



UN Committee ESCR  
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Deres referanse:  
Vår referanse: 2018/199  
Dato: 14/01/2020

## **Supplementary information from the Norwegian National Human Rights Institution to the UN Committee on Economic, Social and Cultural Rights at its 67<sup>th</sup> session, hearing of Norway 25-26 February 2020**

The Norwegian National Human Rights Institution hereby submits its supplementary report to the UN Committee on Economic, Social and Cultural rights, prior to its hearing of Norway at the 67<sup>th</sup> session in 2020.

The Norwegian National Human Rights Institution (hereinafter: NIM) was established 1 July 2015 as an independent institution under new legislation adopted by Parliament. NIM 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 monitoring bodies is an essential tool for an NHRI to fulfil its mandate.

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

This report has been prepared in consultation with the Equality and Anti-Discrimination Ombudsperson (LDO) and the Ombudsman for Children.

Please note that our submission does not reflect all relevant human rights challenges in Norway within the scope of the Covenant on Economic, Social and Cultural Rights.

Please feel free to contact us at [info@nhri.no](mailto:info@nhri.no) in case of questions.

Yours sincerely

On behalf of the Norwegian National Human Rights Institution

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This document is electronically approved and has no signature.

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## Particular relevance

### 1. Instructions for legislative drafting, policies and plans

Reference is made to List of Issues Prior to Reporting (hereinafter LOIPR) para. 2 and the Sixth periodic report submitted by Norway under articles 16 and 17 of the Covenant, due in 2019 (hereinafter the State Report) para. 5.

The *Instructions for the Preparation of Central Governmental Measures* was revised on 19 February 2016.<sup>1</sup> NIM has noted that the revised instructions no longer contain an explicit requirement to assess implications for Norway's human rights obligations during legislative drafting, policy development and planning processes. The obligation to consider human rights, gender and equality are now only referred to in the accompanying guidelines ("veilederen") which is not binding as opposed to the instructions themselves.

NIM is concerned that the lack of an explicit reference to human rights obligations in the instructions could weaken due consideration of human rights obligations in legislative drafting as well as other processes. In order to assess the effects of the revised instructions an independent evaluation should take place.

#### **Suggested recommendation:**

- The State Party should include an explicit obligation to assess potential human rights implications in legislative drafting, policies and plans.

### 2. Follow-up of international recommendations

Reference is made to LOIPR para. 2 and the State Report para. 7.

In Norway, the primary responsibility for reporting and follow-up of core human rights treaties rests with four different ministries. Implementation of recommendations is undertaken as part of the daily work and political priorities of each respective ministry.

Norway's reporting to various monitoring bodies in the period 2017 – 2019 has identified a number of cross-cutting issues raised by various committees. To ensure effective implementation of the recommendations, NIM notes the need to improve coordinated follow-up among different ministries and relevant governmental agencies. Improved coordination between state level institutions and municipalities is of particular importance.

#### **Suggested recommendation:**

- The State Party should strengthen coordinated follow-up of recommendations from international treaty bodies.

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<sup>1</sup> Norwegian «utredningsinstruks» as translated by the Government in the State Report to ESCR in 2019.

### 3. Discrimination of ethnic minorities in housing and labour market

Reference is made to LOIPR para. 3 and the State Report para. 8-9.

In 2015, The Directorate for Children, Youth and Family Affairs (responsible for work on equality and non-discrimination of ethnic minorities) initiated research on discrimination against Sami, national minorities and immigrants in Norway.<sup>2</sup> The report shows discrimination in many areas of society.

This study confirms an earlier survey on housing conducted in 2011 showing the existence of discriminatory practices in the rental market which give unequal access to housing for individuals with immigrant background. This information is also supported by individual complaints that have been filed with the Equality and Anti-Discrimination Ombudsperson up until 2018. The report from 2016, "Living Standards Among Immigrant Populations" from Statistics Norway also reveals some of the challenges with access to adequate housing for this group, including standard of dwelling and available space.<sup>3</sup>

Since 2014, the Government has implemented a general *Housing for Welfare Strategy* to address the problems of adequate and affordable housing for disadvantaged groups, which include, to a certain extent, individuals with immigrant background.<sup>4</sup> Measures that have been developed include direct financial support, municipal guarantee schemes and housing subsidies as well as information, counselling and capacity development.

In December 2019 the Government presented its Action plan against racism and discrimination on the basis of ethnicity and religion 2020-2023.<sup>5</sup> The plan reiterates that discrimination may make it difficult for those with immigrant backgrounds to access the housing market and recognizes the need for further research to identify appropriate measures.

Discrimination in the labour market is a well-documented problem, as highlighted in the State Report. A study from 2012 indicates that the likelihood of being invited to a job interview is 25% lower for individuals with a foreign name.<sup>6</sup> According to Statistics

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<sup>2</sup> Diskriminering av samer, nasjonale minoriteter og innvandrere i Norge En kunnskapsgjennomgang. Arnfinn H. Midtbøen og Hilde Lidén, Institutt for samfunnsforskning Rapport 2015:01. [https://brage.bibsys.no/xmlui/bitstream/handle/11250/2440432/ISF-rapport\\_2015\\_1\\_v3\\_endret.pdf?sequence=3&isAllowed=y](https://brage.bibsys.no/xmlui/bitstream/handle/11250/2440432/ISF-rapport_2015_1_v3_endret.pdf?sequence=3&isAllowed=y)

<sup>3</sup> SSB, <https://www.ssb.no/sosiale-forhold-og-kriminalitet/artikler-og-publikasjoner/levekår-blant-innvandrere-i-norge2016>.

