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Supplementary information from the Norwegian National Human Rights Institution to the Pre-Sessional Working Group (6 – 10 March 2017) of the UN Committee on the Elimination of Discrimination Against Women (CEDAW) in relation to the 9th periodic report of Norway

Reference is made to the Committee's invitation of 7 December 2016 to provide country-specific information prior to the pre-session in March 2017 and the consideration of Norway's ninth periodic report at the Committee's session in October 2017.

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 is given a specific mandate to protect and promote international human rights in Norway as well as to monitor how the authorities respect their international human rights obligations. Submitting supplementary reports to international human rights treaty monitoring bodies is one of the essential tools for an NHRI to fulfil its mandate.

We submitted our application for international accreditation to the Global Alliance of National Human Rights Institutions (GANHRI) in December 2016. We look forward to GANHRI's assessment scheduled for March 2017. The former National Institution in Norway was downgraded to B-status in 2012.

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. Thus, our submission does not reflect all relevant human rights challenges in Norway within the scope of the International Convention on the Elimination of Discrimination Against Women (CEDAW).

The three issues presented first are those relating to the Committee's General Observations from 2012, followed by two new issues for the Committee's consideration.

1. Equality and non-discrimination in the Constitution and other legislation

Reference is made to Concluding Observation para. 10 (a) from 2012 (CEDAW/C/NOR/CO/8).

The principles of equality and non-discrimination were not enshrined in the Norwegian Constitution until the most encompassing revision since 1814 took place in 2014. A new Human Rights catalogue was introduced (Constitution section E) where § 98 now states that "All people are equal before the

law. No human being must be subject to unfair or disproportionate differential treatment.” Various alternative formulations were rejected by Parliament, including one alternative that listed specific grounds for illegal discrimination. The latter alternative was recommended by the National Institution, arguing that specific grounds raised awareness of and gave better guidance in line with international obligations as to which persons were particularly vulnerable. The view of the parliamentary majority was that listing specific grounds could lead to exclusion of some groups from protection.

The debate of various acts addressing different discriminatory grounds versus one common act on equality and non-discrimination has been on the table since 2009, when a white paper detailed and recommended a common act (NOU 2009:14 Et helhetlig diskrimineringsvern). The idea was first rejected in 2013, when instead the three existing discrimination acts (gender, ethnicity and disabilities/access) were revised and supplemented by a new act addressing discrimination based on sexual orientation. In 2015, a new proposal for a common equality and non-discrimination act was presented and made subject to a public hearing where more than 250 institutions and individuals submitted substantive comments. The final proposal from the Government is expected to be presented to Parliament in the spring of 2017.

The National Institution recognizes that securing the human right of non-discrimination based on gender as well as other grounds, can be legislatively enacted both through special acts or a common act. Nevertheless, in the transition from four separate to one common act, there is concern that harmonization may weaken protection against discrimination based on gender. The level of protection in this area is perceived to be higher than that in the more recent acts regulating other types of discrimination. The key purpose of the new act should be to secure a high level of protection from discrimination for all groups including women.

Suggested question to Norway:

- Could the State Party explain the content of the new common equality and non-discrimination act and how it will ensure non-retrogression of protection against gender-based discrimination and equal protection against all types of discrimination in practice?

2. Norway’s Legislative Drafting Instructions (Utredningsinstruksen)

Reference is made to Concluding Observation para. 10 (b) from 2012 (CEDAW/C/NOR/CO/8).

Norway has been operating with a “legislative drafting instruction” (utredningsinstruksen) that we consider to be best practice. This regulation obligated all state entities to consider human rights standards when preparing government initiatives such as legislative amendments, policies and plans (including assessments relating to EEA and Schengen regulations). This mechanism has in practice been an important venue for civil society, human rights institutions and expert groups to provide input and point out shortcomings in terms of human rights implementation. The legislative drafting instruction was revised on 19 February 2016 and came into effect on 1 March 2016.

The revised instruction lists the minimum requirements (in the form of questions) that should be assessed and addressed when deciding whether a proposed measure should be implemented. The National Institution notes that the revised instruction no longer requires assessment of implications for Norway's human rights obligations, including gender equality and non-discrimination. This is a departure from the former instruction. The consideration of human rights and gender and equality are now both relegated to the accompanying guide ("veilederen") to the instructions, where they are included as two of the many examples of the types of matters of principle that should be considered and described when relevant in the proposal from the Government.

The National Institution is concerned that the omission of these considerations in the instructions weakens the implementation of human rights in practice. We also note that while the guide is a tool that can be used to expand on and explain the content of the instructions, it is not binding in the same way as the instructions themselves.

Suggested question to Norway:

- Could the State Party specify how it will ensure that due consideration is given to human rights obligations, including gender equality and non-discrimination, especially in legislative processes?

3. Sami women and health

Reference is made to Concluding Observation para. 32 (a) from 2012 (CEDAW/C/NOR/CO/8).

In its concluding observations after its consideration of the eighth periodic report of Norway, the Committee on the Elimination of Discrimination against Women was concerned that Sami women continued to face multiple discrimination, including difficulty in accessing adequate health care, owing, inter alia, to the unavailability of adequate services for the Sami women living outside the defined Sami area. The committee called upon Norwegian authorities to ensure that all Sami women are provided with adequate social and health services, including mental health services.

A study from 2010 stated that the Sami have a poorer self-reported health than Norwegians, and that the health of Sami women is generally poorer than the health of Sami men. Sami-speaking women in typically Norwegian areas had the poorest health of all.

Another study from 2015 states that there is reason to believe that the right to use Sami language in contact with health and care services will have an effect on the Sami people's health and opportunity to obtain qualitatively good treatment.

