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Input from Norway's NHRI to the UN Committee on the Rights of the Child (CRC) in relation to the adoption of the List of Issues Prior to Reporting to Norway in May 2023

The Norwegian National Human Rights Institution (NHRI) hereby provides its input to the Committee in relation to the List of Issues Prior to Reporting (LOIPR) for Norway to be decided at the 95th Pre-Sessional Working Group 1-5 May 2023.

The Norwegian NHRI was established 1 July 2015 as an independent institution under new legislation adopted by Parliament. The Norwegian NHRI has a specific mandate to protect and promote human rights in Norway, as well as to monitor how the authorities respect Norway's international human rights obligations. Submitting supplementary reports to international human rights monitoring bodies is an essential part of this mandate.

In October 2022, we were re-accredited with A-status by GANHRI, thus being recognised as fully compliant with the UN Paris Principles.

In this submission, we provide information on some issues of concern.

Please feel free to contact us at info@nhri.no in case of questions.

Best regards
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1. Ratification, access to justice and independent representation for children

Reference is made to Concluding Observations (CO) 2018: 8 and 38.

In 2022, the Parliament in plenary rejected a Private Member's Bill to ratify the Optional Protocol (OP) to the Convention on the Rights of the Child (CRC). The majority in the parliamentary committee justified its recommendation to reject the proposal, based on input from the Minister of Foreign Affairs, arguing that this issue was thoroughly assessed in a White Paper in 2016. They argued that there are still valid concerns regarding ratification related to both the provisions of the OP and the Committee's composition, resources and methods. The majority of the Parliamentary Committee also pointed out that recent jurisprudence from the Committee on the Rights of the Child indicate that its interpretations in some cases are not consistent with Norway's and other State Parties' understanding of the Convention.

The Norwegian NHRI presented several written submissions to the MPs prior to the 2022 decision, analysing the effects of ratification of the OP in Norway, including an overview of the Committees jurisprudence under the OP up until 2022.¹ The Norwegian NHRI argued that since Norway is party to several international complaint mechanisms under global and regional human right treaties, this leaves children with fewer opportunities than others in getting access to justice.

As to the question of independent monitoring, including access to justice through domestic remedies, the Norwegian NHRI is concerned about children's access to justice and effective remedies. The Norwegian NHRI and the Ombudsperson for Children are not mandated to receive individual complaints. It should be noted that the Parliamentary Ombudsman under its mandate to receive individual complaints is working to encourage children to file complaints.

Together with the Ombudsperson for Children and some civil society organisations, the Norwegian NHRI submitted a letter to the Parliament, recommending a proposal on a thorough assessment of the right to an effective remedy for children in Norwegian law and practise. This assessment should include both practical issues, such as whether or not children know about the complaints mechanisms and procedures and if they are child friendly, such as whether children can file a complaint without the consent from their parent or guardian, and resourcing issues, such as the legal aid scheme and the support of NGOs providing legal aid to children.

A proposal based on this joint submission was raised by MPs to the Parliament in October 2022 and is to be considered during the spring term in Parliament.²

¹ Written submissions to the Parliamentary Committee, (Norwegian only), available [here](#) and [here](#).

² The proposal was drafted by some MPs as a Private Member's Bill, available in Norwegian [here](#).

Suggested questions to Norway:

- Could the State Party provide information on its position regarding ratification of the Optional Protocol?
- How is the State Party following up on the recommendations from the CRC Committee on independent monitoring and national complaints mechanisms for children?

2. Statistics, lack of disaggregated data regarding Sámi children

Reference is made to CO 2018: 9.

Norway does not currently disaggregate official statistics by ethnicity or indigenous status due to concerns regarding the misuse of data, difficulties in quantifying ethnic group representation and scepticism towards data collection among minority groups. Most UN Treaty Bodies have expressed concern over this approach in their concluding observations to Norway.³ Treaty Body Reporting Guidelines also recommend that States provide relevant statistical data disaggregated by ethnicity or indigenous status.⁴

In light of this, the Norwegian NHRI published a report in 2020 which found that the current approach to Sámi statistics in Norway does not provide an adequate empirical basis for monitoring Sámi rights, and that the State's concerns regarding the collection of Sámi people's data can be addressed through data protection safeguards.⁵ The report contains several recommendations to the Sámi Parliament, Statistics Norway and the Norwegian Data Protection Authority aimed at improving the quality and representativeness of Sámi statistics, as well as the protection of Sámi people's data.

There are several human rights issues affecting the Sámi people today that are difficult to address effectively due to gaps in the available statistics. These include issues related to Sámi health, violence and abuse in Sámi communities, Sámi children, Sámi people with disabilities, Sámi language and culture, as well as discrimination and hate speech against the Sámi.

³ Committee on Economic, Social and Cultural Rights, *Concluding observations on Norway*, UN Doc. E/C.12/NOR/CO/6, 6 March 2020, para. 12-13; Committee on the Elimination of Racial Discrimination, *Concluding observations on Norway*, UN Doc. CERD/C/NOR/CO/23-24, 2 January 2019, para. 5-6; Committee on the Rights of the Child, *Concluding observations on Norway*, UN Doc. CRC/C/NOR/CO/5-6, 4 July 2018, para. 9 and 18(f); Committee on the Elimination of Discrimination Against Women, *Concluding observations on Norway*, UN Doc. CEDAW/C/NOR/CO/9, 22 November 2017, para. 25(d) and 39(c); Committee on the Rights of Persons with Disabilities, *Concluding observations on Norway*, UN Doc. CRPD/C/NOR/CO/1, 7 May 2019, para. 49-50; Human Rights Committee, *Concluding observations on Norway*, UN Doc. CCPR/C/NOR/CO/7, 25 April 2018, para. 16-17.

