



UN Human Rights Committee Secretariat
Gabriella Habtom
ghabtom@ohchr.org
cc: ccpr@ohchr.org

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Supplementary information from the Norwegian National Human Rights Institution to the UN Human Rights Committee in relation to the hearing of the 7th periodic report of Norway on 14-15 March 2018

Reference is made to the Committee's invitation to provide country-specific information prior to the consideration of Norway's seventh periodic report at the Committee's 122nd session.

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

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

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

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

Yours sincerely

On behalf of the Norwegian National Human Rights Institution

Petter Wille

Director

Kristin Høgdahl

Senior Adviser

This letter is electronically approved and is sent without signature

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1. Framework

1.1. Ratification

Reference is made to LOIPR para.3 and State Report paras. 8-12.

In 2017, the Parliament supported the Government's position to not ratify the OP CRC, the OP ICESCR and the OP CRPD. Among other things, the authorities argued that the composition of these committees make them less suited for processing individual cases. The authorities also expressed concern that the committee's views in individual cases could lead to judicialization of political issues (rettsliggjøring) which in turn is perceived to limit the scope of national political decision-making (handlingsrom).

To the extent that the Norwegian government believes that there are weaknesses in the composition of the committees or in their working procedures, we consider that participation in UN treaty body reform is the most efficient strategy to strengthen the system.

Suggested recommendation:

- The State Party is encouraged to consider ratification of the three Optional Protocols to CRC, ICESCR and CRPD.

1.2. Reservation Article 10

The Human Rights Committee, as well as the CRC Committee, has recommended that Norway withdraw its reservation to Article 10 (2(b) and 3).

The number of minors in Norwegian prisons is low. Still, as many as 15 of the total 25 youth in Norwegian prisons in 2015 were held for some time in adult prisons.¹ Normally,

¹ Statistics annex to CRC/C/NOR/5-6 State Party report to CRC Committee (2016) Items 5 a) and d).

these children will face either de facto isolation to protect them from adult inmates, or they are not separated from adults. Even though the time spent in prisons with adults might be short, the potential negative consequences are high.

Suggested recommendation:

- Given the fact that there is a very low number of children in Norwegian prisons and that two youth prisons have been established, the State Party should be requested to give reasons for upholding its reservations to Article 10 (2(b) and 3).

2. Discrimination

2.1. Hate speech and hate crime

Reference is made to LOIPR para. 5 and State Report paras. 21-29.

Hate speech and hate crime has over time been identified as an issue of concern. To remedy the situation, in November 2016 the State Party launched a strategy against hate speech (2016-2020), which specifies 23 different measures. Whilst some of the measures in the Government's strategy have been implemented, others have, to NHRI's knowledge, only been partially implemented or are not yet implemented. This includes capacity building and knowledge development within the police to investigate these crimes (the strategy's measures 10 and 11), and to develop comprehensive and standardized national statistics on the reporting, investigation and convictions of hate crimes (measure 12) that are of particular interest.

NHRI has not been able to clarify whether the matter of hate speech de facto is prioritized in all police districts, or whether the police districts are sufficiently funded so as to ensure adequate follow-up as provided by the national strategy. The successful work of the designated hate crime investigation group in the Oslo police district, is a good example of how to build a professional environment with good legal and practical expertise in the complexities of hate speech investigation.

The State Report recognizes the lack of statistics and commits to the development of quality-assured statistics. It is not clear, however, which measures have been taken to ensure more systematic collection and registration of national hate speech statistics. The statistics should include both the number of reports and the outcome of these reports (number of investigations, dismissals, charges, convictions, etc.). Hate speech statistics should be recorded in accordance with clear and standardized guidelines. The State Party must ensure that the different police districts have the necessary expertise in registering

the relevant data. Measures to ensure this should not be restricted to rules and guidelines, but include the necessary steps to bridge the implementation gap between such guidelines and actual registering of data.

Suggested recommendations:

- The State Party should ensure that police districts give high priority to investigation of hate speech and other hate crimes, as provided for by the Government's strategy.
- The State Party should ensure comprehensive, reliable and standardized statistical data on hate speech and hate crimes.
- The State Party should strengthen coordination and further clarify responsibility among different justice sector institutions, e.g. the police, prosecutor's office and the courts.

2.2. Freedom of speech and technological developments

Reference is made to ICCPR Article 19.