<sup>4</sup> Bolig for velferd, Nasjonal strategi for boligsosialt arbeid (2014-2020), [https://www.regjeringen.no/globalassets/upload/kmd/boby/nasjonal\\_strategi\\_boligsosialt\\_arbeid.pdf](https://www.regjeringen.no/globalassets/upload/kmd/boby/nasjonal_strategi_boligsosialt_arbeid.pdf)

<sup>5</sup> See <https://www.regjeringen.no/contentassets/589aa9f4e14540b5a5a6144aaea7b518/handlingsplan-mot-rasisme-uu-des-2019.pdf>

<sup>6</sup> See ICCPR State Report para. 46.

Norway, the general unemployment rate is 3.8%, whereas unemployment among persons with immigrant background is up to 8.5%.<sup>7</sup>

A recent study found that members of this group were disadvantaged, both with regard to salary levels and types of employment.<sup>8</sup> Persons with immigrant background receive on average 86% of the average salary 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,<sup>9</sup> but such obstacles should be further studied and addressed with a view to mitigate negative consequences.

The Government is preparing amendments to the Citizenship Act. New conditions for citizenship entail that persons will have to pass an oral test in Norwegian on a higher level than the current requirement (B1 instead of A2). The Equality and Anti-Discrimination Ombudsperson is concerned that the new requirement can have negative consequences for certain groups, including persons with low or no education and women responsible for younger children. The Government should ensure that the new forthcoming amendments do not adversely affect vulnerable groups.

**Suggested recommendations:**

- The State Party should evaluate the effectiveness of its housing strategy with a view to eliminating discriminatory practices in the rental market and seek to ensure access to adequate and affordable housing for individuals with immigrant background.
- The State Party should implement measures to ensure effective integration of persons with immigrant background in the labour market, including equal access to the labour market and equal pay for work of equal value.

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<sup>7</sup> SSB, <https://www.ssb.no/innvandring-og-innvandrere/faktaside/innvandring>.

<sup>8</sup> SSB, <https://www.ssb.no/arbeid-og-lonn/artikler-og-publikasjoner/lavere-lonn-blant-innvandrere>.

<sup>9</sup> *Fra mottak til arbeidsliv – en effektiv integreringspolitikk*, Meld.St. 30 (2015-2016).

## Implementation of covenant

### 4. Indigenous / Sami rights to livelihood

Reference is made to LOIPR para. 9 and the State Report paras. 62 and 63-64.

#### 4.1. *Follow-up on the proposals of the Sami Rights Committee regarding Sami rights south of Finnmark county*

In 2007, the Sami Rights Committee presented its report (NOU 2007:13) with proposals for legislation i.a. regarding the recognition and governance of Sami land rights outside of Finnmark. According to the State Report, the Ministry of Justice and Public Security is now in the process of evaluating the Sami Rights Committee's proposal for rights surveying south of Finnmark County. Given the long time this process has taken, the evaluation of this proposal from the Sami Rights Committee should be given priority.

##### **Suggested recommendation:**

- The State Party should give priority to following up the proposals from the Sami Rights Committee for legislation regarding the recognition and governance of Sami land rights outside of Finnmark.

#### 4.2. *Sami fishing rights*

In 2016, the NHRI conducted a study on Sami rights to fisheries in coastal sea areas based on customary use, as well as interpretation of ICCPR article 27 and ILO Convention no. 169 on the rights of indigenous peoples. The study concluded that: (i) the Sami rights to fisheries as a part of their culture and based on their customary fisheries should be secured by law; (ii) the right to participate in the management of the natural resources should be better secured; and (iii) processes are needed to secure that the Sami rights to fisheries are not violated by e.g. industrial- or other new use of coastal sea areas. These conclusions are in line with the Governmental Commission Report NOU 2008:5 on fishing rights in the sea surrounding Finnmark, and the recommendations of CERD in 2015 and the Human Rights Committee in 2018.

The Government holds the view that the Sami rights to fisheries in coastal sea areas are sufficiently implemented in the current legal framework.

##### **Suggested recommendations:**

- The State Party should consider recognizing in statutory law the Sami rights to fisheries as a part of their culture and based on their customary fishing.

- The State Party should strengthen the rights of the Sami to participate in the management of maritime natural resources, and secure that the Sami rights to fisheries are not violated by industrial- or other new use of coastal sea areas.

## 5. Sámi statistics

(This is a new issue, not in LOIPR.)

Norway does not currently disaggregate statistical data by ethnic or indigenous origin. This is due to *inter alia* concerns regarding the misuse of data and scepticism towards data collection among Sámi and minority groups. Traditional questionnaire-based censuses are no longer conducted and official population statistics are compiled primarily based on administrative registers, which do not include ethnicity variables. The only exceptions for Sámi persons are the electoral roll for the Sámi Parliament (Sámediggi) and a recent option initiated to self-identify as a user of Sámi languages in the Population Register (Folkeregisteret).

As a result, existing statistical data provide an inadequate empirical basis for analysing the human rights situation of persons belonging to the Sámi people or other minorities. This makes it challenging to monitor the progressive realization of economic, social and cultural rights, and to assess the effectiveness of anti-discrimination measures, in accordance with paragraph 10 of the Committee's revised reporting guidelines (E/C.12/2008/2).