⁴ See for example, the CRC Guidelines on the inclusion of statistical information and data in periodic reports, CRC/C/58/Rev.3.

⁵ The report is available in English at: <https://www.nhri.no/en/2020/a-human-rights-based-approach-to-sámi-statistics-in-norway/>.

The Norwegian NHRI is particularly concerned that there is no available data on the number of Sámi children in the child welfare system in Norway and whether their rights to Sámi language and culture are adequately safeguarded. This makes it difficult for the Child Welfare Services to implement their obligations under CRC Articles 30 and 20(3), as well as Section 1-8 of the new Child Welfare Act, and for institutions like the Norwegian NHRI and the Sámi Parliament to monitor this situation. Similar data on children with an immigrant background in the child welfare system is already collected and published in Norway.⁶

Suggested question to Norway:

- How does the State Party monitor the implementation of Sámi children's rights without disaggregating statistical data by ethnicity or indigenous status, including for example the language and cultural rights of Sámi children in the care of the Child Welfare Services?

3. Instructions and guidance for human rights assessment in legislative drafting, policies and plans

New issue.

The *Instructions for the Preparation of Central Governmental Measures* ("utredningsinstruksen") were revised on 19 February 2016, and they no longer contain an explicit requirement to assess the implications for Norway's human rights obligations when preparing governmental decisions. The purpose of the instructions is to establish a sound basis for government decisions and measures, including policies, legislative amendments and investments.

The former instructions included an obligation to consider effects on the implementation of human rights and equal opportunities, but this is now relegated to the accompanying guidelines ("veilederen").

The Norwegian NHRI is concerned that the lack of an explicit reference to human rights obligations in the instructions could weaken the due consideration of human rights obligations in legislative drafting as well as other policy processes, including due consideration of children's rights. We submit comments to approximately 50 draft legislative proposals annually and have noted that the human rights assessments conducted by public authorities are of varying quality. Children are affected by policy decisions and legislative processes in a variety of areas, such as public health, education and administration of justice, and we find that the consideration of children's rights is

⁶ See for example:

https://www.bufdir.no/Statistikk_og_analyse/Barnevern/Barnevernstiltak_blant_barn_med_ulik_landbakgrunn/.

sometimes absent in decision-making processes. The Norwegian NHRI is currently developing a more detailed guide on both the procedural and substantive aspects of human rights assessments, in order to contribute to strengthening the quality of human rights assessments within the public administration.

Suggested question to Norway:

- How is the State Party ensuring that compliance with human rights commitments is given due consideration in relation to new regulations, legislative amendments as well as policies and plans?

4. Follow-up of international recommendations

Reference is made to CO 2018: 42.

Norway has over time demonstrated its commitment to complying with human rights obligations under the UN human rights conventions, including the CRC. We appreciate that the Government in general is thorough and dependable in its reporting to UN human rights mechanisms. However, the dedication to systematic and transparent follow-up between periodic reports could be strengthened.

In Norway, the primary responsibility for coordinating reporting and follow-up of UN treaty body recommendations rests with four different ministries, but with input from all relevant ministries responsible for implementation.

Between 2017 – 2020, Norway received 155 recommendations from UN treaty bodies, 32 of which were from CRC.

To ensure effective implementation of these recommendations, the Norwegian NHRI notes the need to improve coordinated follow-up among different ministries, governmental agencies, municipalities and State institutions. Furthermore, improved coordination would also enhance transparency and monitoring by civil society. The Government has clarified that it does not envisage establishing a central unit or mechanism dedicated to follow-up.

The Norwegian NHRI has initiated several measures to facilitate and strengthen follow-up of State reporting. They include compiling a thematic overview of all treaty body recommendations available in print, and soon to be available as a searchable database on our website. We have also initiated a broad cooperation with civil society and the Equality and Anti-Discrimination Ombud, to establish a joint platform for thematic dialogue meetings with the Government on prioritised topics/UN recommendations. The most recent dialogue meeting was in January 2023 on violence against women. Ratification of the Optional Protocol is short listed as a topic for later meetings.

To be successful these initiatives rely on active cooperation with and support from the Government.

Suggested question to Norway:

- How will the State Party strengthen its efforts to ensure a coordinated and transparent process for the follow-up of UN treaty body recommendations?

5. Children's right to be heard in practice in various areas

Reference is made to CO 2010:25 and 2018: 14.

The child's right to be heard is, to a large extent, sufficiently implemented into Norwegian law, but there are still challenges as to how it is implemented in practice. Reviews of decisions from various public bodies show that challenges remain in areas such as child welfare cases⁷ and in immigration/expulsion cases.⁸

Structures and systems for ensuring meaningful participation in policy and decision-making processes are crucial for the implementation of children's right to be heard as a group. At the municipal decision-making level, the establishment of and consultations with local youth councils is compulsory through the Local Government Act. However, various studies show that many youth councils were not consulted during the outbreak of the COVID-19 pandemic, as required by the Local Government Act. This was criticised by the Coronavirus Commission in their second report, which also recognized that Norway's infection control measures had a major impact on children and young people. The Commission recommended that decision-makers at all levels establish procedures to involve children and youth in decisions that affect them, including in times of crises.⁹

There is no specific provision similar to that of the Local Government Act for decision-making processes at the national level but interest in consultations with children in different decision-making processes is increasing. Both the Norwegian NHRI and the Ombudsperson for Children have received requests from national commissions and public bodies seeking advice on good practices in this area. The Norwegian NHRI, the Ombudsperson for Children and other stakeholders have advised the Minister of Children and Families to establish a competence centre with the purpose of providing advice and facilitation for good participation processes.