The significant technological development and the widespread use of internet and social media in recent years open more communication channels for a larger number of people. This is positive. Nevertheless, the State Party is simultaneously facing new challenges to ensure that freedom of speech is not adversely affected by this development. In particular, Norwegian legislation in the field of media has not kept abreast of new technological development, which has resulted in legislative gaps. The editorial responsibility of media is one area of concern.

Parliament has recommended that the Government initiate a study on new media responsibility legislation ("ny medieansvarslov"), an initiative which NHRI welcomes. The work in this area should also consider other freedom of speech challenges arising from the technological development, hereunder questions of international cooperation regarding issues of taxation and the regulation of activities of multi-national technology corporations.

Suggested recommendations:

- The State Party should ensure that challenges to the freedom of speech arising in light of new technological development are duly considered, and that new legislation is proposed as required.
- This includes that the State Party should prioritize the work on a new media responsibility legislation.

2.3. Discrimination of individuals with immigrant background in housing and employment

Reference is made to LOIPR para. 6 and State Report paras. 37-50.

A survey on housing conducted in 2011 revealed the existence of discriminatory practices in the rental market that give unequal access to housing for individuals with immigrant backgrounds. This information has been supported by individual complaints that have been filed with the Equality and Anti-Discrimination Ombudsman over the last years. The report from 2016, "Leaving Standards Among Immigrant Population" from Statistics Norway also reveals some of the challenges with access to adequate housing for this group, including standard of dwelling and available space.²

The State Report also acknowledges the existence of this problem. Since 2014, the Government has implemented a general Housing for Welfare Strategy to address the problems of adequate and affordable housing for disadvantage groups of the population, which include individuals with immigrant backgrounds. Measures that have been developed include direct financial support, municipal guarantee schemes and housing subsidies as well as providing information, counseling and capacity development.

Discrimination in the labor market is a well-documented issue as highlighted in the State Report. A study from 2012 indicates that the possibility of being invited to a job interview is 25% lower for individuals with a foreign name.³ According to Statistics Norway, the general unemployment rate is 4.2%, whereas unemployment among persons with immigrant backgrounds is up to 11.2%.⁴

A recent study found differences both in salary levels and types of employment for members of this group.⁵ Persons with immigrant backgrounds receive on average 86% of the salaries of the general population. These differences also vary between different immigrant groups. Persons from Western-Europe normally have access to higher paid jobs and receive higher salaries, whereas persons from the African region have the lowest paid jobs. There are of course many factors that determine these inequalities, including educational background and skills of these persons, but such obstacles should be further studied and addressed to mitigate these negative consequences, cf. white paper St.t. meld 30 (2015-2016).

² SSB, <https://www.ssb.no/sosiale-forhold-og-kriminalitet/artikler-og-publikasjoner/levelkar-blant-innvandrere-i-norge-2016>.

³ See State Report para. 46.

⁴ SSB, <https://www.ssb.no/innvandring-og-innvandrere/faktaside/innvandring>.

⁵ SSB, <https://www.ssb.no/arbeid-og-lonn/artikler-og-publikasjoner/lavere-lonn-blant-innvandrere>.

Suggested recommendations:

- The State Party should evaluate the effectiveness of its housing strategy to eliminate discriminatory practices in the rental market as well as access to adequate and affordable housing for individuals with immigrant backgrounds.
- The State Party should implement measures to ensure effective integration of persons with immigrant backgrounds in the labor market, including equal access and pay for work of equal value.

2.4. *Minority Sámi women – health and discrimination*

Reference is made to LOIPR para.9.

A study from 2010 stated that the Sámi have poorer self-reported health than the majority population of Norwegians, and that the health of Sámi women is generally poorer than that of Sámi men.⁶ Sámi-speaking women living in predominately non-Sami areas had the poorest health of all.

Reference is also made to a study from 2015 which indicates that there is reason to believe that the right to use Sámi language in contact with health and care services may have an effect on the Sámi people`s health and opportunity to obtain qualitatively good treatment.⁷ The report suggests that Sámi-speaking individuals risk facing structural discrimination in the public health system. The assistance they receive from the health system is deficient due to lack of knowledge of Sámi culture and the skepticism that many Sámi have towards Norwegian health personnel.

New research from The Nordic Welfare Centre, carried out by the UiT – The Arctic University of Norway and published in November 2017, shows that that Sami persons with disabilities may have different and more difficult living conditions than other persons with comparable situations, especially regarding mental health.

The NHRI is concerned that Sámi women continue to face multiple discrimination, including difficulty in accessing adequate healthcare, in particular Sámi-speaking women living outside the defined Sámi language area (språkforvaltningsområdet).

