Supplementary Report to Norway's 5th Periodic Report on the International Covenant on Civil and Political Rights

Human Rights Committee of the Norwegian Bar Association
Norwegian Helsinki Committee
Plan Norway
Norwegian Organisation for Asylum Seekers
Norwegian Refugee Council
Save the Children Norway
Human Rights House Foundation

Abbreviations and acronyms

art	article
CAT	United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	United Nations Committee on the Elimination of Discrimination Against Women
CKREE	Christian Knowledge and Religious and Ethical Education, a subject taught in Norwegian school, know as "KRL" in Norwegian.
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punsihment
CRC	United Nations Committee on the Rights of the Child
ECRI	European Commission against Racism and Intolerance
ECHR	European Convention on Human Rights
EU	European Union
HRC	United Nations Human Rights Committee
ICAT	United Nations International Covenant against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
ICCPR	United Nations International Covenant on Civil and Political Rights
ICEDAW	United Nations International Covenant on the Elimination of all forms of Discrimination against Women
ICERD	United Nations International Covenant on the Elimination of all forms of Racial Discrimination
ICESCR	United Nations International Covenant on Economic, Social and Cultural Rigths
ILO	International Labour Organisation
NGO	Non-governmental organisation
NOAS	Norwegian Organisation for Asylum Seekers
NOK	Norwegian Krone, the Norwegian currency
para	paragraph
UDI	Utlendingsdirektoratet (Directorate of Immigration)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNE	Utlendingsnemda (Appeals instance to the Directorate of Immigration)

Introduction

On behalf of The Human Rights Committee of the Norwegian Bar Association, the Norwegian Helsinki Committee, Plan Norway, Norwegian Organisation for Asylum Seekers, the Norwegian Refugee Council, Save the Children Norway and the Human Rights House Foundation, we submit this supplementary report for the information of the Human Rights Committee for its examination of Norway's 5th Periodic Report under the International Covenant on Civil and Political Rights.

The present report was produced by a working group consisting of representatives from The Human Rights Committee of the Norwegian Bar Association, the Norwegian Helsinki Committee and Plan Norway.

We are grateful for all valuable input from other NGOs, independent agencies and government bodies.

We welcome the opportunity to provide additional information with our own critical perspectives based on various sources, not least our own experience and involvement with human rights issues in Norwegian society, including first hand experience.

The present report should not be understood to be a complete evaluation of the Norwegian report, nor of the situation for human rights in Norway in general. The comments contained herein are not even exhaustive with regard to Norway's official report. In other words, the fact that we have not commented on a particular paragraph or subject does not indicate agreement or approval.

Individual cases have been used to illustrate various issues of concern. Although sometimes alarming in themselves, these cases are all meant as illustrations of more general patterns of concern to the readers of the report. If we believed these cases to be singular, "out-liers", we would not have presented them.

This report has followed the layout of the official report. Article by article, in sequence, starting from number one.

Comments that refer to a single paragraph, or to a specific interval of paragraphs in the official report, always start with the relevant paragraph number. For example, a remark, comment or question to the second paragraph of Norway's report would appear like this: "Comment => 2."

Some comments relate to issues not mentioned in the official report. Such issues are indicated with the symbol and article number of the ICCPR, number one would appear like this "¦ article 1 ¦ ? "

Copies of this supplementary report will be sent to the Office of the Prime Minister, the Ministry of Foreign Affairs, the Ministry of Justice and Police, and the Ministry of Local and Regional Affairs. The official report and this supplementary report will be made available at http://www.nhc.no.

The input of non-governmental entities is vital to the United Nations, and the mechanisms of the UN are essential to the human rights monitoring of NGOs. We remain committed to the

task of providing the Committee with information on any of the issues we have included herein and make ourselves available for further queries of the Committee.

For further queries, please contact:

The Human Rights Committee of the Norwegian Bar Association c/o Knut Rognlien, Boks 6878 St. Olavs pl., 0130 Oslo, knut.rognlien@oslo.online.no or

The Norwegian Helsinki Committee, Tordenskioldsgt. 6b, 0160 Oslo, tel (+47) 22 47 92 02, fax (+47) 22 47 92 01.

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ARTICLE 2 –Implementation

Plan of Action Relating to Human Rights: Recommendations of International Monitoring Mechanisms

Comment => 11. In its Plan of Action Relating to Human Rights Norway includes "more effectively following up the recommendations of international monitoring mechanisms" in its list of the most important measures to strengthen the protection of human rights in Norway. This is a commendable aim. As is pointed out in its report, the State Party has taken several steps to improve human rights protection, both in terms of legislation and administrative measures. We will comment on some of these in more detail under the relevant articles.

A general goal of more effective follow up of recommendations requires a minimum of procedures to ensure systematic identification and highlighting of *all* such recommendations. Such minimum procedures could for instance be in the form of written, official, reasoned, widely distributed views of the Government on the legal and administrative steps that will be taken to follow up each and every recommendation received from monitoring bodies. At present we are under the impression that the full text views / reports of international monitoring mechanisms are distributed between relevant ministries without a *requirement* for action.

Norway has repeatedly failed to implement recommendations of international monitoring mechanisms, in spite of its stated goals. Some examples of recommendations that are still not adequately addressed:

- Human Rights Committee: Article 2, second paragraph, of the Norwegian Constitution (State Religion) in violation of article 18 of the Covenant.
- ILO bodies on Norwegian practice of compulsory arbitration in labour disputes in violation of ILO-conventions Nos. 78 and 87, as strikes did not jeopardize the life, health or personal security of the entire population or parts of it.[1]
- European Committee on Social Rights on Compulsory arbitration in labour disputes.[2]
- UNHCR recommendations on refugee protection for specific refugee populations (cfr addendum 1)
- European Commission against Racism and Intolerance (ECRI) on protection of all "non-returnable" persons.[3]
- UN Committee on the Rights of the Child: the best interest of the children is not always the primary consideration regarding unaccompanied child asylum-seekers or refugees; child applicants for asylum are provided with insufficient opportunities to participate in the

[1] In the beginning of 2005 the Parliament (Stortinget) ended a strike among elevator constructors through compulsory arbitration. In the preparatory documents of the act (Ot.prp. nr. 45 page 4), the Ministry of labour and social affairs states that **even if** compulsory arbitration in this case should be regarded as **not compatible** with Norway´s international obligations, it is necessary to impose it to end the conflict among elevator constructors. This clear expression shows that Norway will continue its practice, which is not compatible with international conventions.

[2] In conclusions on Norway (2004) The Committee recalls that such restrictions can only be compatible with Article 6 paragraph 4 of the revised Social Charter within the limits set by Article 6, if it is prescribed by law and is necessary in a democratic society for the protection of the rights and freedoms of others – or for the protection of public interest, national security, public health, or morals. Despite of this, Norway continues a practice of compulsory arbitration that violates the mentioned standards.

[3] ECRI recommends the establishment of procedures to legalise the situation of non-returnable immigrants – cfr ECRI report on Norway of 27 January 2004 para 40. The Norwegian Government has stated to the media that this advice will not be followed.

proceedings; not all asylum seeking children in need of psycho-social assistance are provided with such help.[4]

! ***Recommendation***
*Norway should loyally and efficiently follow up **all** the recommendations of the international monitoring bodies on human rights.*

Investigation of acts committed by members of the police and prosecuting authority

Comment => 23. After years of criticism for lack of efficiency and independence against the system for investigating police abuses, the government launched a new institution that will be in charge of such cases on 25 January 2005. The Special Unit for police cases will be completely independent from the police. This is a welcome development.

Legal aid

Comment =>25. The Government has correctly informed about the positive changes of legal aid in 2003, but fails to report certain negative developments in 2004.

The Government states that the charge previously paid by clients has been removed. However, at the end of 2004, the Ministry of Justice decided to impose charges for clients with an annual income exceeding NOK 100 000,-.

A requirement to receive free legal aid is that the gross, household income does not exceed NOK 230 000,-. If the household consists of more persons having income, like husband and wife, or other persons who have an interest in the case, the total income of all the persons must be less than NOK 230 000,- in order to receive free legal aid.

These income limits have to be considered in the light of the relatively high level of income and expenses in Norway. The average income for an industrial fulltime worker was NOK 331 700,- in 2004.

Comment =>25. On 15 June 2004, the Parliament - on the Government's proposal - removed the right to free legal aid for asylum seekers before the Directorate of Immigration ("Utlendingsdirektoratet, UDI)"), which handles the cases in the first instance. At this stage the right to free legal aid applies only to minors and in cases where national security is an issue. However – all asylum seekers are offered assistance by a non-governmental organisation, the Norwegian Organisation for Asylum Seekers (NOAS) in preparing for the interview by the Directorate, but no formalised assistance is offered after the interview.

When the Directorate of Immigration (UDI) denies asylum and other grounds to stay, asylum seekers have a right to free legal aid at the appeals stage, limited to five hours (increased from three hours when the free legal aid was removed from the first instance). If the asylum seekers need to bring the case before the courts, it is very difficult to obtain free legal aid, even if their income is less than NOK 230 000,-.

