debtor will not be repaid, and the debtor will not be entitled to any non-contributory social security benefits, although he or she is without means for subsistence.

Such practice might result to a breach of the right to adequate standard of living.

Recommendation:

- *The State Party is encouraged to review its debt collection procedures, with a view to ensure all debtors enjoy adequate standard of living during the enforcement proceedings.*

Question:

- *How are the rates for minimum subsistence during enforcement proceedings established?*
- *How does the State Party ensure that all debtors enjoy adequate standard of living during the enforcement proceedings?*

ICESCR Art.	Subject	State Report para.	Keyword
11	Right to food		Food in prison

In Norway, the prisoners have the possibility of getting meals according to their personal convictions, such as religiously defined rules or vegan principles. However, the prisoners can only demand such diets if they followed such a diet prior to the imprisonment. If a prisoner acquires new personal convictions during their sentence, it is our experience that a change in diet is unnecessarily difficult to implement.

It is understandable that the prisons have to limit changes to some extent, but not to make it almost impossible to acquire new personal convictions while in prison.

In addition, we see that the food served to persons unable to eat the standard food, is very plain and with little variation. Persons who for religious reasons are inhibited from eating certain types of meat have for instance been placed on a vegetarian diet. Therefore some of the prisoners suffer from lack of healthy nutrition.

Recommendation:

- *The Committee urges the State Party to ensure that all prisoners are provided with healthy, varied and nutritious food, served in accordance with their religious and cultural practices.*

ICESCR Article 12: Right to health

ICESCR Art.	Subject	State Report para.	Keyword
12	Right to health	RCO 39	Regional disparities in health indicators

A broad, long-term strategy to reduce social inequalities in health was launched in 2007. Despite this, we still believe there are social inequalities in health. Such disparities are correlated to socioeconomic groups, ethnic background, disabilities, age, and low household income.

Recommendation:

- *The Committee urges the State Party to monitor disparities in health indicators among different groups.*
- *The State Party should take all measures needed to decrease disparities in health indicators correlated to socioeconomic groups, ethnic background, disabilities, age, and low household income.*
-

Question:

- *What kind of disparities is recorded between different regions in the State party?*
- *What kind of disparities is recorded between different ethnic and socio-economic groups?*
- *Please provide information on measures taken to reduce disparities in health indicators among different groups.*

ICESCR Art.	Subject	State Report para.	Keyword
12	Right to health	RCO 40	Children in reception centres, mental health

Today there are approximately 3 700 children living in reception centers. The proportion of children and young people in reception centers suffering from mental disorders is high, and the lack of competence in psychosocial work at the reception centers and the ordinary support network in general, increases the risk of these ailments becoming chronic conditions. Many aspects of the asylum seeker process induce stress and insecurity in the child and the family. Several asylum seekers have also been through traumatic experiences such as violence, torture and war, all of which are known risk factors in relation to the mental health of the child. Save the Children find that children at the reception centers do not receive satisfactory treatment from BUP (child and adolescent psychiatry) and that the waiting time is long. There is also considerable variation as regards to follow-up by the child welfare services. The reception centers end up with the responsibility of implementing measures for which the staff has

neither the competence nor capacity. There is a need for a higher degree of preparedness relating to children's state of health and insecurity in the asylum centers.

A new study on the condition for separated children shows that the health situation is especially critical (Liden et.al 2013). The low level of economic support implicates an inadequate nutritious diet and that medical treatment and medication is not prioritized. Access to adequate health care does also vary. Everyday life in reception centers is regulated by a number of directives and circulars. However, no formal norms for staffing, staff skills and competences, housing standards and environmental resources are defined. In all these aspects the standards are below the norms that are applied by institutions run by child welfare services.

Recommendations:

- *The Committee urges the State Party to ensure that asylum seeking children receive adequate treatment regardless of where they live, and improve the competence in relation to the special vulnerability of asylum children.*

Questions:

- *What measures will be implemented to ensure that local health care is of an equal quality?*
- *How will the State Party ensure that asylum seeking children receive adequate treatment?*

ICESCR Art.	Subject	State Report para.	Keyword
12	Right to health	56 b	De-facto access to emergency and necessary health care for irregular migrants

Irregular migrants face serious challenges in obtaining health care in Norway. In addition to strict limitations imposed on their right to health care, they also face de-facto difficulties in accessing the services that they are entitled to. This stems primarily from a lack of knowledge of their rights among health personnel and due to the lack of a finance mechanism that covers the cost of such services.