Suggested recommendation:

- The State Party should intensify its efforts to address the issue of multiple discrimination of Sámi, in particular Sámi-speaking women.

⁶ <https://www.ncbi.nlm.nih.gov/m/pubmed/20359443/>.

⁷ Midtbøen, Arnfinn H, og Hilde Lidén: «Diskriminering av samer, nasjonale minoriteter og innvandrere i Norge» Institutt for samfunnsforskning 2015:18.

2.5. *Wage gap*

Reference is made to LOIPR para. 7 and State Report paras. 53-57.

Statistics show that women's hourly pay on average is 88% that of men. Research carried out by CORE shows that for lower income jobs, the gender difference is 6%, whereas the difference is 20% in higher-paying jobs. They focus on two main explanatory factors for this difference and note that the gender-segregated market accounts for almost half of the variation. Furthermore, another key contributing factor identified is the effect of family life on women. Research indicates that women with children earn less than women without children, while the situation is the opposite for men.

Suggested recommendation:

- The State Party should continue implementing measures which avoid retrogression and ensure more equal participation of both parents in family life, including best practices such as use of paternity leave quotas.

3. Violence against women

3.1. Domestic violence against children, Sámi and elderly

Reference is made to LOIPR para .9 and State Report paras. 69-98.

In 2017, a Government-appointed committee published a report with an evaluation of 20 serious cases of violence, sexual abuse and neglect of children.⁸ One of the questions addressed in the report was whether the situation could have been prevented or identified by social and health services at an earlier stage. The report reveals an extensive failure at the systemic level. In some cases, the children had not been heard, thus not been given the opportunity to tell their story. In other cases, the child's situation was known to some public services, but no further action was taken. The report concludes that mistreatment of children should have been identified at an earlier stage and calls for better protection of these children.

In 2017, a new report about domestic violence in Sami communities was published.⁹ It suggests that abused individuals from Sami communities experience special challenges and barriers in their interaction with the police and social and health services, such as a lack of cultural and linguistic understanding. Further, in 2016 the police started an

⁸ NOU 2017:12 Svikt og svik.

⁹ «Om du tør å spørre, tør folk å svare», NKVTS, rapport nr. 2 2017.

investigation after eleven women and men from the small Sami community Tysfjord-Divttasvuotna came forward with stories of sexual abuse in the media. In total, more than 92 persons are or have been under investigation.¹⁰ In addition, research from 2015 indicates that Sami people in general are exposed to violence more often than ethnic Norwegians.¹¹ The NHRI has called for a specific action plan against violence and sexual abuse in Sámi communities.

In 2017, the first national study of incidents of violence and abuse against people over 65 years old living at home was published. It indicates that between 56,500 and 76,000 persons have been victims of violence or abuse after reaching 65 years.¹² Eight out of ten have stated that they were in a close relationship with the offender. A study from 2016 further shows that people over 65 years of age seldom are included in the municipal action plans against domestic violence.¹³ Another study, from 2015, also shows that public services lack of mapping tools and routine guides to identify and map domestic violence against elderly.¹⁴

Suggested recommendation:

- The State Party should implement effective measures at the systemic level to ensure effective protection, prevention and redress to children, Sami and elderly exposed to violence and sexual abuse.

3.2. Sexual violence – police investigations

The Public Prosecutor's Office undertook a special survey in 2016 of the quality of police investigation of domestic violence and rape.¹⁵ The study indicated existing challenges in the investigation of these cases. Among other things, the report shows that the investigation can be more effective on issues such as the use of police methods in cases of domestic violence, the use of restraining orders in cases of rape and obtaining evidence in general.

¹⁰ «Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning», Nordland politidistrikt, 2017.

¹¹ Eriksen A. Hansen K.L., Javo C. and Schei B., «Emotional, physical and sexual violence among Sami and non-Sami population Norway: The SAMINOR 2 questionnaire study», *Scandinavian Journal of Public Health*, 2015.

¹² «Vold og overgrep mot eldre personer. En nasjonal forekomststudie», NKVTS, Rapport 9/2017.

¹³ «Kommunale handlingsplaner mot vold i nære relasjoner - også for eldre utsatte?», NKVTS, Rapport 9/2016.

¹⁴ «Oversikt over rutineguider og kartleggingsverktøy for avdekking av vold i nære relasjoner», NKVTS, Rapport 4/2015.