[4]UN Committee on the Rights of the Child, report of 28 June 2000 regarding Norway, esp. paras 22, 49, 51-52.

At the end of 2004, the Government proposed to Parliament to remove legal aid in all cases of expulsion, apart from "terrorist"-cases.

Recommendation

! *Norway should remove all charges paid by clients receiving "free" legal aid. Asylum seekers should be offered sufficient assistance through all stages of the application.*

ARTICLE 6 – Right to Life

¦ article 6 ¦ ? Involuntary return of aliens

UNCHR has strongly advised against any involuntary return of persons from southern Somalia, and in particular against measures intended to induce voluntary returns. Still Norwegian authorities seem to induce voluntary return by severely restricting the possibility to live legally in Norway, even temporary – cfr Annex 1 below. The basis of UNCHR`s advice is that there is a real risk for the life or health of the person if case of return. This is therefore a concern under article 6. In July 2005, the authorities started forced returns of Somalis, in contradiction of UNHCR recommendations.[5]

Chechens risk persecution anywhere in the Russian Federation, either in form of administrative persecution or racist attacks. On this background, the UNHCR concluded that ethnic Chechens with permanent residence registration in Chechnya do not have a "genuine internal flight alternative". Consequently, the UNHCR maintains that this category of Chechens is entitled to international protection. They either have a well-founded fear of persecution or flee a warlike situation threatening their life and security.[6] Despite this, Norwegian authorities have refused a number of applications of permission to stay in Norway, cfr. Annex 1 below.

It is a matter of great concern that Norwegian authorities do not follow the advice of UNHCR as a matter of principle. Although UNCHR`s advice may not be sufficient basis for asylum pursuant to the UN Convention relating to the Status of Refugees, the situation will often be so serious that there is a real risk that the returned persons will be killed or exposed to a serious violation of one or more articles of the ICCPR. There is no reason to believe that UNCHR exaggerates the situations. It is disturbing when Norwegian authorities contribute to violations of ICCPR by such deliberate neglect.

Recommendation

! *We strongly recommend that Norway without any exception loyally follow up all the recommendations by UNCHR.*

5 Dagsavisen 11 July 2005, page 4.

6 Cfr UNHCR position papers of February 2003 and 22 October 2004. In the first document, UNHCR in particular warns against considering Ingushetia a "reasonable relocation alternative".

¦ article 6 ¦ ? Suicides and murders by psychiatric patients

Because of insufficient resources and funding some psychiatric institutions have discharged some patients, who after a short while have committed suicide or even murder.[7] In part, the cause of this appears to be a lack of co-operation between the psychiatric wards and the municipal services.[8] In particular, the Acute Institute of Ullevål University Hospital in Oslo has repeatedly experienced suicides or killings soon after discharges. Statistics regarding this problem should be made available, in order to identify causes and appropriate measures to reduce the number. Statistics on such suicides and the circumstances in which they take place, could shed light on risk factors.

Health authorities have criticised psychiatric institutions for having discharged patients without ensuring sufficient follow-up and treatment after discharge. These responsibilities are placed at different administrative levels. Still the co-ordination and co-operation between different levels of health care remains the responsibility of the authorities.

An important cause of tragic outcomes of discharges seems to be the lack of resources in psychiatric institutions as well as in (municipal) follow-up measures, even though the Government and the Parliament have repeatedly said that more resources should be allocated to mental health care.

In addition to the direct victims of the killings, there are also indirect victims, especially among older people, who develop a fear of being attacked by psychiatric patients, especially psychiatric patients of foreign origin. This may again create discriminatory attitudes to foreigners, which also are relevant to ICCPR article 26.

! ***Recommendation***
Norway should produces adequate statistics regarding suicides and murders by persons who have mental disorders. Norway should implement necessary measures so that the cooperation between the institutions and the municipal services is functioning.

¦ article 6 ¦ ? Mental health care for asylum seekers with particular needs

Some asylum seekers have mental disorders or suffer from post-traumatic stress disorders, often because of exposure to very difficult situations like war, torture or other forms of inhuman treatment or other comparable mental strain. Such mental disorders are not systematically registered and not even adequately dealt with when registered.[9]

! ***Recommendation***
Norway should register all asylum seekers with mental disorders and offer adequate treatment.

[7] Cfr for instance Judgment of 12 May 2005 by Oslo City Court.
[8] Cfr interwiev of Health Director Lars E. Hanssen by the newspaper "Dagbladet" 1 March 2005, and the report of March 2005 by Muusmann Research and Consulting regarding Ullevål University Hospital.
[9] Report from the Norwegian Board of Health Annual Supervision Report 2004 and 3/2005.

ARTICLE 7 – Right to Freedom from Torture, Inhuman or Degrading Treatment or Punishment

The status of the Convention against Torture in Norwegian law

Comment =>54. We welcome the adoption of a specific provision in the Penal Code with a prohibition against torture as a means to compliance with the recommendations of the UN Committee against Torture. According to authorities, the adoption gives a clear signal internationally that Norway does not accept torture under any circumstances. Although the adoption is welcomed, we still believe that Norway should have incorporated the UN Convention against Torture in its entirety into Norwegian law, as has been done with several other human rights conventions.

! ***Recommendation***
We strongly recommend that Norway include the ICAT in the Norwegian Human Rights Law.

Time spent in police cells

Comment =>62. As stated in the report of the government, there is rule that prison accommodation shall be made available within 24 hours after a court makes a remand order. This rule was made in 1997 as a response to criticism from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as detainees were kept in solitary confinement in police cells for many days. Police cells are "stripped", that is without any furniture. Interrogation takes place during this detention. After several days in solitary confinement in police cells the accuracy of the statements is at risk. Detainees may think that they will be released or have their conditions improved, if they make statements that could please the police. When these statements are later used as evidence in court, where the question of guilt is determined, this is also a concern under article 14.

In practice, the time of detention prior to a court order is often 2 days. Adding the 24-hour rule, a person may legally spend a period of 72 hours (48+24 hours) in police detention. Any further pre-trial detention is to be spent in ordinary remand custody prison cells according to the rules. When the new section 183 of the Criminal Procedure Act (allowing 72 hours of detention without a court order) enters into force (cfr the Government's Report para 86), the 24-hours-rule should be amended. Otherwise it will not be a breach of the 24-hours-rule to hold detainees in police cells for four days (72+24 hours) before they are transferred to prison cells.

According to aggregate data provided by the Ministry of Justice and Police, there were several violations of the 24-hour limit in 2004. 224 persons remained in police cells more than 24 hours after the court decision; 94 more than 48 hours; 44 more than 72 hours; 24 more than 96 hours; 16 more than 120 hours (5 days); three more than 144 hours (6 days) and one more than 168 hours (7 days). In addition they had already been detained one or two days before the court decision. In total, there were violations in 406 cases, which is slightly less than in 2003 (435 violations). The first months of 2005 saw fewer breaches than the same periods last year, still seven years after the rule was introduced, there is on average one breach every second day. Many detainees are held for many days isolated in "stripped" police cells. In this situation they are still interrogated, and statements are generally allowed as evidence later.

Comment =>63. It is unsatisfactory that there are any breaches of the 24-hour rule at all. The amount of breaches differs from week to week and depends on the number of detainees and availability of prison cells. However, the variation in number of detainees is within what may be expected. It should not be more difficult to have enough prison cells than to have enough police cells. It should therefore be perfectly possible to provide a sufficient number of prison cells to meet the need at any given time, even if it could be somewhat more costly. This way of saving costs would seem particularly problematic in the case of a wealthy nation like Norway

! ***Recommendation***
Norway should provide a sufficient number of prison cells to meet the need for detention at any given time, so that it is not necessary to have detainees in police establishments for more than 24 hours after a court decision or 48 hours after the detention.

¦ article 7 ¦ ? Isolation of non-citizens in police custody without a court order.

At the Police Aliens Camp at Trandum (cfr Comments to paras 109-111 under article 9, below) some aliens (non-criminals) are held isolated from the other aliens in cells without furniture. They may be held there for several days. Only the police, without court orders, have decided the application of isolation. The police claim of such authority has a very imprecise basis in Norwegian law. According to the Police, the facility has a "Security ward" which includes inter alia two unfurnished single cells and six furnished single cells.[10]

! ***Recommendation***
Norway should discontinue the practise of holding aliens (non-criminals) in solitary confinement without any court order.

¦ article 7 ¦ ? Conditions in police custody

Regarding the conditions of police detention we have experienced some cases that give serious case of concern. We will mention them in some detail.

When it is necessary to examine suspects for traces of blood etc., clothes of detainees are taken away, while substitute clothes are not provided. The small cells have cement floors. Being naked for a longer period of time will inevitably feel cold, and it is degrading to stay in the police confinement without clothes.

In one specific case, a man whose clothes where taken away for examination for a longer period was later acquitted. He has received no apology. He sought additional compensation for not having clothes during his confinement in the police cell, but received none. When asked, police officers have said that not enough clothes are available in the police establishments. We have not found similar problems in ordinary prisons[11].