A new regulation was adopted in December 2011; *Regulation on the right to health- and social services for persons without permanent residence in Norway no. 1255 of December 16, 2011*. This Regulation establishes a clear distinction between the rights of people who are legally in the country and the more limited rights of persons whose residency in Norway is illegal. The latter group includes asylum seekers having been denied asylum and residence permit on humanitarian grounds, even if they cannot return, because their country of origin refuse to receive them. This can occur where the asylum seeker does not have any identity

papers and the home country does not know if, or will not recognize that, the person is their citizen. It might also occur where a person has become stateless or the country of origin has national rules on how long a national citizen can reside outside of the country, before they lose their full rights as a citizen.

According to the Regulation, irregular migrants are entitled to emergency health care. The Regulation restricts the further rights to health care of irregular migrants as compared to persons staying legally on the Norwegian territory. The *Act relating to patients' rights*⁷⁵ grants to everyone present at Norwegian territory the right to “necessary health care” from the municipal primary health care service and from the specialist health service. Irregular immigrants are only given the right to health care in situations where their condition satisfies the requirement that health care is “absolutely necessary and cannot be deferred without risk of imminent death, permanent severe functional impairment, serious injury or severe pain”⁷⁶.

It appears from a Circular accompanying the provision⁷⁷, that the notion of health care which qualifies as “absolutely necessary and cannot be deferred” is based upon the authorities’ assumption that persons who are illegally in Norway would need up to three weeks to leave. It is further assumed that they will have left within this period of time. As a result of these assumptions, only medical conditions that are absolutely necessary to treat within a timeframe of up to three weeks will satisfy the conditions and entitle the person to a right to health care. We are deeply worried that such considerations, which relates to immigration policies, are included as relevant considerations in what ought to be an assessment made on purely professional medical grounds.

In the aforementioned circular to the Regulation there is a table that provides examples of medical conditions that may meet the legal requirements of the term “health care that is absolutely necessary and cannot be deferred”, and a time limit which it is assumed that necessary treatment can wait.⁷⁸ See appendix 1. There is reason to believe that such a schematic listing of time frames of treatment for certain medical conditions will replace an individual assessment of the need for health care on a case by case basis. Schematic assessment could be arbitrary and may limit further the access to health care for these patients.

The restricted rights to health care for irregular migrants, together with the aforementioned practices specified in the Circular, are not in congruence with the right in Article 12 of “everyone to the enjoyment of the highest attainable standard of physical and mental health”.

⁷⁵ Cf. sections 2-1a and 2-1b of the *Act relation to patients' rights no. 63 of July 2, 1999*.

⁷⁶ Unofficial translation of section 5 a of *Regulation on the right to health- and social services for persons without permanent residence in Norway no. 1255 of December 16, 2011*. The Norwegian wording of the law is as follows: «helsehjelp som er helt nødvendig og ikke kan vente uten fare for nært forestående død, varig sterkt nedsatt funksjonstilstand, alvorlig skade eller sterke smerter».

⁷⁷ Norwegian title «*Rundskriv 1-5/2011 om Helsehjelp til personer uten fast opphold i riket og personer uten lovlig opphold*».

⁷⁸ Circular 1-5/2011 pages 6-7.

This practice should be seen in light of the tightening of the immigration policies in the State party initiated in 2008. It is recommended that the Committee asks the State party what measures it will take to ensure that preventive, curative, and rehabilitative health services are within safe reach and physically accessible for irregular migrants.

The differentiated right to health care on the ground of legal status, may be considered as discriminatory in violation of Article 12 in conjunction with the prohibition of discrimination set out in Article 2(2).

The Committee has emphasized that all rights in ICESCR, including Art. 12 regarding right to health, are for everybody regardless of legal status – see General Comment No. 20 para 15 and 30.

An UN-group of experts on health has considered the irregular migrants access to health care in Sweden and concluded that their limited access was not in accordance with the non-discrimination principle of Art. 2 - See A/HRC/4/28/Add.2. We suppose that the situation in Norway is about the same as in Sweden.