⁷ [Samvær etter omsorgsovertakelse \(oslomet.no\)](https://www.oslomet.no/samvar-etter-omsorgsovertakelse), only in Norwegian.

⁸ Om høring av barn i utvisningssaker, [English summary \(fao.no\)](https://www.fao.no/english/summary).

⁹ NOU 2022:5, chapter 10.2. An English summary of the Coronavirus Commission is available here: [nou202220220005000engpdfs.pdf \(regjeringen.no\)](https://www.regjeringen.no/nou202220220005000engpdfs.pdf).

Suggested questions to Norway:

- What actions is the State Party taking to ensure children's right to be heard in practice at the individual level?
- How will the State Party strengthen children's right to be heard as applied to a group of children?

6. Violence, abuse and neglect against children

Reference is made to CO 2018: 18, 33(b).

The Norwegian NHRI notes that neglect and violence and abuse of children are serious social problems which have major consequences for the children concerned and continues to be a relevant challenge in Norway. The Norwegian NHRI has published two reports concerning violence, abuse and neglect against Children; a *Thematic report 2018 – Violence and Abuse in Sámi Communities* and a 2022 report on the *Human Rights Framework for Children's Right to Protection Against Violence, Abuse and Neglect*.¹⁰

In 2022, the Office of the Auditor General published a report investigating the authorities' efforts to combat domestic violence between 2015 and 2020.¹¹ Among the main findings were that (1) the police and other support services have not implemented sufficient measures to reduce the risk of serious intimate partner violence; (2) the police and other public support services lack the knowledge and competence to ensure that victims of honour violence, forced marriages and female genital mutilation receive sufficient help; (3) many public bodies and services are uncertain of when and whether to report cases of suspected violence; and (4) there are challenges in coordination and cooperation between support services.

Another report, *Technology-assisted sexual abuse against children and adolescents*, from Norwegian Social Research (NOVA), presents a scoping review of research on technology-assisted sexual abuse against children and adolescents.¹² The report concludes that physical violence against children on social media is increasing, where sexual abuse originating in existing social relations can be extended to digital platforms, and abuse originating in digital interactions can propagate to the physical environment.

The government has taken several steps in this area since the last reporting in 2018, for example:

¹⁰ Available here: <https://www.nhri.no/2019/thematic-report-2018-violence-and-abuse-in-sami-communities/> and <https://www.nhri.no/en/2022/the-human-rights-framework-for-childrens-right-to-protection-against-violence-abuse-and-neglect/>.

¹¹ Riksrevisjonen, Dokument 3:8 (2021–2022) / Offentliggjort 09.06.2022.

¹² <https://oda.oslomet.no/oda-xmlui/bitstream/handle/11250/2755418/NOVA-Rapport-3-2021.pdf?sequence=1&isAllowed=y>

- The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse entered into force in Norway on October 1st, 2018.
- The current Government is developing an escalation plan on violence against children and domestic violence.
- A white paper on protection of the right to sexual self-determination in criminal law is currently on for consultation, discussing *inter alia* the definition of rape in the penal code and the law on sexual offences against children.¹³
- A legal committee to review judicial issues concerning negative social control, forced marriage, trafficking, physical violence and female genital mutilation was set up.

Suggested questions to Norway:

- What has the government done to implement the Committee's recommendations on sexual exploitation and abuse against children, including children in the Sami population?
- How is the government working to combat violence against children, in particular for vulnerable groups such as Sami and Roma children?

7. Differential care for asylum seekers aged 15-18 and disappearances

Reference is made to CO 2018: 32(b-c, g).

The Norwegian Directorate of Immigration has the responsibility for unaccompanied asylum-seeking minors aged 15 –18 who reside in care centres. Care for unaccompanied asylum-seeking minors under 15 years of age, as well as other children in Norway without caregivers, is the responsibility of the child welfare services.

The Child Welfare Act and provisions pursuant to this act set out general requirements for child welfare institutions, including those related to staffing and competence.¹⁴ The care of asylum-seeking children 15-18 residing in care centres, is regulated by provisions of the Immigration Act.¹⁵ Both regulations obligate the caregivers (child welfare institutions and reception centres) to give proper care.

However, in terms of what constitutes proper care, the regulations on requirements for child welfare institutions are more extensive, *inter alia* with respect to qualified staff,

¹³ NOU 2022: 21 Strafferettslig vern av den seksuelle selvbestemmelsesretten.

¹⁴ The child Welfare Act, especially section 10-16 and 10-19-

¹⁵ See the child welfare act section 10 and the Quality and Approval Regulation section 3 cf. the immigration act section 95 and Regulations relating to the care of unaccompanied minors living in asylum reception centers (FOR-2022-06-26-1193). Guidelines are on routine description for asylum reception with places for unaccompanied minors and Requirements for the operation of places for unaccompanied minors.

single rooms, and outdoor areas.¹⁶ It also seems that child welfare institutions regularly monitor whether the child receives help, care and treatment adapted to its individual needs.