[10] Cfr letters of 20 and 29 June 2005 between Politiets Utlendingsenhet (The Police Central Unit for Foreigners) and lawyer Berit Reiss-Andersen.
[11] Facts according to the defence lawyer in the case, the facts of the case were not disputed by the authorities.

Sometimes police officers become so annoyed with detainees' swearing and verbal threats, that they use physical violence to stop the verbal abuse, even if the detainees are under control and constitute no physical threat. Physical violence should not be necessary in such a situation, as the arrested person could simply be locked up and left alone.

Physical violence used under such circumstances is particularly worrying. The arrested persons are vulnerable in a closed institution like the police establishment, where there are no other witnesses than the police officers themselves[12]. Although the force used as such, may or may not be grave, it is important to instruct police officers that no violence at all is acceptable under such circumstances. If not, limits are hard to set.

An incident of this kind was reported in 2003, but to our knowledge there has not been any apology or reaction against the police officers. The Director General of Public Prosecutions has refused to bring charges against the police officer.[13] The facts of the incident are not contested. The lack of an apology from the authorities indicates that these incidents are not singular events.

Recommendation

! *Norway should provide enough clothes for detainees in police establishments. No violence against detainees that do not provide a direct physically threat should ever be accepted.*

¦ article 7 ¦ ? Health care in police custody

Norwegian lawyers have expressed concern about the health care provided in police detention. Responsibility has previously been given to the police to decide if intoxicated persons should undergo medical examination before imprisonment. In January 2003, the Norwegian Police Directorate introduced new rules, requiring that intoxicated, ill, hurt or mentally unstable persons undergo examination by a physician before imprisonment.

Recommendation

! *Norway should produce adequate statistic concerning deaths in police custody and the assumed reasons.*

Coercive measures in prisons during execution of sentences

Comment=> 65. The Government presents statistics regarding the use of coercive measures in prisons for each year from 1998 to 2002. While staying in security cells or solitary confinement some prisoners commit suicide. Media has reported that such an incident took place on 21 February 2005. The government provides no statistics on suicides committed in security cells. Yet it is clear that the total number of suicides in prison has increased from one in 1999 and 2000 to seven in 2003. In addition, prisoners have died with insufficient medical supervision, but there is no statistics on this problem either. Annual statistics regarding the number of deaths in prison and the assumed reasons should be made available and published to enable an analysis of trends and to consider countermeasures.

[12] CPT`s report of 10 March 2000, page 8.
[13] Decision of 15 March 2005 by the Director General of Public Prosecutions.

Recommendation

! *Norway should produce adequate statistic concerning deaths in detention and the assumed reasons.*

¦ article 7 ¦ ? Mental health care in prisons

Many prisoners suffer from mental illnesses. Prisoners who become psychotic are usually transferred to mental hospitals, while prisoners not considered psychotic have to stay imprisoned. Most of them are not offered satisfactory health care.[14] In addition to the suffering, their situation will often deteriorate. Some will eventually become psychotic, and only then be transferred to mental hospitals. When they are not psychotic any longer, they will be transferred back to the prison, and when once again psychotic, again back to hospitals. This is clearly not satisfactory.

Recommendation

! *Norway should organise mental health care so that prisoners with mental disorders receive stable and necessary care.*

Protection of the integrity of persons in psychiatric institutions

Comment=> 68-69. Although coercive measures shall be limited to what is strictly necessary, there is a question what is "strictly necessary" in practice. When the psychiatrists in charge argue that the use of belts has been necessary towards a patient, the Control Commission and the courts generally accept this, even when coercive measures are used to prevent **presumed future** attacks from the patients. The Control Commission and the courts are not required to have a member with psychiatric qualifications (the law requires a medical doctor to be a member, not a psychiatrist), which may explain why the Commission and the courts seldom control the discretion of the psychiatrist in charge.

Information on the use of coercive measures in psychiatric institutions is limited. The data available reveal large variations in the use of coercive measures between psychiatric institutions[15]. More systematic information and research is required to assess and identify the causes and the occurrence of coercive measures in violation of the law or the Covenant. This is a task for the state party. Despite the lack of data, there are some documented cases and other information that justify concern from a human rights perspective.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has emphasised that the use of instruments of physical restraints for a period of **days** "cannot have any therapeutic justification and amounts, in its view, to ill-treatment".[16] In Norway there is no maximum limit for the time period in which coercive measures may be used. In one case the period exceeded 78 days and nights altogether during half a year. In this period either the patient's arms and/or his legs were bound together or to his stomach restrained by a belt or he was bound to a security bed. The use of belts will often make the patient more aggressive, making new attacks on personnel more likely. Such new

[14] Letter of 21 November 2003 from the Norwegian Board of Health to the Ministry of Health.
[15] Annual Supervision Report 2004 by the Norwegian Board of Health.
[16] CPT`s 8th General Report, pages 13-14.

attacks were used by the hospital as justification to reintroduce the use of belts.[17] A female patient in Østfold Hospital was restrained with a belt on approximately 150 occasions in the course of less than ¾ of a year.[18]

Coercive measures are also used against children under the age of 18 in psychiatric institutions, by such means as being restrained on the floor or on a bed for up to half an hour by one or two adults. Child patients who provided the information describe the experience as unpleasant, undignified and offensive.[19]

Psychiatric institutions are closed units with little insight from the outside. Patients and the wider community depend on staff to report incidents that may be in violation of the law or the Covenant. Unfortunately, superiors and colleagues may often consider a whistle blower disloyal and submit them to different pressures and reactions. In a grave case a therapist in Østfold Hospital was branded mentally ill by his superior, the chief psychiatrist, because he had sent a letter to health authorities criticising the treatment of a patient. Health authorities fond that the whistle-blower's criticism to be sufficiently substantiated, and praised his efforts necessary to reveal injustice to patients.[20] Still the reactions from his colleges and superiors were so hard that he in the end had to quit.

This case illustrates the potentially very high price of whistle blowing. It is generally believed that a considerable proportion of incidents that may be in violation of law or human rights go unreported. Employees, who raise questions concerning violations of human rights, should receive additional protection from sanctions in order to make protection of human rights effective, cfr. Article 2. The authorities however, have done very little to ensure protection. As this is an interference with the personnel's right to freedom of expression, it is also a concern under Article 19.

! ***Recommendations***
Norway should produce adequate statistics on the use of coercive measures in psychiatric institutions.
The use of such measures should not be allowed for more than 2 days, and at any rate the prevention of future attacks should never be sufficient reason to justify the use of coercive measures.
Whistle-blowers in psychiatric institutions should be given extra protection against negative sanctions.

Sexual crimes

Comment=>73. In its 2003 report, CEDAW expressed concern that a low percentage of rapes reported to the police resulted in trials and convictions. CEDAW also noted that

[17] Cfr Judgment of 18 October 2001 by Frostating High Court.
[18] Cfr. exerpts from the report of 11 December 1991 by the Extraordinary Supervision Committee
[19] We have been unable to find any solid official statistics on the use of coercive measures on children in psychiatric institutions. The project 'Life Before 18' ('Livet under 18') is our source. Cfr. The Norwegian Forum for the Convention on the Rights of the Child: 'Supplementary Report 2004 to Norway's Third Report to the UN Committee on the Rights of the Child', p. 20.
[20] Cfr. exerpts from the report of 11 December 1991 by the Extraordinary Supervision Committee.

Norwegian police and public prosecutors dismissed an increasing number of such cases.[21] Every year, an estimated 8000-9000 women are subject to rape, yet only 600-700 cases are reported to the police.[22] According to the public prosecutor, up to 80% of the cases are dismissed because of lack of evidence or because of poor quality of police investigations.

Children are also victims of sexual crimes. Norway's third periodic report to the CRC quotes figures that show that in 2000, 131 persons were convicted of incest or sexual abuse of children less than 16 years of age. However, many cases of sexual child abuse go unreported. Exact figures are hard to determine, as there are no recent studies concerning the matter. The studies available are out of date and focus only on the most serious incidents of abuse. The UN Committee on Economic, Social and Cultural Rights recommended as early as 1997 that Norwegian authorities obtain new figures showing the extent of such abuse. In Norway's third periodic report to the CRC, the Government continues to refer to figures dating from 1986 and 1993.

! ***Recommendation***
Norway should produce adequate statistics regarding sexual crimes to children.

Bullying and violence by fellow pupils at school

Comment => 74. Although a study[23] has shown that there was a thirty percent reduction in bullying among children and the youth from 2001 to 2004, there remains a lot to be done in order to achieve the 'zero-tolerance' goal set by the government. Both the law and the plan of action on bullying place the formal responsibility for anti-bullying work on adults. The Children's Ombudsman suggests that new action plans should focus on the responsibilities of children and develop strategies that include students in the process[24].

Prevalence of violence against women

Comment => 75. A study on domestic violence in Oslo showed that every sixth women had been subject to domestic violence at least once after becoming 16 years.[25]

When considering Norway's fifth and sixth report, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) expressed concern that a high and growing number of women who sought refuge in shelters for battered women were migrants and that migrant, refugee and minority women faced multiple discrimination in access to education, employment, health care and exposure to violence.