The pro-bono *Medical center for irregular migrants* run by the *Norwegian Red Cross* in Oslo and the *Church City Mission* offers medical consultations and provides basic health care free of charge to irregular migrants including free medication when needed. The Medical center reports that many patients have problems paying for health services which they have received and the high costs of such services may be a disincentive for seeking health care. The regulation states that health services should be fully paid by irregular migrants, with the specification that it is not allowed to demand payment in advance when given emergency care. There is no economic support for medications.

General Comment no. 14 states clearly that the right to health contains several elements; inter alia that health facilities, goods and services have to be accessible to everyone without discrimination. Accessibility includes “economic accessibility”, which requires that health services must be affordable for all.⁷⁹ The State Party is aware of the fact that irregular migrants cannot afford to pay for these services. As irregular migrants are not allowed to work, it would be unreasonable to expect them to be able to cover fully the expenses of health services and medicines. Despite this awareness the State Party demands irregular migrants to pay for health services, which citizens get for free. Health institutions are not allowed to demand payment in advance of emergency health care, but this is insufficient to ensure accessibility. There is a need for a financial mechanism to cover the costs of health care for irregular migrants along the same lines as for members of the National Insurance Scheme in order to ensure that the right to health is satisfactory fulfilled.

The limited possibility for irregular migrants in Sweden to have the costs of health care covered, has been considered as a breach of Art. 12 - see A/HRC/4/28/Add.2, especially para 41.

⁷⁹ Cf. CESCR General Comment No. 14 para. 12 b.

There have been several reports of persons in need of health care who are entitled to such, but have been refused on the basis that they are irregular migrants. Several decisions with refusal at the request of health care from the specialist health service indicate that there is a misconception among health personnel that these persons are not entitled to any assistance except in emergency situations. There is reason to believe that this practice stems from a lack of knowledge among health personnel of the legal health rights of irregular migrants.

This is a particular point of concern for this vulnerable group of persons as they are very reluctant to return to ask for medical assistance after a rejection. In several cases where the Medical center for irregular migrants have lodged a complaint about a decision of refusal, with a following reversal of the decision, the patient has disappeared or does not dare to return for a new consultation. This is a threat to the rule of law.

Although the pro-bono Medical Center for irregular migrants is doing important work to meet the most necessary need of health care of the irregular migrants, this is the responsibility of the State party. This private initiative must not be a sleeping pillow.

Children living in an irregular situation are entitled to health care to a larger extent than irregular adults under the aforementioned Regulation.⁸⁰ However, they are not allowed to be enrolled on a regular GP scheme ("fastlegeordningen"). This scheme was implemented in 2001 with the intention to secure healthcare for inhabitants that take part in the national security scheme. The individual GP functions as a departing and termination point of all information and navigation throughout the health service. Irregular children do not have access to a regular GP, and as a result, their access to the Norwegian healthcare system is severely limited. Norwegian children have free health services up to the age of 16, whereas irregular children have to cover such costs. These limitations may constitute discrimination in breach of the ICESCR Art.12 in conjunction with Art. 2.

The abovementioned Regulation of 2011 made legal status as a decisive condition for access to health services. This was not the case earlier, and this is therefore a retrogressive measure. To be in accordance with Art. 12, the State Party has the burden of proving that the measure is based on "the most careful consideration of all alternatives, and that it is duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party`s maximum available resources" - see General Comment No. 14 para 32. The State party has not even tried to prove this.

Recommendation:

- ***The Committee urges the State Party to amend the Regulation on the right to health- and social services for persons without permanent residence permit in Norway no. 1255 of December 16, 2011 in order to ensure equal access "necessary health care" to irregular migrants.***

⁸⁰ Cf. section 4 of *Regulation on the right to health and social services for persons without permanent resident in Norway no. 1255 of December 16, 2011.*

- *The Committee urges the State Party to establish a financial mechanism to cover the costs of health care and medicines for irregular migrants in order to ensure that health services are economically accessible and affordable for everyone without discrimination.*

Question:

- *What measures does the State Party intend to implement to improve the level of knowledge among health personnel of the legal right to health care that irregular migrants are entitled to?*
- *What measures will the State Party take to ensure that preventive, curative, and rehabilitative health services are within the safe reach and physically accessible for irregular migrants?*
- *What measures will the State Party take to ensure that health services and medicines are economically accessible and affordable to irregular migrants?*

Appendix 1:

Abstract of *Regulation on the right to health and social services for persons without permanent resident in Norway no. 1255 of December 16, 2011* pages 6-7.