¹⁵ Report of the General Prosecutor's Office on domestic violence and abuse, <https://www.riksadvokaten.no/document/kvalitet-pa-etterforskning-og-patalearbeid-i-mishandlings-og-valdtektssaker/> and "Evaluering av politiets arbeid med seksuelle overgrep", Politidirektoratet and KRIPOS, January 2015.

Similar gaps in the quality of investigation were identified in a 2015 study by the National Criminal Police Authority (Kripas).¹⁶ The report found considerable variation in quality and effectiveness of the investigations conducted. As much as 39% of the cases are not investigated in a satisfactory manner.

Suggested recommendation:

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

4. Trafficking

4.1. Asylum-seeking children

Reference is made to LOIPR para. 10, and State Report para. 102.

As a supplement to the topic of unaccompanied asylum-seeking minors missing from reception centers, we would like to draw the Committee's attention to the following:

Research suggests that during the period 2008 to June 2015, a total of 625 unaccompanied asylum-seeking minors disappeared from reception centers and care centers.¹⁷ The numbers for 2016 and 2017 are also high, 150 disappeared in 2016, and from 1 January to 31 October 2017, a total of 223 unaccompanied asylum-seeking minors disappeared.¹⁸

On 10 January 2017, the Norwegian Institute for Urban and Regional Research, published the report *"Prevention and follow up of unaccompanied minor (UAM) asylum-seekers that disappear from UAM reception centres and care centres in Norway"*. According to the report, in 59 % of the cases where unaccompanied minors have disappeared in the period between January 2011 to June 2015, it is unknown to Norwegian authorities where they have disappeared to and what has happened to them.

Suggested recommendation:

- The State Party should continue its efforts to strengthen protection of unaccompanied minor asylum-seekers, including prevention of, and effective follow-up on disappearance-cases.

¹⁶ Politidirektoratet og KRIPOS, "Evaluering av politiets arbeid med seksuelle overgrep" January 2015.

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

¹⁸ Press, Save the Children Youth Organization, "Vi kan ikke reise tilbake" ("We can't go back"), page 8.

5. Persons with disabilities

5.1. Use of coercive force

Reference is made to LOIPR para. 11 and the State Report paras. 113-121.

A key issue, not mentioned by the State Party, are the visits of the NPM to nine different mental healthcare institutions from 2015-2017.¹⁹ The NPM assessed topics such as coercive medication, coercive ECT, shielding of patients from other patients and the use of mechanical instruments such as belts. It also assessed the patients' procedural safeguards and how they were handled by institutions. The NPM's recommendations are specific and adapted to the individual institution. Nevertheless, it seems that a consistent recommendation is that the procedural safeguards of the patient should be strengthened. One example is the need for more thorough written documentation when using coercive treatment or measures. Another key recommendation is that several of the institutions must be better at considering alternative and less intrusive measures before using force.

In para. 114, the State Report refers to the specific requirement in the Mental Health Care Act of 2017, obliging the responsible mental health professional to consult other qualified mental health professionals before administering coercive examination and treatment. It is worth emphasizing that it is not a requirement that the mental health personnel being consulted should be independent. With reference to CPT's recommendations, the ECHR has reaffirmed that independent second-hand assessments are "*an important safeguard against possible arbitrariness (...)*".²⁰ Further, it is true that patients with the capacity to consent cannot be examined or treated against their will. However, there is an exception to this not mentioned by the State Party: If patients with the capacity to consent represent an immediate and serious danger to his or her own life or to others' lives or health, these patients *can* be examined or treated against their will.

In para. 118, the State Report refers to the legislation committee which will review the rules for using coercion in the health and care services. The National Institution strongly supports such a review.

Suggested recommendations:

- The State Party should continue its efforts to end the unjustified use of coercive force, including review of legislation.

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

²⁰ *X v. Finland* 3 July 2012, paras. 168–171.

- The State Party should ensure further reduction of the use of coercion, including through training of staff, prioritizing alternative and less intrusive methods, as well as strengthening procedural guarantees and control.

5.2. *Use of coercive electroconvulsive treatment*

Reference is made to LOIPR para. 11 and State Report para. 119.

The authorities have no complete factual overview on the use of coercive ECT, and there are indications that involuntary ECT is practiced differently across institutions.²¹ Moreover, there is no clear legal basis in formal law or regulation that allows ECT to be given to non-consenting patients. According to the preparatory works of the Mental Health Care Act, ECT can be used without the consent of the patient if the procedure meets the conditions of the “*principle of necessity*” in the Penal Code.