The Norwegian NHRI documented already in 2016, the significant differences between unaccompanied asylum-seeking minors under 15 and those aged 15 –17, in care.¹⁷ The report argued that Article 22 paragraph 2 in lieu of article 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 15-18.

The Norwegian Ministry of Justice and Public Security acknowledged in 2021 that care provided to asylum-seeking minors aged 15-17 years was more limited but did not consider that the differential treatment constituted to unlawful discrimination. The Ministry emphasized that the care provided for minors must be tailored to their needs and circumstances.¹⁸

The Norwegian NHRI is concerned about the State Party's interpretation and practice of "proper care" when considering the obligations set out in the Convention on the Rights of the Child. We cannot see a convincing basis on which to conclude that asylum-seeking children aged 15-17 in general have less need of care than other children under public care in Norway of the same age. In case of traumatized children, the needs and vulnerability may be higher and the effects of differential treatment more severe.

The Norwegian NHRI is also concerned about the lack of guarantees and sufficiently effective control mechanisms to ensure that each asylum-seeking child above the age of 15 is given proper care. After the Immigration Act was amended in July 2021, the County Governors have responsibility to oversee the care of unaccompanied minors living in asylum reception centres. Reporting in the media of their findings indicate that asylum-seeking children aged 15-17 in some cases is not given proper care.¹⁹ Furthermore, the body with supervisory authority for the County Governor's inspections has expressed in a letter dated 1st of February 2023 that they will not be able to secure the rights of unaccompanied minors during their stay in reception centres without an increase in funding.²⁰

¹⁶ Regulations on the child welfare service's follow-up of children in child welfare institutions (the follow-up regulations (FOR-2022-12-15-2240).

¹⁷ Norwegian NHRI thematic report 2016: Omsorg for enslige mindreårige asylsøkere, only in Norwegian.

¹⁸ Prop. 82 L (2020-2021) section 8.4.

¹⁹ [Statsforvaltaren varslar om alvorlege funn etter tilsyn på asylmottak – NRK Norge – Oversikt over nyheter fra ulike deler av landet \(In Norwegian\)](#)

²⁰ Statens helsetilsyn, Dimensjonering av tilsyn med enslige mindreårige asylsøkere i mottak – ressursbehov, 01.02.23. Ref. 2022/1297-26

Children missing from reception centres

Figures from the Directorate of Immigration per 6. December 2022 show that 411 unaccompanied minor asylum-seeking children have disappeared from reception centres since 2015 and are still missing.²¹ Norway has over time received recommendations from UN monitoring bodies to examine and investigate the causes of these disappearances.²² Guidelines have been issued to follow-up missing children.²³ The Minister of Justice has announced that the e Police Directorate and the Attorney General have commissioned the National Group for Investigation Management to update and further develop the current guidelines.²⁴

There is a clear need for an overarching framework and guidelines for reviewing cases, as well as an assessment of whether these are complied with, and followed up through effective control mechanisms. As far as the Norwegian NHRI is aware, the Higher Prosecuting Authorities have not examined the quality of the conducted investigations and should be encouraged to do so.

Suggested questions to Norway:

- How will the State Party ensure that the regulation and guidelines for care in asylum reception centres will secure care equivalent to that of children under the responsibility of the Child Welfare Services?
- How will the State Party continue its efforts to strengthen protection of unaccompanied minor asylum-seekers, including prevention of, and effective follow-up on disappearances?

8. Intercountry adoption, investigation of procedures, safeguards and wrongful removal

New issue.

The Committee on the Rights of the Child, together with several others, issued a joint statement on illegal intercountry adoptions in 2022.²⁵ The statement refers to States' obligations to prevent, criminalise, investigate and provide remedies for illegal intercountry adoptions.

²¹ Our ref. 2023/3 29.

²² CCPR/C/NOR/CO/7, para. 31, [CAT/C/NOR/CO/8, para. 26](#), [CRC/C/NOR/CO/5-6, para. 32](#).

²³ See RUDI-2015-9 sml. Når barn rømmer fra barneverninstitusjon fra BUFdir og politiet.

²⁴ [Sak nr. 4 \[11:57:12\] - stortinget.no](#).

²⁵ https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf

These obligations also pertain to Norway, where intercountry adoption also takes place.²⁶ In the wake of several media inquiries into potential illegal intercountry adoptions to Norway, the Ministry of Children and Families has stated that it will establish an external commission of inquiry into these allegations.²⁷

Suggested question to Norway:

- What measures has the State Party adopted in Norwegian law, policy and practice to prevent illegal intercountry adoption?
- What steps is the State Party taking to remedy potential illegal intercountry adoptions, when will the external commission of inquiry start, what will be its mandate and how will the victims' views be heard and respected in the process?

9. Discrimination and hate speech against children, including Sámi, national minorities and LGBTI children

Reference is made to CO 2018: 33(c).