“Paragraph 4
Indent a)

(...) The table below looks at examples of conditions that may fall under the term “health care that is absolutely necessary and that cannot be deferred”. (...)

<i>Condition</i>	<i>Current treatment</i>	<i>Severity</i>	<i>Period during which treatment could be deferred</i>	<i>Outcome if left untreated</i>
TIA (Transient ischaemic attack) Forewarning of stroke	Assessment Prophylaxis	Potentially serious	0-3 weeks	Risk of stroke
Life-threatening heart attack	Assessment, possibly blocking or bypass surgery	Potentially serious/fatal	0-2 weeks	Development of heart attack, death, heart failure
Sciatica with increasing paralysis	Assessment Surgery	Serious	2-3 weeks	Extensive paralyse, incontinence Permanent paralyse
Gangrenous wounds	Amputation	Serious	1-2 weeks	General infection Increasing gangrene

Third-degree burns	Plastic surgery	Serious	2 weeks	Spread of infection
Life-threatening psychosis	Pharmacotherapy	Serious	Days	Acute exacerbation, danger to self or others
Severe depression with risk of suicide	Pharmacotherapy ECT		Days	Suicide
Suspected very severe cancerous disease	Pharmacotherapy/ surgery/ radiation therapy	Serious	Days	Imminent death
Terminal-stage cancer	Palliative treatment	Serious	2 weeks	Strong pain Reduced quality of life

ICESCR Art.	Subject	State Report para.	Keyword
12	Right to health	Not mentioned	Victims of rape

In 2011 the police received 1077 reports of rape. Over a period of five years there has been an increase of 22.1 per cent in reported sexual offenses in Norway. These numbers are disturbing, and more preventive measures need to be taken regarding rape and other sexual offenses. There are also great challenges when it comes to health services for women who are exposed to rape and violence.

In 2008 a panel of experts appointed by the Norwegian State presented a number of measures meant to combat rape. Several of these measures were meant to ensure that women who have been raped are given access to appropriate health services. However, a report from Free Legal Aid for Women (JURK) shows that many of these measures have not been implemented. Many of the health services are also only offered in the bigger cities.⁸¹

Recommendation:

- *The Committee urges the State Party to implement the measures concerning health care suggested in the State Party Issue paper NOU 2008:11 “Fra ord til handling”.*

Question:

- ⁸¹ NOU 2008: 11 Fra ord til handling. Bekjempelse av voldtekt krever handling.
- JURK report From words to Action. Evaluation of the follow-up of the State Party Issue paper NOU 2008:4 about combating rape.
- See also shadow report to the CEDAW committee by the anti-discrimination ombud

- *How does the State Party intend to ensure that victims exposed to violence are given appropriate health services?*
- *How will the State Party ensure that victims of rape, regardless of where they live, are given equal and adequate health services?*

ICESCR Art.	Subject	State Report para.	Keyword
12	Right to health	39	Domestic violence

A survey made by the Norwegian Institute for Urban and Regional Research in 2005 shows that 27 per cent of women in Norway have experienced violence in a current or previous relationship. In addition to this, numbers from the police on reports of violence in close relationships, shows an increase of 75 per cent in the last 5 years. This places high demands on how the authorities and the police work with this issue.

From July 1st 2002 a system with coordinators working specifically with violence in the family was implemented in all police districts in Norway. This was meant to strengthen the police's work with violence in close relationships as well as increase the competence of this issue within the police. However, a report made by Free Legal Aid for Women (JURK) from 2011, showed that many police districts did not have a coordinator working with violence in close relationships. In many of the districts that did have a coordinator, this person was not hired in a full position, or did not get to work with the issue full time. Some legal aid organizations experience that women who report violence in close relationships are not taken seriously by the police⁸².