NHRI finds that the coercive use of ECT with reference to the “*principle of necessity*” may be against the principle of rule of law in both the Norwegian Constitution and international human rights law. It is a serious concern that the use of ECT lacks a formal legal basis, while other coercive treatments have a direct anchoring in the Mental Health Care Act with strong procedural safeguards. The new guidelines from 2017 address several of these weaknesses, nevertheless, the principles of clarity, predictability and more consistent practice of the use of coercive ECT suggest that a regulatory framework must be strengthened.

Suggested recommendations:

- The State Party should assess to which extent coercive ECT is used in mental health institutions and whether such practice is justified.
- The State Party should ensure that the regulatory framework and practices are in full compliance with its human rights obligations.

6. Liberty, access to court and privacy

6.1. *Remand in police custody for more than 48 hours*

Reference is made to LOIPR para. 12 and State Report para. 125.

²¹ Helsedirektoratet, «*Nasjonal faglig retningslinje om bruk av elektrokonvulsiv behandling – ECT*», June 2017 and visits conducted by the NPM.

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

Suggested recommendation:

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

6.2. Isolation in police custody

Reference is made to LOIPR para. 12.

In police custody facilities (police custody cells), isolation is used systematically for all detainees, because the custody facilities are normally designed so that detainees have no contact with each other. This means that, in many cases, detainees are placed in isolation without this being deemed necessary for reasons relating to the investigation. This can entail a violation of CCPR Article 7 and ECHR Article 8 on the right to respect for private and family life.

Suggested recommendations:

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

6.3. The use of post-conviction solitary confinement in prison

Reference is made to LOIPR para. 12.

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

constitute acceptable grounds for exclusion. Hence, there is an expectation that the new guidelines will contribute to reducing the number of instances of exclusion.

Nevertheless, so far, this does not appear to be the case. In 2016, the Correctional services registered 3,066 full exclusions and 958 partial exclusions. From 1 January to 11 December 2017, 4,257 full exclusions and 1,763 partial exclusions were registered. Thus, contrary to the general expectation due to stricter rules, the registered cases of exclusions have increased significantly. Although the cause of the increase is unclear, it may be an indication that the new guidelines have not been adequately implemented in practice, rendering exclusion of prisoners an enduring issue of concern.

Suggested recommendation:

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

6.4. Women in prison

Reference is made to LOIPR para. 14 and State Report para. 146.

It follows from the State Report that the Government has been working on women's conditions during the execution of sentences. Following a report from the Parliamentary Ombudsman (the National Preventive Mechanism against Torture and Ill-Treatment), the prison places for women in Drammen Prison have been abolished, and a separate wing in Kongsvinger Prison has been transformed into a women's section.

For the Committee's information, the Norwegian Equality and Anti-Discrimination Ombudsman also issued a thematic report in May 2017 on prison conditions for various vulnerable groups that mentioned similar challenges as the NPM.²²

While the National Institution welcomes the Government's efforts to improve the conditions for women in prison and the establishment of new separate women's sections, it gives cause for concern that they have decided to locate the newly-established women's section in premises that the Parliamentary Ombudsman considers not to meet modern requirements for prison conditions.

There are also concerns that many women prisoners have significantly poorer access to outdoor areas, physical activities and vocational training than men. The substance abuse rehabilitation services offered to women in prison are inferior to those offered to men.

²² Likestillings- og diskrimineringsombudets rapport: «Innsatt og utsatt – om soningsforholdene til utsatte grupper i fengsel», 2017.

Additionally, 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.

Suggested recommendation:

- The State Party should reinforce its efforts to follow up the findings and address the unequal conditions for women in Norwegian prisons.

6.5. Mentally ill in prison

Reference is made to LOIPR para. 12.

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

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

Based on these findings, there is grave concern that this specific group of inmates may be subjected to treatment in violation of CCPR Article 7.

Suggested recommendation:

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

6.6. Trandum Holding Center in general

Reference is made to LOIPR para. 14 and State Report paras. 148-151.

After the State Report was submitted to the Committee, the Parliamentary Ombudsman’s National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment of persons deprived of their liberty (the NPM) issued a new report based on a visit to Trandum in March 2017.²³ During this visit, the NPM examined the detention center's practice concerning the use of its security section and the use of coercive measures.

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

Further, the use of handcuffs in connection with transportation appeared to be routine procedure. The report also reveals a serious incident where pepper spray was used on a detainee in order to complete a body search. The NPM found that both the decision to use pepper spray and the way in which force was used, appeared questionable in light of the requirements for necessity and proportionality.