A 2004 Report of the Police Directorate showed that the number of cases of violence or threats of violence against women has tripled during the last 10 years. In the majority of

21 In its report CEDAW criticises Norwegian authorities for not addressing the problems as human rights violations. It "urges the State party to intensify its efforts to address the issue of violence against women, including domestic violence, as an infringement of women's human rights".
22 Amnesty International Norway, "Stop violence against women in Norway," 5 March 2004.
23 Centre for Behavioural Studies, University of Stavanger.
24 Larsen, Jon Martin (from www.dagsavisen.no/innenriks/article1311629.ece), 31.10.04.
25 Hilde Pape og Kari Stefansen (red.), Den skjulte volden? En undersøkelse av Oslobefolkningens utsatthet for trusler, vold og seksuelle overgrep, Nova 2004. [The hidden violence? A study of the population of Oslo's vulnerability for threats, violence and sexual abuses]

cases, the women have been living with the violator. In police cases of violence against women, 90% of the violators are men.

In 2004 there was increased media focus on cases of women being murdered by their former husbands or partners. According to the secretariat of the shelters for battered women, more than 1000 women are on the run from relationships characterized by violence and brutality.

Plan of action on combating violence in close relations

Comment => 75-76. Norwegian authorities have introduced several initiatives to strengthen protection of women. Since 2000, the Norwegian government has introduced plans of action against domestic violence, female genital mutilation and forced marriages. The 2004-2007 plan of action has been criticized as being mainly a list of measures aimed at establishing more knowledge about the problem of domestic violence. Human rights NGOs have held that addressing the problem efficiently would require concrete measures to prevent violence, to ensure prosecution of violators, and to give protection and reparations to victims. The plan also fails to address the underlying problem of discriminatory traditions against women.

! ***Recommendation***
Norway should implement more concrete measures to prevent violence in close relations.

¦ article 7 ¦ ? Violence against children at home

Norway has both legislation and social systems that aims to prevent children from getting abused and provide treatment to children exposed to violence. Section 30 of the Children's Act expressly states that the child must not be subjected to violence or in any other way be treated so as to endanger his mental and physical health. The general provisions of the Penal Code concerning bodily harm also apply to children.

Data from statistical reports in police registers of criminal cases and registers at women shelters and the child welfare services give an indication of the occurrence of violence committed against children in close relationships. However, it is difficult to assess the extent of the problem, as there had been no national representative study done on the issue recently. Recent studies on domestic violence focus more on adults and less on children.

Female Genital Mutilation

Comment=> 76 The passing of an Act prohibiting female genital mutilation and the adoption of an action plan to combat female genital mutilation and the establishment of a project to facilitate the implementation of the action plan ("the OK Project") are all commendable developments. There is currently no statistics as to the number of Norwegian born and raised, female children who have been circumcised.[26] On 31 May 2005, Parliament passed a resolution recommending mandatory examination of all female children (not just those with minority backgrounds) by health professionals in order to prevent female genital mutilation.

[26] Lien, Inger-Lise, NIBR-rapport 2005:8 'Tiltak mot kjønnslemlestelse: Evaluering av OK-prosjektet – det nasjonale prosjektet for iverksetting av tiltak I handlingsplanen mot kjønnslemlestelse', pp. 14-15.

¦ article 7 ¦ ? Deportation

In General Comment No. 20 para 9 (1992) the Human Rights Committee stated that no person should be sent to a country where there is a real risk of treatment in violation of Article 7. As long as the Norwegian authorities are not following the UNCHR`s advises, there is a risk of such treatment – cfr. article 6, above and Annex 1, below.

Recommendation

! *Norway should implement all UNHCR recommendations about deportation and return, and follow the view expressed in the Human Rights Committee in General Comment No 20, para 9, in its return policy.*

¦ article 7 ¦ ? Safeguards against torture and cruel, inhuman or degrading treatment or punishment in military operations

Human rights groups in Norway have insisted that Norwegian authorities should put forward preconditions on safeguards against torture before accepting to take part in international military operations. The debate was triggered by reports about abuses in Abu Ghraib, Guantanamo Bay, and in other detention facilities in Afghanistan, Iraq and elsewhere by US, British, and other forces.

As of December 2004, Norway was taking part in international military operations i.a. in the Balkans, in Afghanistan, and in Iraq. Norwegian authorities responded that they were taking up the issue of precautions against torture and other forms of abuse of detainees with their counterparts in international operations, in particular with US and British authorities. They would not, however, put the existence of specific safeguards as a precondition for taking part in such operations.

Recommendation

! *Norway should put safeguards against torture and other cruel, inhuman and degrading treatment or punishment as a precondition for taking part in international military operations.*

ARTICLE 8 – Right to Freedom from Slavery and Servitude

Trafficking

Comment=>84-85. Norway is known to be a destination country for victims of trafficking, mainly for sexual exploitation. However, statistical and systematic knowledge about the scope of the problem is lacking. In 2003 Norway ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol), and introduced legislation making all aspects of trafficking punishable. The government launched a Plan of Action against trafficking which aims to strengthen police capacity to investigate cases of trafficking. Human rights NGOs have been supportive of the government having adopted a human rights approach to the problem and that it considers trafficked women or children as victims of abuse and not as criminals. Concerns remained, however, that this approach did not prevail in all cases. In 2004, there were several media reports claiming that

immigration authorities did not grant residence permits to witnesses or victims of trafficking thereby obstructing prosecution.

On 15 February 2005, eight men were convicted by Oslo Court for trafficking of two women from Russia and Lithuania. The leader of the organisation behind the trafficking was sentenced to 11 years imprisonment, while the others got from five months to five years for participation in the trafficking. The verdicts were appealed. The case is important since it is the first time a Norwegian court has dealt with crimes related to trafficking of human beings. NGOs and legal experts raised concerns, however, that there is still a great need for efficient action by Norwegian police and prosecutors to fight trafficking in Norwegian courts.

! ***Recommendation***
Norway should offer residence permits to all victims of trafficking.

ARTICLE 9 – Right to Liberty and Security of the Person

Deprivation of liberty in mental health care

Comment =>87-97. In 2004, the number of involuntary psychiatric hospitalisations in Norway was high compared with other European states.[27] It has often been contended that the underlying reason was a serious lack of resources in the Norwegian health care system for mentally ill persons. A high number of people were refused treatment in early phases of illness, only to be hospitalised involuntarily when their conditions deteriorated.

In some cases patients who sought treatment were hospitalised involuntarily because it was the only way in which overcrowded psychiatric hospitals would accept them. It was also claimed that the high number of involuntary hospitalisations was due to cultural factors and to legal provisions that allowed hospitalisation even of persons who were not an imminent threat to themselves or others.

The government introduced several initiatives to increase quality and resources in psychiatric health care in 2004. An 8 years plan, which was started in 1999 to increase resources in psychiatric health care, has yielded some positive results. A major policy goal is to increase local capacity to treat and support mental illness.

! ***Recommendation***
Norway should make available sufficient capacity in mental health care, to meet the needs of those who want voluntary treatment.

Imprisonment of non-citizens

Comment =>107. A non-citizen may according to the Immigration Act be remanded in custody on the mere suspicion of having given a false identity. There is no maximum time limit for the period of custody. Some foreign nationals have been remanded for more than

[27] According to The Foundation for Scientific and Industrial Research at the Norwegian Institute for Technology (SINTEF), the proportion of involuntary psychiatric hospitalisations remains relative stable at 40%.

one year.[28] A man from Latvia was remanded for as much as **1 year and seven months** on suspicion that he had given false identity. Such a long period of deprivation of liberty outside normal due process of law is very worrying.

! ***Recommendation***
Norway should discontinue the practise to remand non-citizens in custody for long periods on the suspicion of having given false identity.

Comment =>109-111. Near Oslo Airport, Gardermoen, there is a camp for aliens, called "The Police Aliens Camp at Trandum" ("Trandum Internat"). Aliens are kept at Trandum while authorities consider whether all the conditions to deport them are fulfilled. This may take some days, but they risk staying there for 6 weeks.

Trandum Internat consists of former military barracks with a tall fence around. Private watchmen, cameras and dogs secure the area. The aliens are allowed to stay in a small area between the building and the fence for 1-2 hours a day. They have to stay inside the building for the rest of the time. Several persons sleep in the same room. They are not allowed to have their own mobile telephones, but each of them may use a common telephone for maximum 5 minutes a day. They may be granted visits from family or friends, but for a limited period of time. They also risk to be put in solitary confinment decided at the discretion of the police, without a court order. If those consented to the stay will leave Trandum Internat, they are offered transportation to the airport or Oslo centre. When they leave the Internat, this is registered in the national police information system INKSYS, and the alien risks re-arrest.[29] Even children under the age of consent (15 years) are held in Trandum Internat. Their parents or other guardian have consented for them.

For some of the aliens the court will have decided that the deprivation of liberty is in accordance with the law. The others have signed a declaration of consent to stay at Trandum Internat until a certain date.[30] This document is usually signed when in police custody. Some have been told that they will remain in police custody until they sign. Thus, there is a risk that persons sign the declaration, even if the conditions to deprive their liberty according to the law are not fulfilled.