Recommendation:

- *It is crucial that women who report violence in close relationships are given a respectful treatment and that the police working with these cases are qualified.*

Question:

- *What is the status of the coordinators working with violence in the family in the police districts now?*
- *How does the Norwegian State Party intend to ensure the competence of the police working with women exposed to violence in close relationships?*

⁸² Vold i parforhold - ulike perspektiver Resultater fra den første landsdekkende undersøkelsen i Norge (2005) Red. Thomas Haaland, Sten-Erik Clausen og Berit Schei. The Norwegian Institute for Urban and Regional Research 2005, Marte Johansen *JURK report on Domestic violence coordinators in the police* by 2010,

<http://foreninger.uio.no/jurk/publikasjoner/rapporter/Politiets%20familievoldkoordinatordning>

ICESCR Art.	Subject	State Report para.	Keyword
12, 2, 3	<i>Right to protection of health</i>		<i>Residence permit, domestic violence, problem of documentation</i>

Requirement to documentation of domestic violence for those wanting a residence permit without their spouse

We welcome the efforts done by the State Party to handle domestic violence in the homes of immigrants. However, we still see examples where the immigrants who are subjected to domestic violence are unaware of their right to get an independent resident permit in accordance with the Immigration Act (section 53). There is still a need to improve the information given on the matter to those in question.

Organizations providing free legal aid to these groups, experience that immigrants do not dare to apply for resident permit. This is because they are afraid that they will not be able to meet the documentation requirement, and at the same time do not dare to separate from the violent spouse in fear of losing their residence permit. This constitutes a danger to the health of the abused immigrant.

The free legal aid organizations also experience that this exception is practiced very strictly.

It can be very difficult to document the abuse, especially if the abuse is psychological. It therefore comes down to whether you are seen as credible, and the immigration authorities does not always take psychological issues, such as post-traumatic stress syndrome and other psychological factors, into proper consideration.

Furthermore, this rule⁸³ does not allow for separation time, as all other couples are allowed one year of separation before the divorce is finalized⁸⁴.

The consequence is that persons who have a residence permit on the basis of family immigration will remain needlessly long in abusive relationships. Domestic violence is recognized as an issue under the ICESCR art 12, and the practice might thus amount to a breach of their right to health.⁸⁵

Recommendation:

⁸³ immigration Act (section 53)

⁸⁴ (Seljord 2003)

⁸⁵ JURK – Høringsuttalelse NOU 2012:15, Politikk for likestilling .The Immigration Act (*Utlendingsloven*) art. 53, JURKs case handling

- <http://www.uriks.no/trearsregelen-firkanta-stivbeint-inhumant-og-tankelaust/>
- Treårsregelen i norsk utlendingslovgivning: en normativ analyse, by [Seljord, Liv Anlaug](#) Master thesis 2008. <https://www.duo.uio.no/handle/123456789/14858>

- *The Committee urges the State Party to establish less strict guidelines for the case handling, taking PTSD and other knowledge about abused persons' reactions into consideration.*

Question:

- *Why does the three-year rule not allow for separation time?*
- *How will the State Party make sure that the Immigration Code section 53 is practiced in a way that takes abused people's psychological reactions into consideration?*

ICESCR Art.	Subject	State Report para.	Keyword
12	Right to health	Not mentioned	Healthcare services in prison

Healthcare services in prison

Prisoners in Norway have a health situation that differs from the general population. The prison population has a high occurrence of psychological illnesses, as well as somatic and dental health issues.⁸⁶

According to the Municipality Health Care Act (kommunehelsetjenesteloven § 2-1 jfr. § 1-3 nr. 1 letter e), inmates are entitled to the same health services as the population in general. The principle of normality (“normalitetsprinsippet”) states that the inmates are entitled to the same health rights outside of the prison as on the inside. This principle can only be limited by security reasons. In general, it is our assessment that the right to health care in theory is implemented in prison. However, capacity and resources play a major role in what services the prisoners de facto receive. As an example, 40 per cent of the prisons health care personnel report that they have insufficient resources to provide necessary health services.⁸⁷ As a result, the health care provided in prison is of a lower standard than that outside of prison.

Mental health care

Although all prisoners are entitled to the same health care as other citizens, the prisoners are in reality lacking a satisfactory mental health care system. The occurrence of mental health problems is much higher within the prison population than in the rest of Norway⁸⁸.

Firstly, the capacity of the mental health care in prisons is too limited. Most prisons do not have a psychologist. In the prisons which do have one, the psychologist is usually employed only part-time. The number of visits from psychiatric health care personnel is therefore limited, and rarely amounts to more than two or three visits a week to the prison.

⁸⁶ Cf Stortingsmelding nr 37 (2007-2008)

⁸⁷ Synovate: *Kartlegging av fengselshelsetjenesten i Norge, 2010* page 20.

⁸⁸ Levekår blant innsatte», Friestad & Skog Hansen, 2004, og Stortingsmelding nr.37 (2007-2008), pkt 7.1.5.