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

Suggested recommendation:

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

6.7. Detention of children awaiting deportation

Reference is made to LOIPR para. 16 and the State Report paras. 148-151 and 157-158.

The State Report refers to ongoing work to improve and clarify the regulations for the arrest and detention of children and families with children in relation to deportation cases. The proposed regulation may improve the rights of children in these cases, compared to existing procedures in the current legislation.

The Ministry of Justice and Public Security has also announced that it is planning to establish a separate immigration detention center for families with children outside Trandum.

²³ The report in English, see <https://www.sivilombudsmannen.no/wp-content/uploads/2017/09/Visit-report-2017-Trandum.pdf>

The Parliamentary Ombudsman (the National Preventive Mechanism against Torture and Ill-Treatment) issued a report based on a visit to Trandum in 2015. The report stated that Trandum was unsuitable for children, although it has a specialized family unit.

In addition, the Borgarting Court of Appeal passed a judgment on 31 May 2017, in a case where a family with four children was detained in Trandum immigration detention center for a period of 20 days. The Court concluded that the state had violated Article 3 of the ECHR, Article 37 (a) of the Convention on the Rights of the Child and Section 93 (2) of the Norwegian Constitution. The Court found the conditions in Trandum to be comparable to those mentioned in five judgements from the European Court of Human Rights against France.²⁴

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

A new temporary immigration detention center for families with children was established in Hurdal from 1 January 2018. As long as Norwegian legislation is open for the possibility for detention of children awaiting deportation, the NHRI would like to emphasize the importance of establishing a *permanent* and child-friendly immigration detention center for families with children.

Suggested recommendation:

- The State Party should prioritize the establishment of a new permanent child-friendly immigration detention center for families with children outside Trandum.

6.8. *Juvenile detention*

Reference is made to LOIPR paras. 12 and 14 and the State Report paras. 125-130 and 144-145.

It is positive that the number of children in police custody has decreased in recent years and that annual statistics on children in custody have been made available. Nevertheless, in 2016, children were placed in police cells on 343 occasions. Thirty-four children were detained more than 24 hours without court hearing, despite the Criminal Procedure Act's

²⁴ ECtHR *A.B. and others v. France* (11593/12), *R.K. and others v. France* (68264/14), *R.C. and V.C. v. France* (76491/14), *R.M. and others v. France* (33201/11) and *A.M and others v. France* (24587/12).

provision that minors must be presented before a court as soon as possible, and at latest, the day after the arrest.²⁵

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

Suggested recommendation:

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

6.9. Free legal aid

Reference is made to LOIPR para. 13 and State Report paras. 133-.

Legal aid in civil cases may, under certain circumstances, be a prerequisite for the right to access to court. If legal aid in civil cases is not granted pursuant to the Legal Aid Act, legal aid as necessary to ensure the right to access to court must still be granted in accordance with para. 95 of the Norwegian Constitution, ECHR Article 6. Since the Legal Aid Act is not fully reflecting human rights standards on effective access to court, such provisions on access to court may on their own serve as a practical and important basis for granting legal aid. This was recently recognized in a circular published by the Norwegian Civil Affairs Authority in December 2016 (SRF-2017-1). Hence, legal aid may now be granted beyond the scope of the Legal Aid Act, if the interests of justice so require.

However, due to how the right to effective access to court is laid out in the aforementioned circular, there is a concern that the granting of legal aid outside the scope of the Legal Aid Act is not effectively operationalized by the relevant authorities.

Amongst other reasons, we therefore welcome the current review of the Legal Aid Act, which will hopefully result in a regulatory framework that duly reflects and effectively implements relevant human rights standards on legal aid in civil cases.

²⁵ The National Police Directorate (2016) – Report to the Ministry and Public Security on detention figures, overstayers and children in detention in 2016.

Suggested recommendation:

- The State party should put in place a statutory framework and administrative practice which ensures legal aid that guarantees the right of effective access to court.

6.10. Surveillance measures and privacy

Reference is made to ICCPR Article 17.

In recent years, there have been significant developments in the field of invasive surveillance methods to prevent serious criminal offences and to protect national security.

In June 2016, the Police Act and the Code of Criminal Procedure was amended, introducing new police methods, and allowing monitoring of communication, house searches and data surveillance, if deemed necessary to prevent or avert serious criminal offences, mostly related to acts of terrorism and crimes against the State. Such measures may be deployed irrespective of suspicion that a crime has already been committed. Although subject to judicial authorization and review, the key criteria laid out to use such measures render significant discretion to the Police, that may reduce the quality of the judicial oversight.

