

Committee on the Rights of the Child (CRC)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights
Palais Wilson – 52, rue des Pâquis
CH - 1201 Geneva
Switzerland

crc@ohchr.org

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Supplementary information from the Norwegian National Human Rights Institution to the Pre-Sessional Working Group (2-6 October 2017) of the UN Committee on the Rights of the Child (CRC) in relation to the fifth and sixth periodic reports of Norway

Reference is made to the Committee's invitation to provide country-specific information prior to the pre-sessional working group in October 2017 prior to the consideration of Norway's 5th and 6th periodic reports in 2018.

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

The Global Alliance of National Human Rights Institutions (GANHRI), after considering our application for international accreditation, confirmed on 9 June 2017 that we are in full compliance with the UN Paris Principles, and thus formally recognized with A-status.

We hereby take the opportunity to draw your attention to five issues which we suggest that the Committee include in its List of Issues requesting further information from Norway:

- Child Welfare Services and nine cases communicated by the European Court of Human Rights to Norwegian authorities;
- Care for unaccompanied minors seeking asylum;
- Violence against children, especially against Sami (indigenous) children;
- Ratification of the Optional Protocol to the Convention on the Rights of the Child on a communication procedure (OP CRC)
- Detention of children pursuant to the Immigration Act.

Our submission does not reflect all relevant human rights challenges in Norway within the scope of the International Convention on the Rights of the Child (CRC). Thus, we also refer to submissions from other national actors, including that of the Ombudsman for Children.

The first four issues presented relate to the Committee's General Observations from 2010 and are followed by one new issue for the Committee's consideration.

1. Child Welfare Services and nine cases communicated by the ECtHR

Reference is made to Concluding Observations 2010, point 5, paragraph 35, and to the State report part 6 letters c and f.

The Child Welfare Service is a key institution for the protection of children's rights in Norway. The vulnerability of children lacking adequate parental care, has over the last decade raised awareness and increased scrutiny of institutional practices both at home and abroad. In the period 2015-2017 nine cases of children subject to measures by the Child Welfare Services have been brought before the European Court of Human Rights (ECtHR). The cases have been communicated to Norwegian authorities in the course of 2016-2017.

These cases raise legal issues relating to the most intrusive child welfare measures such as deprivation of parental responsibility and limitation of rights to contact. Furthermore, the cases illustrate the diverging interests at stake in this field, i.e. the best interest of the child on the one hand and the parents' and the children's right to a family life on the other. They also illustrate the complex assessments that have to be made when it concerns striking a fair balance between different convention rights. An example is the child's right not to be separated from his or her parents held up against the child's right to protection from all forms of physical or mental violence, injury or abuse and neglect or negligent treatment.

The outcomes from the Court in these nine cases are likely to influence the further development of the Child Welfare Act, as well as the practices of the Child Welfare Service, the County Board of Appeal for Child Welfare and the Norwegian courts.

A parallel national development, as mentioned in the State report part 6 letter c on page 21, is a green paper prepared for the government with a full review of the Child Welfare Act which was published in September 2016. The report proposes a new Child Welfare Act which in our opinion will strengthen the rights of children in at least three ways. The proposal has a rights-based approach, giving children individual rights to child welfare services subject to specific conditions. Secondly, it provides for stronger procedural guarantees for both children and parents in relation to emergency decisions. Lastly, the proposed act strikes a better balance between the different, and at times conflicting rights than the current Child Welfare Act.

Suggested question to Norway:

- Could the State Party provide updated information on the ongoing work of reviewing the Child Welfare Service Act?

2. Care for unaccompanied minors seeking asylum

Reference is made to Concluding Observation 2010, point 8, para. 52 (e) (CRC/C/NOR/CO/4), and the State report part 9 a, pages 40 – 41

In its Concluding Observations in 2010, the Committee on the Rights of the Child expressed concern that the State Party had limited the responsibility for the Child Welfare Service to children under the age of 15, and called on the Norwegian authorities to expand the responsibility of the Child Welfare Services also to children aged 15, 16 and 17, as announced in 2008. This recommendation, and the many challenges linked to increased influx of asylum seekers in 2015, gave impetus to one of the first thematic studies undertaken by the Norwegian National Human Rights Institution. A thematic report on care for unaccompanied asylum-seeking minors in the asylum-seeking phase was published in 2017.