Several treaty bodies have made specific recommendations to Norway regarding the lack of adequate statistical data on the ethnic composition of its population.<sup>10</sup> They recommend collecting data on human rights for ethnic groups in dialogue with members of relevant groups.

### **Suggested recommendation:**

- The State Party should ensure adequate statistical data on the enjoyment of Covenant rights, including by allowing the Sámi people and other minorities to voluntarily self-identify in statistical collections, while securing their effective participation, privacy and confidentiality at all stages of the process.

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<sup>10</sup> In 2019, the CERD recommended that Norway provide statistical data "on the enjoyment of social and economic rights by various ethnic groups, including through dialogue with ethnic minorities and by diversifying its data-collection activities [...]" (CERD/C/NOR/CO/23-24, para 6). In 2018, the CRC recommended that Norway "disaggregate data by ethnicity, as the absence of such data prevents the State Party from gaining the knowledge needed to measure discrimination [...] and develop measures to overcome it" (CRC/C/NOR/CO/5-6, para 9). Similarly, the CEDAW recommended in 2017 that Norway collect and disaggregate data on the health situation of Sámi women, including data on discrimination in the health sector and on the prevalence of violence and abuse (CEDAW/C/NOR/CO/9, paras 25d and 39c).

## **6. National minorities – Tater/ Romani**

Reference is made to LOIPR para. 14 and the State report, para. 91.

On 1 June 2015, the Governmental Commission on Tater/Romani (hereafter the Commission) issued its final report “Assimilation and Resistance: Norwegian policies towards Tater/Romani people from 1850 to the present” (NOU 2015:7). The main finding of the report is that Norwegian authorities have been implementing a hard-handed assimilation policy with regard to Tater/Romani people, still noticeable as late as the 1980s.

The Government established a reference group of representatives for the Tater/Romani minority in April 2018 with a view to follow up on the various recommendations of the Commission. To secure transparency and wider participation, an official website has been established to provide information on progress. Among the issues under consideration are the establishment of a cultural centre, strengthening education on Tater/Romani culture and history, as well a system for future administration of financial means for “collective redress” (kollektiv oppreising).

In the State Report, it is specified that the follow up to the Commission’s Report will be included in a report to Parliament concerning national minorities in 2020.

### **Suggested recommendation:**

- The State Party should intensify its efforts to follow-up the recommendations in NOU 2015:7, in close consultation with representatives of the Romani people/Tater.

## **7. Asylum seekers**

### *7.1. Care for unaccompanied asylum- seeking children*

Reference is made to LOIPR para. 15 b) and the State Report para. 97-99.

In 2017, NHRI published a thematic report which showed significant differences in care for unaccompanied asylum-seeking minors aged 15–18 in reception centres as compared to those under 15 years old and to other children under the responsibility of the Child Welfare Services. The report argues that Article 22 paragraph 2 of the Convention on the Rights of the Child obliges the authorities to provide an equivalent standard of care and protection to unaccompanied asylum-seeking minors aged 15-17. The younger children are under the responsibility of the Child Welfare Services and receive better care than the older children who live in designated reception centres.

The plan was originally that the Child Welfare Service should have the responsibility for the care of *all* unaccompanied asylum-seeking minors in 2009. This has not happened due to budgetary reasons. In the State Report the Government puts forward a new argument,



namely that the younger children normally require a higher level of care than the older children.

However, a research report from 2018 indicates that there are major differences in the level of care provided in different reception centres and in the way the reception centres are organized.<sup>11</sup> The report further points to insufficient mental health care services.<sup>12</sup> Some reception centres also lack basic care functions such as ensuring that the children get enough and adequate food and securing an environment which allows for proper sleep at night.

**Suggested recommendation:**

- The State Party should give unaccompanied asylum-seeking minors aged 15-18 a standard of care and 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.

## 7.2. *Health for irregular migrants*

Reference is made to LOIPR para. 27 a) and the State Report para. 197.

Under Norwegian law, irregular migrants are entitled to emergency healthcare and healthcare that is “completely necessary and cannot be deferred without risk of imminent death, permanent severe functional impairment, serious injury or severe pain”. This includes both somatic and psychiatric treatment. The term “cannot be deferred” is interpreted as medical conditions that are considered necessary to treat within a timeframe of three weeks. Since irregular migrants often de facto remain in Norway for a prolonged period of time, the three weeks limitation restricts their access to necessary healthcare for serious conditions with long-term consequences. Furthermore, irregular migrants have the right to assessments from the specialised healthcare service and to receive necessary healthcare prior to and after child birth, abortions and infection control (smittevern). As a rule, irregular migrants are not entitled to palliative or rehabilitative treatment. Children under the age of 18 have a more comprehensive right to healthcare.

Irregular migrants must as a main rule pay for the healthcare services they receive. As irregular migrants are not allowed to work or to be a member of the National insurance scheme (“Folketrygden”), there is no financing-scheme that ensure their access to healthcare, except emergency healthcare. Even though payment in advance cannot be required in cases concerning emergency aid and specialised healthcare that cannot be

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<sup>11</sup> “Care practices in reception centers for unaccompanied asylum seeker minors (Norwegian)”, Sønsterudbråten et.al, Fafo-rapport 2018:05.