Organizations providing free legal help in prisons experience that a number of prisoners have little or no contact with psychiatric health care personnel when in prison.

Furthermore, the prisons use personnel without proper medical training to assess the mental health of the prisoners, and use these assessments as basis for decisions regarding prioritizing prisoners' needs for psychiatric treatment and whether the prisoner needs psychiatric care from a psychologist outside the prison. If the prisoners claim to be in need of mental health care, and there is no such service provided inside the prison, the non-medical personnel of the prison decide whether the prisoner should get such examinations. This leads to a situation where there are high and low priority patients. The low priority patients often end up confining themselves in their cell due to their illness. It is unsatisfactory that assessments made by non-medical personnel constitute the basis for this priority system.

Other, non-medical, considerations take precedence over medical considerations also in other cases. As an example, if the prison has acknowledged that a prisoner is in need of psychiatric treatment, the prisoner will not receive such help if the prison does not have a psychologist available in prison, and the prison considers the "security risk" too high to allow the prisoner to be escorted by police to a psychologist outside the prison.⁸⁹

If there is a disagreement between the prison's health services, for instance a general practicing doctor and the prison authorities concerning a prisoner's need for health care, the matter will be resolved by the prison authorities, and the medical advice of the GP might be ignored.⁹⁰

Another issue is the availability of medicine in prisons for prisoners with mental health issues. In practice, we see that prisoners who regularly take medicine will not receive the same medicine in prison, and is only supplied with a substitute. This practice results in deterioration of the prisoner's mental health, as the substitute medicine might have other effects, takes time to adjust to, etc.

Prisoners often have several and intertwined health issues. Their health can sometimes deteriorate even further inside the prison.⁹¹ Therefore, prisoners have a pressing need for close medical attention and a thorough evaluation of their health issues.

The organizations providing free legal aid in prisons experience that there are significant differences between the prisons' resources and their number of employed therapists. In some prisons there are possibilities for group therapy once a month; in others there exists no such possibility.

The same organizations have also experienced situations where prison authorities have been unable to handle mentally disoriented inmates, and placed them in solitary confinement for safe keeping, instead of ensuring needed treatment. Given the prison law system's

⁸⁹ Cf Norwegian Directorate of Health *Veileder for helse- og omsorgstjenester i fengsel* section 2.9.1

⁹⁰ IS-1971 Helse- og omsorgstjenester til innsatte i fengsel, 2012.

⁹¹ Friestad og Hansen *Levekår blant innsatte* Fafo 2004 s 54

discretionary nature, the prison authorities can place inmates in solitary confinement for long periods, sometimes up to a year. By comparison, courts are limited to decide on isolation for up to two weeks at a time, with a maximum of either six or twelve weeks according to the nature of the offence the detainee is accused of.⁹²

Given the known health risks of solitary confinement, the State Party should supply documentation and statistics on the availability of medical and mental care of prisoners subject to solitary confinement, with focus on the presence of health personnel and what sort of treatment that is offered from which category of health personnel (medical doctor, psychiatrist, psychologist or nurse).

Somatic health care

The problems concerning mental health care also apply to the somatic health care in prison. The access to medical remedies is limited due to security concerns.⁹³ The free legal aid organizations even experience that multiple prisoners have severe problems in getting the prisons to administer prescribed medicine. The health problems of these prisoners need to be treated in accordance with medical procedures. The organizations fear that the health of the prisoners in question will continue to deteriorate until the Correctional Services add resources to make sure all prisoners have the opportunity to be treated medically in accordance with Norwegian law.

Dental health care

When it comes to dental care, the organizations visiting prisons experience that the need for immediate care is an issue for prisoners. The capacity is limited, which leads patients with severe pains to wait for days and weeks to be treated by a dentist.

Recommendation:

- *The Committee urges the State Party to take measures as to what standard of health care prisoners should be entitled to by law whilst serving a sentence.*

Question:

- *What type of, and what level of health care, is offered to isolated prisoners?*
- *Why do medical personnel not have the final say when there is conflict between security measures and health care needs?*
- *What measures are taken to ensure that all prisoners, regardless of which prison they stay in, are provided with adequate health services?*

⁹²The Criminal Procedure code § 186 a.