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

The report shows that there are significant differences in the accommodation and care given to children including unaccompanied asylum-seeking children under the age of 15, and unaccompanied minors aged 15, 16 and 17. The younger children are under the responsibility of the Child Welfare Services, while the older children live in designated reception centres. The reception centres differ with respect to staffing levels which are much lower, staff competence requirements and physical conditions. The reception centres are only regulated by instruction from immigration authorities rather than by law. Taken together, the differences imply that the level of care and protection offered to unaccompanied asylum-seeking minors aged 15-18 is much lower than what is offered to unaccompanied asylum-seeking minors under 15 and other children in Norway under the responsibility of the Child Welfare Service.

According to the Child Welfare Act, the King in Council have the possibility to extend the care centres to unaccompanied asylum-seeking minors aged 15, 16 and 17. The plan to do so was announced in 2008, but was later postponed due to lack of resources in the Child Welfare Service.

We note that the State report page 41, merely states that this possibility “has not yet been used”. In our view, this information under-communicates the Government’s stated intentions for this group of children. In a green paper issued on 31 August 2016, the current Government stated that there are no plans for expanding the responsibility of the Child Welfare Services to children aged 15, 16 and 17. No reasons are provided. In a letter from the acting Minister of Justice to the Parliament (Stortinget) on 11 May 2017, the Minister reaffirms this position, and explains that an expansion of the care centres for children aged 15-18 will have major economic consequences. It thus seems reasonable to assume that there are budgetary reasons for the significant differences in the accommodation and care arrangements.

It is our understanding that the Convention on the Rights of the Child does not allow for differential treatment of one group of children solely based on economic grounds. The Committee has previously

stated that the right to non-discrimination applies irrespective of budgetary resources. There are also several studies, including *Living Conditions for Children during the Asylum-Seeking Process* (NTNU 2015) which document the divergences in living conditions and quality of life among younger and older youth. Our conclusion is that unaccompanied asylum-seeking minors aged 15, 16 and 17, are being subjected to discrimination contrary to the Convention on the Rights of the Child Article 22 para 2 and Article 20 read in conjunction with Article 2.

The situation for unaccompanied asylum-seeking minors in reception centres is currently of great importance to their development and well-being, as there has been a marked increase in the use of temporary resident permits to unaccompanied asylum-seeking minors aged 16-18. Children with temporary resident permits are not settled, and risk spending years in reception centres. The Ombudsman for Children is concerned about worrying reports of psychological health issues, incidents of self-harm and suicide attempts as well as an increased number of disappearances and a high level of absence from schools at the reception centres.

Suggested questions to Norway:

- Could the State Party please give a more thorough explanation of why it has not followed up on the recommendation from the Committee in 2010?
- Could the State Party explain if it has any plans to improve the care and accommodation offered to unaccompanied asylum-seeking minors aged 15-18 in reception centres?

3. Violence against children, especially indigenous Sámi children

3.1. Violence against children

Reference is made to the Committees Concluding Observations from 2010 point 56 and the State report point 5 letter a.

A Government-appointed committee published the report “Svikt og svik” (Failure and Betrayal) on 22 June 2017. The committee’s task was to evaluate 20 serious cases of violence, sexual abuse and neglect against children, and to investigate whether the situation of these children could have been prevented or disclosed by public service providers at an earlier stage, and recommend measures to protect children from such violations in the future.

The report is alarming and reveals a comprehensive failure at a systemic level. In some cases, the children had not been heard and had therefore not been given the opportunity to tell their story. In other cases, the child’s situation was known to some public service providers, but no further action was taken. The report concludes that more cases should have been disclosed at an earlier stage and calls for better protection of these children.