In General Comment No. 8, 1982, para 1, the Human Rights Committee stated that Article 9, para 1 is applicable to **all** deprivation of liberty. As far as we know the Committee has not dealt with the question of consent to deprivation of liberty. Because of the risk of evasion of the law, the risk of pressure on the alien and the uncertainties involved, the European Court of Human Rights has not accepted consent to deprivation of liberty as in conformity with the European Convention on Human Rights (ECHR) Article 5, para 1[31]. As article 9, para 1 of ICCPR is nearly similarly to Article 5, para 1 of ECHR, and they both have the Universal Declaration of Human Rights as their model, we consider that consent to deprivation of liberty is a matter of concern also under ICCPR.

[28] Record of Norwegian Court Cases (Retstidende) 1996, page 326.
[29] Letter of 23 February 2005, from Politiets Utlendingsenhet (The Police Central Unit for Foreigners) to Lawyer Knut Rognlien.
[30] Op. cit.
31 Wilde, Ooms and Versyp v Belgium Series a 12 (1971) para 65.

Recommendation

! *Norway should no longer allow a declaration of consent to replace a court order as sufficient basis for keeping aliens in closed camps.*

Duration of pre-trial detention

Comment=>114. According to the Ministry of Justice and Police, 3198 persons were held in remand custody in 2004 for an average of 65 days each. 66 persons spent more than 365 days in remand custody. Seven persons spent more than 730 days. This constituted a reduction of 7.6 % in the number of persons put in remand custody as compared to 2003, while average time spent in remand custody increased by 3 %.

In 2004, 61 children (persons under the age of 18) were held in remand custody. Two children spent more than 183 days in pre-trial detention. None spent more than 365 days. In a letter to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) the Norwegian Ombudsman for Children expressed his concern over the Norwegian Government's use of remand custody for juveniles and how seldom alternatives to imprisonment substitutes are used. The Ombudsman referred particularly to the case of a 15-year old boy who was remanded in custody from 30 August 2004 until the start of the trial on 5 January 2005. This case elicited serious concerns from among Norwegian human rights organisations and also from a member of the Standing Committee on Justice of the National Assembly.[32]

Recommendation

! *Norway should avoid imprisonment of minors. When imprisonment is absolutely necessary, minors should never be held in adult confinements.*

ARTICLE 10 – Right of Prisoners to be Treated Humanely

Comment =>119-127. A 29 July 2004 letter from the Central Criminal Ward Authorities at the Ministry of Justice to prison directors became target of considerable criticism from lawyers and human rights groups. The main focus of the letter was to provide guidelines on how to treat detainees and prisoners who have taken part in organized criminal activity or persons constituting a serious security risk.[33] The legal basis for operating Norwegian prisons is the law on enforcement of punishments (Law 2001-05-18 nr 21). The letter draws mainly on this law, applying it to persons belonging to organized crime.

Human rights groups voiced concerns about the letter to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). One concern is that the letter annuls ordinary criteria for easing restrictions and granting benefits to prison inmates. "Good behaviour" should in these cases not be seen as an argument for evaluating the security risk to be limited. According to the prison authorities, the nature of the crime, the number of convictions, and with whom the person has been convicted should instead be seen as the determining factors in deciding restrictions.

32 Storberget, Knut (Member of the Parliamentary Justice Committee) in Dagsavisen, 16 December 2004, www.dagsavisen.no/debatt/article1376296.ece.

33 The title of the letter was: "Implementation of punishment or pre-trial detention for persons taking part in organized crime".

This would be in breach of a fundamental principle of the law on enforcement of punishments. In article 3, the law states that punishment should "promote the sentenced person's adaptation to society", and the person should have a possibility to make his or her own efforts to avoid new criminal behaviour.

A major concern was that the letter contained a long list of restrictive measures local prison authorities may apply if they deem it necessary for reasons of security or to prevent new crimes, inter alia complete control of communication, frequent ransacking, isolation, and frequent change of cell, change of department or change of prison. Due to security and investigative concerns in a specific case, the lawyers of the prisoner may have no access to information from the police or the prosecutor.

We are concerned that local prison authorities are given discretionary powers to apply restrictions that in sum could lead to inhuman treatment. Although national control mechanisms are in place, and some safeguards are built in whereby local authorities should inform or consult with regional or national authorities if they apply some of the restrictions over long periods of time, there is a concern that this is not sufficient to ensure compliance with international standards against inhuman treatment and torture.

! ***Recommendation***
Norway should consider every detainee and prisoner individually and not set ordinary criteria for easing restrictions and granting benefits aside only on the basis of which crime for which the persons was convicted.

Comment 132 => Although Norway has made a reservation under Article 10(2b,3) of the Covenant (concerning the separation of juvenile prisoners from adult prisoners), no such reservation has been made under Article 37(c) of the CRC covering a similar provision. The Norwegian Government should withdraw its reservation under the Covenant. Despite the Government's careful consideration during prison placement, it has occurred that a 15-year old detainee was held with adult prisoners who had committed serious crimes.[34]

! ***Recommendation***
Norway should avoid putting persons under the age of 18 in prison. If it is absolutely necessary to detain such a person, he should be kept in an institution designed for young persons and not mixed with adult prisoners.

ARTICLE 14 – Right to a fair hearing

¦ article 14 ¦ ? Admissibility as evidence of statements obtained in police arrest or other difficult conditions

Professor of criminal justice and director of the Centre for Criminal Justice at the University of Bristol, Rod Morgan, has together with CPT studied the practise of custodial conditions in different European countries. He concluded that the Scandinavian countries (Denmark,

[34] www.aftenposten.no/nyheter/iriks/article925363.ece

Sweden and Norway) have a practise of isolating suspects remanded in custody for months while the police interrogate them. This practice is generally not found in other European countries.[35] According to Morgan: "To the extent that their custodial conditions are unpleasant, this may serve to persuade prisoners held on remand to admit their assumed guilt.[36]"

Statements given in police custody or other difficult conditions are often used as evidence in court; regardless of whether witnesses/defendants declare that they have given false statements, influenced by a desire to get out of isolation or by the isolation itself.

In several cases, statements given in police custody or other difficult conditions have been used as the only basis for a conviction.

The conditions in police arrest are very unpleasant (as described under the heading "Conditions in police custody" under article 7, above). When detainees are transferred from police arrest to an ordinary prison, conditions will usually be better, but many detainees are still held for weeks in isolation or their contact with other persons is restricted. CPT has described effects of solitary confinement, as fatigue, insomnia, loss of appetite, nausea, headaches, crying fits and bouts of depression.[37] After a visit in 1997, "The delegation was left in no doubt that in some cases, illness was a direct consequence of prolonged isolation by court order".[38] The findings were consistent with earlier findings of the CPT visit in 1994, when medical experts of the CPT delegation encountered prisoners who exhibited "serious medical implications arising from solitary confinement".[39]

The United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has recommended the Norwegian government not to use isolation (visit- and correspondence restrictions) as a measure during the pre-trial period, except when the safety of persons or property is involved[40].

A point of interest is to what extent detainees may reasonably believe that a false statement will relieve their conditions of detention. After its 1997 visit, CPT wrote:

> "To advise someone that a failure to cooperate will lead to the imposition (or continuation) of restrictions or, conversely, that willingness to cooperate will lead to the relaxation or lifting of restrictions, would appear – at first sight at least – to correspond closely to the concepts of "coercion" or "promises" (of section 92 of the Criminal Procedure Act).
>
> Further, the distinction, which the Norwegian authorities seek to make between information on the use of restrictions, which is provided with – as opposed to information, which is provided without – "procedural basis", opens the door to abuse. This approach could clearly encourage the police to seek to justify the imposition (or

[35] Rod Morgan and Malcolm D. Evans: "Preventing Torture" page 247-249.
[36] op. cit. page 319.
[37] Report of 27 June 1997 by the CPT, pages 15-16.
[38] Op. cit., pages 10-12.
[39] Excerpt of CPT´s report of 21 September 1994.
[40] CAT Protocol of 6 May 1998

the continuation) of restrictions even in cases when they know that due consideration for the investigation does not require such a measure.[41]"

The Criminal Procedure act was later amended so that the competence of the police to decide changes in restrictions became more limited. Revealing some of the underling ideas of the present law, the Norwegian Government responded to the CPT in 1997:

> "It is an undisputed fact that the ability and willingness of an accused person to contribute towards elucidating a case has a significant bearing on the necessity of using these enforcement measures. In cases where the accused refuses to help shed light on the case, it goes without saying that there is a greater need to use enforcement measures than in cases where the accused contributes towards its elucidation.
>
> With reference to the above, the Norwegian authorities are of the opinion that it is permissible to inform the accused of the consequences of his/her co-operation or lack of the same. The Norwegian authorities consider that it is not only permissible to do so, but that it would be incorrect not to do so in cases where considerations related to the investigation might be decisive for the question of remand in custody. Of course, it is not difficult to see that such information might be perceived by the accused as placing him in a coercive situation and under pressure to cooperate. But this is a situation that has often been brought about by the accused´s own actions and dealings prior to arrest.[42]".