Another study from 2015 reviews the existing research on discrimination among the indigenous Sami people, national minorities and immigrants and their descendants in contemporary Norway. The report states inter alia that qualitative studies have shown that the Sami risk facing structural discrimination in the public health system. The qualitative studies indicate that the assistance the Sami receive from the Norwegian health-system is deficient due to social and health workers' lack of

knowledge of Sami culture and the scepticism that many Sami have towards Norwegian health personnel.

The above-mentioned challenges are also addressed in a white paper from 2016 (NOU 2016:18 Hjertespråket), and several measures to remedy the challenges are proposed.

CEDAW article 12 calls upon State Parties to take all appropriate measures to eliminate discrimination against women in the field of health care.

The state report provides information on the legislative measures in place to eliminate discrimination against Sami women with regard to adequate social and health services. From the studies mentioned above, the problem seems to be more of a practical than a legislative nature.

Suggested question to Norway:

- Could the State Party submit more specific information on measures taken to implement the legislative framework in practice.

4. Women in prison

No previous reference; new issue recommended included in List of Issues.

The NHRI would like to draw the Committee's attention to a new topic not mentioned in the Norwegian state report. In recent years, reports and statements have been released focusing on the conditions of female inmates in Norwegian prisons.

In 2015, a cross-disciplinary working group prepared the report "Equal conditions for women and men under the responsibility of the Correctional Service" to the Directorate of Norwegian Correctional Service. The working group concluded that efforts are required at many different levels and in many different areas in order to obtain equal conditions for women and men under the responsibility of the Correctional Service. A total of 54 measures were proposed to improve the conditions for women in Norwegian prisons.

On the basis of a complaint about the conditions in Trondheim Prison, the Equality and Anti-Discrimination Ombudsman concluded in a statement in March 2015 that female inmates were being discriminated against on the basis of their gender because the Correctional Service had not considered measures to provide women with equal access to outdoor areas used by men. According to our information, changes have been made in Trondheim Prison in the wake of the statement of the Equality and Anti-Discrimination Ombudsman.

In January 2017, the Parliamentary Ombudsman (the National Preventive Mechanism against Torture and Ill-Treatment) issued a thematic report on women in prison. The Parliamentary Ombudsman has submitted the report directly to the Committee. The report shows that women serve under worse conditions than men. The report also points out that international research shows that the low number of women in prison compared with men often leads to the prison administration and prisons in general

being organized on the basis of the needs of male inmates, and that a higher percentage of women in prison come from disadvantaged backgrounds than men.

The report points out several reasons for the unequal conditions for women and men in Norwegian prisons. For instance, several women's prisons are located in old and unsuitable buildings and many women have significantly poorer access to outdoor areas and physical activities than men. Furthermore, female inmates often have other health problems than men, and therefore need different health services. The Parliamentary Ombudsman recommends that mental health care for women in prison should be improved. The substance abuse rehabilitation services offered to women are also inferior to those offered to men. In addition, the report shows that some women risk having to serve in prisons with a higher level of security than their case indicates due to the limited number of prison places for women. Other female inmates risk having to serve their sentence in prisons far away from their families and their own children because of the low number of suitable prison places. Moreover, the report shows that women serving in mixed-gender prisons (common prison with separate units for males and females) have an increased risk of unwanted attention or sexual harassment by male inmates.

CEDAW Article 2 states that all parties to the convention condemn discrimination against women in all its forms and agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women, and to this end undertake to refrain from engaging in any act or practice of discrimination against women.

Suggested question to Norway:

Could the State Party provide information on how it intends to follow up on the findings from the two reports on unequal conditions for women and men in Norwegian prisons?

5. Human rights of older persons

No previous reference; new issue for possible inclusion in List of Issues.

Demographic developments in Norway resonate with the global trend of an aging population. According to the UN independent expert on older persons, the number of persons above 60 will double to 2 billion by 2050 (A/HRC/33/44). Statistics Norway has estimated that the current number of persons 70 years or older will more than double by 2060 reaching 1.3 million.

The UN Working Group on Older Persons established in 2010, was tasked to consider whether protection of older persons is sufficiently ensured by existing human rights instruments and if not, to propose measures to remedy the situation. The working group has documented lack of protection both against discrimination based on age and against inhuman and degrading treatment (A/AC.278/2015/2). Alternative measures discussed include a new convention and/or increased focus on the rights of older persons by existing mechanisms. State parties are thus encouraged to report on the human rights situation of older persons as relevant.

The situation of older persons is receiving increased attention in Norway. There is also increased awareness of the relevance of human rights to this issue after the National Institution in 2014 published a "[Thematic report: Human rights in Norwegian nursing homes](#)". The report found that legislative protection seemed satisfactory. In practice, however, individual cases of degrading treatment were lacking adequate follow-up and the right to privacy of older persons was frequently violated in a manner not compliant with human rights standards. The Government publicly acknowledged these challenges. The report recommended a more detailed mapping of key human rights challenges to facilitate corrective measures and that the human rights of older persons be addressed in reporting to international monitoring mechanisms.

The National Institution notes that the Government so far has not followed up on the recommended mapping and we are presently considering how to best follow up on this recommendation. We noted with satisfaction in 2015 that the Government did report on the human rights of older persons in Norway's first report to CRPD. Given that women with age constitute an increasing majority of the total population of older persons, we also think it relevant that this issue be addressed when reporting to CEDAW.

Suggested questions to Norway:

- What issues of discrimination of older persons, in particular older women, is of concern to the State Party?
- Given the human rights challenges in Norwegian nursing homes documented by the NHRI and acknowledged by the Government, what steps is the State going to take to verify and possibly act on the situation of this vulnerable group?

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

Yours sincerely,

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Director

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This letter is electronically approved and has no signature