Suggested question to Norway:

- Could the State Party provide information on how it intends to follow up the report “Svikt og svik”?

3.2. Violence against indigenous Sámi children

Reference is made to Concluding Observations 2010, para. 61 (CRC/C/NOR/CO/4), cf. para.31.

The Ombudsman for Children addresses the broader picture of violence against children in its supplementary report to the Committee. We thus limit our focus to violence against indigenous Sami children in particular. As mentioned in the Ombudsman report, recent studies and research indicates that indigenous Sámi girls are more likely to experience sexualized violence than non-indigenous girls. Generally, there is still not much research and data concerning the frequency and forms of violence against and abuse of Sámi children in Norway. This is still very under-discussed and under-studied, and it also remains concealed.

A 2017 research project (NKVS-report) analysing factors that affect the frequency and occurrence of violence in close relationships in Sámi communities, confirms that police officers as well as social and health personnel are facing many barriers when encountering situations with domestic violence in Sámi communities and violence against Sámi children. The challenges are multifaceted. The studies show that there is a lack of knowledge of Sámi language and culture among public social and health workers, and that there is a need for educating police and health staff in how to integrate the principle of the best interest of the child in an indigenous context. According to this study, both Sámi women and men experience more violence, including sexual abuse, than persons from the majority population, and the abuse often starts in their childhood. The study highlights the need to intensify community action and mobilization through legal awareness.

Violence and sexual abuse of children belonging to vulnerable groups such as the Sámi, is difficult to expose for various reasons. Challenging cultural norms of silence and shame can be difficult, particularly for children. The police in Nordland county started an investigation in June 2016 after eleven women and men from Tysfjord-Divttasvuotna came forward with their abuse stories in the media. The many sexual assault cases in a small Lule- Sámi community have been described as a national tragedy by the Sámi Parliament. The police are investigating over 120 cases involving sexual crimes in Tysfjord. In total, more than 80 people are under investigation for various forms for sexual abuse of children and young persons; some of the cases are 40 years old, others are more recent. The government has involved itself upon request from the Sámi Parliament. This is the most extensive investigation of sexual abuse of children in a Sámi community, and has thus affected the whole community.

Prioritizing prevention is one of the major recommendations highlighted in these studies and reports. While it is important to address cases of violence and provide the children, other victims and families with support of their need, it is essential to stop the violence before it starts.

Suggested questions to Norway:

- How does the State Party ensure that adequate and appropriate measures, including preventive measures, are taken to combat violence against and sexual abuse of indigenous Sámi children, particularly girls?
- Can the State Party provide specific information on measures, including strengthening adequate and culturally appropriate social, health and mental health care services for the victims of sexual abuse and violence, against Sámi children in the Lule-Sámi community in Tysfjord?

4. Ratification of OP CRC

Reference is made to Concluding Observation 2010, point 9, para. 62 (CRC/C/NOR/CO/4).

The Optional Protocol to the Convention of the Rights of the Child on a communication procedure, was approved by the UN General Assembly on 19 December 2011. The government commissioned a study in 2013 to assess the consequences of ratification, but decided to postpone any decision in spite of general support from various actors in the public hearing of the report. A decision was later made to consider ratification of OP CRC in conjunction with two other complaint mechanisms not yet ratified by Norway, i.e. OP ICESCR and OP CRPD.

In September 2016, the Government submitted its report on the three individual communication procedures to the Storting (Parliament). The Government concluded that it will not present a proposal to accept any of these mechanisms at present. The report was subject to public discussion with the Norwegian National Human Rights Institution in the lead, supported by the Ombudsman for Children and numerous NGOs which all opposed the Government position.

The report argues, among other things, that there is considerable uncertainty about what will be the consequences of Norwegian acceptance to the complaints mechanism and that the committee is composed in such a way as to make it little suited for processing cases. There is also concern that the committee's statements could lead to increased judicialisation and limitation of national political autonomy.