<sup>12</sup> (ibid) Only 30 % of unaccompanied minors living in reception centres with 4 or more symptoms of psychological health problems receive psychiatric services from a psychologist.

postponed, this means that a vulnerable group with limited financial resources have severely limited access to medical treatment and care. Health practitioners and organizations have for many years voiced great concern regarding the poor state of health, and especially mental health, of many of these individuals.

The cumulative effects of irregular immigrants limited access to basic and necessary healthcare in combination with their obligation to pay for the treatment, may give rise to concerns in relation to the right to health under Article 12.

**Suggested recommendations:**

- The State Party should ensure that irregular migrants have access to necessary healthcare services, giving due consideration to their de facto long-term stay in Norway, their vulnerability and limited financial resources.

## **8. Trans-gender persons, LGBTI youth**

Reference is made to LOIPR para. 16 and the State Report paras. 106-113.

### Hate crime

The criminal code in Norway protects against hate speech based on sexual orientation, however, not on the basis of gender identity- and expression. Research shows that LGBTI-people are victims of hate speech more frequently than the rest of the population.<sup>13</sup> The consequences of being subjected to hate crimes poses a health risk to LGBTI-persons. Norwegian police authorities have over several years recommended that gender identity and gender expression should be incorporated in the penal code.<sup>14</sup>

### LGBTI-children and youth

There is a lack of knowledge about the health of LGBTI children and youth. Research indicates that these children are more vulnerable to mental health problems and they are more often victims of violence, bullying and harassment from fellow pupils and adults, including teachers.<sup>15</sup> The current national curriculum calls for teaching to raise awareness about LGBTI issues, however, there is still a need to strengthen the implementation of current policy.

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<sup>13</sup> <https://sciencenorway.no/forskningno-gender-and-society-norway/one-of-four-lgbt-people-experience-hate-speech/1553837>

<sup>14</sup> [https://www.politiet.no/globalassets/dokumenter/oslo/rapporter/anmeldt-hatkriminalitet-oslo/Anmeldt\\_hatkriminalitet\\_i\\_Oslo\\_2018](https://www.politiet.no/globalassets/dokumenter/oslo/rapporter/anmeldt-hatkriminalitet-oslo/Anmeldt_hatkriminalitet_i_Oslo_2018)

<sup>15</sup> <https://www.reddbarna.no/nyheter/barn-som-bryter-med-normer-for-kjoenn-og-seksualitet>

### Trans-specific health care

Transphobia and discrimination are major barriers to access to healthcare and may result in increased risk of health concerns unrelated to gender or sexuality.<sup>16</sup> Public healthcare for trans-persons in Norway have been subject to criticism over several years. Norwegian healthcare practices have been based on the diagnosis of transsexualism to determine the need for trans-specific health care. As a consequence, many have been excluded from receiving the healthcare they need. The ICD-11 has redefined gender identity-related health and moved the diagnosis out of the mental and behavioural disorders chapter and into the new «Conditions related to sexual health» chapter.<sup>17</sup> The new diagnosis according to the ICD-11 is being implemented in Norway from January 2020. In December 2019 the government suggested new guidelines regarding trans healthcare. These guidelines are not yet final.

#### **Suggested recommendations:**

- The State Party should incorporate “gender identity” and “gender expression” as grounds for hate crime in the penal code.
- The State Party should ensure that problems faced by LGBTI children and youth are addressed in national action plans regarding bullying and harassment in schools.
- The State Party should strengthen competence of teachers and other relevant professionals regarding LGBTI-children and youth and that schools incorporate a LGBTI-perspective in teaching in line with the current national curriculum.
- The State Party should ensure that health care in Norway reflects the WHO’s changes in the diagnosis according to ICD-11 and the de-pathologisation of gender incongruence, and trans-persons are given access to healthcare in accordance with the Yogyakarta principles 17(g)-(i).

## **9. Rape and other sexual and gender-based violence**

Reference is made to LOIPR para. 24 b) and the State Report paras. 185-187 (the issue of elderly is new).

A report from 2019 showed that only one of five young persons, who had been exposed to violence and abuse, confirmed that they had been in contact with the support system.<sup>18</sup> Another report on violence against children under the age of four, showed that there are serious gaps in the protection and support system of this vulnerable group. The legislation

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<sup>16</sup> <http://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11#402742>

<sup>17</sup> World Health Organisation (WHO, <https://icd.who.int/en>)

<sup>18</sup> «Ungdoms erfaringer med vold og overgrep i oppveksten: En nasjonal undersøkelse av ungdom i alderen 12 til 16 år», NKVTS, 2019.

is unclear when it comes to the relationship between rules concerning confidentiality, disclosure rights and relinquishment, both for the police and other relevant actors. The knowledge and focus on the phenomenon of violence against children varies among police districts and at various health stations.<sup>19</sup> In 2017, a Government-appointed committee published a report with an evaluation of 20 serious cases of violence, sexual abuse and neglect of children.<sup>20</sup> The report reveals an extensive failure at the systemic level. In some cases, the children had not been heard and 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 and remedied at much earlier stage.