In 2022, the Norwegian NHRI published the results of its national survey on the population's attitudes towards the indigenous Sámi people and the five national minorities in Norway (Jews, Kvens/Norwegian Finns, Forest Finns, Roma and Romani/Taters).²⁸

The survey shows that many in the population have little knowledge about the Sámi and national minorities, learnt little about the groups at school and agree with stereotypes about the groups. In addition, we see that a significant proportion have observed hate speech against Jews, Sámi, Roma and Romani/Taters in the last 12 months, and that hate speech against Sámi increases the further north you go in Norway. Some of the main findings of the survey include:

- 9 out of 10 state that they learnt nothing or little about Kvens/Norwegian Finns, Forest Finns, Roma and Romani/Taters at school. Half say the same about the Sámi and one third say the same about Jews.
- 1 in 3 report that they have a negative impression of Roma and Romani/Taters.
- 1 in 10 in Northern Norway report that they have a negative impression of the Sámi and Kvens/Norwegian Finns.
- 1 in 10 would dislike having Roma or Romani/Taters as a neighbor, while 1 in 5 would dislike having members of these groups as a close family member.

²⁶ In accordance with Act relating to adoption (LOV-2017-06-16-48) Chapter 4.

²⁷ <https://www.tv2.no/nyheter/innenriks/toppe-til-alle-som-har-blitt-rammet-jeg-beklager/15440352/>

²⁸ The report is available in Norwegian at: <https://www.nhri.no/rapport/holdninger-til-samer-og-nasjonale-minoriteter-i-norge/>.

- 19% have observed hate speech against Jews in the last 12 months, while 15% have observed the same against Sámi, 12% against Romani/Taters and 10% against Roma. The proportion who has observed hate speech against Sámi people increases to 24 % in southern Sámi areas and to 33 % in Northern Norway. Hate speech is most often observed online and in social media.
- 58% of those who have observed hate speech against Sámis and national minorities in the last 12 months did nothing to intervene or help the victim.

These results are consistent with other studies which show that teachers and teacher educators often lack the knowledge and resources to implement the curriculum requirements regarding the Sámi and national minorities,²⁹ and that rates of self-reported discrimination and hate speech among the Sámi and some of the national minorities are higher than the general population.³⁰ Young Sámi people are particularly vulnerable, with a qualitative study indicating that three out of four report experiencing discrimination at least once in their lives.³¹

The Norwegian NHRI has made several recommendations to the Government aimed at strengthening the implementation of the State's human rights obligations to protect the Sámi and national minorities from discrimination and hate speech. These include a national competence boost on the Sámi and national minorities for all teachers and teacher educators, additional measures to prevent and combat hate speech against the Sámi and national minorities in both national and local action plans, a low-threshold online tool for reporting hate speech and improved police statistics on hate crime.

There is little data about hate speech against LGBTI children. A study from 2019 indicated that LGBT persons are twice as likely to experience hate speech as the population in general.³² The same study found that LGBT persons are three times as likely to experience concrete threats compared to the population at large. A report from

²⁹ See for example, Torjer A. Olsen, "Not Good Enough for Anyone? Managing Sámi Education in the Cultural Interface" in *Indigenising Education and Citizenship Perspectives on Policies and Practices from Sápmi and Beyond*, Torjer A. Olsen and Hilde Sollid, eds. (Oslo: University Press, 2022); Hadi Strømme Lile, «Human Rights Education» in Malcolm Langford, Marit Skivenes & Karl Harald Søvig (eds.), *Children's Rights in Norway: An Implementation Paradox?* (Universitetsforlaget, 2019) p. 415; Ola K. Berge, Åsne Dahl Haugsevje and Nanna Løkka, "Cultural enrichment – political difficulty: Review of the policy towards national minorities 2000–2019" (Telemarksforskning, report no. 490, 2019); Arnfinn Midtbøen, Julia Orupabo and Åse Røthing, "Old minorities in the new Norway" in *National minorities and indigenous people in Norwegian politics from 1900 to 2016*, Nik Brandal, Cora Alexa Døving and Ingvi Thorson Plesner, eds. (Oslo: Cappelen Damm Academic, 2017).

³⁰ See for example, Ketil Lenert Hansen, "Ethnic discrimination and bullying in relation to self-reported physical and mental health in Sámi settlement areas in Norway: The SÁMINOR study", 2011; Audun Fladmoe, Marjan Nadim og Simon Roland Birkvad, "Experiences with hate speech and incitement among LGBT people, other minority groups and the rest of the population" (Oslo: Institute for Social Research, report no. 4, 2019).

³¹ Ketil Lenert Hansen and Sara With Skaar, "Young Sámi's mental health. A qualitative and quantitative study of the psychosocial health of young Sámi" (Tromsø: UiT Norges Arctic University, 2021).

³² Birkvad, S. R., Fladmoe, A. & Marjan, N. (2019). *Erfaringer med hatytringer og hets blant LHBT-personer, andre minoritetsgrupper og den øvrige befolkningen* (Rapport 2019:4). Institutt for samfunnsforskning.

SINTEF from 2020 indicated that children and young people are insecure or afraid of being LGBTI.³³ They fear being bullied due to their sexual orientation and what will happen if they are open about their orientation or identity.

Suggested question to Norway:

- What measures is the State Party taking to improve teacher competence regarding the Sámi and national minorities, to prevent and combat hate speech against these groups and LGBTI children, and to make it easier for members of these groups to report experiences of hate speech?

10. Right to education in own language for Sámi children

Reference is made to CO 2018: 33(a).