We hold that, irrespective of the **intention** of the prosecution authority when informing the detainees on how long the restrictions could last, the information may likely **effect** the statements of a detainee to the police and to a judge, especially when statements are obtained from detainees in solitary confinement or other similar difficult conditions.

! ***Recommendation***
Norway should stop the practise of allowing statements given by a person in or just after isolation/solitary confinement being used before the court when the question of guilt is decided.

ARTICLE 17 – Right to privacy and family life

¦ article 17 ¦ ? Protection of privacy of children and youth related to the use of the Internet and cellular phone cameras

Norwegian law forbids the collection and use of personal information from children below 15 years old without the consent of their parents. However, the Norwegian Consumer Ombudsmen reported in December 2004 that Internet websites continue to collect and use personal information of children and the youth who are often required by the websites to register and give their personal information before they are allowed access to services and products.

[41] Report of 27 June 1997 by the CPT, pages 15-16.
[42] Response of 18 December 1997 from the Norwegian Minister of Justice to CPT

¦ article 17 ¦ ? Telephone and room monitoring and interceptions

The Act regarding telephone monitoring has been amended twice since Norway's Fourth Periodic Report of 4 February 1997. From 1 January 2000 a lawyer is appointed to represent the person (the suspect) whose telephone is monitored. The lawyer has the possibility to give submissions to the court, which will decide whether the monitoring should be allowed or not. The lawyer is not allowed to contact the suspect and operates on the condition of strict secrecy.

The procedure has given lawyers insight into how such cases are considered and decided. In the experience of lawyers, many cases in Oslo follow a pattern in which the police give a short request simply claiming facts, without mention of sources or further arguments. When lawyers asked for access to all documents of the case in question, the court tended to deny it without giving any reasons. The courts themselves did have the right to ask for the said documentation, but seldom used this right. This caused many lawyers to refuse to participate in such cases, holding that the control of the police is illusory when courts consider the police's pure allegations as the truth.

In June 2005, Parliament amended the Act, so that the lawyers shall have access to all the documents of such cases. The underlying problems of courts "trusting" the police in monitoring cases remain.

When amending the Act in June 2005, Parliament – on the Government's proposal – allowed the police to monitor private rooms. Both telephones and rooms can be monitored secretly, even when no crime is committed. The conditions of monitoring are only that there is a reasonable reason to believe that a serious crime will be committed, and that the monitoring is essential to prevent the crime. Telephones and rooms used by persons who are not in the searchlight of the police, can also be monitored. The law now allow these methods, even if there is no research showing that such methods effectively prevent serious crimes.

The Parliament is aware of the disadvantages of this for the inhabitants thinking that they may be monitored everywhere, it is inter alia argued that the control by the court will be a guarantee against unnecessary use.

The experiences of earlier unlawful monitoring of telephones found by the government-appointed Lund Commission also show the risk to let such cases be decided by courts, which are not sufficiently critical to the police.[43] The courts will be presented with cases where the police describe a risk of serious crime. It will often be very difficult for a judge to refuse the police request and risk the feeling of contributing to a serious crime, as shown in cases on telephone monitoring in Oslo.

! ***Recommendation***
Norway should not allow secret telephone or room monitoring/interception as a preventive method.

[43] Norway's Fourth Periodic Report of 4 February 1997, paras 191-192.

¦ article 17 ¦ ? Family life – prisoner's infants

When a prisoner gives birth to a baby before or under the detention in a normal prison, she is not allowed to have the baby together with her in the prison. Infants are not allowed either. The reason given is that it may be harmful for children to stay in prison.

Norwegian mothers may have a leave from prison when breastfeeding, but foreign prisoners will generally not be given a leave because of the risk of fleeing. If there is nobody else to take care of the baby outside the prison, the baby may live together with foster parents until the mother has served her sentence.

The separation of mother and infant in this way may be an unnecessary interference with the right to respect for the family, and thus a concern under article 17. In particular as no consideration is given of the fact that babies and infants' needs for breastfeeding, care and security may be met in a better way if the child is allowed to stay with the mother (or father), than under any alternative option, depending on the circumstances of each case. To our information, Norway is, except for Albania, the only country in Europe where there are no possibilities for mother and baby to stay together in prison. In other countries, authorities consider what will be in the best interests of the child in each case[44].

! ***Recommendation***
Norway should decide in each individual case whether children should be with imprisoned parents, based on the principle of the best interest of the child, and make whatever provisions needed for prisoners to have their babies and infants in prisons, to implement such decisions.

¦ article 17 ¦ ? Privacy of psychiatric patients and their descendants

The Central Register of Psychoses in Norway[45] contains information on the mental illness and treatment of approximately 300 000 persons who have been committed to psychiatric hospitals from 1916 to 1989. New registrations were stopped in 1989. The use of the existing information still continues.

The main object of the register is to give information to researchers. The results of the research are published, also internationally.[46] The register is used i.a. by researchers who are interested in finding out whether mental illness is heritable, especially in the case of querulant paranoia.[47] It is argued that the register provides the possibility to collect information on the mental development of the persons registered and their **descendants** over time.

Researchers are not allowed to make direct contact, but ask relevant hospitals to send letters to persons in question and ask for further contact. As most of the persons registered are dead, most such letters will go to descendants informing that one of their forefathers/mothers were once committed to a psychiatric hospital, and that a researcher is interested to examine them. The descendants may not know of the mental illness of the forefather/-mother, and the

[44] Report of 4 March 1987 by a Commission appointed by the Ministry of Justice. The situation is still the same.
[45] Sentralkartoteket for alvorlige sinnslidende" or "Psykoseregisteret".
[46] I.e. an article about qurulent paranoia by Christian Astrup in Neuropsychology 1984.
[47] Op. cit.

information of this and the researchers` interest in their own mental situation will likely create feelings of discomfort. Such a letter is an interference with the right to privacy of the person registered and the privacy of the descendants.

Until the 1980`ies the register was not sufficiently protected against unauthorized access. Information may have come into unauthorized hands. Even if the security measures are better today, there will always be a risk of unauthorized access as long as the register exists.

The register was until the 1980`ies not known for others than some few persons in the health administration. The patients were not informed about the registration and to an even lesser extent did they consent in registration or in that their descendants could be contacted. The law has not been precise and accessible in a way that would allow the public, the psychiatric patients or their descendants to foresee their legal position. The interference is therefore not in accordance with the law.

Patients and their descendants have no possibility of protesting or to ask for deletion or rectification of diagnosis, to impose limited use or better security measures. The registered persons have to live in uncertainty whether they or their descendants may be contacted by researchers or others who have had unauthorized access to the register. The uncertainty whether their descendants will be informed about their mental illness, is in itself an interference with the right to privacy.

! ***Recommendation***
Norway should delete the information contained in The Central Registry of Psychosis.

ARTICLE 18 – Freedom of Thought, Conscience and Religion

The relationship between the State and the State Church

Comment =>175. Article 2, second paragraph, of the Norwegian Constitution is in clear contradiction with Article 18. The Government informs in its report that all the paragraphs of Article 2 of the Constitution will be considered in connection with a possible future reform. However it has been possible to remove just the second paragraph of Article 2 during the twelve years since HRC first time pointed at this issue[48].

! ***Recommendation***
We recommend that the Committee set a time limit within which the Government propose to the Parliament to remove Article 2 second paragraph of the Norwegian Constitution.

[48] HRC has since 1993 emphasized that article 2 second paragraph of the Norwegian Constitution is in clear contradiction with article 18 of the Covenant – cfr CCPR/C/79/Add.27 page 2.

Teaching of Christian Knowledge and Religious Education within a single, obligatory subject

Comment=> 176. HRC has stated that the framework of the compulsory school subject "Christian Knowledge and Religious and Ethical Education" (CKREE) constituted a violation of Article 18 paragraph 4 as of 2004. [49] The Norwegian Government has proposed to change the wording in §2-4 of the Education Act, so that the obligation of the teacher to teach CKREE in compliance with the school's object clause, no longer is explicit.

However, the Government emphasises that all education and activity in the school aims at fulfilling the object clause. It did not propose to **remove the general, Christian object clause** of Education Act § 1 (2), for the activities and education in schools. The teaching of all compulsory subjects is therefore still required to be carried out with the intention of providing a Christian upbringing.

Before we know the exact changes of the CKREE subject, it is not possible to consider whether the subject will be neutral and objective and thereby meet the requirements of Article 18. We would like to comment on this when the proposed amendments are published.

! ***Recommendation***
Norway should remove the general Christian object clause of the Education Act.

¦ article 18 ¦ ? Christian object clause of preschools (kindergartens)

The Preschool Act of 5 May 1995 states in § 1 (2) that "The preschool shall help to give the children an upbringing according to the basic values of Christianity". Although attendance is not compulsory, parents have to accept this if they want to have their children in public preschools.

! ***Recommendation***
Norway should remove the general Christian object clause of the Preschool Act.