Moreover, the Ministry of Defense is currently working on a proposal to implement a system for bulk data retention. The proposal stems from a working group established by the Government (“Lysne II-utvalget”). In the report “Digitalt grenseforsvar”, it is proposed that the Norwegian Intelligence Service (“Etterretningstjenesten”) be given access to retain and process generic masses of data passing Norwegian borders. Like other European states that have adopted such systems, or are in the process of doing so, it is a significant issue whether bulk data retention powers are compatible with the right to privacy, especially considering recent jurisprudence from the ECHR, CJEU and recent reports from the UN Special Rapporteur on Privacy.

In recent years, the catalogue of secret surveillance measures has expanded rapidly and on a seemingly fragmented basis. This includes provisions regulating the use of information obtained using secret measures. The lack of a comprehensive approach in this field is apt to raise concern regarding the total impact on privacy and its consequences in a broader societal perspective.

Suggested recommendation:

- The State should ensure that government surveillance systems, as well as the use and development of such systems, do not infringe on the right to privacy.

7. Asylum-seekers

7.1. Asylum-seeker children age 15-17 - differential treatment

Reference is made to the ICCPR Article 26.

The many challenges linked to the increased number 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 2017.²⁶

The report indicates that there are significant differences in the accommodation and care given to unaccompanied asylum-seeking children under the age of 15, and unaccompanied asylum-seeking 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 centers, which are the responsibility of the immigration authorities. The reception centers differ in terms of staffing levels which are much lower, staff competence requirements and physical conditions. The reception centers are only regulated by instruction from the 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.

In our view, the Government has not demonstrated that the difference in treatment has a legitimate aim. 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. As the ICCPR Article 26 contains a general discrimination clause, we assume that our assessment under the CRC would also be relevant in relation to the ICCPR Article 26.

Suggested recommendation:

- The State Party should give unaccompanied asylum-seeking minors aged 15-17 a standard of protection equivalent to that offered to other children under the responsibility of the Child Welfare Services, including unaccompanied asylum-seeking minors under the age of 15.

²⁶ NIM <http://www.nhri.no/getfile.php/131692/nim/Nyhet/Temarapport%202016%20-%20Omsorg%20for%20enslige%20mindre%C3%A5rige%20asyls%C3%B8kere.pdf> (only in Norwegian).

8. Citizenship

8.1. Citizenship for stateless children

Reference is made to LOIPR para. 18, and the State Report paras. 171 – 174.

In October 2015, UNCHR published the report “*Mapping statelessness in Norway*”.²⁷ Although the Norwegian Nationality Act in Article 3 has a specific provision which gives international law precedence over national law in this area (sector monism), the report revealed gaps in the actual implementation of the 1954 and the 1961 UN conventions on statelessness. UNHCR had several recommendations to Norwegian authorities in order to secure full compliance with Norway’s obligations under the relevant conventions.

As mentioned in the State Report paragraph 172, the Government issued instructions to the Norwegian Directorate of Immigration in October 2016, to ensure that applications for Norwegian citizenship from stateless applicants who are born in Norway are processed in accordance with the international conventions.

Suggested recommendation:

- The State Party’s obligations under the 1954 and 1961 UN Conventions should be reflected in the Act on Nationality rather than in instructions from the Government.

9. Rights of persons belonging to indigenous peoples and minorities

9.1. Attitudes to religious minorities

Reference is made to ICCPR Article 27

In November 2017, the Center for Studies of Holocaust and Religious Minorities (the HL-Center) published a population survey on attitudes towards Jews and other minorities,²⁸ as a follow-up to their 2012 survey on the same topic. The report shows that Anti-Semitic attitudes among Norwegian citizens has decreased since 2012, at the same time as the Jewish population’s own experiences of Anti-Semitism has increased. The survey also reveals negative attitudes towards Muslim, Somali and Roma minority populations in Norway.

²⁷ UNHCR <http://www.refworld.org/pdfid/5653140d4.pdf>.

²⁸ <http://www.hlsenteret.no/publikasjoner/antisemitism-in-norway-web.pdf>.

The report, among others, advises to enhance registration of hate-motivated crimes as well as continued monitoring of situation through research and surveys.

Suggested recommendation:

- The State party should reinforce its efforts to combat antisemitism and other forms of intolerance against all religious minorities and minority groups, including through education programs, research and other initiatives.