The Office of the Auditor General of Norway published a report in 2019 on Sámi pupils' right to education in and on Sámi language. The right to education *on* Sámi language, is a right to learn a Sámi language as a separate subject. This right applies to all Sámi children in Norway. The right to education *in* Sámi language, is a right to receive the entire education in Sámi as the language of instruction, for example in subjects such as mathematics. This is a right for all children within the 13 municipalities that are included in the administrative area for Sámi languages (forvaltningsområdet for Sámske språk). These are municipalities where Sámi language has been used by many inhabitants, most often in a minority, throughout history. The Sámi language area includes three different Sámi languages, North-Sámi, Lule-Sámi and South-Sámi. North-Sámi is a threatened language, but in the strongest position of the Sámi languages, including two municipalities where Sámi is the dominant language. Lule-Sámi and South-Sámi languages are severely threatened, and the language users are in minority in all municipalities within the language area. A prerequisite for good education is a sufficient number of teachers with competence in Sámi languages and culture, and sufficient teaching aids in Sámi languages in all subjects.

In the 2019 report, the Office of the Auditor General emphasized that pupils asking for education *on and in* Sámi language must have their rights fulfilled, but the report also emphasize that the lack of teaching aids and teachers with Sámi competence were substantive obstacles to the fulfilment of the duty to provide this education. Hence, the Office of the Auditor General recommended that the Ministry of Education and Research follow up measures to improve the number of teaching students, and to in cooperation with the Sámi Parliament consider measures to develop necessary teaching aids. In 2020 the Norwegian Parliament supported these recommendations. The

³³ Lassemo, E., Sand, K., Tøndel, G. (2020). Rapport. Kartlegging spørsmål fra lhbtq-ungdom, ung.no. (Rapport: 2020:00454), SINTEF.

Norwegian NHRI does not know if specific measures have been taken to improve the situation and is concerned by messages received from concerned parents and experts about the situation with teachers and teaching aids.

Suggested question to Norway:

- What measures have the State Party taken since the report of Office of the Auditor General of Norway in 2019 to ensure a sufficient number of teachers and teaching aids for education in and on Sámi languages?

11. Access to health and care services for children using drugs

New issue.

In 2022, the Norwegian NHRI published the report "Drug use and human rights".³⁴ The purpose of the report was to raise awareness of the State's human rights obligations in the field of drugs and to assess their implementation in Norway. One of the main areas of concern raised in the report is inadequacies in health and care services for children using drugs. The report identifies three different human rights issues in this area: the lack of access to health services, inadequate services in child welfare institutions, and the use of drug tests for youth. Overall, these issues challenge children's rights to health and protection from the illicit use of narcotic drugs and psychotropic substances according to Articles 24 and 33 of the CRC.

Firstly, many children with concurrent drug problems and mental problems lack access to health services. A report from the Office of the Auditor General from 2021 concluded that youth with concurrent drug problems and mental disorders do not receive adequate health care treatment.³⁵ Nearly 40% of the municipalities state that the health care offer for this group is inadequate in their municipality, and around one in three municipalities state that the provision does not have sufficient capacity. Almost 20% of the municipalities lack an offer for young people with drug problems. Almost every third clinic in Children and Adolescents' Psychiatric Outpatient Services (BUP) do not treat young people under the age of 18 with concurrent drug problems and mental disorders, and many receive treatment intended for adults. Both in municipalities and in the specialist health services, there is a lack of sufficient competence and resources.

Secondly, health and care services offered to children who live in child welfare institutions and use drugs are often inadequate. In 2021, a total of 1,476 children and

³⁴ An English summary of the report is available here: www.nhri.no/en.

³⁵ Dokument 3:13 (2020–2021).

young people were placed in child welfare institutions in Norway.³⁶ Many of these were placed in an institution due to behavioural problems according to the Child Welfare Act §§ 4-24 and 4-26. Several reports, including from the Office of the Auditor General and the Ombudsperson for Children, conclude that there is a risk that potential drug problems are not always identified when children are placed in child welfare institutions.³⁷ The right choice of institution is crucial to ensure that the help that is offered is sufficiently adapted to the child's needs. Incorrect placement can have serious consequences for the children concerned. Additionally, there is a lack of expertise in drug problems at many such institutions, and children with drug problems do not always get the help they need while they are in an institution. This includes access to health services.

Thirdly, young people can be subjected to drug tests as a measure to check and control their use of drugs, either as part of an alternative penalty reaction, or as part of a voluntary drug contract. These measures are not only control measures, but also part of the assistance offered by the government to children using drugs.³⁸ A government-appointed committee (known as the Drug Reform Committee), has pointed out that there is a lack of empirical evidence to show that drug tests as part of an alternative penalty reaction have the desired effect.³⁹ The Norwegian Directorate of Health has pointed out the same for voluntary drug contracts.⁴⁰ It is therefore uncertain whether these are suitable measures according to Article 33 of the CRC. There is also a lack of regulations in place to ensure that consent to voluntary drug contracts is obtained without pressure and with sufficient information about the possible consequences of a positive drug test.

Suggested question to Norway:

- What measures will be taken by the State Party to ensure that all children using drugs have access to health and care services which ensure their rights according to the Convention?

³⁶ Figure provided by the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) to the Norwegian NHRI 4. Sept. 2022

³⁷ Dokument 3:7 (2019–2020), p. 45 and The Ombudsperson for children, *De tror vi er shitkids*, 2020, p. 25–27.

³⁸ NOU 2019: 26, kap. 11.6.

³⁹ NOU 2019: 26, p. 320

⁴⁰ The Directorate of Health's hearing statement to NOU 2019: 26, p. 21.