ARTICLE 19 - Right to Hold Opinions and Freedom of Expression

Child pornography

Comment=>189 The Norwegian Penal Code included a ban on production, import, possession and trading in child pornography. In May 2005, in part to comply with Council of Europe Convention of 8th November 2001, the wording was amended to include "acquiring and systematic familiarisation [of sexual depictions of ... children] and handles [sexual depictions ... children]. This will make it easier for law enforcement to bring charges and obtain convictions against suspected paedophiles. By including an exception for sexual depictions of an artistic, scientific, informational or similar nature, the change was assumed not to conflict with freedom of expression.

[49] HRC, views of 3 November 2004 (Communication No. 1155/2003).

Children and new media

Comment=>191 The Norwegian Board of Film Classification was reorganised in 2004 to become part of a greater Media Authority. It is expected that the role of age control for audiovisual media will continue, however some controversy arose from the change in administration with regards to actual classification. Apparently the new administration quickly chose to reintroduce a ban on several films that had just been lifted.

In terms of new media such as the Internet, several organisations remain involved in the European Safer Internet Action Plan. This Action Plan focuses primarily on awareness initiatives. As in other countries it has been seen as an increasing problem, that teenagers will post provocative pictures of themselves on websites. Reported incidents of solicitation by minors on the Internet, continue to raise concerns. Issues relating to privacy and age of consent are yet to be clarified.

ARTICLE 26 – Equality before the law, equal protection by the law

Ethnic discrimination

Comment => 222-236. There is limited data available in Norway on the incidence and nature of racial discrimination, as acknowledge by the authorities, which in the 2002-2006 Plan of Action to Combat Racial Discrimination, have committed themselves to conduct surveys on the living conditions of people of immigrant backgrounds. This is a welcome step.

Reports from the Centre against Ethnic Discrimination suggests that such discrimination was widespread in the labour market and in the housing market, as well as in some other spheres of society.

According to Statistics Norway, there were 349 000 immigrants in Norway at the beginning of 2004. This constitutes 7,6 % of the population. 72 % of the immigrants are of non-Western origin. The registered unemployment among immigrants by the end of 2004 was 10,8 %; while in the population as a whole it was 4,1 %. Among some immigrant groups the unemployment rate was much higher. For instance among persons of African origin, the unemployment rate was 20,1 %.[50] There is also indication that the levels of salaries are lower among immigrants than among ethnic Norwegians.[51]

Several government plans of action over the last 10 years have been aimed at increasing the proportion of immigrants in both the public and the private sector. Recent statistics show that these efforts have led to limited progress. In the period 1998-2002, the proportion of non-Western immigrants in state bureaucracy and in state owned institutions increased by only 0,5 %. The increase in municipal and provincial bureaucracy and in institutions was 0,71 %.

50 Among immigrants from Asia, there was 14.4 % unemployment; among immigrants from Eastern Europe there was 11.6 % unemployment, and among immigrants from South and Central America there was 11.5 % unemployment. Immigrants from the Nordic countries had only 4.5 % unemployment, while immigrants from the rest of Western Europe had 4.7 %. Among immigrants from North America and Oceania 5.6 % were unemployed as of august 2004.

51 See Kristian Rose Tronstad, "Martin Luther King – fortsatt en drøm", Aftenposten 28.08 2003. The article refers to research done by a Norwegian project looking into the distribution of power and influence in Norwegian society ("Maktutredningen").

The proportion of immigrants was higher in the private sector (6,78 % at the end of 2002), and this sector can also point to a higher increase (1,22 % from 1998 to 2002). But the overall picture still gives reason for concern.

The Norwegian Human Rights Law gives a special status to the ICCPR, the ICESCR, the ICRC and ECHR so that the said conventions will prevail whenever they conflict with other provsions of law or constitution. The new law on ethnic discrimination puts ICERD at the level of law, and not on the same level as the conventions mentioned in the Human Rights Law, which could signal that the rights of ICERD are "second class human rights". A similar concern is valid for women's rights, as ICEDAW is not included in the Human Rights Law either.

! ***Recommendation***
The International Covenant for the Elimination of all forms of Racial Discrimination and the International Covenant for the elimination of all forms of Discrimination against Women should both be included into the Norwegian Human Rights Law.

ARTICLE 27 – Minorities

Indigenous peoples: The Sami

Comment 237-265=> The number of Sami in Norway is estimated to be approximately 45 000 people. Norway ratified the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent States in 1990. The main principle of the convention is the right of indigenous peoples to preserve and develop their own culture, including maintaining control of the natural resources necessary for this purpose. It also includes an obligation by state authorities to support these endeavours.

The legal status of the Sami people has improved over the last decades. A deputy minister of the Ministry of Local Government and Regional Affairs deals specifically with Sami issues. In addition to participating freely in the national political processes, the Norwegian Sami elect their own constituent assembly, the Sameting, first opened in 1989. The sixth of February was announced in 1993 as the official Sami day in Norway. On 1 September 2003, a Resource Centre for the Rights of Indigenous Peoples was established to increase information about the rights of Sami and other indigenous peoples.

However, the Sami people right to ownership of land and water resources remained controversial, i.e. because of the mixed population of the Finnmark County. In June 2005 the Parliament passed an Act, the Finnmark Act, to regulate management of resources in the County. The Act transfers ownership of 96% of the areas of the County from the state to an independent body. Decisions on issues related to the areas would be taken by a council consisting of three representatives from the Sameting and three representatives from the elected assembly of Finnmark County.

The controversial questions regarding the rights to the resources in the different parts of Finnmark are going to be decided by a Commission, the "Finnmark Commission".

¦ article 27 ¦ ? Indigenous People: The East Sami

The Norwegian Government's report to HRC refers to background material that touches on the situation for the **East Sami** people,[52] the report it self makes no reference to this situation at all, which is critical as the East Sami people is not able to enjoy their own culture in accordance with Article 27. [53] The recently passed Finnmark Act does not deal with the East Sami people's special situation.

The East Sami is a separate ethnic group, different from the other Sami as regards culture, general perception of law, the way society is organised, the way they make their living, religion, language (including alphabet) and geographic location (the area around the borders between Norway, Finland and Russia). The East Sami culture is about to become extinct because most of the material basis has been taken away, i.e. the opportunity to herd reindeer has been taken away completely, and the opportunity to hunt and fish salmon partially.

Norwegian courts and the reindeer-herding administration have determined that the East Sami are entitled to herd reindeer. However, Sea Sami people, whose ancestors were employed as herdsmen by the East Sami, have occupied the East Sami's original grassing ground that is known as the Neiden siida area. According to the current Reindeer Herding Act, the Sea Sami are entitled to continue to herd reindeer there. There are no vacant grassing areas for the East Sami in the Neiden-siida area or anywhere else.

The Norwegian government has previously actively, through its assimilation policy, made it difficult for the East Sami to maintain their culture. The Norwegian government has also passively contributed to the East Sami's reindeer being supplanted by the Sea Sami's reindeer, through, for instance, not enforcing a public order to slaughter parts of the latter's reindeer.

Based on these fact and on Norway's international obligations, including Article 27 of ICCPR and ILO Convention No. 169, the majority of the Sami Rights Committee proposed that the State rapidly expropriate a right for the East Sami to keep reindeer in a specially defined area (the former Neiden-siida area) and the monopoly on salmon fishing in a part of River Neiden (Neidenelva). Since other private individuals now have rights that prevent the East Sami from herding reindeer, an expropriation must take place, and the State must provide acceptable compensation, so that the measure can be acceptable to the remaining population. [54] It is important to note that the East Sami are the only group that the Sami Rights Committee proposes discriminating in favour of, as the East Sami is a minority that has the greatest need for protection.

Eight years has passed since the Sami Rights Committee proposed the **rapid** implementation of measures to prevent the East Sami culture from dying out. Despite several requests by the East Sami, the Norwegian government has still not even proposed measures that can give the East Sami the opportunity to herd reindeer, which will be a decisive material basis for the

[52] Such as NOU *(Norwegian Official Reports)* 1997:4.

[53] The Sami Rights Committee, *(Samerettsutvalget)*, a committee that has been publicly appointed to look into the legal aspects relating to the Sami, and whose members have a wide range of backgrounds, has thoroughly assessed the East Sami people's situation in NOU 1997:4, chapter 7, which, among other things, is based on reliable historical surveys by Professor Einar Niemi in NOU 1994:21, part V. These are the main sources for the description presented here. Selected portions of the NOU 1997:4 that particularly regard the East Sam are translated and into added to this report in an Annex.

[54] NOU 1997:4, page 362.

survival of their culture. It is uncertain whether such measures will be implemented in time at all, i.e. while the East Sami who have experience of herding reindeer in the East Sami way, are still alive. Measures that are implemented later, may come too late to revitalise the East Sami culture.

There is no other specific way of solving this problem than that of expropriating land for the East Sami, with reasonable compensation to those who today have the right to herd in the Neiden-siida area, in accordance with the proposal of the majority of the Sami Rights Committee. Pursuant to Norwegian law, such a claim for expropriation cannot be put before a Norwegian court. The Norwegian government has to carry out such an expropriation on its own initiative. On this background – it was discouraging that the East Sami people's special situation was not addressed in the "Finnmark Act".