In the public debate and at the public hearing, the National Institution argued that the expressed concern of restricting national political autonomy was exaggerated and that a right to complain does not impose any new human rights obligations on the state. Secondly, we argued that a consistent foreign policy goal for Norway has been to strengthen the international human rights system and its implementation. A ratification would strengthen Norway's legitimacy when advocating for ratification by states where the need for supranational complaint systems is high. Thirdly, to the extent that a Norwegian government believes that there are weaknesses in the committee's composition of members or its working procedures, full support and participation in UN treaty body reform is the most efficient strategy to strengthen the system. Lastly, it was also underlined that the report did not

address the best interests of the child in the question of ratification, which in our opinion should have been done.

In the end, the majority in Stortinget supported the Government's position and decided not to ratify the OP CRC or the other two complaint mechanisms.

Suggested questions to Norway:

- Could the State Party explain more thoroughly why it will not accept the communication procedures now, and in particular why it will not accept the procedure to the CRC?
- Could the State Party explain when it will reconsider its position on this issue?

5. Detention of children pursuant to the Immigration Act

New issue for possible inclusion in List of Issues. Reference is made to the state report point 9g Deprivation of liberty pursuant to the Immigration Act, page 46.

The Trandum holding centre is the main facility in Norway where those who have been rejected asylum in Norway await deportation out of the country. Regulation and conditions at Trandum have been much debated issues for many years.

It is clear from the State report that there is ongoing work to improve and clarify the regulations for the arrest and detention of children and families with children in immigration cases. The Ministry of Justice and Public Security has also announced that it is planning to establish a separate immigration detention centre for families with children outside Trandum.

The current practice of detaining families with children pending expulsion in immigration cases raises in our view concern with regards to several rights enshrined in the Convention on the Rights of the Child. Firstly, when families with children are arrested and detained, the children are not formally treated as a party in the court hearing and in the subsequent verdict on detention. Furthermore, when children are detained together with their parents, they seldom have the opportunity to be heard and express their views on the arrest and detention. The assessment of the police, prosecutors and courts seems to be that since it is necessary to detain the parents, the best interest of the child is to be with them. This method of assessment undermines in our view the stringent criteria for detaining children.

In addition, the current Norwegian practice raises, in some cases, concerns relating to the Convention on the Rights of the Child Article 37 letter a, which has its parallel in the European Convention on Human Rights Article 3.

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

At the national level, the Borgarting Court of Appeal passed a judgement on 31 May 2017, in a case where a family with four children were detained in Trandum immigration detention centre for a period of 20 days. The Court concluded that the state had violated Article 3 of the ECHR, article 37 letter a of the Convention on the Rights of the Child and section 93 paragraph two of the Norwegian Constitution. The Court of Appeal found the conditions in Trandum to be comparable to those mentioned in the five judgements against France (cf. ECtHR *A.B. and others v. France* (11593/12), *R.K. and others v. France* (68264/14), *R.C. og V.C. v. France* (76491/14), *R.M. and others v. France* (33201/11) and *A.M and others v. France* (24587/12)). The judgement can be appealed to the Supreme Court, and is not yet final.

The conditions in Trandum have been under scrutiny for several years. In 2015, the Parliamentary Ombudsman (the National Preventive Mechanism against Torture and Ill-Treatment) issued a report based on a visit to Trandum. The report stated that Trandum was unsuitable for children, although it has a specialized family unit. The Norwegian Psychological Association also raised concerns about the detention of children with their parents in Trandum, in a report issued in November 2015.

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

Suggested questions to Norway:

- Could the State Party give more updated information on the ongoing legislative work on the detention of children in Trandum immigration detention centre?
- Could the State Party please elaborate on its plans for establishing a new separate immigration detention centre for families with children?
- Could the State Party provide information on whether there are any procedural safeguards for ensuring that the cumulative effects of the coercive measures in the forced return process for a child is not in violation of CRC article 37a?

We look forward to meeting you at the pre-session working group in Geneva in October.

Yours sincerely,

Petter Wille
Director

Kristin Høgdahl
Senior Adviser

This letter is electronically approved and is sent without signature