Secondly, in 2017, a new report about domestic violence in Sami communities was published.<sup>21</sup> 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 the investigation of child abuse cases in the small Sami community Tysfjord.<sup>22</sup> In addition, research from 2015 indicates that Sami people in general are exposed to violence more often than Norwegian population in general.<sup>23</sup>

Thirdly, in 2017, the first national study of incidents of violence and abuse against people over the age of 65 living at home was published. It indicates that between 56,500 and 76,000 persons (between 6,8 and 9,2 percent of this age group) have been victims of violence or abuse after reaching 65 years.<sup>24</sup> Eight out of ten have stated that they were in a close relationship with the offender. A study from 2016 further found that people over 65 years of age seldom are included in the municipal action plans against domestic violence.<sup>25</sup> Another study, from 2015, shows that public services lack mapping tools and routine guides to identify and map domestic violence against elderly.<sup>26</sup> The national newspaper Aftenposten revealed that there were 13 000 reported incidents (avvik) of violence registered by employees in nursery homes. In 98% of the cases the residents of the institutions were responsible for these acts. In 19 % of reported incidents the victims were residents of the institutions, while employees were victims in 74% of the cases.<sup>27</sup>

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<sup>19</sup> "Alvorlig vold mot små barn", Kripos 2019.

<sup>20</sup> NOU 2017:12 Svikt og svik.

<sup>21</sup> «Om du tør å spørre, tør folk å svare», NKVTS, rapport nr. 2 2017.

<sup>22</sup> «Overgrepene i Tysfjord – erfaringer og funn fra politiets etterforskning», Nordland politidistrikt, 2017.

<sup>23</sup> 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.

<sup>24</sup> «Vold og overgrep mot eldre personer. En nasjonal forekomststudie», NKVTS, Rapport 9/2017.

<sup>25</sup> «Kommunale handlingsplaner mot vold i nære relasjoner - også for eldre utsatte?», NKVTS, Rapport 9/2016.

<sup>26</sup> «Oversikt over rutineguider og kartleggingsverktøy for avdekking av vold i nære relasjoner», NKVTS, Rapport 4/2015.

<sup>27</sup> [https://www.aftenposten.no/a-magasinet/i/mRE0z0/sykehjemsvolden-13000-voldsepisoder-paa-norske-sykehjem-i-fjor-aftenposten-har-faatt-innsyn-i-alle?spid\\_rel=2](https://www.aftenposten.no/a-magasinet/i/mRE0z0/sykehjemsvolden-13000-voldsepisoder-paa-norske-sykehjem-i-fjor-aftenposten-har-faatt-innsyn-i-alle?spid_rel=2)

NIM is concerned that there are weaknesses in the measures to ensure effective prevention, protection and redress to vulnerable groups such as children, Sámi and elderly exposed to violence and sexual abuse, including domestic violence. As mentioned in the State Report, The Government has decided to develop a new plan of action to combat violence in close relationships and a new action plan against rape has already been launched.

**Suggested recommendations:**

- The State Party should implement effective measures at the systemic level, including a new action plan, to ensure effective protection, prevention and redress to children, Sámi and elderly exposed to violence and sexual abuse.

## **10. Child poverty**

Reference is made to LOIPR para. 25 and the State Report para 25.

The Committee has previously raised concerns about the persistently high level of child poverty despite general growing prosperity in Norway. The State Report para. 25 describes the implementation of the Governments strategy on children living in poverty (2015-2017). The statistics provided in the report shows that the number of children living in low-income families has increased from 2007 – 2017. However, the Government has not given any explanation of why the numbers are increasing despite the measures implemented in this field.

In Norway, children living in poverty are often defined as children living in a family with an income below 60 per cent of the median income over a three years period (persistent low income).

Statistics Norway issued a report on economy and living conditions for low-income groups in Norway in October 2019. The report shows that most Norwegian households are financially relatively well-off, although there is a small decrease in real incomes as well as an increase in income inequalities between the households in the period of 2014 and 2017. The report further states that single parents, couples with children and people with reduced ability to work are among the most rapid growing group of low-income population in recent years. Thus, the number of children living in low-income households has increased since 2011. Most of these children have immigrant background, but the number of children in poverty without immigrant background has also increased. Most of the children come from single-parent households.

In an international perspective, the proportion of people in low-income households in Norway is small. However, compared to other Nordic countries like Denmark and Finland, the share of children in low income has risen substantially in recent years.

The majority of children living in low-income families in Norway do not experience material and social deficiencies. However, a number of single parents and couples with children living in low-income households are lacking one or more material and social benefits, for instance they cannot afford to replace worn out furniture, to eat meat or fish every second day, to take one-week vacation per year or to regularly participate in recreational activities.

In November 2019, The Church City Mission published the report “Snakk om fattigdom” (Talk about poverty), where they have interviewed children who have grown up in low-income households. The report has several recommendations for the future work against child poverty, for instance the importance of openness and recognition of the problem among politicians and in the society at large, available resources in the municipalities, cross-sectorial cooperation and increased focus on the child’s perspective.

**Suggested recommendation:**

- The State party should strengthen its efforts in the fight against child poverty.

## 11. Health care and coercion

Reference is made to LOIPR para. 28 and the State Report para. 203 (new issue: elderly).

### *11.1. Health care and coercion in general – legislative proposal*

As mentioned in para 203 in the State report, the Government received a report from a legislative commission that has reviewed the legislation on coercion in the health and care sector, including coercion against mental health patients, somatic health patients, elderly with dementia, persons with intellectual impairments, and drug and alcohol addicts.<sup>28</sup>

The report is the most thorough research in this field that has been conducted in decades, and it reveals several challenges in implementation of Norway’s international human rights obligations. NIM has encouraged the state party to put in place, as soon as possible, the legislative amendments in the proposal that strengthens the human rights situation of persons in the health and care sector.