The East Sami People is not represented in the Sami Assembly (Sametinget), but the Sami Assembly is supposed to promote the interests of the East Sami People along with the interests of other Sami. Thus the Sami Assembly has supported the East Sami People in words, but has not yet asked the Government to follow up the proposal of the Sami Rights Committee. Nor has he Sami Assembly been willing to put the East Sami case before the ILO organs, which is a remedy for the parties to the ILO-process..[55] The East Sami People is not recognized as a party to the ILO-process, but the Sami Assembly is.

! ***Recommendation***
Norway should rapidly expropriate land rights for the East Sami people to keep reindeer in the Neiden siida area and a monopoly on salmon fishing in a part of the River Neiden, so that the East Sami culture may be revitalized.

National Minorities

Comment 277=> Past human rights violations of the Romani communities in Norway comprised forced sterilization of women, lobotomies and forced separation of children from their parents, among others.

Representatives of the Romani communities have complained that recent legislation makes exercise of certain professions in the craft industry difficult. Qualifications or equipment that they do not possess have now been made compulsory.

Another area of concern is the survival of the Romani language, as well as the ongoing stigmatisation of Romani people, including their free access to privately owned camping.

[55] cf a copy of the minute book of the Sami Assembly's plenary meeting in September 1999, pages 136-137 (Annex to this report).

Annex 1:
Refugees and Asylum seekers

How refugees are treated, in particular whether asylum and security is provided are core issues to the protection of many human rights, including the right to life and torture (non-refoulement). In countries of destination refugees are often vulnerable groups, some times in need of particular protection and support, often prone to discrimination on the basis of ethnicity or nationality. Given the complexity of the matter we decided to address some of the major issues in this Appendix.

Deprivation of basic social rights used to force or induce the return of refugees (Articles 6, 7, and 26)

On 1 January 2004 a new policy towards persons who have received a final rejection of their asylum application was adopted. These people were no longer entitled to free boarding and food. 10 January 2005, the Interlocutory Appeals Committee of the Supreme Court accepted this policy on preconditions that rejected asylum seekers should not risk torture or inhuman treatment as a consequence of expulsion from Norway. The policy was criticized by human rights groups for forcing persons who neither could return to their home country nor take care of themselves in Norway (having no work permit) to live on the streets.[56]

As of February 2005, and estimated 600 persons had been affected by the new policy. In spite of government assurances that no one should be forced to live on the street and that all persons residing in Norway are entitled to a minimum of social assistance, there were reports that several persons had their applications for social aid rejected. Many had to live with friends or manage by taking temporary and unregistered work.[57]

The government has decided to establish a "transit centre" to cater for the basic needs of this group. It remains to be established.

The Centre against Ethnic Discrimination criticised the policy for being in breach of the UN Covenant on Social, Economic and Cultural Rights and the European Convention on Human Rights.[58] Illegal aliens have a right to have their basic needs fulfilled temporary. Also Norwegian legislation ensures this right. In addition, The Centre criticises the underlying moral tenure of the policy, interpreting it as denouncing rejected asylum seekers as not being worthy of receiving aid.

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56. The UNHCR expressed its view on the new policy: "UNHCR holds the general view that the Norwegian asylum system is in line with international standards and that the adjudication of single cases is reliable. To apply economic incentives to induce failed asylum seekers to co-operate to obtain a valid travel document is not in breach with international law and UNHCR's guidelines," says Måns Nyberg, Head of Information at the UNHCR Regional Office." Press release by the Ministry of Local Government and Regional Affairs, 4 October 2004 (http://odin.dep.no/krd/engelsk/aktuelt/pressem/016081-070267/dok-bn.html)

57. Stein Lillevolden, "Dobbeltspill om flyktninger", Dagbladet 24.02. 2005. http://www.dagbladet.no/kultur/2005/02/24/424300.html

58. Heidi Wyller and Marie Nyhus, "Upresist og feilaktig om ulovlige og lovlige asylsøkere" ["Inaccurate and wrong on illegal and legal asylum seekers"], http://www.smed.no/artikkelID.asp?artikkelID=284.

Return to unsafe areas (articles 6 and 7; protection of human rights defenders)

Norwegian refugee policy becomes increasingly strict and quite a number of decisions are seen as controversial by human rights organisations and the public. On this background, the Centre (against Ethnic Discrimination argues, asylum seekers who fails to obtain asylum may still have a strong subjective fear of returning to their country of origin.

UNHCR considers that persons originating from *southern Somalia* are in need of international protection and objects to any involuntary return of rejected asylum-seekers to the area south of the town of Galkayo.[59] Despite this the Norwegian authorities rejected about 40 % of the applications for asylum/residence permits from persons from southern Somalia in the first four months of 2005. Until recently they have not been physically returned to Somalia, but Norwegian authorities put pressure on them to return, because they are no longer allowed to live in asylum camps, nor given a legal basis to work or live elsewhere. As of July 2005 the government has returned one person to Somalia and announced plans for return of a substantial number of people to Somalia. The plan does not seem to make a distinction between areas north and south of Galkayo, and thus disregards the UNHCR recommendations. The first person returned was indeed returned to the area south of Galkayo.

UNHCR has recently strongly advised States to suspend the forced returns of *Iraqi* nationals to all parts of Iraq. UNCHR has further asked States to postpone the introduction of measures intended to induce voluntary returns, including rejected asylum seekers. This includes financial or other incentives and particularly deterrent or punitive measures.[60]

In 2004, 370 Iraqis had their applications for asylum and other kinds of protection rejected in Norway. 27 received political asylum, 292 other kinds of protection, while 137 received permission to stay on humanitarian grounds. Throughout 2004 and till June 2005 Norwegian authorities refused Iraqi nationals who have lived in Norway for less than three years, to live in asylum camps, to have working permits or other sufficient means to live for, with the intent to induce voluntary returns. UNCHR`s office in Stockholm has criticised the Norwegian authorities for this.

Norwegian authorities are unable to execute its plans for forced return rejected asylum seekers to Iraq. Meanwhile, many people in this group are subject to the deprivation of basic social rights used to induce return, cfr above.

- Chechens

The Norwegian Helsinki Committee has engaged in several asylum cases in which Norwegian authorities did not follow UNHCR guidelines, in particular cases related to *Chechens* who had their permanent residence registration in Chechnya before their flight. According to UNHCR, this category of asylum seekers is entitled to international protection.

In an illustrating and particularly grave case, is that of Ashgirieva and Isayev. Ashgirieva was a human rights defender.[61] Their asylum application was rejected in the first instance (UDI). Appeals are pending. The rejection said that the applicants could use the "internal flight

59. UNHCR Position on the Return of Rejected Asylum-Seekers to Somalia of January 2004
60. CHR Return Advisory Regarding Iraqi Asylum Seekers and Refuges of September 2004.
61 The case is explained in more detail in Norwegian Helsinki Committee (2005): Human rights developments in Norway 2004, report 1/2005 , pages 14-17.

alternative", meaning that they could settle in other parts than Chechnya inside The Russian Federation. It is well documented that Chechens risk persecution any place inside the Russian Federation, either in form of administrative persecution or racist attacks. On this background, the UNHCR concluded that ethnic Chechens with permanent residence registration in Chechnya do not have a "genuine internal flight alternative."[62]

In Checnya, human rights activists may be killed, victim of forced or involuntary "disappearances", tortured or subject to grave threats.[63] In several cases journalists who have smuggled pictures or documentation of abuses out of Chechnya have been killed. In the rejection of Ashgirieva's asylum application her role as a human rights defender was not given due consideration and weight.

The unreasonable rejection in this particular case and other similar cases seems clearly to be based on policy decisions. In March 2004, UDI concluded that Chechens could be returned to the Russian Federation, except for those who are "persecuted", a group counting for less than 10 % of Chechen asylum seekers in Norway. Repatriation of Chechens is, according to the UDI, not in breach with the principle of "return in safety and dignity".

In May 2004, the director of the UDI, Trygve G. Nordby, explained that UNHCR based its guidelines on "empirical facts dating back to 2001 and 2002. On the other hand, the UDI has to base its decisions on the most recent documentation available" he wrote. However, UNHCR repeated its position on Chechen asylum seekers in October 2004. The UDI organized its own fact-finding mission to the Russian Federation, but did not meet with ethnic Chechens during the mission.

Traditionally Norwegian refugee and human rights policy has underlined support of and co-operation with United Nations and its organs as one of its main principles. The decision not to abide by UNHCR guidelines represents an important shift of policy. It may also be a breach of Norway's obligation as a state party to the Convention relating to the Status of Refugees and its Protocol.[64]

[62] The UNHCR position documents of February 2003 and 22 October 2004. In the first document, the UNHCR in particular warns against considering Ingushetia a "reasonable relocation alternative".

[63] The Norwegian Helsinki Committee, *The Silencing of Human Rights Defenders in Chechnya and Ingushetia.* Report 1/2004 (Available online at nhc.no)

[64] Protocol relating to the Status of Refugees, Article 2(1): "The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, …" Erna Solberg, The Minister of Local Government and Regional Affairs, reiterated the Norwegian policy of not following UNHCR guidelines related to Chechens with permanent residence registration in Chechnya 6 January 2005.