9.2. *Sámi rights*

Reference is made to LOIPR paras. 19 and 20 and the State Report paras. 175-199

Nordic Sami Convention

The Sámi are recognized as an indigenous people in Norway through a specific constitutional amendment on Sámi rights,²⁹ through a series of white papers on Sámi policy, as well as through Norway's ratification of ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.³⁰ The Sámi people have a right to self-determination as indigenous people under international law, and are entitled to be consulted on matters that affect them.

In January 2017, the negotiations on a Draft Nordic Sámi Convention were concluded. There are, however, outstanding issues raised by the Sámi representative bodies, with regard to interpretation of inter alia the provisions regarding self-determination and consultations in the draft.

Effective participation

The Agreement on procedures for consultations between the Central Government authorities and the Sámediggi of Norway sets out detailed procedures for such consultations. Furthermore, the Minerals Act provides for consultations with the Sámi Parliament and Sámi communities in relation to extractive industry in traditional Sámi areas.

The Ministry of Local Government and Modernization, in consultation with the Sámediggi in Norway are presently developing a new consultation act, yet to be agreed between the parties. NHRI notes that given the considerable amount of development and extractive

²⁹ Para. 108 in the Norwegian Constitution states that: "It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life."

³⁰ Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989), ratification of the Kingdom of Norway of which was registered on 19 June 1990.

industry projects in Sámi areas, where the Sámi oppose such projects, there seems to be a need to enhance the legal framework.

The State Party should increase its efforts to consult Sámi communities seeking their free, prior and informed consent and effective participation in decision-making processes. In 2007, the Sami Rights Committee II presented proposals on the identification and recognition of Sami rights to ownership and use of land in Sami areas outside of Finnmark, and amendments to the Mineral Act for the same areas. The Government has not yet submitted proposals to Parliament on follow-up to these proposals.

Fishing

The Official Norwegian Report NOU 2008:5 Fishing Rights in the Sea surrounding Finnmark concluded inter alia that the Sea Sami and the population in the coast of Finnmark has historical and cultural rights to fish in the coastal sea areas. The right entails a right to fish, both for own use and as a fisherman by occupation to fish an amount that gives base for a household. The rightsholders also have the right to participate in the use, management and conservation of the natural resources in the coastal sea and land areas. In 2017, NHRI published a report recommending that the right to fishing should be recognized by statutory law. The Government, however, holds the view that the rights of the Sea Sami, deriving from inter alia ICCPR Articles 26 and 27, are sufficiently implemented through the amendments of the provisions and administrative fishery system mentioned by the State Party.

Reindeer reduction

A larger number of reindeer in Finnmark as compared to available grazing lands threatens the sustainability of the industry and the local environment. Unless the reindeer herders can agree on how many reindeer each *siida* (traditional reindeer herding group) can have, the authorities may decide that everyone shall reduce its herd with the same percentage. Since almost no *siida* has been able to agree on the reduction, the authorities decided the same percentage reduction for all herds. Unfortunately, it seems that this method of regulation may have disproportionate consequences for smaller reindeer owners.

Suggested recommendations:

- The State Party is encouraged to intensify the consultation process on the draft Nordic Sami Convention.
- The State Party should provide the Committee with information about the status of this process, including information about the monitoring

mechanisms set forth in the draft aimed at ensuring effective implementation of the Sámi Convention.

- The State Party should prioritize the follow up of the report from the Sami Rights Committee NOU 2007:13 to ensure full enjoyment of indigenous peoples' rights outside the Finnmark region.
- The State Party should consider recognizing in statutory law the fishing rights of Sea-Sami along the coast of Finnmark.
- The State Party should consider reviewing the reindeer herding act to better secure sustainable and equitable reindeer herding.

9.3. *Tater/Romani*

Reference is made to LOIPR para. 21 and State Report paras. 200-203.

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

The policy was established through different laws and regulations that had discriminatory intent, at least in part, and clear discriminatory consequences the way it has been implemented. The assimilation policy was manifested in two main activities: (a) transferring/removal of children from parental care and (b) forced (re)settlement of Tater/Romani people.

The State has yet to present a plan for follow-up after the consultation round with affected groups in 2016. After discussion with representatives of Tater/Romani organizations, NHRI is concerned about the lack of progress in developing a follow-up plan.

Suggested recommendations:

- The State Party should implement the recommendations of the Commission's report, including providing adequate compensations and reparation for victims of past abuses.
- The State Party to take all necessary steps to ensure Tater/Romani people can fully enjoy all rights and freedoms without discrimination.