**Suggested recommendations:**

- The State Party should put in place the legislative amendments on use of coercion that strengthens the human rights protection of persons in the health sector and care institutions.

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<sup>28</sup> NOU 2019: 14 Tvangsbegrensningsloven.

## *11.2. Mental health care and persons with intellectual disability – particular concerns regarding coercion*

### Mental health care

Reports on practice, as documented by the Parliamentary Ombudsman's National Preventive Mechanism (NPM) visiting fifteen different institutions in 2015–2018,<sup>29</sup> have shown that coercion such as restraints, segregation, and involuntary treatment is often applied excessively and/or for a prolonged time, without respecting legal safeguards. This shows the need to strengthen procedural safeguards for the patients, including more thorough written documentation of coercive treatment and focus on considering less intrusive measures before using force. The National Preventive Mechanism (NPM), in its thematic report from 2018, has voiced particular concern about the use of long-term segregation (shielding) of patients in mental health institutions which often take place in prison-like premises, with very limited opportunity for meaningful human contact and purposeful activities.<sup>30</sup>

Furthermore, the use of coercive electroconvulsive treatment (ECT) in mental health care is of particular concern. The treatment has no statutory basis in Norwegian law. However, according to the preparatory works of the Mental Health Care Act, coercive 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. On this ground, the treatment is used in mental health care institutions, and the authorities have no complete factual overview on the use of coercive ECT. There are indications that involuntary ECT is practiced differently across institutions.<sup>31</sup>

NIM finds that the coercive use of ECT with reference to the "principle of necessity" may be against the principle of legality 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 implemented in 2017 address several of these weaknesses, but nevertheless, the principle of legality and the need for more consistent practice of the use of coercive ECT suggest that a regulatory framework must be strengthened as long as coercive ECT is still in use.<sup>32</sup> NIM has stressed this point of view in our dialogue with the government,<sup>33</sup> while underlining that this view should not be understood as potentially condoning more use of coercive ECT.

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<sup>29</sup> See the website of the NPM in English: <https://www.sivilombudsmannen.no/en/visit-reports/>.

<sup>30</sup> «Skjerming i psykisk helsevern – risiko for umenneskelig behandling», NPM, temarapport 2018.

<sup>31</sup> Helsedirektoratet, «Nasjonal faglig retningslinje om bruk av elektrokonvulsiv behandling – ECT», June 2017 and visits conducted by the NPM.

<sup>32</sup> Helsedirektoratet, «Nasjonal faglig retningslinje om bruk av elektrokonvulsiv behandling – ECT», June 2017.

<sup>33</sup> NIMs årsmelding for 2017.

Moreover, there is a current discussion in Norway on whether the scientific basis can justify the use of coercive ECT. The same discussion is ongoing for the use of coercive neuroleptic drugs and the use of long-term segregation (shielding) of patients. The question is addressed in the legislative proposal mentioned above, which propose to restrict the use of these treatments, but not abolish them. Under the case-law of the European Court of Human Rights in relation to Article 3, the use of coercive therapeutic methods require that the medical necessity of the measure has been convincingly shown to exist.<sup>34</sup> NIM has stressed that this should not be seen solely as a question of individual clinical assessments. It is for Parliament to enact provisions regulating the use of coercive treatment, and thus, the legislature must base its decisions on a thorough assessment of the scientific basis for the use of the methods in question.

#### Persons with intellectual impairment

The level of use of coercion against persons with intellectual impairment has increased. In 2017, 1503 decisions on planned use of coercion were approved.<sup>35</sup> The Norwegian Board of Health Supervision is concerned with the increase in use of coercion against persons with intellectual impairment.<sup>36</sup> In a report from 2019, Equality and Anti-discrimination Ombudsperson found that there are gaps in the quality control of decisions on use of coercion by the supervisory mechanisms.<sup>37</sup>

An additional issue is a lack of qualified personnel. In the majority of cases where coercion is used (three of four), the measures are carried out by unskilled personnel. Thus, dispensation from the right to be treated by qualified personnel when coercion is used as a planned measure, seems to be the general rule. In 2017, dispensation from the qualification requirement were applied for in 1175 cases. Dispensation was granted in 1093 cases.<sup>38</sup>

Furthermore, justifications within the decisions on the use of coercion seem to be rudimentary and to lack explicit considerations of the right of persons with intellectual impairment to individual autonomy (CRPD Art. 3 (a)). An examination of 121 coercive-care decisions from 2015 from the County Governor in Oslo and Akershus indicates that the right to individual autonomy of persons with intellectual impairment, as anchored in the Convention on the Rights of Persons with Disabilities, is insufficiently protected.<sup>39</sup>

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<sup>34</sup> M.S. v. Croatia (75450/12).

<sup>35</sup> <https://www.helsetilsynet.no/globalassets/opplastinger/publikasjoner/aarsrapporter/aarsrapport2017.pdf>, p. 13.

<sup>36</sup> *ibid*, p. 56.

<sup>37</sup> «[Tvang og makt mot personer med utviklingshemming etter helse- og omsorgstjenesteloven kapittel 9](#)», LDO 2019.

<sup>38</sup> *Op.cit.*, p. 56 (table 17).

<sup>39</sup> Kjersti Skarstad (2018): «Ensuring human rights for persons with intellectual disabilities?», *The International Journal of Human Rights*, DOI: 10.1080/13642987.2018.1454903.