⁹³ Anne Mette Hårdnes, *Helsetilbudet i norske fengsel: en undersøkelse av regler og praksis*. Juss-Buss stensilserie nr 114, Oslo 2008, page 47.

ICESCR Article 13: Right to education

ICESCR Art.	Subject	State Report para	Keyword
13	Right to education		<i>Free secondary education for all, non-discrimination, asylum seekers</i>

Asylum seekers have the right to free primary education, and attendance is compulsory. In Norway primary education lasts until the age of 15-16, from when secondary education, of different forms, is available.

Asylum seekers do however not have the right, as contrary to the rest of the population, to secondary education.⁹⁴ Some students are permitted to attend, but access is based on discretionary decisions by headmasters, and there are no set criteria for which students who are allowed to attend and which who are excluded. This could be a violation of the non-discrimination provision in art. 2(2) as elaborated by General Comment 13 paragraph 6.

“[P]rogressive introduction of free education” means that while State Parties must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education.⁹⁵ Norway has sufficient resources, and thus might be obligated, to grant asylum seekers the right to attend secondary education for free.

Recommendation:

- *The Committee urges the State Party to amend the Education Act so that free secondary education is available to all on a non-discriminatory basis.*

Question:

- *What measure will the State Party take to provide free secondary education to all on a non-discriminatory basis?*
- *Will the State Party take measures to grant asylum seekers the right to secondary education?*

ICESCR Art.	Subject	State Report para	Keyword
13	Right to education		<i>Prisoners' right to education</i>

⁹⁴ Jf. Ot.prp. nr. 44 (1999–2000) om forarbeidene til utdanningsloven § 4A-1.

⁹⁵ General Comment no. 13 paragraph 14.

According to the Execution of Sentences Act (straffegjennomføringsloven) § 18 the criminal administration system must arrange for the inmates to be able to participate in daily activities in the prison. These can consist of either work, education or other programs.

The education provided to prisoners are in many cases inadequate, and does neither give adequate possibilities for reintegration into society nor match the educational level of the prisoners.

The educational level of prisoners is considerable lower than the average for the population. Ten per cent has not completed mandatory education at the most elementary level, one third has no other education than this, and only twelve per cent have started any higher education.⁹⁶ Many prisoners struggle due to learning disabilities.⁹⁷ Higher education is in theory available for all through distance learning courses, although occasionally restricted due to security concerns.

Government commissioned research undertaken in connection with reform of prison educational programs, shows that educational programs for prisoners are not adjusted sufficiently in accordance with the needs of prisoners.⁹⁸ Especially the need for vocational courses, in particular for female prisoners⁹⁹, and the need to facilitate better for higher education, is considered to be great.¹⁰⁰

We have yet to see the State Party's response to such recommended reforms.

There are also indications that activities offered to inmates are based on gender stereotypes. For instance, women have been reported to be offered knitting as work in prison.¹⁰¹ This might amount to discriminating against women (Art. 2 in conjunction with art 6).

Recommendation:

- *All inmates must get access to education.*
- *All inmates must get access to work or other activity in which they are interested, which may improve their possibilities for reintegration into society, and which are not based on gender stereotypes.*

⁹⁶ Cf Eikeland et al *Motiv for utdanning under soning* 2010 page 32.

⁹⁷ Cf Eikeland et al *Innsatte i norske fengsel: Kompetanse gjennom utdanning og arbeid* 2010 page 56

⁹⁸ Cf Eikeland et al *Innsatte i norske fengsel: Kompetanse gjennom utdanning og arbeid* 2010 page 68

⁹⁹ Cf Stortingsmelding nr 27 2004-2005 s 36

¹⁰⁰ Cf Eikeland et al *Innsatte i norske fengsel: Kompetanse gjennom utdanning og arbeid* 2010 page 69

¹⁰¹ "Fengselsundersøkelsen" by Ida Thorsrud, JURK report from 2012, which can be found at:

<http://foreninger.uio.no/jurk/publikasjoner/rapporter/Fengselsunders%C3%B8kelsen>

Question:

- *How does the State Party intend to ensure that all inmates are offered educational programs and work matching their educational level that will increase their work qualifications?*
- *What will the State Party do to make sure the education or work available to prisoners is not based on gender stereotypes?*

ICESCR Article 15: Right to culture

ICESCR Art.	Subject	State Report para.	Keyword
15	Right to culture	71 c	East Sami people

Reference is made to State Party's Report para 71 c regarding the East Sami people, where the State Party refers to its report regarding CERD para 16 and 17.