12. Treatment of children in prison and detention

12.1. Isolation of juveniles in prison

Reference is made to CO 2018: 35.

The Norwegian Parliament passed amendments to the Execution of Sentences Act in 2012, so that isolation could no longer be used as a disciplinary measure against minors in prison, and that isolation as a preventive measure must be limited to a maximum of seven days. However, the particular provision that limits the isolation of minors as a preventive measure to a maximum of seven days, has not yet entered into force (Act article 37, para. 4). According to the State Party there has been a need for a closer assessment of how the rule is to be implemented in practice. As far as we are aware, further explanation has not been provided for the extended delay.

Suggested question to Norway:

- Which problems remain to solve the practical issues relating to the implementation of the limitation on isolation of minors and how soon will this provision be enacted?

12.2. Preventive detention sentencing (forvaring) of children

Reference is made to CO 2018: 35(a).

The State Party aims to minimize the use of preventive detention of children but has not eliminated this practice. The Ministry of Justice and Public Security has stated that it will closely follow the development of cases where children are convicted to preventive detention.⁴¹

The Norwegian NHRI is concerned that the rules for assessment of lack of criminal accountability due to severely deviant state of mind or severe mental disability, see the Penal Code section 20, are not satisfactory. This may result in wrongful convictions of children, including preventive detention sentencing. The Ombudsperson for Children has expressed concern after a review of relevant cases.⁴²

If the perpetrator is under 18 at the time of the crime, preventive detention sentencing that is extended periodically without a maximum time limit, cannot be used unless “altogether extraordinary circumstances” apply. This was added to the Penal Code

⁴¹ Letter from the Ministry of Justice and Public Security to The Ombudsperson for Children, 14. of December 2021.

⁴² Letter from The Ombudsperson for Children to the Ministry of Justice and Public Security 4. of July 2021.

section 40 in January 2012. The preparatory works state that "detention should almost never be used on offenders who were minors at the time of the act".⁴³

Based on this, the Supreme Court, in HR-2019-832-A section 79, formulated the threshold as follows:

“[f]or offenders who were under 18 at the time of the crime, there must be a very high risk that the protection of society will not be safeguarded by an alternative prison sentence - greater than what is required to impose detention for adults. Furthermore, despite the offender's young age, there must be no realistic possibility of safeguarding society through means other than detention”.

The Supreme court maintained that preventive detention, which can be extended beyond the stipulated maximum time, is worse than imprisonment, and not in the best interest of the child.

Before the amendment in 2012, the courts had never imposed a preventive order for crimes committed by a perpetrator under the age of 18. However, in the years after the amendment, there have been several children convicted to preventive detention. In several of these cases, there were questions concerning criminal accountability. Assessing criminal liability is especially difficult in cases concerning child offenders.⁴⁴

The Norwegian NHRI is concerned that the Penal Code provisions on criminal liability may not be tailored to take due regard of the particular issues concerning child offenders. This includes procedural guarantees, e.g. requiring child and youth psychology/psychiatric competence and 24-hour observations as part of a forensic psychiatric assessment of children.

Suggested question to Norway:

- How will the State Party ensure that preventive sentencing orders for crimes committed before the perpetrator has reached the age of 18 are based on thorough assessments of criminal liability with due consideration of the special challenges when the offender is a child?

⁴³ Prop. 135 L (2010-2011) section 9.4.

⁴⁴ Our considerations in the following are to a large extent based on the article in Norwegian named “Insanity in children between 15 and 18 years of age. Challenges and opportunities” in Journal of criminal law first issue 2021 by Linda Gröning, Øyvind Ottesen and Kari Øverland.

13. Children's right to privacy in relation to the digital environment

Reference is made to CO 2010: 29, not raised in 2018.

The Personal Data Act was amended in 2012 to include a provision stating that personal data relating to children should not be processed in a way that is inconsistent with the child's best interests. However, this provision was left out of the new Personal Data Act that entered into force in 2018. Currently, there is ambiguity in Norwegian law when it comes to the question of the child's right to privacy vis-à-vis the parents,⁴⁵ both regarding the child's right to self-determination and to what extent the Norwegian Data Protection Authority can intervene against parent's activities exposing the child's personal data.

As stated by the Committee, the digital environment presents particular problems for parents and caregivers in respecting children's right to privacy.⁴⁶ A number of problems in this area have recently been subject to public debate. These include for example, the issue of parents and others sharing images or other material through social media, sometimes in order to support their view in child welfare cases. Another example is the issue of parents monitoring and tracking their children's online activities.

Outside the family sphere, the digital environment imposes several threats to children's right to privacy. An area of particular concern is the use of devices and software provided by schools, leading to the processing of children's personal data, as stated by the Privacy Commission.⁴⁷

Suggested question to Norway:

- What legal measures is the State Party taking to protect children's right to privacy and which remedies and complaints mechanisms are available to children who experience violations of their right to privacy in the digital environment, including when their parents or caregivers violate this right?

14. The need to cut emissions to safeguard children's rights and to assess the best interest of children in all environmental decisions concerning them

Reference is made to CO 2018: 27.

Climate change has a disproportionate harmful effect on children. The Committee has previously held that "children are particularly impacted by the effects of climate change,

⁴⁵ Addressed by the Government appointed Committee on a new Children Act in NOU 2020:14, as well as the Privacy Commission in NOU 2022:11.