The Directorate of Health is developing guidance material for health personnel working with people with intellectual disabilities, and the annual state budget allocates resources for measures aimed at strengthening competence in health and care services for people working with intellectual disabilities.<sup>40</sup>

**Suggested recommendations:**

- The State Party should ensure further reduction of the use of coercion, including through training of staff, restricting unqualified personal from taking decisions on such measures, prioritizing alternative and less intrusive methods, strengthening procedural guarantees and control as well as giving due respect to the right of individual autonomy.
- The State Party should ensure that the use of coercive ECT, coercive neuroleptic drugs, and long-term segregation are in accordance with human rights standards and that the use of coercive measure even in emergency cases should have basis in law and be subject to legal safeguards.

*11.3. Elderly on coercion, nutrition and medication – particular concerns*

In 2019, NIM published a report on the human rights situation of elderly persons, presenting seven issues of concern.<sup>41</sup> Among these, three key issues are related to health care. The situation in nursing homes is also described in a report from the former National Institution.<sup>42</sup>

The first issue relates to the new Chapter 4A in the Patients' Rights Act that came into force in 2009. The provisions in Chapter 4A specifies that involuntary healthcare can only be justified towards patients who lack decision competence and resist healthcare, when it is necessary to avoid serious harm to the patient. It should be noted that approximately 80% of 40,000 residents in nursing homes are diagnosed with dementia and encompassing disabilities. The Norwegian Board of Health conducted a systemic audit of practices in nursing homes in 103 municipalities in the period 2011-2012.<sup>43</sup> The audit revealed extensive use of coercion contrary to the provisions in Chapter 4A. It also found that the provisions, including guidelines on its implementation, were not well known to healthcare professionals, including the need to adopt a written decision when using coercive treatment. A recent study by Statistics Norway on behalf of NIM further

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<sup>40</sup> Cf. Norway's replies to CRPD List of Issues, CRPD/C/NOR/Q/1/Add.1.

<sup>41</sup> "Eldres menneskerettigheter: syv utfordringer", NIM, temarapport 2019.

<sup>42</sup> «Menneskerettigheter i norske sykehjem», tidligere nasjonal institusjon, temarapport 2014.

<sup>43</sup> "Summary of National Supervision in 2011 and 2012 with Compulsory Health Assistance for Patients in Nursing Homes" from April 2013.

documented the lack of registration of the use of coercive healthcare.<sup>44</sup> Only half of the municipalities had in 2017 reported on instances of coercive healthcare in spite of the legal obligation to do so since 2009.

Secondly, the Directorate of Health estimates that around a third of elderly patients in hospitals and in health and care services in the municipalities are malnourished or at risk of malnutrition. This can in itself increase the risk of falls, repeated hospital admissions, lack of wound healing and death. Malnutrition also reduces resistance to infections and worsens physical and mental function.<sup>45</sup>

Thirdly, many elderly persons have several illnesses and need to use several medicines. A doctoral dissertation from 2018 shows that among the surveyed persons, 35 percent of the elderly living at home and 44 percent of residents in the nursing homes used at least one drug, or a combination of drugs, which could be characterized as potentially unfortunate.<sup>46</sup> In a doctoral dissertation from 2017 on medication of elderly persons, one of four prescriptions to this group was considered to be unfortunate.<sup>47</sup>

In November 2018, the Office of the Auditor General (Riksrevisjonen) issued a report on the quality of care for the elderly, stating that there is a need to strengthen efforts to prevent malnutrition and unfortunate use of drugs.

The issues must also be seen in conjunction with the above-mentioned violence against elderly in nursing homes (see issue 9), which reinforces our concern.

**Suggested recommendations:**

- The State Party should take steps to reduce the use of coercion against older persons in residential care homes and ensure that decisions on the use of coercion against these individuals are taken only in accordance with stringent criteria, subject to adequate legal safeguards and with due respect to the right of individual autonomy.
- The State Party should ensure adequate documentation and reporting on the use of coercion in residential care homes.
- The State Party should take steps to ensure that health care personnel in residential care homes have sufficient knowledge of human rights obligations and national legislation on the use of coercion and force.

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<sup>44</sup> "Human Rights Situation of residents in nursing homes», B. Otnes, Statistics Norway, Document 2018/28.

<sup>45</sup> Meld. St. 15 Leve hele livet (2017-2018) kapittel 6.

<sup>46</sup> "Inappropriate Medication Use in the Elderly – A Modern Epidemic", Gunhild Alvik Nyborg, UiO.

<sup>47</sup> Potentially inappropriate prescribing to older patients: criteria, prevalence, and an intervention to reduce it The Prescription Peer Academic Detailing (Rx-PAD) study – A cluster-randomized educational intervention in Norwegian general practice, Sture André Rognstad, UiO.

- The State Party should take steps to strengthen the prevention of malnutrition and unfortunate use of drugs.

## 12. Mentally ill in prison

Reference is made to LOIPR para. 29 and the Stet Report paras. 208-209.

Reports following visits to 20 prisons and an immigration detention centres in 2014-2018 from the Parliamentary ombudsman's NPM, has shown that many inmates are subjected to solitary confinement, isolation and similar regimes without meaningful human contact, including inmates with serious mental health conditions or acute suicide risk. In 2019, the Ombudsman published a thematic report on isolation in prisons, raising concerns on the situation of prisoners with mental health issues.