The CERD-Committee has earlier been informed of the situation of the East Samiis, who are the original inhabitants of Sør-Varanger in Finnmark. It is estimated that they have been living there for approximately 3000 years. They are quite different from the other Sami people in terms of ethnicity, culture, language (e.g. Cyrillic characters), religion (Greek orthodox) and general perception of law. The East Samiis have been suppressed by the activity of other Sami groups, and they are not represented in the Sami Parliament.

In the Supplementary Report of 2010 to the CERD-Committee, the NGO's stated the following:

“ In its Concluding Observations of 19 October 2006 para 17 The Committee recommends to adopt concrete measures to ensure the preservation of the East Sami's distinct culture and way of life.

The material/economic basis for this culture is mainly reindeer herding and fishing. The East-Sami has no longer available pastures or grazing land for reindeer. This is due to a gradual occupation - many years ago - of the traditional East-Sami grazing land in Neiden area by a Sami group belonging to the majority Samiis with quite another culture than the East-Sami. The authorities have by passivity accepted this and remain unwilling to contribute to a sufficient reduction of reindeer herded by the other Sami group or to a reallocation of land through an expropriation as suggested by the Sàmi Rights Committee.

It is not possible for the East-Sami to preserve their culture and way of life when they cannot herd reindeer, because this is an important part of the basis for the culture, which therefore is closely connected to reindeer herding and cannot live isolated from each other.

None of the measures mentioned in the State Party's CERD-Report is sufficient to keep the culture alive. There is even a risk that a museum for the East-Sami culture will be the society's indulgence for not keeping the culture alive. A museum dedicated to a dead culture is of limited value until the most fundamental needs to preserve the very same culture have

been secured.

The State Party's referral to the Finnmark Commission is not relevant, because the Commission has no power to expropriate the existing rights of one Sami group in favour of the East-Sàmi. In addition - the Commission has started and will finalize its work in other parts of Finnmark before the Neiden area will be considered. The leader of the Commission, Jon Gauslaa, has suggested that the work will take at least ten years. The referral to the Finnmark Commission is therefore at best a new delay in solving the problem.

The State Party's proposal to let East-Sàmis have a small reindeer-keeping operation in connection with tourism is not sufficient to revive the East-Sàmi culture. It will be artificial and is likely to delay the real measures to address their fundamental issues.

For thoroughly observations and documentation we will refer to the letter of 5 October 2007 with enclosures to the Committee from lawyer Knut Rognlien on behalf of the organization "The East-Sàmi of Neiden"

In its Concluding Observations of March 11, 2011 regarding para 18, the CERD-Committee was "concerned that measures taken may not be sufficient to preserve and promote the culture of the Sami people and address the special situation of the East Sami, in particular their access to land for reindeer grazing and that of the Sea Sami, in particular regarding their fishing rights..." and recommended "that the State Party consult with the East Sami and Sea Sami and to implement measures with a view to enabling them to fully enjoy their human rights and fundamental freedoms and to maintain and develop their culture, means of livelihood, including management of land and natural resources, in particular reindeer grazing and fishing."

Since then, the State Party has taken no steps to consult with the East Sami, although the East-Samiis in Neiden have asked for such consultations.

The State Party has neither taken any steps to implement measures to return the management of land regarding their traditional reindeer grazing, although the Sami Rights Committee already in 1997 concluded that the State Party should rapidly implement such measures.

The CESCR has in its General Comment No. 21 para 36 stated that the right for indigenous people to take part in cultural life "includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired". Where the lands "have been otherwise inhabited or used without their free and informed consent, (the State Party Parties must) take steps to return these lands and territories".

It seems that Art. 15 of ICESCR gives an even stronger protection for the East Samiis rights than CERD. We will therefore ask CESCR to consider the East Samiis rights under ICESCR, although CERD already has considered this issue.

Recommendation:

- ***The Committee urges the State Party to rapidly implement measures to return***

Norwegian NGO-Forum for Human Rights: Alternative Report to Norway's 6th Periodic ICESCR Report.

the management of land regarding their traditional reindeer grazing to the East Samiis.

Question:

- *What measures will the State Party take to increase the protection of the East Samiis rights concerning the management of land regarding their traditional reindeer?*