⁴⁶ CRC Committees General Comment no. 25, para. 76.

⁴⁷ NOU 2022:11.

both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken.”⁴⁸ Two obligations are particularly relevant.

Firstly, children’s’ right to life and private life, the prohibition of inhuman and degrading treatment and the right of indigenous children to their culture are examples of rights that increasingly are affected by climate change. The Committee has held that “[d]ue to the particular impact on children, and the recognition by States Parties to the Convention that children are entitled to special safeguards, including appropriate legal protection, States have heightened obligations to protect children from foreseeable harm”.⁴⁹ The way to appropriately protect children in accordance with this heightened obligation is for a State to do its part to limit global warming to 1.5°C. This extends both to domestic emissions and exported combustion emissions from oil and gas extraction. The Committee has held that it has jurisdiction with respect to State Parties’ effective control over “acts or omissions regarding the carbon emissions originating within its territory” by its “ability to regulate activities that are the source of these emissions”, which naturally includes exported combustion emissions from oil and gas.⁵⁰

Norway is far off track for meeting its domestic climate targets.⁵¹ Moreover, it plans to expand its oil and gas extraction, even though several actors, such as the International Energy Agency and the Intergovernmental panel on climate change (IPPC), have stated that new fossil fuel extraction and combustion is ‘incompatible’ with the 1.5°C goal in the Paris Agreement.⁵²

Secondly, CRC art. 3.1 sets out that “[i]n all actions concerning children [...] the best interests of the child shall be a primary consideration”. Environmental decisions generally concern children, and the best interests of the child shall accordingly be a primary consideration in the adoption and implementation of environmental decisions affecting children. One example pertaining to Norway is decisions to permit new fossil fuel extraction.

⁴⁸ *Sacchi et al. v. Germany* (dec.), 22.09.2021, CRC/C/88/D/107/2019 para 9.13.

⁴⁹ *Sacchi* para 9.13.

⁵⁰ *Sacchi* para 9.9.

⁵¹ Efta Surveillance Authority (ESA) Climate Progress Report 2022, https://www.eftasurv.int/cms/sites/default/files/documents/gopro/Climate%20Progress%20Report%202022_final_3110222.pdf p. 4.; Ministry of Climate and Environment, *Regjeringas klimastatus og -plan*, 2022, https://www.regjeringen.no/contentassets/fad4e2d774cf45ac8ad0e8cbb1ea093f/no/pdfs/kld_regjeringas_klimastatus_og_-plan.pdf pp. 70 and 91.

⁵² International Institute for Sustainable Development, *Navigating Energy Transitions: Mapping the road to 1.5°C*, Oktober 2022, tilgjengelig her: <https://www.iisd.org/system/files/2022-10/navigating-energy-transitions-mapping-road-to-1.5.pdf>. FNs klimapanel, *Climate Change 2022: Mitigation of Climate Change*, kapittel 2, s. 267.

Suggested questions to Norway:

- How does the State Party protect the rights of children by ensuring that its emissions, both resulting from domestic activities and exported combustion emissions resulting from oil and gas extraction, are reduced in a pathway consistent with limiting global warming to 1.5°C?
- How does the State party integrate the principle of the best interests of the child in all laws and decisions impacting the climate and environment, including decisions concerning new fossil fuel extraction?

15. The cultural rights of indigenous children

New issue, reference is made to Article 30.

In November 2021, the Supreme Court of Norway decided that the human rights of the reindeer herders on the Fosen peninsula were violated due to the construction of large wind power plants in reindeer grazing areas.⁵³ This violated the Sami's right to enjoy their cultural rights (reindeer husbandry activities) under ICCPR Article 27.

The Fosen judgement concerned the validity of the Ministry of Petroleum and Energy's decision from 2013 on expropriation and granting a license to the Storheia and Roan wind power plants on the Fosen peninsula. The Supreme Court ruled that ICCPR constitutes a limitation on administrative discretion, which means that the licensing decision was invalid if ICCPR Article 27 were violated.

One of the wind power plant companies, Fosen Vind, argued before the Supreme Court that the threshold for violation is very high and that "the interference must be so intrusive that it equals a total denial". The Supreme Court did not agree with this; in the judgment, the Court refers to the term "substantive negative impact" as the relevant threshold.

After the judgement was publicized, there have been no alterations to the function of the wind power plants, which still operate on full capacity, causing problems for the reindeer herders.

The authorities do not recognize that there has been a human rights violation but interpret the judgement to mean that a human rights violation may occur in the future. The communication between the authorities, the wind power plant companies and the Sami, appears to be unconstructive and unproductive. In February/March 2023, more

⁵³ English translation of the judgement can be found here: <https://lovdata.no/dokument/HRENG/avgjorelse/hr-2021-1975-s-fulltekst?q=fosen%20english>.

than 500 days after the judgement, Sami activists have been rallying in front of ministry buildings in the center of Oslo, demanding that the wind power plants be demolished.

In the judgement, the Supreme Court did not discuss Article 30 of the CRC, but as the content of Article 30 and ICCPR Art. 27 to a large extent is identical, the NHRI finds it natural to mention this judgement and its aftermath because it is relevant to the children of the reindeer herders at Fosen.

Suggested questions to Norway:

- Does the State Party recognize that the Supreme Court Judgement states that the wind power plants represent a human rights violation?
- How will the State Party secure the right of Sami children at the Fosen peninsula to enjoy their right to culture?