Of specific concern are the findings regarding persons with symptoms of severe mental illness and aggressive behavior at the Ila Detention and Security Prison (Ila) from 2016.<sup>48</sup> 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 Directorate of Norwegian Correctional Service, 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 practice of isolation.<sup>49</sup>

As a response to this situation, in 2019, a working group within the Directorate of Norwegian Correctional Service has proposed several preventive measures.<sup>50</sup> Some of these measures have already been, or are about to be, implemented by the Directorate.<sup>51</sup> However, several of the proposed measures are not possible to implement under the current budget and legislation.

NIM is concerned that *sufficient* and *immediate* steps are not taken to address the situation of prisoners with mental health issues.

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<sup>48</sup> «Oppfølging av innsatte med psykiske lidelser og/eller rusmiddelproblemer», Helsedirektoratet og Kriminalomsorgsdirektoratet 2016.

<sup>49</sup> «Besøksrapport Ila fengsel og forvaringsanstalt 6.-9.mars 2017», Forebyggingsenheten.

<sup>50</sup> «Tiltaksplan for forebygging av isolasjon i kriminalomsorgen», KDI, mai 2019

<sup>51</sup> «Reduksjon av isolasjon i kriminalomsorgen Gjennomføringsplan for strakstiltak i 2019», KDI, 3. desember 2019

**Suggested recommendation:**

- The State Party should take immediate steps to ensure that inmates with symptoms of severe mental illness are properly diagnosed and provided with health treatment, and that they are not subjected to isolation.

**13. Access to health services for persons who use drugs**

(New issue)

In 2018, the government established an expert committee to propose measures to reform the current drug policy. The mandate highlighted that criminalization of drug use and possession of drugs for personal use may have constituted an obstacle to providing appropriate and individualized services to these persons.<sup>52</sup> The committee considered existing empirical research and conducted consultations with stakeholders, including persons with lived experience of drug use and interest groups for relatives to persons who use drugs.

In its report, submitted in December 2019, the committee concluded that criminalization may have a negative impact on the willingness to seek help for drug use.<sup>53</sup> The committee also found that criminalizing persons who use drugs may have the unintended consequence of making health and care services less accessible to this group.

Moreover, there is a lack of disaggregated statistics on cases under Section 231 of the Criminal Code differentiating between individuals prosecuted for purchase and possession of drugs for personal use and those prosecuted for supply-related drug crimes. The lack of data makes it difficult to fully assess the negative impacts that criminalization of drug use, and purchase or possession of drugs for personal use, may have on the enjoyment of human rights for these individuals.

The committee has proposed a reform including decriminalizing the use of drugs, as well as purchase and possession of limited amounts of drugs meant for personal use. The committee has also outlined a mechanism for monitoring and evaluating drug policies, in order to enhance the knowledge-base for political decision-making.

**Suggested recommendation:**

- The State Party should take the necessary steps to ensure that persons who use drugs have full access to health services.

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<sup>52</sup> Terms of reference for government-appointed expert committee on drug policy reform, 23 March 2018.

<sup>53</sup> See *NOU 2019: 26 Rusreform – fra straff til hjelp* [the report of the committee], chapter 12.3.2.2. The committee's report refers to, *inter alia*, Benfer et al., "The impact of drug policy liberalisation on willingness to seek help for problem drug use: A comparison of 20 countries", *International Journal of Drug Policy* vol. 56 (2018) pp. 162–175; and Soussan and Kjellgren, "Alarming attitudinal barriers to help-seeking in drug-related emergency situations: Results from a Swedish online survey", *Nordic Studies on Alcohol and Drugs* vol. 36 no. 6 (2019) pp. 532–541.

#### 14. Sami, Kven and Finnish languages

Reference is made to LOIPR para. 31 and the State Report, paras. 248-255.

In addition to the information given in the State Report, we would like to emphasise that children in the Sami districts (municipalities with enhanced responsibilities for Sámi language as defined in the Sámi Act chapter 3), have a right both to learn Sámi language and to receive instruction in other subjects in that language. The same rights apply in municipalities outside the Sámi districts if at least ten pupils within the municipality request this. In municipalities outside the Sámi districts, all Sámi children have a right to learn Sámi language (opplæringslova §6-2).

Pupils with a Kven/Norwegian Finnish background who live in Troms and Finnmark have the right to learn Kven or Finnish language if at least three pupils request this (opplæringslova §2-7). In para. 255 of the State Report, it appears that these pupils have a right to *instruction* in Finnish or Kven language. This is not the case.

According to a recently published report by the Office of the Auditor General, there are significant shortcomings with regard to instruction in Sámi language regarding teaching materials in Sámi language, the number of teachers available and the use and means for distance learning. In 2015 the Norwegian Directorate for Education and Training presented a survey showing that the number of pupils with Finnish as a second language has declined. Learning Kven language has been an integrated part of learning Finnish language. In 2018 the Norwegian Government introduced a targeted plan for revitalising Kven language. Kven organisations have criticized the plan for not being ambitious enough.

##### **Suggested recommendations:**

- The State Party should follow up the report from the Office of the Auditor General of Norway and improve the conditions for education and instruction in Sámi languages.
- The State Party should continue its efforts to strengthen the Kven language in consultation with the affected group, including on the implementation and evaluation of the current Targeted Plan to strengthen Kven language.